

AN ESSENTIAL SERVICE: PUBLIC LIBRARIES AND THEIR ROLE IN LAW AND SOCIETY

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On March 16, 2020, in order to help slow the spread of COVID-19, the City of Vancouver closed all of its public library branches. I experienced these closures on a number of different levels: as a Vancouver resident who loves to read and to visit libraries, as the partner of an avid reader, as the father of a four and a half year old who is as excited about the prospect of trips to the library to pick up “fresh books” as he is with the chance to practise riding his pedal bike through the neighbourhood, and, among other identities, as a law professor whose work focuses on the intersection of copyright, human rights, and social justice, and who believes that libraries are integral to the achievement of the objectives of each of these areas of law. Drawing on these identities, I’ll reflect in this essay on the important role played by libraries and librarians in both law and society, on what is lost when libraries close, and what we should celebrate – and fight for – when they re-open.

Libraries advance what the Supreme Court of Canada (SCC) has described as the dual objectives of the copyright system: “promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator” (*Théberge v. Galerie d’Art du Petit Champlain*, [2002] 2 SCR 336 at para. 30). In particular, they fill a critical gap in the copyright system by ensuring that everyone, regardless of their income, has access to complete copies of works of expression in a non-infringing manner.

Copyright law helps to set the conditions under which works of expression like books and movies are created, disseminated, and used. Each work that meets the set of minimum standards outlined in the Canadian *Copyright Act* is granted a bundle of time-limited rights (*Copyright Act*, RSC, 1985, c. C-42). This bundle includes, among other rights, the right to reproduce the work in whole or in substantial part, and to communicate it to the public by telecommunication.

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The rights of copyright owners are not absolute. In addition to being time-limited, the *Copyright Act* provides for a number of exceptions and limitations to the rights of copyright owners, referred to by the SCC as user rights (*CCH Canadian et al v. Law Society of Upper Canada*, 2004 SCC 13 at para. 48). Fair dealing is the most expansive user right in Canada's copyright system. It ensures that despite the rights granted to copyright owners under the *Copyright Act*, space is preserved for non-copyright owning parties to continue to engage in certain types of uses of copyright-protected works, including those that help realize human rights both internationally-recognized and protected in the *Canadian Charter of Rights and Freedoms* (such as the right to freedom of expression) (*Canadian Charter of Rights and Freedoms*, s. 2(b), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11). Like the rights of copyright owners, the user's right of fair dealing is also constrained. In particular, it is of limited utility if what parties want is to access a full copy of a work such as a book, movie, or piece of music.

Libraries help to fill this gap. Due in part to the artificial monopoly created by the copyright system, under which only the copyright owner has the prima facie right to reproduce a work or make it available to the public, many books or other works of expression are priced at a level above which some individuals are able to pay. For some individuals, the cost to buy a particular book, for instance, may be beyond what they are able to afford. For others, while they could afford to purchase one or more books (and may do so), they may not be able to afford to purchase all of the books that they would like to read over the course of a week, month, or year. Their access to books and other works of expression is constrained by copyright.

By giving everyone, regardless of their income, the ability to freely access books, movies, CDs, and other works of expression, libraries help address this inequity. At the Vancouver Public Library (VPL), residents do not need to pay a fee to get a library card. Card-holders also do not need to pay a fee to take out items from the library's collection or to put items on hold. If you are a card-holder at the VPL, you can walk into any branch, take a book off a shelf, check it out, and take it home. And you can do so knowing both that the copyright owner has been compensated either through the initial purchase of the work for the library's collection or the payment of a licensing fee in the case of digital resources, and that Canadian authors of works in the VPL's collection will receive payment

from Canada's Public Lending Right Program, should they elect to participate. By providing free access to works to everyone, while at the same time supporting authors and copyright owners, libraries help further the dual objectives of the copyright system.

Libraries also assist in the realization of human rights, including – but not limited to – the right to freedom of expression, which “include[s] [the] freedom to seek, receive and impart information and ideas of all kinds” (Article 19, *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976)); the right to education (Article 13, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, Can TS 1976 No 46 (entered into force 3 January 1976) (*ICESCR*)); the right to “take part in cultural life” (Article 15(1)(a), *ICESCR*); and the right of everyone “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which [they] [are] the author” (Article 15(1)(a), *ICESCR*).

