

Date: February 17, 2021
To: Chair and Members of the Board
From: Paul Takala, Chief Librarian/CEO
Lisa Weaver, Director Collections and Program Development
Subject: **Legal Opinion on the Working with Us Policy - PT/LW**

RECOMMENDATION:

That the Library Board receive the attached Legal Opinion on the *Working with Us Policy*.
That the Library Board directs staff to study the opinion and bring back revisions to the policy for the Board to consider to ensure it complies with the legal advice.
That staff are directed to ensure operational processes are put in place to ensure the policy is effectively and fairly administered.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

The *Working with Us Policy - HPL's Policy on Partnerships, Programs & Space* received 1st review in May 2020. Because of the complexity of the issues involved in space usage, free speech and inclusion, the Library Board directed staff to seek a legal opinion on the draft policy.

BACKGROUND:

Following the May 2020 Board meeting staff engaged a local attorney with extensive expertise in Human Rights law, Wade Poziomka, a Partner at Ross & McBride LLP. In recent years public libraries in Canada have faced a complexity of issues around the our core role in protecting free speech necessary for free and democratic societies to flourish, living up to the promise of the Canadian Charter of Rights and Freedoms, as we are also mindful of our deep commitment to inclusion while knowing that some speech, that while not legally defined as Hate Speech, can be deeply hurtful to many individuals and groups who have lived experience with personal and systemic discrimination.

The attached Legal Opinion provides guidance to the Library Board and staff as we work to fairly and transparently operationalize the updated policy on Partnerships, Programs and Space Use.

In seeking legal advice on the draft policy, we had four (4) questions. The first three (3) related directly to the policy and the final question addressed a specific issue around requiring individuals entering Library premises during the COVID-19 Pandemic by checking with their HPL Library Card. The questions we asked were:

1. Are there elements of the policy that violate Charter Rights or Canadian/Ontario laws?
2. An underlying assumption in the policy is with Library programs and co-planned programs. HPL is able to ensure we can create programs consistent with our values and strategic plan, however, with room bookings from third parties we need to ensure we do not restrict free speech by denying bookings to groups because their views might be inconsistent with our

organizational values. Are we violating Charter Rights or Canadian/Ontario laws by giving room booking lower priority than our own programs?

3. Are there additional legal steps that we could take to ensure our spaces are used consistent with our *Diversity and Inclusion Policy* without undermining Charter Rights or Canadian/Ontario laws?
4. Are there legal implications for HPL enforcing the need to have a library card during the pandemic if this is required?

With room bookings and in-person events currently suspended due to the pandemic, staff will be studying the implications of the opinion in the coming months and reporting back to the Library Board. There are a few areas of the draft policy that will need some revisions and the opinion also provides guidance on the processes we need to have in place to effectively administer the policy.

In the past, HPL has benefitted from legal opinions shared by other libraries on matters that affect us all and because we faced no active litigation, we intended the opinion to be publicly available to contribute to the broader dialogue. Thanks to Wade Poziomka and his team at Ross & McBride LLP for all their thoughtful work on this file. Also, a special thank you to James L. Turk, Distinguished Visiting Scholar at Ryerson University and Director of Ryerson's Centre for Free Expression for taking the time to share his perspective with Mr. Poziomka and his team.

Finally, as we move forward we need to recognize that because of our unique role as a public library, supporting access to a wide diversity of opinion and expressions, some of the decisions we make in the future will disappoint some. By adhering to our Intellectual Freedom Policy while also approaching our work with respect for everyone, coming from a perspective of *cultural humility* as promised in our Diversity and Inclusion Policy, we can strive to advance deeper mutual understanding and respect even if that process can be painful at times.

ATTACHMENTS:

Description	Upload Date	Type
Legal Opinion on the Working with Us Policy	2/12/2021	Cover Memo
Working with Us - HPL's POLICY ON PARTNERSHIPS, PROGRAMS & SPACE - 1st Review	2/12/2021	Cover Memo

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Paul Takala
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Dear Mr. Takala:

RE: LEGAL OPINION**Introduction**

The Hamilton Public Library (“HPL”) has requested a legal opinion to provide clarity around aspects of its policy entitled *Working With Us – HPL’s Policy on Partnerships, Programs and Space Use* (the “Policy”), especially with regards to the *Charter of Rights and Freedoms* (the “Charter”) and Ontario law such as the Ontario *Human Rights Code* (the “Code”).

The area of library policy has not attracted a large amount of litigation and so there is a paucity of caselaw that is directly relevant to the Policy on which this opinion has been sought. Much of this opinion is therefore rendered on the basis of legal first principles applicable to the *Charter* and *Code*. This opinion has also been prepared with the input of James L. Turk (“Mr. Turk”), Distinguished Visiting Scholar at Ryerson University and Director of Ryerson’s Centre for Free Expression.¹

This opinion is divided into four sections:

1. Applicability of the *Charter* to public libraries

¹ <https://cfe.ryerson.ca/people/james-l-turk>; <https://www.ryerson.ca/fcad/about/distinguished-advisors/james-turk/>

2. Legal implications of giving preference in room bookings
3. Additional ways to enforce the Diversity and Inclusion Policy
4. Legal implications of requiring a library card during the Pandemic

Applicability of the Charter

Whether the *Charter* applies to public libraries generally, or to public libraries when exercising functions such as the implementation of the Policy does not appear to have been answered conclusively.

It is well established that the *Charter* explicitly applies to government actors:

... s. 32 of the Charter specifies the actors to whom the Charter will apply. They are the legislative, executive and administrative branches of government. It will apply to those branches of government whether or not their action is invoked in public or private litigation. ... It would also seem that the *Charter* would apply to many forms of delegated legislation, regulations, orders in council, possibly municipal by-laws, and by-laws and regulations of other creatures of Parliament and the Legislatures. It is not suggested that this list is exhaustive.²

What constitutes government activity has been delineated by the Supreme Court of Canada in several subsequent decisions.

In *McKinney*, several university professors challenged the University's imposition of mandatory retirement on the basis that it violated the equality provision in Section 15(1) of the *Charter*. The Court found that the University's relations with its employees was not a matter governed by the *Charter*. In reaching its conclusion, the Court placed particular emphasis on the lack of governmental control over the University's Board and day-to-day operation:

... the universities' fate is largely in the hands of government and that the universities are subjected to important limitations on what they can do, either by regulation or because of their dependence on government funds. It by no means follows, however, that the universities are organs of government. There are many other entities that receive government funding to accomplish policy objectives governments seek to promote. The fact is that each of the universities has its own governing body. Only a minority of its members (or in the case of York, none) are appointed by the Lieutenant-Governor in Council, and their duty is not to act at the direction of the government but in the interests of the university (see, for example, s. 2(3) of *The University of Toronto Act, 1971*). The remaining members are officers of the Faculty, the students, the administrative staff and the alumni.

The government thus has no legal power to control the universities even if it wished to do so. Though the universities, like other private organizations, are subject to government regulations and in large measure depend on government funds, they manage their own affairs and allocate these funds, as well as those from tuition, endowment funds and other sources.

...

² *RWDSU v. Dolphin Delivery Ltd.*, 1986 CanLII 5 (SCC), [1986] 2 SCR 573, at paras 34 and 39.

... Though the legislature may determine much of the environment in which universities operate, the reality is that they function as autonomous bodies within that environment. ... there is nothing here to indicate any participation in the decision by the government and, as noted, there is no statutory requirement imposing mandatory retirement on the universities.³

In *Douglas College*, a companion case released at the same time as *McKinney*, the Court reached a different conclusion and found that colleges created by statute and subject to a high degree of government control were bound by the *Charter*.

