In the Alberta Court of Justice

Citation: R v Reimer, 2024 ABCJ 188

Date: 20240924
Docket: 230200198P1
Registry: Calgary

Between:

His Majesty the King

- and -

Derek Scott Reimer

Reasons for Judgment of the Honourable Justice A.A. Fradsham

Introduction

[1] Mr. Reimer is charged that he:

> "On or about the 25th day of February, 2023, at or near Calgary, Alberta, did unlawfully obstruct, interrupt or interfere with Calgary Public Library Board in the lawful use, enjoyment or operation of property, contrary to section 430(1)(d) of the *Criminal Code* of Canada" (Count 1);
>
> and that he:
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> "On or about the 25th day of February, 2023, at or near Calgary, Alberta, not being in a dwelling house, did unlawfully cause a disturbance in or near a public place by screaming, shouting, swearing, singing or using insulting or obscene language, contrary to section 175(1)(a)(i) of the *Criminal Code* of Canada" (Count 2).

[2] The Crown elected to proceed by way of summary conviction procedure.

[3] As will be explained in the "Facts" portion of these Reasons, these charges arise from Mr. Reimer's attendance at the Seton branch of the Calgary Public Library where he expressed

his disapproval of a library-organized event called "Reading with Royalty" in which "drag queens"[1] were reading stories to, and interacting with, young children and adults. Opinions about such events can be strongly divergent, and because that is so, it is important to be crystal clear on what this judgment is about and what it is not about.

[4] This judgment is not in any way concerned with the arguments either in favour of, or opposed to, the "Reading with Royalty" event, or similar events.

[5] This judgment is concerned solely with whether or not the Crown has proven beyond a reasonable doubt that the accused committed one or both of the alleged offences.

[6] In these Reasons, a reference to a section number is, unless otherwise stated, a reference to that section number in the *Criminal Code*.

Issues

[7] Apart from determining what facts have been proven by the evidence, the issues to be decided are:

1. Is the "Calgary Public Library Board" a "person" as that word is used in section 430(1)(d)?
2. If the Calgary Public Library Board is a "person" under section 430(1)(d), did the acts of the accused on February 25, 2023, unlawfully obstruct, interrupt, or interfere with that person in the lawful use, enjoyment or operation of the Seton branch of the Calgary Public Library?
3. Did the accused attend the Seton branch of the Calgary Public Library "for the purpose only of communicating information" and is therefore entitled to rely upon the defence set out in section 430(7)?
4. Were either or both of the adult programming room in the Seton branch of the Calgary Public Library, or the area outside that room, a "public place" on February 25, 2023 when the "Reading with Royalty" programme was being conducted?
5. If either of those areas was a "public place", did the accused cause a disturbance in one or both of them?
6. If the accused created a disturbance, was that disturbance caused by the accused screaming, shouting, swearing, singing, or using insulting or obscene language?

Facts

[8] Four people testified in this trial:

1. Robyn Gray (the library experience facilitator at the Seton branch of the Calgary Public Library);

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[1] I use this term as it is defined in ***The Penguin English Dictionary, Third Edition*** (London: Penguin Books, 2007) at p. 386: "a man who dresses in women's clothes, *esp* one who wears flamboyant outfits."

2. Maria Ellert (a parent who attended the Reading with Royalty event with her two children);
3. Jordan Blasetti (a staff member of the Seton branch of the Calgary Public Library); and
4. Jacob Robinson (a YMCA security guard).

[9] Also entered into evidence (Exhibit 2) was a video of some of the events.

[10] The Seton branch of the Calgary Public Library is located at 4995 Market Street S.E., in Calgary, Alberta, and was first opened on January 16, 2019. I will sometimes refer to it simply as "the Seton library". The Seton Library is physically adjacent to a YMCA facility.

[11] The Seton library is not operated in the style of the traditional "make no noise" library depicted in novels and movies. Ms. Gray described the library as having areas which are much more vibrant. Her evidence on the point, which I accept, was as follows:

> "Q I take it that the Seton Library is similar to what we have come to understand as a library complete with books available for sign-out by the public and quiet spaces to learn and read?
>
> A Yes. Quiet is said in quotation marks but, yes.
>
> Q Okay. Why is that?
>
> A We encourage play in the library especially for the younger children. So, we do have quite rambunctious children sometimes in the library so I will not say it is a quiet library by any means but we do have quieter spaces. We have a quiet room and then we have a couple of rooms that patrons are allowed to book for their own study and there's a couple -- or sorry, one -- one program room that they are allowed to book that they can have their own birthday parties or their own different events in there.
>
> Q Besides children playing and being rambunctious with their children noises, are adults for instance encouraged to yell and make noise?
>
> A We don't encourage them to yell or make noise. No. We also don't encourage the children to yell and make noise either. We do control their level as like inside voices -
>
> Q Right.
>
> A -- but adults are allowed to hold conversations. If they want they can hold debates or occasionally there is an argument but we do ask them to keep it below a certain level as long as they are not disturbing other patrons in the area especially if they are up in the program room area or on the mezzanine level which is our study space. That is what we have reserved for our quiet space. So, we don't encourage people to do a lot of talking up there. Like, little questions here and there but don't have like a coffee date there. We ask them to be elsewhere in the library for that.

Q Right. Just while we are on that point, you were describing an area on the second floor; is that fair?

A It's technically our third floor at Seton.

Q Nice. Okay. Well, let's start with this. You've said that Seton has multiple floors?

A Mm-mm.

Q Does it have more than three?

A No.

Q Can you see what we see on the main floor as we enter the library?

A So, the main floor is the entry to the library is you have the -- what we call the connection point which is the desk that the staff will work off of to help people who are coming to the library. Re-direct them to things and then on that level is our children's area. So, if you go over to the right that is where we have a children's book. We have the helicopter. There is a children's program room that is kind of tucked into that corner. So, that is what would be on the main floor, and then behind the desk is the quiet study area.

Q I see. What about the second floor?

A So, the way that the Seton Library is set up, the main floor is technically our second floor.

Q Oh, I see.

A When you go down a level that's where our first floor is so it is like a half floor I am going to call it and that's where we have our adult books. We have tables and chairs for people to work on. Our teen area as well as our computers and printers are down there.

Q What about the third floor so to speak?

A So, the third floor we refer to as our mezzanine and it is above the second floor and that is where we have like our study area. So, there's no books on there. There's only tables and chairs. You have -- we have two breakout rooms that are smaller rooms people can use to study and we have our adult program room which is a larger room that people can book for events.

Q I understand there is a room up there that's surrounded by glass on the mezzanine floor?