Furthermore, libraries and librarians play an important role in helping to advance social justice. We live in a time of extreme, and growing, inequality. Public library branches, including those of the VPL, offer an escape for many people from the inequities that they face on a daily basis. Many people experience VPL branches as inviting, welcoming, and safe spaces. They are climate-controlled. They have public washrooms. They have benches, couches, chairs, and tables that are designed to be comfortable and functional, and not to move people along. They are accessible. They offer educational resources, including courses and textbooks. They provide opportunities for connection and community building, including by hosting classes, workshops, and meet-ups. They offer resources in multiple languages. They distribute information about how to vote. They provide access to the Internet through the provision of public computer terminals, allowing patrons to engage in a range of online activities, including accessing health information, government services, and the legal system; checking their email; and playing games.

Despite the closure of all VPL branches on March 16, VPL librarians have continued to find ways to help people keep reading. On the VPL's website, it is noted that “[o]ur locations are closed, but VPL's Digital Library is always open” (“Updates on the Library's Response to COVID-19”, VPL, 15 May 2020, <https://www.vpl.ca/library/news/2020/updates-librarys->

[response-covid-19](#)). Through the Digital Library, library patrons “can access ebooks, movies, music, online courses and more – all from home with [their] VPL card” (*ibid*). The demand for digital library resources in Vancouver and elsewhere has significantly increased during the COVID-19 pandemic (Jesse Johnston, “Demand for Online Library Content Soars During Pandemic”, CBC, 1 May 2020, <https://www.cbc.ca/news/canada/british-columbia/libraries-online-services-covid-19-1.5551682>).

While the Digital Library has been an outstanding resource, the closure of physical library branches has significantly impacted the lives of many. For cardholders who do not have the means through which to access the Digital Library, the closure of VPL branches has limited their access to books and other resources. For others, the closure of library branches means their access to community is diminished. For others still, the closure of VPL branches means that they can’t check their email, that they have one fewer place to sit and rest, that their place of escape is gone.

I am writing this essay in mid-May, 2020. It is early in the morning, on what looks to be a sunny day. British Columbia has just entered Phase 2 of its Restart Plan. As part of this phase, libraries are permitted to re-open. While the exact details have yet to be announced, Christina de Castell, the Chief Librarian at the VPL, has indicated that reopening plans include both a “takeout model at select locations, and a computer lab downtown for those who don’t have computers with internet access and rely on the library for this” (“Looking Ahead to a ‘New Normal’”, VPL, 15 May 2020, <https://www.vpl.ca/library/news/2020/library-update-may-15>).

I will be grateful for whatever type of gradual opening is adopted. I miss being able to visit the Terry Salman Branch of the VPL (my “local”). I miss the experience of picking out, and reading, “fresh books” with my son. Eventually, the VPL will fully re-open. We will be welcomed back in to the library to browse, to sit, to search, and to connect. We will share the space among the stacks. We will pick up books that others have set down, without fear.

When libraries re-open, they will do so in the midst of an economic landscape that has been significantly altered by COVID-19. In the wake of this crisis, many individuals and families will need to make difficult decisions on where to spend their limited financial resources. In this environment, libraries – already critically important in so many ways – will

take on an even greater importance in the lives of individuals and communities. Books and other works of expression provide lifelines to people, opportunities to escape, information to help build a better life, and inspiration to take the next step. No-one should be denied access to a book or other works of expression because they can't afford to purchase or license it. At the same time, authors and publishers (or other intermediaries) need support or the supply of high-quality works of expression will decline. Libraries help to bridge these two needs. Libraries are also free, open, and public spaces. They are community hubs and gathering places. In a time of economic insecurity, the importance of such places cannot be overstated.

Like individuals, governments will need to make difficult decisions on where to allocate resources post-pandemic. Now is the time for anyone who believes in the power of libraries to effect positive social change to do their part to ensure that despite whatever challenges emerge as a result of COVID-19, that libraries continue to be robustly supported. We need to think about how to ensure – in an environment of limited resources – that public library branches remain open and that they continue to serve as welcoming, vibrant, diverse, accessible, and safe spaces for all. As a law professor and as someone who believes deeply in the importance of libraries, I am committed to helping in this process, including through my research and teaching.

The closure of VPL's branches due to COVID-19 has served to highlight the essential role that libraries and librarians play in the lives of many individuals, and in the community more broadly. Public libraries support authors, help ensure the proper functioning of the copyright system, assist in the realization of human rights, advance social justice, connect communities, and protect democracy. Now and in the future, let's celebrate – and fight for – public libraries.