As its constituent Act makes clear, the college is a Crown agency established by the government to implement government policy. Though the government may choose to permit the college board to exercise a measure of discretion, the simple fact is that the board is not only appointed and removable at pleasure by the government; the government may at all times by law direct its operation. Briefly stated, it is simply part of the apparatus of government both in form and in fact. In carrying out its functions, therefore, the college is performing acts of government, and I see no reason why this should not include its actions in dealing with persons it employs in performing these functions. Its status is wholly different from the universities in the companion cases of *McKinney v. Univ. of Guelph* and *Harrison v. Univ. of B.C.*, both *supra*, which, though extensively regulated and funded by government, are essentially autonomous bodies. Accordingly, the actions of the college in the negotiation and administration of the collective agreement between the college and the association are those of the government for the purposes of s. 32 of the *Charter*. The *Charter*, therefore, applies to these activities.⁴

Later, in *Eldridge*, the Court reviewed this earlier jurisprudence and articulated the two bases by which the *Charter* could be found to apply to an entity:

... the *Charter* may be found to apply to an entity on one of two bases. First, it may be determined that the entity is itself "government" for the purposes of s. 32. This involves an inquiry into whether the entity whose actions have given rise to the alleged *Charter* breach can, either by its very nature or in virtue of the degree of governmental control exercised over it, properly be characterized as "government" within the meaning of s. 32(1). In such cases, all of the activities of the entity will be subject to the *Charter*, regardless of whether the activity in which it is engaged could, if performed by a non-governmental actor, correctly be described as "private". Second, an entity may be found to attract *Charter* scrutiny with respect to a particular activity that can be ascribed to government. ... If the act is truly "governmental" in nature - for example, the implementation of a specific statutory scheme or a government program - the entity performing it will be subject to review under the *Charter* only in respect of that act, and not its other, private activities.⁵

³ *McKinney v. University of Guelph*, 1990 CarswellOnt 1019, [1990] 3 S.C.R. 229, at paras 40–42 and 45. [“*McKinney*”]

⁴ *Douglas/Kwantlen Faculty Assn. v. Douglas College*, 1990 CarswellBC 766, [1990] 3 S.C.R. 570, at para 49. [“*Douglas College*”]

⁵ *Eldridge v. British Columbia (Attorney General)*, 1997 CarswellBC 1940, [1997] 3 S.C.R. 624, at para 44. [“*Eldridge*”]

In this case, the Court noted that it had earlier determined in the *Stoffman* case⁶ (another companion case with *McKinney*) that a hospital's mandatory retirement policy was not subject to the *Charter* because

... the hospital's mandatory retirement policy ... was a matter of internal hospital management. Notwithstanding the requirement of ministerial approval, the Regulation was developed, written and adopted by hospital officials. It was not instigated by the government and did not reflect its mandatory retirement policy. Hospitals in British Columbia, moreover, exhibited great variety in their approaches to retirement. That each of these policies obtained ministerial approval reflected the large measure of managerial autonomy accorded to hospitals in this area.⁷

However, a different result obtained in *Eldridge*, where the hospital was delivering a government program mandated by statute:

The purpose of the *Hospital Insurance Act* is to provide particular services to the public. Although the benefits of that service are delivered and administered through private institutions - hospitals - it is the government, and not hospitals, that is responsible for defining both the content of the service to be delivered and the persons entitled to receive it. ... moreover, hospitals are *required* to furnish the general hospital services specified in the Act.

...

The structure of the *Hospital Insurance Act* reveals, therefore, that in providing medically necessary services, hospitals carry out a specific governmental objective. The Act is not, as the respondents contend, simply a mechanism to prevent hospitals from charging for their services. Rather, it provides for the delivery of a comprehensive social program. Hospitals are merely the vehicles the legislature has chosen to deliver this program. ... in the present case there is a "direct and ... precisely-defined connection" between a specific government policy and the hospital's impugned conduct.⁸

In *Godbout*, the Supreme Court determined that the *Charter* unquestionably applies to municipalities because their councils are democratically elected, they have general taxing power, they are empowered to make law, and all of their powers are conferred upon them by the provincial government:

... most significantly, municipalities derive their existence and law-making authority from the provinces; that is, they exercise powers conferred on them by provincial legislatures, powers and functions which they would otherwise have to perform themselves. Since the Canadian *Charter* clearly applies to the provincial legislatures and governments, it must, in my view, also apply to entities upon which they confer governmental powers within their authority.⁹

⁶ *Stoffman v. Vancouver General Hospital*, 1990 CarswellBC 765, [1990] 3 S.C.R. 483. ["*Stoffman*"]

⁷ *Eldridge*, at para 48.

⁸ *Ibid* at paras 49-51.

⁹ *Godbout c. Longueuil (Ville)*, 1997 CarswellQue 884, [1997] 3 S.C.R. 844, at para 51. ["*Godbout*"]

Similarly, in *Multani*, the Court found that there was “no question” that the *Charter* applied to a school board:

There is no question that the *Canadian Charter* applies to the decision of the council of commissioners, despite the decision’s individual nature. The council is a creature of statute and derives all its powers from statute. Since the legislature cannot pass a statute that infringes the *Canadian Charter*, it cannot, through enabling legislation, do the same thing by delegating a power to act to an administrative decision maker¹⁰

As stated in the Introduction to this opinion, there do not appear to be any cases that directly address the question of whether the *Charter* applies to public libraries, either generally or in their execution of certain functions. The matter came before the Divisional Court in *Weld v. Ottawa Public Library*, wherein the applicant sought to judicially review a decision of that library to deny her a room booking for a film screening on the basis that the film was likely to promote hatred and discrimination. However, the Court decided that the matter was not amenable to judicial review, and it left for another day the question of whether the *Charter*’s Section 2(b) protections of freedom of expression were applicable.

With reference to the aforesaid cases of the Supreme Court, there appear to be several factors weighing in favour of the *Charter* applying to public libraries.

Libraries in Ontario are creatures of the *Public Libraries Act* (the “Act”) that are created and have their boards appointed by municipal councils, which are themselves subject to the *Charter*. As Mr. Turk points out, libraries are under the management and control of their board, but the decisions and actions of those boards are constrained in numerous ways and substantial control over the board reposes in the municipal council, including by operation of Sections 9(9), 12, 14(2), 19 and 24 of the Act.

Additionally, libraries/boards receive grants from the provincial Minister of (pursuant to Section 30 of the Act) and may receive grants from the municipal council (Section 27), while the Lieutenant Governor may make regulations prescribing conditions governing the payment of grants (Section 39). The Lieutenant Governor may also make regulations respecting the establishment, organization, management, premises and rules of public libraries (Section 39).

Section 20 of the Act is largely mandatory and refers mainly to what the Board “shall” do; Sections 23(1) and 23(2) of the Act specifically require libraries to make their reference materials available to the public without charge. This is indicative of libraries carrying out a specific government objective.

On the other hand, the Court in *McKinney* noted that government funding and regulation are not sufficient to demonstrate that an entity is “government” for the purpose of *Charter* application. Library board members do not serve at the pleasure of the municipal council but instead, under Section 10(3), serve for a term concurrent with that of their appointing council.