A Yes. That's our adult program room.

Q All right. Before I ask you questions about the adult program room, what do the two breakout rooms look like?

A They are kind of little glass rooms that they actually when you go up into them they are glass on all four sides and they are overtop of the Y-like entrance walkway.

Q Oh, okay.

A They are quite small. I think you can only fit like eight to ten people in there, max. They are kind of rectangular and yeah.

Q Now, study area what does that look like?

A It's just an open space that has tables and chairs and then along the far side you can oversee the rest of the library. There's longer -- longer desks with tall chairs that people can sit at.

Q What is the normal use of the study area on any given day in the Seton Library? What is it designed for?

A Just people coming using the space as a study area. We have a lot of teenagers that come into the space because there is a high school next door. So, they would frequently use it just to do schoolwork. Sometimes we have tutors up there. We have university students that come and will do work there and then sometimes people will do -- we have quite a few people who do work from home but they come, and they do work from the library so they're not stuck at home all day. So, they would use the space as well."[2]

[12] Prior to February 25, 2023, the Seton library had a programme known as "Reading with Royalty" which Ms. Gray generally described (and I accept her description) in these words:

"Q I have some questions now for you about the Reading with Royalty. I understand the library has a program called Reading with Royalty.

A Yes.

Q What is Reading with Royalty?

A So, Reading with Royalty is a story-time program that we have partnered with Calgary Pride for. So, it is designed for all ages and what it is its -- participants come. One of the facilitators, so a worker from the library, would then work with one or two readers from Calgary Pride who are in drag. They would work together and we read stories. We do songs. We do rhymes. We do dances. At the end of the program we have a dress-up period so the kids can enjoy themselves and participate a little bit in that and then there is a 'Q' and 'A' session with some of the Royal readers just to kind of get the public familiarized with them and their life and what drag is and that culture and we also will give out sometimes there's colouring sheets and informative -- we have a gingerbread person that has some info on it that we give out to the parents if they like. There's buttons that kids can

[2] R v Reimer, Derek Transcript, September 20, 2023 p.10, l. 7 – p.12, l.12

make. Sometimes I had those for my program. Yeah. It's just a fun program that is a little bit different than the story-times that we normally put on.

Q All right. As it existed as of February 2023 was Reading with Royalty a registered program?

A At the Seton Library it -- we had one that was registered that occurred in October but otherwise it was not a registered program at the Seton Library.

Q Was that October of 2022 or the --

A Yes.

Q Okay. So, --

A Yeah.

Q -- previous --

A The previous October.

Q I see. Okay. So, that October 2022 it was a registered program but then in February of 2023 it was a drop-in?

A It was a drop-in program and every other program before that regarding the Reading with Royalty was drop-in as well. It -- Seton has that program occur three or four times a year approximately and previous to the February program this year, I had run it three times with drop-in.

Q All right. So, those three times that you personally ran it with drop-in, can you tell the Court in terms of how it went. How the program go off.

A It was off fine. We normally -- I ran the program in our open area which we have kind of a stage area beneath out helicopter tail and it is just an open area where there's a carpet on the front where the kids can kind of sit around and then there is seating kind of in the back where parents can sit and both program -- or all three programs that I had run previously went great. The first one was kind of -- I got it last minute so -- but it still went quite well. We had people who came specifically for the program and we had people that just didn't know the program was going on, dropped-in, enjoyed themselves and, yeah, left afterwards.

Q Right. What you have described before in terms of one or two participants from the Pride community reading a story, performing a song, doing rhymes and dances, is that the kind of normal course of business as it relates to a Reading with Royalty program?

A Yes. Normally with the Reading with Royalty program the way that it will run is the library facilitator would give the introduction and we run the songs and rhymes and then the Royal readers that we have would do the reading of the books and then they would also have a 'Q' and 'A' session at the end with the parents and kids.

Q That is how it went for three previous times you had run?

A Yes.

Q For the three times that you ran this program, can you give the Court an idea of how everyone is usually positioned in terms of the attendees being children, adults, anyone else.

A So, usually what would happen is myself and one or -- I've had two readers both -- every time I have done it. So, myself and the two readers would be at the front just in chairs. In front of us there's a carpet. I can't remember what exactly was on it. It's a big oval carpet. That's where we encourage the children to sit so that they are a little bit closer to the books. They have the room to get up and move around and then in the -- behind them in that stage area we have some like cement kind of big steps that that is where mostly the adults would sit. Some of the kids would sit up with their parents and then above that is like where our books are. So, it is like just an open space and so people would stand back there as well to kind of see. Occasionally we would have parents sitting on the floor with their kids especially if they have younger children they'd be sitting there kind of on the carpet area and doing the dances and the songs with them. Yeah.

Q How long do these programs usually last for?

A Typically about 45 minutes. The actual story time itself would be about 25 to 30 minutes and then the kind of dress-up, play, 'Q' and 'A' kind of period would be about 15 to 20 minutes."[1]

[13] A session of that programme was scheduled for February 25, 2023. Initially it was planned to conduct the programme in the open area by the children's area. However, concerns about a possible protest led the library staff to move the event to the adult programme area.

[14] During the course of the event, there were three incidents. While it is the third of the incidents which forms the subject matter of the two charges before the Court, knowing what happened in the first two incidents will assist in understanding what occurred during the third incident.

[15] Ms. Gray testified that when the event started, there were about 40 to 50 people in the room of which 12 to 15 were children. That estimate is at odds with the estimate given in evidence by Ms. Ellert who attended the event with her two children. As will be seen later, she estimated that there were about a dozen adults and a dozen children. I accept from the evidence that some people, for reasons not disclosed in the evidence, left the event as events progressed. I accept Ms. Gray's estimate of the number of people in attendance at the very beginning of the session and accept Ms. Ellert's estimate of the number of people in the room at the time that Mr. Reimer was in the room.

[16] Ms. Gray described what occurred:

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[1] R v Reimer, Derek Transcript, September 20, 2023 p.13 l. 21 – p.15. l.19

"A So, we got our program started on time so approximately 11:00. I gave my introduction, my explanation of what the program was to the participants, introduced my two readers and then I believe I did one song and then we got into the reading of the first book. During the reading of the first book, we had our first interruption of the program. A woman -- a blonde woman in a blue jacket stood up. She had been sitting in the chairs given to the adult. She was in the middle. She stood up and said something along the lines of do you know what you are exposing your children to. She had a phone in front of her and appeared to be filming us.