Additionally, as the Court in *Weld* stated, the library’s “core functions are to make books and other materials available to the public, and not to make space available to the public for screening films or

¹⁰ *Multani c. Marguerite-Bourgeois (Commission scolaire)*, 2006 SCC 6, at para 22. [“*Multani*”]

other private events”; and the decision to cancel a private room booking “was not based on any legal obligation or on the exercise of a statutory power.”¹¹

While those comments are instructive, it must be remembered that they were made in the context of whether the decision could be judicially reviewed, and the Court in *McKinney* was careful not to equate amenability to judicial review with the application of the *Charter*. “[universities] may be subjected to the judicial review of certain decisions, but this does not in itself make them part of government within the meaning of s. 32 of the *Charter*.”¹²

Mr. Turk points out that one consideration in *McKinney* is the unique historical independence afforded to universities, whereas libraries have traditionally operated as more of a public agency serving the public’s interest. This may weigh in favour of the *Charter* applying to public libraries. Mr. Turk further remarks that libraries operate under a statutory framework of circumscribed autonomy that is more similar to community colleges and school boards, both of which are governed by the *Charter*.

Mr. Turk’s is also of the view that the Court in *Weld* has taken an overly narrow view of the core functions of a library. However, decisions of the Divisional Court will be persuasive (and possibly binding) authority in a potential legal challenge to library policy.

At a minimum, the *Charter* likely applies to public libraries when executing their core function of making materials available to the public, and it could apply when public libraries are dealing with room bookings for private events (the question has not been decided).

The question of whether libraries are governed by the *Charter* in all of their activities cannot be definitively answered. However, there is a sound basis, as outlined above, for saying that the *Charter* probably does apply to the operations of the HPL generally.

As Mr. Turk aptly notes, both the Ontario Library Association’s “Statement on the Intellectual Rights of the Individual” and the Canadian Federation of Library Associations’ “Statement on Intellectual Freedom and Libraries” are already guided the spirit of the *Charter* and *Charter* values. In effect, libraries such as the HPL are likely already operating as if the *Charter* applies to them.

This opinion will, therefore, proceed on the basis that the *Charter* applies to public libraries, including HPL.

Legal implications of giving preference in room bookings

As stated, it is possible that the *Charter*’s freedom of expression protections may apply to room bookings in a public library; that was precisely the question left open by the Divisional Court in *Weld*. Section 2(b) of the *Charter* guaranteeing freedom of expression is reproduced as follows:

2. Everyone has the following fundamental freedoms: ... (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

¹¹ *Weld v. Ottawa Public Library*, 2019 ONSC 5358, at para 15. [“*Weld*”]

¹² *McKinney*, at para 34.

Section 1 of the *Charter* makes clear that this right is not absolute, but instead is “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

While the applicability of the *Charter* to HPL has not been definitively determined, there is no question that the *Code* applies to HPL as an entity providing a service, which “encompasses those activities which provide a benefit from one person to another or to the public” and “is not restricted to benefits which are generally available to the public.”¹³ The HRTO has specifically found that “a public library offers a variety of services to the public within the meaning of the *Code*, and that, therefore, the respondent cannot discriminate against a user of its facilities in violation of the *Code*’s provisions.”¹⁴

Section 1 of the *Code* entitles individuals to be free from discrimination in the provision of services:

Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

Section 15 of the *Charter* also contains an equality provision that explicitly does not apply to policies designed to ameliorate discrimination:

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 10 of HPL’s policy is on reasonably solid footing to the extent that states that it will refuse to book a room for illegal activity or events that discriminate, although some changes may be necessary to make this basis for refusal clearer (see Part 3 of this opinion).

In *R. v. Keegstra*, the Supreme Court specifically found that the hate speech prohibitions contained in the *Criminal Code* are an acceptable infringement on the *Charter*’s freedom of expression protections. HPL is thus entitled to refuse room bookings to events that would be considered hate speech without running afoul of the *Charter*, should it apply.

However, as noted by Mr. Turk, HPL should be aware of the concept of prior restraint, which would include the act of judging a person will engage in illegal hate speech before the event and refusing them use of HPL space on that basis. Courts have found that “[p]rior restraints are considered particularly severe restrictions on speech”, though they are not impermissible in all cases.¹⁵

¹³ *Thavarajasooyer v. Incorporated Synod of the Diocese of Toronto*, 2009 HRTO 314, at para 6. [“*Thavarajasooyer*”]

¹⁴ *MacDonald v. Cornwall Public Library*, 2011 HRTO 1323, at para 3. [“*MacDonald*”]

¹⁵ *R. v. Glad Day Bookshops Inc.*, 2004 CanLII 16104 (ON SC), at paras 111–15. [“*Glad Day*”]

Mr. Turk recommends (and we agree) that, at a minimum, HPL must be able to demonstrate “reasonable grounds” for concluding that illegal activity will take place before imposing a prior restraint. To this end, Mr. Turk further recommends (and, again, we agree) that the HPL policy contain wording along the following lines:

Refusing access to library space will not be denied except where there are reasonable grounds to believe that the proposed activity/use of the space is contrary to the law and/or would interfere with the public’s use of the library.

This wording would apply regardless of the prohibited activity with which HPL is concerned (e.g. hate speech, discrimination, gambling). The focus in applying the aforesaid standard must always remain on the nature of the proposed event rather than the identity of the individuals who are requesting to use the space. HPL must be able to

Meanwhile, the HRTO has previously found that “in certain circumstances, it is a violation of the right to be free from discrimination protected under Part I of the *Code* where a respondent fails to take appropriate steps to respond to an allegation of discrimination.”¹⁶ HPL must therefore be responsive to concerns about discrimination; while its obligation here is to respond to complaints, it would be valid to be proactive and avoid booking rooms for discriminatory events.

Accordingly, HPL’s Policy with respect to room bookings is not unlawful on its face. Where HPL must be cautious is in the manner by which it chooses its partners and thereby grants free room bookings to certain groups while mandating a charge for others. This may not be discriminatory *per se*, but would become discriminatory if HPL’s implementation of this Policy is shown to habitually disadvantage certain groups on the basis of their *Code*-protected grounds. This is referred to as “indirect” or “constructive” discrimination, which is proscribed by Section 11 of the *Code*:

Discrimination can be direct or indirect. Direct discrimination occurs when an individual is treated adversely because of a personal characteristic covered by the *Code* such as disability. See *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143.

Indirect discrimination, as provided for in section 11 of the *Code*, recognizes the reality that discrimination can occur when neutral rules that do not appear to be discriminatory have a disproportionate and adverse impact on a group identified by one of the personal characteristics covered by the *Code*. An example of indirect or “constructive discrimination” (as it is referred to in the *Code*) is the case of *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3 (“Meiorin”), in which an aerobic standard that disproportionately prevented women from obtaining firefighter jobs was found to be discriminatory. See also *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536 in which the requirement to work Friday evenings was found to be discriminatory for an employee who, for religious reasons, was prohibited from working on Friday evenings.¹⁷

¹⁶ *Moore v. Ferro (Estate)*, 2019 HRTO 526, at para 183–84. [“Moore”]

¹⁷ *Contini v. Rainbow District School Board*, 2012 HRTO 295, at paras 17–18. [“Contini”]

Where a seemingly neutral policy is found to constitute indirect discrimination, the policy may nevertheless be valid if it is a *bona fide* requirement adopted in good faith to serve a legitimate end. The test to be applied in this scenario is set out by the Supreme Court in its *Meiorin* decision:

Having considered the various alternatives, I propose the following three-step test for determining whether a prima facie discriminatory standard is a BFOR [*bona fide* occupational requirement]. An employer may justify the impugned standard by establishing on the balance of probabilities:

- (1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;
- (2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and
- (3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.¹⁸

While this test was clearly established in the employment context, it applies equally outside of that context, and has in fact been applied by the HRTO to the policies of public libraries. In *MacDonald*, the HRTO considered the library's "one person, one computer" policy and determined that this indirectly discriminated against those with disabilities who required the assistance of another individual:

The "one person – one computer" rule adopted by the respondent discriminates *prima facie* against those with disabilities who are unable, for whatever reason, to use a computer without assistance. The rule is neutral on its face but it could have adverse effects for those who are disabled and who require the assistance of another person to use the respondent's computers. Thus, the onus now shifts to the respondent to establish that it has met both the procedural and substantive components of its duty to accommodate to the point of undue hardship as required by section 11 of the *Code*.

In order to determine if a rule relating to the delivery of services is reasonable or *bona fide* in the circumstances as required by section 11(1) it is necessary to apply the analysis set out by the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.)*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3 ("*Meiorin*") and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 CanLII 646 (SCC), [1999] 3 S.C.R. 868 at para. 20 ("*Grismer*"). As summarized by the Tribunal at para. 10 in *Wozenilek v. Guelph (City)*, 2010 HRTO 1652, the respondent must show that:

- (1) it adopted the standard for a purpose or goal that is rationally connected to the function being performed;

¹⁸ *British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U.*, 1999 CarswellBC 1907, [1999] 3 S.C.R. 3, at para 54. ["*Meiorin*"]

- (2) it adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and
- (3) the standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.

I find that the “one person – one computer” rule is rationally connected to the delivery of library services. It is designed to ensure that the noise level in the library is kept sufficiently low to ensure that library users can read, research, and study in conditions appropriate to such work without being disturbed by those around them. Computer use may provide more opportunities for discussion and noise than traditional printed material because of the wide variety of material available on the Internet and the format in which it is delivered. It also requires a different form of attention than printed materials. The rule also helps prevent [sic] congestion in one area of the library and ensures that the privacy of users of computer stations is respected. While the rule adopted may not be the only possible rule, it is rationally connected to the stated goal.

I have no doubt, based on the evidence before me, that the respondent adopted the “one person – one computer” rule in good faith in the belief that this rule is necessary to the achievement of this goal. There is no evidence to suggest that the respondent adopted the rule for any purpose other than ensuring an appropriate noise level in the library, avoiding congestion and protecting privacy.

Even if a rule was adopted in good faith and is rationally connected to a valid purpose, this does not in itself lead to the necessary conclusion that there is no discrimination. A rule which is neutral on its face can amount to discrimination because an ostensibly neutral rule can have disparate adverse effects on different groups. The fact that the respondent adopted the rule for legitimate purposes (to reduce noise, avoid congestion and protect privacy) does not in itself mean that the application of the rule is not discriminatory. The application of the same rule – one person per computer station only – to all users regardless of their abilities would amount to discrimination if the respondent made no effort to accommodate those who, because of their disability, would otherwise be unable to use the computer. The respondent must make reasonable efforts to accommodate disabled persons seeking to use its computers.¹⁹

In our opinion, there is little doubt that HPL has adopted its room booking policy in good faith for the objective of furthering its goal (as stated at Section 1 of the Policy) of using library space to “maximize” its impact on the community it serves and of establishing and maintaining “strong community partnerships that are focused on advancing Library, City, and community goals.”

However, HPL must be careful to ensure that it is not engaging in partnerships and thereby renting rooms free of charge in a way that habitually excludes and/or disadvantages certain groups on the basis of their *Code*-protected grounds.

¹⁹ *MacDonald*, at paras 33–34 and 37–39.

An example of how this could happen is found in the HRTO decision of *R.C. v. District School Board of Niagara*, which concerned a school board policy of limiting the permissible distribution of religious literature to the distribution of seminal or authoritative religious texts. The HRTO found that to do so would adversely impact atheists, who are protected by the *Code* ground of “creed” but do not disseminate their belief in a seminal or authoritative text such as the Bible:

The Board suggests that if the new policy is discriminatory, it is justified under s. 11 of the *Code* as a reasonable and *bona fide* requirement in order to promote the objective of giving students and their families access to seminal texts from religions. The Board argues that it would undermine its objective if the Board had to distribute materials that were not seminal texts such as “Just Pretend”. The Board argues that the new policy therefore complies with the *Code* and remedies the 2009 discrimination, and that the Tribunal should therefore not order that it be changed.

I need not engage in an extensive analysis of whether the respondent has met each aspect of the test for justification under *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3 (“*Meiorin*”). The third step of that test requires that the requirement be reasonably necessary to accomplish its purpose or goal, and that the respondent could not accommodate the differences without experiencing undue hardship. Assuming that the other steps in the test are met, there is no evidence or reason why the respondent’s objective of giving students access to texts of creeds would be undermined by permitting optional attendance, with parental permission, at a distribution of atheist literature or materials that discuss traditional native spirituality. The desire to restrict the policy to the manner in which some creeds convey their core beliefs (seminal or authoritative texts) cannot justify an exclusion of creeds that convey their core message in other ways.

I understand that some parents and students may not agree with some of the content of atheist literature like “Just Pretend”. However, the applicant and others do not agree with some of the content of the Gideon Bible. If the Board decides to have a policy permitting distribution of religious literature, it must be prepared to accept that some parents and students might object to materials that others, with parental permission, are receiving. If it is prepared to distribute permission forms proposing the distribution of Christian texts to committed atheists, it must also be prepared to distribute permission forms proposing the distribution of atheist texts to religious Christians. It cannot design its criteria in a way that would permit communication of materials setting out their beliefs by some, but not all creeds.²⁰

Therefore, should HPL’s policy of giving preference to its partners have the effect (regardless of the fact that this is unintended, as intention need not be shown to establish discrimination) of habitually excluding certain *Code*-protected groups, HPL must be prepared to either accommodate the disadvantaged group (e.g. by allowing them a measure of charge-free bookings) or demonstrate that these groups could not be accommodated to the point of undue hardship (e.g. by demonstrating that allowing additional charge-free booking is not financially feasible for HPL).

²⁰ *R.C. v. District School Board of Niagara*, 2013 HRTO 1382, at paras 71–73. [“*R.C.*”]

It should also be noted that Section 10 of the Policy refers to “Discrimination” as events that limit attendance based on *Code*-protected grounds. HPL should be mindful that there may occasionally be valid reasons for such limitations. Specifically, Section 14 of the *Code* allows for such distinctions when they are ameliorative:

A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

Should the *Charter* be found to apply, Section 15(2) contains a similar ameliorative provision:

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

HPL should therefore consider re-wording this part of Section 10 of the Policy from an absolute prohibition to a discretionary one. HPL may wish to say that it will not allow events or meetings where attendance is limited on *Code*-protected grounds, except where the prospective renter satisfies HPL that such limitations are consistent with the ameliorative provisions of the *Code* and/or *Charter*.

Should the *Charter* be found to apply to HPL, there is also a process by which any infringement on a *Charter* right (whether Section 2(b) or Section 15) may be justified. This is known as the *Oakes* test, and it was summarized by the Court in *McKinney* (notwithstanding that the *Charter* was found to not apply in that case):

The approach to be followed in weighing whether a law constitutes a reasonable limit to a *Charter* right has been stated on many occasions beginning with *R. v. Oakes, supra*, and I need merely summarize it here. The onus of justifying a limitation to a *Charter* right rests on the parties seeking to uphold the limitation. The starting point of the inquiry is an assessment of the objectives of the law to determine whether they are sufficiently important to warrant the limitation of the constitutional right. The challenged law is then subjected to a proportionality test in which the objective of the impugned law is balanced against the nature of the right, the extent of its infringement and the degree to which the limitation furthers other rights or policies of importance in a free and democratic society.²¹

This is different, although not dissimilar, to the test mandated in *Meiorin*. HPL could likely show there is a sufficiently important objective to its Policy, that being to “maximize” its impact on the community it serves and of establishing and maintaining “strong community partnerships that are focused on advancing Library, City, and community goals.”