So, at that point one of my readers Nolan (phonetic) was still reading the book and participants had asked the woman to leave. She initially was not leaving the program. So, that adult participants of the program did crowd around her to block her sight and block the -- the phone from the rest of the room and they kind of crowded -- crowded her to leave the room. At this point I did stand up to go provide aid but by the time I had gotten to the back of the room the participants had already removed the woman from the room.

Q What effect if any did this have upon the programming that was happening at that time inside of the -- the adult programming room?

A It distracted the flow of the program for sure but not enough that we didn't feel confident going forward and everybody still seemed to quite okay with continuing with the program."[4]

[17] I accept that description.

[18] In cross-examination, Ms. Gray said that the from the time that the woman made her comments until she was ushered out of the room was "within a minute or two". I accept that.

[19] After the woman was removed from the room by the adult audience members, the reader (Nolan) finished the reading of the book. Ms. Gray then led the children in rhymes and a song ("for the children to get up and move around"). A man came into the room and went along the back glass wall. He was yelling. Ms. Gray described the man as "shouting religious jargon".

[20] As noted, I also heard evidence from one of the parents (Ms. Ellert) who had brought her two children to the programme, and she said the man said, "repent to Jesus". I accept Ms. Ellert's evidence of what the man said. I do not say this critically, but the phrase "religious jargon" is less a statement of what was said and more a characterization of what was said.

[21] Ms. Gray testified that the adult participants in the programme "crowded around the person, asked him to leave", and when he did not, they "just crowded around him until he left the room". In cross-examination, she testified that the man involved in this second incident was in the room for much less time than the woman in the first incident. The man in the second incident was in the room approximately 30 to 60 seconds. Subject to my comment about Ms. Gray's

[4] R v Reimer, Derek Transcript, September 20, 2023 p.20, ll 2-17, p. 21, ll. 34-38

evidence about what the man said (in the second incident), I accept her description of the second incident.

[22] Ms. Gray testified that the effect of this event was "a little bit more jarring". She said, "there were supposed to be people outside the room preventing others from coming into the room and that had not — was not working." While I accept her evidence on that point, I am of the view that her reference to "people outside the room preventing others from coming in" was a description of an informal, *ad hoc* measure; this session of the Reading with Royalty programme had not lost its character of being a "drop-in programme". Indeed, in cross-examination, Ms. Gray was clear that even though the programme was being held in a programme room, it remained an "open programme": those wishing to attend the programme were permitted to enter the room.

[23] During this second incident, Ms. Gray was "actively running the programme". She testified that she was "focussed on the children and the rhyme and song that I was currently singing." I accept that.

[24] In cross-examination, Ms. Gray agreed that the woman involved in the first incident was forced out of the room within about 60 seconds of her making her comments. The man involved in the second incident entered the room approximately three minutes later. He made some statements and was forced out of the room; he was in the room between 30 to 60 seconds. I accept that evidence.

[25] Ms. Gray described the third incident (which is the one which forms the subject matter of the charges before the Court):

> "Q Okay. What happened after the second -- or the man who was the second interruption, exited the room?
>
> A So, after that, I -- I was continuing on with the rhyme and song that I was doing with the kids and then within a minute or two while I was still on the same tune -- song, we then had a third man enter the room. He was taller, wearing dark clothing, and came in the room and he started yelling or talking extremely loudly, and I cannot remember a hundred percent what was being said but at that point he started to come towards the front of the room along the side glass wall.
>
> A So, at that point I believe he was also asked to leave the room. He continued to walk forward. The adult participants of the program attempted again to surround him and not let him continue coming into the room. Just -- but that in this case did not work. He continued to come into the room speaking extremely loudly and moving forward towards the front of the room where myself, the readers, and the children were located. And then at that point he was getting quite close to where the children were located. So, myself and my readers we tried to get the children to move away from that wall and that area because we did have some toddlers on the floor in that area".[5]

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[5] R v Reimer, Derek Transcript, September 20, 2023 p.26, ll27-34, p.27, ll. 2-9

[26] Ms. Gray testified that she "was continuing with my song". She said she "was attempting to keep the children focussed on me and not focussed on what was going on elsewhere in the room." She said the "man continued up along the wall and he did get behind us at one point". Ms. Gray could not recall what the man was saying. I will note here that the evidence is clear, and I accept, that it was the accused who was the man described in the third incident.

[27] Ms. Gray testified that the man "was still being surrounded by the adult participants of the programme." She said, "Nolan and I were attempting to keep an eye behind us just of where he was in the room in case we had to move the children again." She said that she and Nolan "continued on with a song".

[28] Ms. Gray described the effect of the third incident:

> "A This particular disruption had quite a bit more effect on the room. By this point I had adults who were visibly shaken. We had children that were crying. I had one younger - - or like a preteen, so he was probably about 10 or 11 years old from what he looked like to me, come from where the adults were -- kind of like the back of the carpeted area -- come run up to the front, grab his little brother, and then run and try to leave. I did notice at this point we did have participants leaving. So, we -- from what I could see most of the people in the room were visually (sic) shaken.
>
> Q Okay. You said at one point that you and one of the readers tried to move the children off of the rug towards the left-hand side and it was at that point that Mr. Reimer went in behind you. Is that -- is that what I understood your evidence to be?
>
> A I moved them while he was coming up the side glass wall because he was headed towards where some of them were. So, at that point I did try to get them kind of out of the way and then he continued onto behind us.
>
> Q Right. And that was my follow-up question. Why did you move them in that way that you've described?
>
> A Just to make sure that there were no children out of the way. Like, I had said previously we did have babies and toddlers that were on the floor.
>
> Q You said it was at that point similar to the other interruptions, Mr. Reimer was surrounded by some of the attendees?
>
> A Yes."[6]

[29] The accused was able to "continue up the room", but Ms. Gray did not know how he was able to get past the surrounding adults. She did say that when Mr. Reimer was behind her and Nolan, Mr. Reimer was surrounded by people.

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[6] R v Reimer, Derek Transcript, September 20, 2023 p.29, ll. 7-29

[30] In cross-examination, Ms. Gray confirmed, and I accept, that Mr. Reimer did not proceed up the middle of the room as there were seats in the middle of the room. Rather, Mr. Reimer proceeded on the side of the room. He was followed by adults from the audience.

[31] Ms. Gray said she did not see Mr. Reimer once the surrounding group had him at the door to the room. She said she was focussed on "keeping the children engaged with me". I accept that.

[32] Ms. Gray said that she was shaken by "Mr. Reimer's behaviour", and that she was worried about the children in the room and just in what was going on." She said she was focussed on "keeping the children calm".