²¹ *McKinney*, at para 56.

The onus is then on HPL to show that its Policy is proportional to that objective, in that “the limiting measures must be carefully designed, or rationally connected, to the objective; they must impair the right as little as possible; and their effects must not so severely trench on individual or group rights that the legislative objective, albeit important, is nevertheless outweighed by the abridgement of rights.”²²

HPL’s policy certainly appears to be rationally connected to its objective; partnerships are encouraged and HPL’s impact on the community maximized where it is able to increase free public programs in its spaces. It is also apparent on the face of HPL’s Policy and its endorsement of the statement on Intellectual Freedom set out by the Canadian Federation of Library Association and the Ontario Library Association that it is making every reasonable effort to balance the *Charter* rights at stake with the fulfillment of its Policy goals.

The crucial part of this test is likely to be minimal impairment. HPL must be able to show that its policy impairs the *Charter* rights at issue (freedom of expression, equality) as little as possible. HPL may be able to do this by demonstrating that it considers all potential partners equally and in good faith.

HPL should thus be vigilant to ensure that its Policy is constantly being implemented in a way that permits the broadest variety of partnerships possible, such that free room bookings are available to the groups of as many beliefs and opinions as possible (short of actual hate speech or discrimination).

Additional ways to enforce the Diversity and Inclusion Policy

As stated in Part 2 of this opinion, HPL is on reasonably solid footing where it refuses to rent space to a group when it has reasonable grounds to believe that the group will engage in hate speech as proscribed by the *Criminal Code* or promote discrimination contrary to the *Human Rights Code*.

As currently written, Section 10 of the Policy refers broadly to “Illegal Activity” that contravenes local, provincial, and national laws. HPL should consider explicitly stating under this heading that it will not rent space to groups or events that HPL has reasonable grounds to believe are likely to engage in hate speech as proscribed by the *Criminal Code*.

As currently written, Section 10 of the Policy refers to “Discrimination” as events that limit attendance based on *Code*-protected grounds. As stated in Part 2 of this opinion, HPL may wish to consider re-wording this part of Section 10 of the Policy from an absolute prohibition to a discretionary one. HPL may wish to say that it will not allow events or meetings where attendance is limited on *Code*-protected grounds, except where the prospective renter satisfies HPL that such limitations are consistent with the ameliorative provisions of the *Code* and/or *Charter*.

²² *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, as cited in *McKinney* at para 60.

HPL may also wish to add to Section 10 that space will not be rented to events that HPL has reasonable grounds to believe are likely to engage in activity that promotes discrimination contrary to the *Code*. If HPL chooses to do so, it must ensure that this is not used as a vehicle for indirect discrimination. HPL should ensure that this prohibition targets overt discrimination (i.e. speech that advocates for the disadvantage to groups or individuals based on their *Code*-protected grounds) rather than unpopular opinions that some groups may find distasteful.

In addition to his comments about prior restraint, Mr. Turk has made his own remarks regarding Section 10. One such remark is to consider whether providing an explicit list of prohibited activities may limit HPL's flexibility to respond to activities that are not listed as prohibited but nevertheless ought to be excluded based on the application of its policy.

In our opinion, it should at least be made clear that the prohibited activities listed are not exhaustive; language to the effect that "the prohibited activities include *but are not limited to the following*" should be included. I would note that this does not give HPL limitless flexibility. Where non-exhaustive lists are provided, Courts may interpret them as extending only to activities that, while not explicitly listed, are of the same kind as those listed (an interpretive principle known as *ejusdem generis*).

In Mr. Turk's view, some of our proposed additions risk making the policy read like a legal document rather than as a publicly accessible policy. He expresses a preference for language including in the Edmonton Public Libraries room booking policy,²³ with the key point being that HPL may be better served by providing general notice that it will not permit activities that violate the *Criminal Code*, Ontario *Human Rights Code*, or are otherwise unlawful.

Our view is that some specificity about what constitutes prohibited and unlawful activities is useful; making explicit reference to hate speech and discrimination clearly signals that HPL specifically denounces those activities and will not permit them in its premises.

Ultimately, HPL must determine the proper balance between the comprehensiveness and accessibility of the policy.

Legal implications of requiring a library card during the Pandemic

The library board is plainly entitled to set rules "for the admission of the public to the library" pursuant to Section 23(4) of the Act, which of course is subject to the *Code* (and may be subject to the *Charter*).

It is our opinion that this section of the Policy likely does not engage any *Code* or *Charter* grounds. In fact, HPL has explicitly taken steps to ensure that as many people as possible are able to obtain either a library card or a guest pass, regardless of, *inter alia*, age, race, disability, or income level. Additionally, this part of the Policy is clearly instituted for a pressing objective in the midst of a public health emergency.

²³ https://www2.epl.ca/public-files/policies/board-policies/meeting_rooms_b-2006.pdf

Should HPL have concerns, it may wish to consider whether the type of contact tracing we have seen implemented at restaurants and shops whereby patrons leave their name and some type of contact details (e.g., phone number, email address) is sufficient to accomplish its contact tracing goals. However, as Mr. Turk points out, this alternative approach could pose disadvantage to individuals who are illiterate and/or do not have a phone number and/or email address.

Sincerely,

ROSS & McBRIDE LLP

Per:



Wade Poziomka
WRP/jab



Nick Papageorge



WORKING WITH US – HPL’S POLICY ON PARTNERSHIPS, PROGRAMS & SPACE

Policy Level: Library Board

Author: Chief Librarian/CEO

Review Period: 4 Years

Date Approved: Draft Received 1st Review May 2020

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SPECIAL STATEMENT DURING THE COVID-19 PANDEMIC

During the COVID-19 Pandemic there will be restrictions on how many people we can accommodate and restrictions on group gathering in our spaces. The restrictions that we have in place will be consistent with direction and guidance we receive from Public Health authorities, the City of Hamilton and the Ontario Government.

- Our overarching goal during the pandemic will be to keep the risk of exposure to COVID-19 by customers and staff, as low as possible, while striving to provide as much service as we can, provided we can do so safely.
- The restrictions we have in place will respond and change based on circumstances and direction. They will be reviewed on a monthly basis.
- Until further notice, we will not be able to accommodate any group activities in our spaces.
- To protect staff and the public, during the pandemic, we will need to hold everyone accountable for their behaviour to support public health efforts. With our Inspire Card program, every Hamiltonian should be able to get a Library card, even if they have limited identification. To ensure accountability and to support contact tracing during the pandemic, HPL will require people entering our spaces to have a library card. Out of town visitors with identification will be given a visitor pass. HPL staff will be focused on issuing cards to everyone that lives, works or goes to school in Hamilton.
- During the Pandemic and post-Pandemic recovery period, we will focus our services and programs on helping people get through the emergency and supporting individuals and communities recover.

1. POLICY PURPOSE

To provide staff, community members and partners guidance on the appropriate use of library spaces and to articulate the HPL decision making processes that governs the implementation of the policy.

The policy also provides an overall framework for the Hamilton Public Library to manage:

- Learning and social inclusion program development
- Existing and new partnerships
- Room rentals

The goal is to ensure HPL uses its spaces to maximize the impact we have and that we have strong community partnerships that are focused on advancing Library, City and community goals. This policy **combines and supersedes** the following policies: **Rules and Conditions Regarding Booking, Meeting Room, Partnership and Program Development policies.**

1.1 DEFINITIONS

- **Managers** – Each branch or department has a Manager that oversees their location within their approved mandate. The Library Management and Senior Leadership Team is listed on the Library website¹.
- **Co-Planned Programs** – Are activities that take place in HPL spaces that are offered by Library partners. Generally, HPL provides its space for free and the partner offers a learning activity for free. The partner is able to brand the program, but they work with HPL to make sure it gets promoted by HPL and that relevant library resources are identified when appropriate.
- **Learning Program** - Is defined as a coordinated activity or event with a specific purpose, such as developing reading skills, learning to utilize technology skills, understand something or gain a skill. or sharing knowledge and expertise.
- **Library Managed** – An event or program that is offered by HPL staff.

¹ <https://www.hpl.ca/articles/management>

- **Library Partner** – A community group or organization whose mission aligns with HPL’s and is listed as active in the “Partnership List”. Generally, HPL partners with not for profit organizations, educational institutions and governmental entities. HPL also partners with for profit organizations in special circumstances.
- **Meeting Space** – A part of a library building that can be used to hold special events (i.e. Central Living Room, 4th Floor Zones)
- **Partnership** is defined as a mutually beneficial collaboration between the Library and an external organization(s). Partner contributions provide support for and/or promote activities, services, events and programs to the public in ways that are mutually beneficial. (See section 9 -Partnership Levels)
- **Program Room** – A room at the Library that is mainly used for programs and meetings.
- **Senior Leadership Team (SLT)** – Comprised of the Chief Librarian/CEO and Library Senior Directors.

2. OUR APPROACH TO CREATING LEARNING OPPORTUNITIES

We understand that the human experience creates many different understandings and perspectives. As a public library our program is aimed at creating constructive dialogue and learning that advances people and brings them together. We strive to create an environment where we learn from each other. HPL’s Strategic Plan, our Diversity and Inclusion Policy and our Intellectual Freedom Policy provide guidance regarding the services and activities that happen in our spaces.

HPL’s Mission is **Freedom to Discover**. The public library approach to learning is based on helping people learn things that can ignite this imagination and inspire them. Put another way: “*Education is not the filling of a pail, but the lighting of a fire.*”² Three (3) key frameworks shape the development of our learning program:

1. Our **life-long learning model** is informed by UNESCO’s Four Pillars of Education:
 - Learning **to Know**
 - Learning **to Do**
 - Learning **to Be** and
 - Learning **to be Together**³.



2. We strive to work with partners that share our broad goals, focusing on working together to have positive impacts that are meaningful and sustainable. We are committed to **Collective Impact**⁴ and working with others that are likewise committed.
3. We believe in the need for **ongoing evaluation and improvement**. We strive to be as effective as we can, ensuring we have meaningful impacts on people’s lives.

² https://www.brainyquote.com/quotes/william_butler_yeats_101244

³ <https://unesdoc.unesco.org/ark:/48223/pf0000227208>

⁴ <https://www.tamarackcommunity.ca/collectiveimpact>

3. REASONS FOR ENGAGING IN PARTNERSHIP

The Hamilton Public Library is committed to working with aligned individuals and organizations to create a better future by working together. There are three (3) core reasons we engage in partnerships:



4. PRINCIPLES & PROCESSES THAT SHAPE OUR APPROACH TO SPACE USAGE

The Library's public **space is for the use and enjoyment of all members of the public**. Public space is provided for individuals and small groups to read, study, use library collections, access technology and Wifi consistent with our **Code of Conduct**⁵. Individuals or small groups (such as students working on group projects or adults working on one-to-one literacy tutoring) may use the public study and lounge areas.

- 1 **Spaces are Community Assets**: The Library's spaces are community assets that are utilized to advance individuals and the communities we serve in ways consistent with HPL's mission, values and strategic priorities.
- 2 **Manager Authorization for Other Uses**: Use of the facilities for other purposes such as book clubs, games, crafts or larger group activities needs to be authorized by the Manager and needs to be done in ways that do not impede others using the space.
- 3 **Approvals are Not Open Ended**: Library operational needs and strategic priorities change over time. Past approval for something should not be assumed to be an ongoing commitment from HPL.
 - Library staff are required to regularly review priorities. Commitments are reviewed annually.
 - Priority to space is given to groups that work in collaboration and follow our policies.
 - When arrangements are required to change, the Library is committed to giving advanced notice.
- 4 **Resolving Disagreements**: Our goal is to resolve disagreements in a collaborative way, however, individuals and groups that do not work cooperatively with staff and the local Manager will lose privileges. If a dispute arises that cannot be resolved locally, the Senior Leadership Team (SLT) will arbitrate and decide on the course of action. SLT will base decisions on:
 - The perspectives from both parties and relevant written documentation, including email.
 - Has the party honoured past commitments?
 - Has the party worked within agreed to parameters?
 - Has the party adhered to this policy and used appropriate channels for communication?
 - What are the impacts on operations and other uses?
 - Has enough warning been given for the change?

In special circumstances the appeal may be referred to the Library Board. The Library Board would assess whether the Chief Librarian/CEO and SLT followed Library Board policy in making their determination. If they determine that staff did follow the policy then the Board would confirm the

⁵ <https://www.hpl.ca/articles/customer-service-commitment>

decision. They could also opt for the policy to be reviewed and updated.

- 5 **Transparency:** The Library will publish on its website the name of the organization or group offering an authorized program or room booking in our spaces.
- 6 **Non-endorsement by HPL:** The use of library space by a group or organization does not constitute the Library Board's endorsement of the group's policies or beliefs, any particular program, position or purpose of any person or organization.
 - Co-Planned programs will be promoted by HPL recognizing the hosting partner.
 - Where an outside group is using library space, promotional and other materials should not imply HPL sponsoring of the event unless it is agreed to in advance.

5. PRIORITY ORDER OF USE FOR LIBRARY SPACES & ROOMS

Currently, no group activities are allowed in HPL spaces.

The following is the **order of priority** for use of the program rooms and meeting spaces.



- 1 At some locations the community demand outstrips operational capacity and alternate space suggestions may be suggested in the community by Library staff.
- 2 HPL's 1st priority for space use is library managed or co-managed activities. Then we look for opportunities for aligned partners to provide free learning opportunities in our spaces. Our 3rd & 4th priorities are providing the space for free to authorized groups and then paid room rental respectively.
- 3 **Free Allocations*:** Local partners are eligible for up to four (4) free bookings a year. City of Hamilton Councillors are eligible for two (2) free bookings per month for public meetings or groups in which the Councillor is a member and a regular attendee.
 - **Restore Room:** Program rooms and meeting spaces have standard set-ups that are posted in the rooms/space. Groups are expected to restore rooms and spaces to the standard set-up and leave them clean and in good order. Special set-up is normally restricted to paid rentals and must be agreed to in advance subject to the Library's ability to accommodate the request. Failure to comply will result in losing privileges.
 - **Follow the Proper Channels** – HPL has online systems to manage programs and room bookings. Staff can assist with the process if necessary.

6. PREFERENCE FOR CO-PLANNING PROGRAMS

HPL encourages partners and potential partners to work with us on co-planned programs. For those that want to work with us, we can offer:

- Access to attractive, vibrant spaces with a broad active membership base

- A strong network of promotion including, online and print
- A robust Information Technology Infrastructure
- A wide range of staff expertise and knowledge
- Access to research materials both in print and digital formats
- Where appropriate, HPL staff can provide programs for partner organizations in their spaces

In return for HPL providing access to spaces and promotion of the contributing partner, we are looking for, a willingness to agree to co-develop that includes things such as:

- 1 **Advanced planning** that enables both organizations to efficiently use their resources to organize and promote activities.
- 2 **Shared program planning** consistent with the agreed mandate, including promoting awareness of relevant free resources available at HPL or through other community agencies.
- 3 **Shared evaluation** plan that ensures both organizations can effectively track agreed to measures and assessing impact where practical.