[33] Ms. Gray was asked about the effect these events had on the Reading with Royalty programme that day:

> "Q All right. What effect did this interruption have upon the Reading with Royalty program that day?
>
> A Like, I had previously stated, we did have people leaving the program. Quite a few. And not returning. It -- it affected the feel of the program. Normally it is a very happy program. Normally there's a lot of smiling faces and we are having fun. There afterwards were less smiling faces than I would normally have and continuing forward it wasn't as upbeat as the program's normally run. And the 'Q' and 'A' session afterwards did not really happen. Yeah.
>
> Q Okay. Why did the 'Q' and 'A' session not happen?
>
> A I don't have a -- kind of like a solid answer for that. I just -- it is up to the participants to ask the questions and having queries for the Royal readers and that just didn't really happen that time and after the story time portion was done, we all -- myself and the readers we went to kind of who we knew and who we were familiar with instead of going and mingling with strangers that we would normally have chatted with.
>
> Q Did the 'Q' and 'A' sessions have participation in the three times you had done it previously?
>
> A Yes."[7]

[34] In cross-examination, Ms. Gray explained that the way she would "generally end the story time portion of the programme is that I invited the participants of the programme that if they have any questions to feel free to come and chat or if they want to raise their hand." She extended that invitation at the end of the February 25 session; her view was that the audience did not respond as they had at the end of previous sessions. I accept that she perceived a difference in audience participation.

[35] She said that Mr. Reimer "ultimately did leave the room" but she could not describe how that occurred. She said that after Mr. Reimer left the room, he "continued yelling" such that he

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[7] R v Reimer, Derek Transcript, September 20, 2023 p.30, l.24 – p.31, l.1

could be heard through the glass walls. At "one point", he was "knocking and banging on the back glass wall." She said that "the adult participants of the programme were still quite aware and monitoring where he was".

[36] In re-examination, Ms. Gray said that the incident with Mr. Reimer lasted longer than the second incident. From the whole of the evidence, I find that the incident with Mr. Reimer lasted no more than two minutes.

[37] In re-examination, Ms. Gray was asked these questions and gave these answers:

> "Q Okay. My friend asked you when you were describing Mr. Reimer in the room, he asked you, well, the room was chaotic during that period and you said yes. Why was it chaotic?
>
> A It was chaotic because we had -- well, Mr. Reimer was in the room, so I'm going to state the different things that made it chaotic. So, the yelling that was happening. The people moving around the room. Being behind us at a certain point. At this point like I had previously said, I had children -- one child running grabbing his brother, running away. Other children were trying to find their parents. So, it -- it all combined and we had adults that were upset and we had people leaving the room at this point. It all just combined to create a very chaotic environment.
>
> Q MR. DALIDOWICZ: What was the first act in the chaos?
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> A I'm going to have to go back with the interruptions but plural.
>
> Q Okay.
>
> A Yeah. It was -- sorry. I'm finding it hard to answer that one. The -- I will say like the yelling, going over top of me, attempting to continue on with the program was creating contrasting sounds which then was creating a little bit of confusion and, yeah. I – sorry."[8]

[38] Ms. Gray testified that the Calgary Public Library continues to offer the "Reading with Royalty" programme, but it is now a "registered" programme instead of a "drop in "programme. The programme is now always held in a programme room (as it was in the Seton library on February 25, 2023).

[39] When asked whether on February 25, 2023 the "Reading with Royalty" programme proceed as planned that day, Ms. Gray said:

> "A No. It did not go as long as initially intended. My initial plan of certain rhymes and songs to use ended up getting switched up. Like, I had previously said the 'Q' and 'A' session at the end didn't really happen and the kind of dress-up play portion wasn't as long or as engaged as it also normally is."[9]

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[8] R v Reimer, Derek Transcript, September 20, 2023 p.55, ll. 16-25, p. 56, ll. 15-21
[9] R v Reimer, Derek Transcript, September 20, 2023 p.33, ll. 35-38

[40] As noted, I also heard evidence from Ms. Ellert who had attended the February 25 "Reading with Royalty" event with her two children. She said that there were "maybe like a dozen adults and maybe about that many children." In cross-examination, she confirmed that there were about 12 adults and 12 children in the room. As previously noted, I accept that as being an accurate estimate of the number of people in the room during the incident with Mr. Reimer.

[41] She also testified that some of the children in the audience were crying after the second incident. I accept that.

[42] Ms. Ellert testified that Mr. Reimer made his way down the side of the room past the adults trying to stop him. She said he was yelling, but she could not recall specifically what he was saying except that it was "something about Jesus". I accept that.

[43] Ms. Ellert was asked: "Did his yelling have any effect upon the programming in the room that you could see?" She replied, "Yes. It completely stopped." I do not accept that evidence as it contradicts Ms. Gray's evidence that she continued to engage with the children.

[44] Ms. Ellert said that she was "very scared". When asked why she was scared, she gave this explanation:

> "A Well, I didn't understand why he was in the room yelling at us and I was scared for the children that were on the rug that he almost stepped on and the performers that were trying to provide this event for us and they couldn't but I was -- I was quite shaken at the point. Very nervous about the whole situation. I just -- I wasn't sure what he -- what his purpose was or like what he was capable of when he was doing that in that room."[10]

[45] I accept that Ms. Ellert felt the way she described.

[46] Ms. Ellert described Mr. Reimer's removal from the room:

> "Q How long was Mr. Reimer in the room behaving this way?
>
> A It was pretty quick. Probably under a minute. Maybe even less than 30 seconds. I can't recall exactly.
>
> Q You said it was after observing him behaving this way and saying the things that -- in the manner in which you have described to the Court that he was surrounded and the guided out of the room and you said he was yelling the whole time about Jesus?
>
> A Yeah.
>
> Q And did you see the manner in which Mr. Reimer exited the room?
>
> A I didn't because he was at that point surrounded from my vantage point so all I could see was kind of him because he is taller than everyone kind of surrounded

[10] R v Reimer, Derek Transcript, September 20, 2023 p. 70 l. 40- p. 71 l.3

by these people being guided out of the room and still kind of making a commotion and yelling.

Q Okay. Once Mr. Reimer was outside of the room, could you still see him?

A I could see him a little bit through the glass. He tapped on a window at one point and I could hear that he was still yelling.

Q Ms. Ellert, what effect if any did his behaviour outside of the room have upon what was happening inside?

A Well, we tried to resume -- the performers tried to resume the reading and so when he knocked on the glass everybody kind of looked back for a second but at that point the - - the performers were trying really hard to keep the kids focused on them to, you know, recover."[11]

[47] As to the audience reaction to the totality of the events, Ms. Ellert said that one of the male audience members was crying, and "many of the children were crying. The parents were comforting each other." I accept that.