7. CRITERIA FOR ENGAGING IN PARTNERSHIPS

The following criteria govern how HPL approaches partnerships and related activities. Not all criteria will apply in every case, however, they will be used to inform decision making. Priority will be given to organizations and initiatives that meet multiple criteria from the following list:

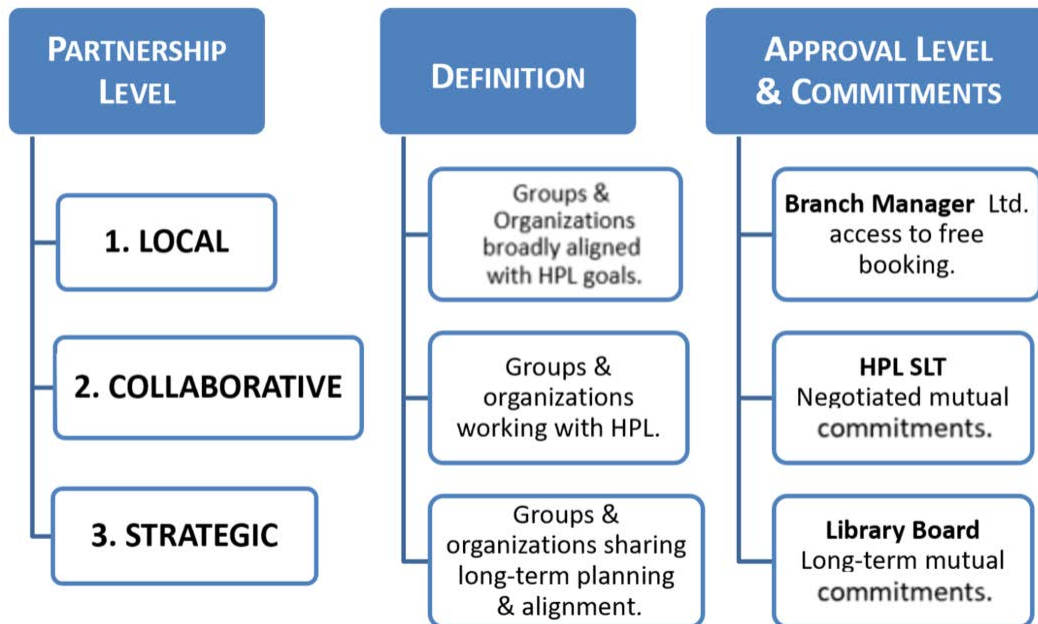
1. **Aligns** with our **core organizational values** (Intellectual Freedom, Inclusiveness, Innovation, Respect and Accountability) and/or shares **common goals** or objectives with HPL.
2. Is committed to looking for **mutual benefit** and a **reciprocal approach to levels of commitment**.
3. Demonstrated commitment to **collaboration** and **shared planning**
4. Demonstrated commitment to **ongoing evaluation** and **continuous improvement**
5. Demonstrated commitment to **collective impact** and **long-term strategies**
6. In some cases, we are looking for partners that can provide an **activity/service** at **multiple locations**.

8. PARTNERSHIP LEVELS

Our partnership goals have a few objectives that we are striving to reconcile in our approach:

1. HPL has multiple locations and we want to **empower Library staff to work with local groups** to enhance community collaboration between HPL and others working towards creating a better future for all members of their communities.
2. As a publicly funded organization we need to ensure we are **accountable to our funders** to **ensure we are using our resources effectively** to have the most positive impact on the individuals and communities we serve.

- To address this, we are **implementing processes and systems to support broad collaboration** with the community while also ensuring that we **align our resource commitments to those willing to work with us** to ensure we are working toward shared goals.



9. PRIORITY FOR FREE ACTIVITIES & SPECIAL CASES

Most programs offered by the Library or in partnership with others **are free to attend**. This rule also applies to space rentals. We have this approach because **charging for events creates a participation barrier** that excludes some community members. We also need to be mindful of the administrative costs associated with collecting a registration or entry fee. Our focus is using our spaces to be informative learning opportunities and social inclusion opportunities, not to be used as a vehicle for commercial ventures.

The Library does consider special circumstances where we may allow something that we do not generally do. In these cases, **advanced written authorization** from the Senior Leadership Team, (**SLT**) is required for the event, program or rental to proceed.

- Charging Entry Fees in our Spaces:** In some circumstances HPL allows for events to charge an entry fee. When this is approved, we look to negotiate mitigating steps to offset obstacles created by charging. SLT considers the following when approving charging for events:
 - The partner has already offered free co-planned programs with HPL in our spaces.
 - The price is reasonable and less than what might be charged at other venues. Focuses on covering costs, not making a large profit.
 - Makes available a limited number of free tickets for free distribution through a lottery.
- Closed Meetings** – If a group wants to restrict access to a meeting, whether a free learning program, group meeting or space rental we require an explanation that is reasonable and does not violate HPL policies or any applicable laws. We reserve the right to have HPL staff observe any closed meeting to ensure it is consistent with its intended purpose and does not violate our policy or applicable laws.

3. **Political Gatherings** – These are governed by our *Advocacy & Political Participation Policy*⁶
4. **Art Exhibits** – if they are not co-managed by HPL see our *Displays and Exhibits Policy*⁷
5. **Alcohol Consumption** at programs/events is considered on an individual basis. An appropriate permit along with Smart Serve servers is required. A copy of the permit/license must be provided in advance of the event. Game Day insurance of \$5 million in coverage is required.



6. **Last Minute Booking:** We normally plan uses of our spaces in advance, so we can use our promotion channels to advance public awareness of activities. To also be responsive to current needs and to remain effective and accountable to our funding partners we strive to work one (1) quarter in advance.

10. WHAT IS NOT ALLOWED IN LIBRARY SPACES

The following restrictions exist on the use of Library spaces:

1. **Illegal Activity:** HPL will not knowingly permit any individual or group to use its facilities in contravention of Canadian or Ontario laws, and local Bylaws.
2. **Discrimination:** HPL will not allow events or meetings where attendance is limited on the basis of race, colour, religion, gender, age, sexual orientation, gender identity or expression, mental or physical disability. We will not approve of events that are intended to advocate actions that contravene Canadian or Ontario laws.
3. **Sales Promotion:** Events promoting the purchase of specific brands/products/service are not allowed. General consumer education from knowledgeable professionals are not included in this category.
4. **Also prohibited:** private social gatherings and gambling.