[48] In cross-examination, Ms. Ellert said that five to six adults surrounded Mr. Reimer, and that that constituted about one-half of the adult audience members. I accept that Ms. Ellert's estimate was accurate in relation to the incident with Mr. Reimer.

[49] Ms. Ellert testified that she saw children move from where they were sitting on a rug and away from Mr. Reimer as he went forward along the edge of the room to the front. She said that he did not step on anyone, "but he came very close." I accept that.

[50] In cross-examination, Ms. Ellert testified that Mr. Reimer was not "guided out" of the room, he was "forced out". I accept that.

[51] In cross-examination, Ms. Ellert was asked these questions and gave these answers:

"Q So, I want to make sure I understand. Mr. Reimer tries to go into the room; right?

A Yeah.

Q There's a group of adults who try to prevent him from getting into the room.

A Yes. 26 27

Q He gets past the group of adults; right?

A Yes. 29 30

Q He makes some statements?

A Yes.

Q People make statements right back at him; right?

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[11] R v Reimer, Derek Transcript, September 20, 2023 p. 71, ll. 11-34

A Yeah.

Q He makes his way around the edges of the room to the front of the room.

A Through people but, yeah.

Q Right?

A Yeah.

Q And at that point that's when as you say in your statement these five or six adults surrounded him and to use your words "almost physically drag him out of the room"; right?

A Yes.

Q And then it was at the door after being dragged to the front of the room where there was what you describe as a physical altercation that resulted in him falling.
A Yes.

Q Okay. Did you see Mr. Reimer land on the ground?

A No."[12]

[52] I accept that evidence.

[53] Ms. Ellert said that Mr. Reimer "knocked" on the glass once after he had been expelled from the room. She said she could hear him "yelling" outside the room, but "couldn't make out what he was saying through the glass." I accept that evidence.

[54] From the contents of the video marked as Exhibit 2, I find that Mr. Reimer was physically ejected from the room by a group of adults. He was ejected with sufficient force that he fell to the floor. He did not respond with force.

[55] In addition to the evidence which I have already stated as being accepted by me, I find the following facts concerning what happened in the programme room:

1. On February 25, 2023, the "Reading with Royalty" programme was being held in a programme room in the Seton branch of the Calgary Public Library. It was an open programme: anyone wishing to attend was permitted to enter the room. People could come and go as they might wish.
2. While initially there were 40-50 people in the room, when Mr. Reimer entered the room, there were about 24 people in the audience made up of about 12 children and 12 adults.
3. After the programme session began, there were three incidents. It is evident that each incident involved a person who disagreed with the event being held, but there is insufficient evidence to allow one to conclude that the three individuals were acting in concert.
4. The first incident involved a woman who was seated in the audience. She made certain statements and was escorted out of the room by audience members.

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[12] R v Reimer, Derek Transcript, September 20, 2023 p. 81, l. 21 – p. 82, l. 11

5. The second incident involved a man entering the room, making certain statements, and again being physically escorted out of the room by audience members.
6. The third incident involved Mr. Reimer. He was able to enter the room and made his way along the side of the room to the front of the room while being followed by audience members. Some children who were sitting on the floor moved away from him as he walked to the front of the room being followed by audience members. Mr. Reimer was yelling. There is no evidence which allows me to determine what Mr. Reimer said. There is evidence that he made some "comments about Jesus", and I accept that, but beyond that I do not know what he said. Mr. Reimer was then surrounded by adult members of the audience and was physically escorted and ejected from the room. He was ejected with enough force that he fell to the ground. There is no evidence that Mr. Reimer resorted to force.
7. About one-half of the adult audience members of the audience were involved in ejecting Mr. Reimer from the room.
8. Some children in the audience were crying after the second incident and before Mr. Reimer made his appearance.
9. When Mr. Reimer entered the room and made his way to the front while "speaking extremely loudly", Ms. Gray "was continuing with [her] song. [She] was attempting to keep the children focussed on [her] and not focussed on what was going on elsewhere in the room."

[56] Once Mr. Reimer was forcibly removed from the programme room, he walked around the large foyer area outside the room. As he did so, he spoke very loudly voicing his concerns with the "Reading with Royalty" programme. The essence of his comments was captured on the video which was marked as Exhibit 2. The following is my transcription of his comments as captured on the video (and I find that Mr. Reimer uttered these words):

Video, at 1:06

THE ACCUSED: We are not supposed to be homosexuals and transgenders. Those that do this will not inherit the Kingdom.

Video, at 1:48

THE ACCUSED: (INAUDIBLE) and we're coming down to warn (INDAUDIBLE) to say that this is not okay, that this is wrong, this is evil. To have a pervert dressed up like that is wrong and evil. So, children don't believe this. Parents don't let your children be involved with this wickedness. The homosexual agenda is sweeping the city and the globe, and we have to come against this, we gotta stand against this. Now is the time, now is the time where we need to stand up, to rise up guys and we need to push back against this wickedness. And we have had enough. We've had enough of this darkness in our cities. That they're having this pervert hour - - we have this pervert hour at so many libraries and so many venues and they're getting shut down. Three

> cancellations have happened because of our protests. Praise God for that because it's gross, it's perverted, it's wicked.
>
> **Video, at 4:36**
>
> THE ACCUSED: We're coming against this perversion, perversion of drag queens, perverting our children ... (INAUDIBLE).

[57] Jordan Blasetti, a supervisor at the Seton branch of the Calgary Public Library, testified. He testified that once Mr. Reimer was ejected from the programme room, Mr. Blasetti spoke with him and followed him as he walked.

[58] The video does not show Mr. Reimer doing anything other than walking and talking loudly. He did not interfere with any other users of the library space, and other users of the library did not appear to change what they were doing. Mr. Reimer was asked to leave the library, but he did not do so until the police arrived and made the same request of him.

[59] Mr. Blasetti testified: "individuals in the study area were paying rapt attention to the confrontation that was happening.... Certainly, several individuals stood in the mezzanine and came towards the area and kind of stood at a perimeter around where the events were happening as well as, you know, at the bottom of the stairs in our welcome area. People's attention I — we observed people's attention drawn towards that area throughout."