⁶ <https://www.hpl.ca/articles/advocacy-and-political-participation-policy>

⁷ <https://www.hpl.ca/articles/displays-and-exhibits-policy>

11. RULES AND CONDITIONS REGARDING BOOKINGS

The following are the basic rules and expectations about space usage and bookings:

1. **Respect the Space, People and Rules:** HPL wants to work with others to bring positive experiences to people. Allowing other groups to use our space creates demands on our resources. To manage this, we need to ensure that we agree in advance on what is expected, commitments are honoured, people work within our planning cycles and are respectful to staff and the public.
 - **Attendance** must not exceed the posted room capacities allowance.
2. **Restore Room/ Space Condition:** Program rooms and meeting spaces have standard set-ups that are posted in the rooms/space. Groups are expected to restore rooms and spaces to the standard set-up and leave them clean and in good order. Special set-up is normally restricted to paid rentals and must be agreed to in advance subject to the Library's ability to accommodate the request.
3. **Equipment:** Availability of equipment is specific to the room or space and on a case by case basis. Arrangements for equipment need to be made in advance.
4. **Use Online System** Whether proposing a co-planned program, renting space, or requesting a free booking, everyone is encouraged to use the library online system to initiate the process. To coordinate activities across our 22 locations and two bookmobiles, library staff can assist with this if needed.
 - To make a room rental, an active HPL Library Card is required. To be eligible for free partner bookings a **Partner/Community Library Card** is required. This requirement exists so we can use our online Event Calendar System.
5. **Observation:** To ensure meetings do not violate Library policies, HPL reserves the right to observe in person any meeting or event held in its facilities.
6. **Public Performance Rights:** Viewing of films must have appropriate Public Performance Rights in place. Films may be shown if a license has been purchased by the organizer from a rights holder such as Audio Cine Film or Criterion Pictures. Proof of the purchased film licence must be provided in advance of the booking.
7. **Charges & Cancellations:** Payment is due at the time of booking confirmation. Two (2) weeks' (10 business days) written notice is required to cancel a room booking. A full refund will be provided if appropriate notice is given.
8. **Declining Room Bookings:** The Library reserves the right to decline bookings that could negatively impact library operations or stress library resources. The Library reserves the right to cancel bookings when this policy is violated or in special circumstances. If HPL cancels an event that involves a room rental, a full refund will be issued by HPL.
9. **Violations of Policy:** Violation of this policy could lead to cancellation of events and a future prohibition on room or space bookings. Groups will be held financially responsible for any damage done.

12. ROOM AND RENTABLE SPACES RENTAL FEES & PROCESS

All room rentals involving group activities and meeting are currently suspended.

Additional Room Rental Rules	Rooms/space capacity is capped by fire regulations and based on theatre style layout.
Booking the rooms does not include technical support for any technology or audio/visual equipment unless previously arranged and paid for at the time of booking.	Fees are based on four-hour blocks and this block include half-hour for set up and half-hour for reset. Customers can rent multiple blocks if available.
Central Library	Sherwood
Hamilton Room 170-person capacity; 4hrs: \$400	Rooms A – B 100-person capacity; 4hrs: \$150
Wentworth Room and 2nd Floor Program Room 40-person capacity; 4hrs: \$150	Red Hill, Westdale
4th floor Program Room 15-person capacity; 4hrs: \$100	50-person capacity; 4hrs: \$150
4th floor Program Room 15-person capacity; 4hrs: \$100	Other branch rentable spaces will be added in the future using above rates on hpl.ca
Circuit 4.0 - individual zones on the 4th floor 50-person capacity; 4hrs: \$150	
Circuit 4.0 all zones on the 4th floor 350-person capacity; 4hrs: \$700	
Central Library – Board Room on the 5th floor 30-person capacity; 4hrs: \$450	
Room and Rentable Spaces Additional Fees	
Groups are expected to restore rooms and spaces to the standard set-up and leave them clean and in good order. Customers may be billed for added services requested at the time of booking or for the cost of restoring the rooms/spaces and equipment to its original form as needed.	
Security: \$50 per hour, per guard. minimum four hours	Technology Support: \$50 per hour, minimum four hours
Equipment Rental (where available): technology and audio/visual items: \$25 per item	Room layout set-up and reset: \$500 one-time cost Reset room layout: \$250 one-time cost
Cleaning: \$50 per hour, minimum four hours	
Loss or damage: customers will be billed the cost of replacing or repairing lost or damaged equipment or facilities including cables, microphones, piano, furniture, etc.	

13. ABOUT HPL LEARNING & SOCIAL INCLUSION PROGRAMS

HPL has 22 locations, weekly we average over 69,000 in person visits which works out to 3.59 million annually. In recent years we have averaged around 10,000 programs with attendance around 190,000 people⁸. Broadly speaking our programs are about advancing learning, literacy, the love of reading and about creating opportunities to reduce social isolation and promote mutual understanding. Here are some key things to understand how we develop our programs:

1. **Preference for Co-Planned Programs** – HPL is looking for aligned organizations serving Hamilton to provide more free learning opportunities in our spaces. We are seeking to work with organizations that are looking to create mutual benefits and share our reciprocal approach to levels of commitment.

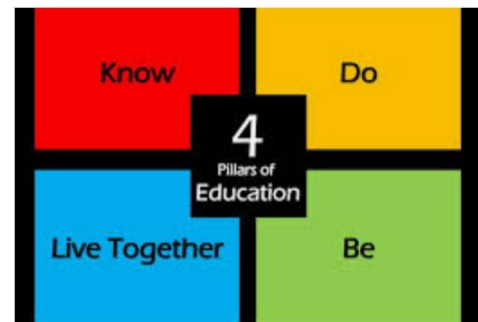


2. **Challenging Thinking** – Sometimes advancing our understanding can be uncomfortable. The Library may present programs that some individuals find controversial. Holding a program does not indicate an endorsement of its contents by the Hamilton Public Library, but rather is an affirmation of the principle of intellectual freedom as embodied in the Canadian Federation of Library Associations Statement on Intellectual Freedom.

3. **Covering Gaps in Community Needs** – With our flexible program, we are looking to fill in gaps that exist in our community. When those gaps are addressed elsewhere, we focus on new needs. To assess if a program is filling a need, HPL looks to multiple points of information to evaluate the alignment with our mission. These include: Evidence of attendance and participation in existing programs; When reliable research or information indicates a gap in general public knowledge or awareness of an issue that impacts our health, mutual understanding, security or prosperity; we also consider recommendations from residents and other organizations.

4. **Topics of Programs we Focus On**

- Supporting **literacy for all** and promoting school readiness and the love of reading. Helping families grow the next generation of readers.
- Supporting people in their **life-long learning journeys** and enhancing academic success.
- Supporting **digital inclusion**; knowledge and access to technology skills needed to successfully participate in work and online forums in responsible ways that protect personal privacy and reduce personal risk.
- Supporting **work force development**, including locating, applying and successfully interviewing for jobs. Helping entrepreneurs find paths to success.
- Strengthening **community cohesion** bringing people together to increase understanding of our diverse histories, heritages, culture and experiences in ways that bring us together.
- Provide information and skills that **empowers people to improve their** own health, wellness, financial security, sense of self and social belonging.
- Enhance **access to arts, music & culture**. Support people to find and improve artistic forms of expression.
- Support **civic engagement** and participation.



⁸ <https://hpl.novusagenda.com/agendapublic/CoverSheet.aspx?ItemID=737&MeetingID=76>

- Provides **information about** education, health, cultural, recreational and social services opportunities that address the people's needs.
 - Supporting seniors age successfully. With seniors we are inspired by **creative aging**⁹.
5. **Target Age Groups** – HPL programs target people of all ages and backgrounds. In particular, we focus on early literacy supporting school readiness, children, teens, adults of all ages and we have an increasing focus on seniors' programs. HPL strives to create spaces and programs that are family friendly and create **inter-generational experiences**. In some cases, the Library may set age or other guidelines for participation in a program, such as a children's program, when the program is designed and best suited for specific audience.
 6. **Liability Insurance** - is required for all programs taking place in Library premises and is purchased by the Library prior to the date of the activity/event. Certain activities require additional insurance. If that is required, we will discuss and normally require the organizers to provide that insurance and proof in advance that has the Library and City of Hamilton named on the certificate.
 7. **Pre-registration** - Where possible we offer programs that do not require pre-registration, this is generally our preference since it can create a barrier to participation and creates administrative overhead. We recognize in some circumstances pre-registration is required. HPL's event management system has a registration function which should be used. If partners want to handle registration themselves this should be prenegotiated.

⁹ <http://creativeage.ca/>