[60] I found Mr. Blasetti to be less than objective in his evidence. Though he certainly was (and is) entitled to his own negative opinion about the things Mr. Reimer was saying that day, I found that his evidence disclosed a certain bias against Mr. Reimer. He was reluctant to acknowledge the physical violence visited upon Mr. Reimer when he was ejected from the programme room, and he took no action against the person involved in that event (apart from reminding the person that violence was contrary to library rules). Indeed, when Mr. Blasetti did ultimately acknowledge that Mr. Reimer was removed from the room in a "rough manner" in which he was "pushed to the floor as he was being removed", Mr. Blasetti then said "it was clear to me that after that rough removal from the room that the most urgent threat to everyone's safety and most urgent disruption continued to be Mr. Reimer as he quickly jumped to his feet and shouted." To conclude that Mr. Reimer "continued" to be "the most urgent threat to everyone's safety" because, after being physically thrown to the floor, Mr. Reimer shouted bespeaks an animus towards Mr. Reimer. Mr. Blasetti is entitled to his view, but it does detract from the weight I give his evidence.

[61] However, in cross-examination, Mr. Blasetti did agree with this statement: "The only physical observations you made of other patrons in the library were of the two individuals you described, whose attention was drawn to the room." I accept that statement.

[62] Mr. Robinson (the YMCA security guard) testified and said that he called 9-1-1 because Mr. Reimer had been "thrown out" of the room, and the protocol is to call for assistance when there is "aggression".

[63] Mr. Robinson said that what he saw was that "even people down on the lower level, were kind of looking up". I accept that people were looking up.

Law and Analysis

Causing a disturbance (Count 2)

[64] Section 175(1)(a) creates the offence colloquially known as causing a disturbance in a public place, and sections 175(1)(a)(i)-(iii) set out the various ways in which that offence can be committed.

[65] Mr. Reimer is charged with committing the offence contrary to section 175(1)(a)(i) which reads:

> "Everyone who (a) not being in a dwelling-house, causes a disturbance in or near a public place, (i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language...is guilty of an offence punishable on summary conviction."

[66] In ***R v Lohnes*** (1992) 69 CCC (3d) 289, the Supreme Court of Canada discussed what "constitutes a public disturbance under section 175(1)(a) of the *Criminal Code* ... which makes it an offence to cause a disturbance in or near a public place by, *inter alia*, fighting, screaming, shouting, swearing, singing or using insulting or obscene language." The Court noted that "shouting or swearing or singing are not in themselves criminal offences. They become criminal only when they cause a disturbance in or near a public place." (p 290)

[67] At p 299, McLachlin J. stated:

> The weight of the authorities, the principles of statutory construction and policy considerations, taken together, lead me to the conclusion that the disturbance contemplated by s 175(1)(*a*) is something more than mere emotional upset. There must be an externally manifested disturbance of the public peace, in the sense of interference with the ordinary and customary use of the premises by the public. There may be direct evidence of such an effect or interference, or it may be inferred from the evidence of a police officer as to the conduct of a person or persons under s. 175(2). The disturbance may consist of the impugned act itself, as in the case of a fight interfering with the peaceful use of a barroom, or it may flow as a consequence of the impugned act, as where shouting and swearing produce a scuffle. As the cases illustrate, the interference with the ordinary and customary conduct in or near the public place may consist in something as small as being distracted from one's work. But it must be present and it must be externally manifested. In accordance with the principle of legality, the disturbance must be one which may reasonably have been foreseen in the particular circumstances of time and place.

[68] At p 298 of ***R v Lohnes***, *supra*, Justice McLachlin endorsed the comment of Chief Justice MacKeigan in ***R v Swinimer*** (1978) 40 CCC (2d) 432 (NSCA) that "the test for a disturbance in or near a public place under s. 175(1)(a) should permit the court to weigh the degree and intensity of the conduct complained of against the degree and nature of the peace which can be expected to prevail in a given place at a given time."

[69] A helpful summary of the law is found in ***R v Enchin-Dixon*** 2021 BCPC 45 at paragraph 98:

1. It is something more than mere emotional upset or annoyance.
2. The conduct must cause an externally manifested disturbance of the public peace, in the sense of an interference with the ordinary and customary use by the public of the place in question.
3. The interference may be minor but it must be present.
4. The disturbance may be proven by direct evidence or be inferred from the evidence.
5. The disturbance may consist of the impugned act itself or it may flow as a consequence of the impugned act.
6. The disturbance must be one which may be reasonably foreseen in the particular circumstances of time and place.

[70] Justice Cooke said in ***R v Lawrence*** (1992) 74 CCC (3d) 493 (Alta QB) at p 504 that "it is clear that the purpose of the section is not to limit freedom of expression but rather to prevent the disruption of the public's normal activity and use of a public place by externally manifested disorder."

[71] The same point was made by Justice McIntyre in ***R v Whatcott*** 2005 SKQB 302 at paragraph 9:

> [9] The intent of s 175 is to control the physical consequences of certain human activity, regardless of the meaning being conveyed. The purpose is not to control expression, in and of itself. The legislation is not aimed at the content of expression, but rather the physical result of the expression or activity, and then only in a public place.

[72] In order for the Crown to prove the commission of a criminal offence, the Crown must prove beyond a reasonable doubt the existence of both the *actus reus* and the *mens rea*. Justice McLachlin explained it this way in ***R v Beatty*** 2008 SCC 5 at paragraph 66:

> [66] I add that this formulation mirrors the theory on which the criminal law is founded — that the *actus reus* and *mens rea* of an offence represent two aspects of the criminal conduct. The *actus reus* is the act and the *mens rea*, or guilty mind, the intention to commit that act....

[73] The *actus reus* of the offence of causing a disturbance in or near a public place was described by the Ontario Court of Appeal in ***R v Swinkels*** 2010 ONCA 742 at paragraph 10:

> [10] The actus reus for this offence has two components. First, the accused must have engaged in one of the enumerated acts, which include "screaming, shouting,

> swearing, or using insulting or obscene language". Second, the accused's actions must have caused "an externally manifested disturbance of the public peace, in the sense of interference with the ordinary and customary use of the premises by the public": Lohnes, at p 181 SCR. Or, as the court put it another way, the test would be satisfied if actions by an accused involved "violent noise or confusion disrupting the tranquillity of those using the area in question": at p 179 SCR

[74] The *mens rea* of the offence was explained in ***R v Brazau*** 2017 ONSC 2975 by Justice Goldstein:

> [37] The *mens rea* required is not the intention to cause the disturbance itself. The intent required is to do one of the things set out in the Code: for example, one must possess the intention to fight, scream, shout, or use insulting language. The disturbance is the by-product. The disturbance must cause interference with the ordinary and customary use of the public place. In other words, the offence catches those who intend to do the things that cause a disturbance. That is exactly what Mr. Brazau intended: he meant to convey his opinion by screaming, shouting, or the use of insulting or obscene language. His reason for the acts - his motive – was irrelevant.

[75] In Count 2 on the Information, it is alleged that Mr. Reimer caused a disturbance by one or more of the acts of "screaming, shouting, swearing, singing, or using insulting or obscene language". From that list, the facts only give an air of reality to the allegations of shouting or using insulting language.

[76] "Shouting" is not defined in the *Criminal Code*. However, I respectfully adopt the definition provided by Justice Hutcheon in ***R v Reed*** (1992), 76 CCC (3d) 204 (BCCA) at p 207: "The word 'shouting' in its ordinary sense involves a loud, vehement human voice without the aid of an amplified sound device."

[77] The evidence satisfies me that Mr. Reimer engaged in shouting both while in the programme room of the library and while outside that room (after he was ejected from the programme room).

[78] The term "insulting language" is also not defined in the *Criminal Code*.

[79] In Volume VII of the ***The Oxford English Dictionary, Second Edition*** (Oxford: Oxford University Press, 1991), at p 1057, the word "insult" is defined, in part, as "injuriously contemptuous speech or behaviour; scornful utterance or action intended to wound self-respect" and "to assail with offensively dishonouring or contemptuous speech or action; to treat with scornful abuse or offensive disrespect; to offer indignity to; to affront, outrage."

[80] An example of a situation in which a court found words uttered by an accused person to constitute "insulting language" under section 175 is found in paragraph 6 of ***R v Walker*** 2007 ONCA 104. In that case, the Court of Appeal agreed with the learned trial judge's conclusion that the accused calling a police officer a "racist" constituted the use of insulting language.

[81] In the case at bar, nothing is known about what Mr. Reimer said in the programming room (apart from some "comments about Jesus"). Consequently, it has not been proven that Mr. Reimer used "insulting language" in the programming room.

[82] After Mr. Reimer was ejected from the programming room, and while he walked back and forth in the large area outside that room, he uttered the following words and phrases: "to have a pervert dressed up like that is wrong and evil...That they're having this pervert hour – we have this pervert hour at so many libraries...it's perverted...We're coming against this perversion, perversion of drag queens, perverting our children...."

[83] The word "pervert" (as a verb) is defined in the same dictionary (Volume XI; p 619), as meaning, in part, "to turn (a person, the mind, etc.) away from right opinion or action; to lead astray; to corrupt". As a noun, the word "pervert" is defined as "one who has been perverted...one who suffers from a perversion of the sexual instinct".

[84] I am satisfied that the words uttered by the accused outside the programming room, and which I have set out above, constituted "insulting language" as referred to in section 175(1)(a)(i).

[85] I am satisfied that both the adult programming room and the area outside it were public places. The public was permitted access to both.

[86] Did the accused, by either shouting, or using insulting language, cause a disturbance in either or both of those public places?

[87] In the adult programming room, Ms. Gray was presenting the "Reading with Royalty" programme with two readers. When Mr. Reimer entered the room and began to make his way along the wall to the front, Ms. Gray continued with the song she was singing to the audience.

[88] Ms. Gray and Nolan (one of the readers) "were attempting to keep an eye behind us just of where he was in the room in case we had to move the children again." Ms. Gray "moved [some of the children] while [Mr. Reimer] was coming up the side glass wall because he was headed towards where some of them were. So, at that point [Ms. Gray] did try to get them kind of out of the way and then [Mr. Reimer] continued onto behind [Ms. Gray and Nolan]."

[89] While Mr. Reimer was making his way up the side of the room, he was closely followed by adults who were trying to envelop him with a view to removing him.

[90] While the combination of these events (the shouting, Mr. Reimer's physical movement toward the front of the room, and the adults trying to follow/envelop him) caused some emotional upset, it did not result in an externally manifested disturbance. Those presenting the "Reading with Royalty" programme continued with their work. To the extent that those presenters monitored where Mr. Reimer was in the room, they did so while continuing with their presentation, and did so not because of his shouting, but because of the physical movement of Mr. Reimer into the room and the reaction of those who wanted to remove him from the room. The evidence does not enable me to decide whether those who wanted to remove Mr. Reimer from the room did so because of the content of what Mr. Reimer was saying or because he was shouting it or simply because he was moving to the front of the room.

[91] I find that the Crown has not proven beyond a reasonable doubt that Mr. Reimer caused a disturbance in the adult programming room by one of the actions enumerated in section

175(1)(a)(i). He caused emotional upset which may have been caused, in part, by his shouting. If I am wrong, and there was a disturbance in the adult programming room, then it is not at all clear whether it was the result of some of the audience members' reaction to Mr. Reimer's physical movement within the room, or to the content of what he was saying, or to his shouting.

[92] In the public area outside the adult programming room, three things occurred which may have attracted attention:

1. Mr. Reimer being ejected from the adult programming room with such violence that he fell to the floor in the open area.
2. Mr. Reimer shouting as he walked around the open area.
3. Mr. Reimer using insulting language.

[93] Some people within the library looked at what was occurring in that open area. There is no evidence that they were deterred or prevented or impeded from their normal use of the library space. There is no evidence which would allow one to reasonably conclude, much less conclude beyond a reasonable doubt, that their attention was momentarily drawn to Mr. Reimer's shouting or use of insulting language rather than being drawn to the act of Mr. Reimer being physically thrown to the floor. Further, I find that the physical act of throwing Mr. Reimer to the floor as he was ejected from the adult programming room was not a reasonably foreseeable consequence flowing from the act of shouting within that room. In short, there was no externally manifested disturbance of the public peace in the library area outside the adult programming room, and, even if there was, the evidence falls far short of proving that it was caused by one of the enumerated acts in section 175(1)(a)(i) as opposed to some other event.

Mischief (Count 1)

[94] Section 430(1)(d) states: "Everyone commits mischief who wilfully...(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property."

[95] Section 430(4)(b) creates the offence of mischief with which Mr. Reimer is charged.

[96] The Calgary Public Library Board exists as a corporation as result of section 3(4) of the *Libraries Act*, RSA 2000, c L-11: ***Cardston (Town) v Alberta (Municipal Affairs)*** 2022 ABKB 802 at paragraph 26. The word "person" in an enactment includes a "corporation": *Interpretation Act*, RSC 1985, c I-21, section 35(1).

[97] Consequently, the Calgary Public Library Board is a "person" as that word is used in section 430(1)(d).

[98] The phrase "the lawful use, enjoyment or operation of property" is found in both sections 430(1)(c) and 430(1)(d).

[99] In ***R v Maddeaux*** (1997), 115 CCC (3d) 122 (Ont CA), Justice Austin, speaking for the Court, interpreted the words "use, enjoyment or operation" as they are found in section 430(1)(c). I am satisfied that his Lordship's comments equally apply to those words as they are found in section 430(1)(d). At p 127 of ***R v Maddeaux***, *supra*, Justice Austin said:

> "...In my view, the words "use, enjoyment or operation" in s. 430(1)(c) are to be read *ejusdem generis*. "Use" of this property would include being present in the apartment for the purposes of cooking, eating, cleaning, resting, sleeping, listening to the radio and watching television. The word "enjoyment" might include any or all of those uses. "Operation" would not normally be employed in connection with a residential property, such as an apartment, but would be used in connection with a commercial, institutional or industrial enterprise as, for instance, a music shop, a grocery store, a library, or a mill."

[100] Justice Veit, in paragraph 45 of ***R v Hnatiuk*** 2000 ABQB 314, said that she accepted from ***R v Maddeaux***, *supra*, "that the word 'enjoyment' has a more inclusive meaning than 'possession' and includes the action of obtaining from property the satisfaction that the property can provide".

[101] Justice Veit then went on to explain that actions which interfere with "enjoyment" must also be wrongful if they are to be made criminal by section 430(1). Justice Veit said, at paragraph 46:

> [46] One difficulty with the decision to adopt a broad interpretation of the word "enjoyment" is that the words of section 430 of the *Criminal Code*, are, therefore, extremely broad: it is a crime to wilfully obstruct, interrupt or interfere with the lawful use, enjoyment or operation of property. Wilfully means knowingly, or deliberately, in the sense adopted by the B.C.C.A. in ***Tan;*** obstruct means to stand in the way of; interrupt means to break the continuity of; and, although interfere has a quite technical meaning of interposing or interspersing, by extension it means "to get in each other's way". The Haavaldsens knew that their use of their legal fire pit got in the way of the Hnatiuks enjoyment of their property; yet the Haavaldsens continued to use their fire pit. Could they be convicted of the criminal offence of interfering with the enjoyment by the Hnatiuks of their home, which they lawfully own and in relation to which they have a lawful right to use their backyard? Of course not. Common sense tells us that the doing of something which is not illegal is not transformed into a crime by the fact that it annoys a neighbour. However, the doing of something which is wrongful - for example causing a loud disturbance in the middle of the night which contravenes a municipal by-law may also constitute a crime if it disturbs, or interferes with, a neighbour's sleep. A purposive interpretation of the words of s. 430 leads us to the conclusion that, although the words themselves are broad, they mean that a person who engages in wrongful behaviour which interferes with the lawful enjoyment of property is guilty of a crime. In this case, the fact that the Hnatiuks had put up this chain link fence, which was not pretty, and draped it with a tarp, which was not property, and that Ms. Hnatiuk wrote rude words on the tarp, which were not pretty, but all of which were lawful, cannot constitute a crime, even though the fence, the tarp, and the words on the tarp reduced or interfered with the enjoyment by the Haavaldsens of their property. The evidence establishes that there were three wilful wrongful conducts, all of which were trespass, in which Ms. Hnatiuk engaged; she deliberately doused the fire on two

> occasions - that was a trespass on the Haavaldsens property even if it was not an assault of the Haavaldsens and their guests - and she deliberately trespassed on their property to hit their fence with a basketball. And on each of those occasions, it is clear that the wrongful conduct interfered with, or got in the way of, the enjoyment by the Haavaldsens of their property.

[102] In my respectful view, that same logic applies to conduct which is said to unlawfully interfere with the operation of property (which is at the core of what is alleged against Mr. Reimer in Count 1). Before those acts which interfere with the operation of property become criminal by virtue of section 430(1), they must be wrongful ("unlawfully interfere").

[103] I respectfully agree with Justice Veit that in order for an act to be wrongful it must contravene a municipal by-law, or some statutory regulation, or constitute a civil wrong. I must respectfully disagree with my learned colleague Judge Wendon's statement in ***R v Anderson*** 2009 ABPC 249, at paragraph 53, that "the term 'wrongful behaviour' finds its definition in the effect that it has on someone else.... It is therefore contextual." In my view, the term "wrongful" needs an objective foundation as described by Justice Veit. If the term "wrongful" is not based in an objective finding (for example, that the act constitutes a civil wrong, or contravenes a municipal by-law), then it invites making criminal an act which simply annoys someone, which is the very situation Justice Veit warned against.

[104] Consequently, I am of the view that in order for Mr. Reimer to be convicted on Count 1, the Crown must prove beyond a reasonable doubt that acts of Mr. Reimer interfered with the Calgary Public Library Board's operation of the Seton branch of the Calgary Public Library, and that those acts were wrongful.

[105] During the course of all of the events of February 25, 2023, as found from the evidence, the operation of the Seton branch of the library by the Calgary Public Library Board continued unabated. The library stayed open, the library staff performed their duties, the public had access to the facility, the library spaces were used as intended by staff and public, and normal library functions continued.

[106] I find that the acts of Mr. Reimer did not obstruct, interrupt or interfere with the Calgary Public Library Board's lawful use, enjoyment or operation of the Seton branch of the library.

[107] Further, though I need not decide this in light of my finding, no evidence before me would allow me to conclude that Mr. Reimer's acts were "wrongful" as that term was used by Justice Veit in ***R v Maddeaux***, *supra*.

Section 430(7)

[108] The defence submitted that in addition to the other arguments advanced, Mr. Reimer is not guilty of mischief because that which he did fits within the provisions of section 430(7) which states:

> "No person commits mischief within the meaning of this section by reason only that he attends at or near or approaches a dwelling-house or place for the purpose only of obtaining or communicating information."

[109] Since I have found that the Crown has not proven the elements of the offence of "mischief", it is not necessary for me consider section 430(7). However, since counsel kindly provided me with thoughtful submissions, I will offer the following comments.

[110] The limiting words found in section 430(7) (i.e., "by reason only that he attends...for the purpose only of obtaining or communicating information") were considered by Justice Green in ***R v Dooling*** (1994), 94 CCC (3d) 525 (Nfld SC) at p. 537:

> If the acts of the accused involve more than mere attending at or near a place for the purpose of communicating information, s 430(7) will, of course, not apply. Thus, if the acts complained of constitute something more than mere presence at a place in a manner that is reasonably necessary to communicate information, or if the communication is, in fact, a mask or subterfuge for a different purpose (and thus the attendance at the place is not necessary to accomplish the purpose of the communication), the accused will not be able to take advantage of s 430(7).

[111] However, Justice Green went on to say (at pp. 537-538) that:

> "...It would be the rare case indeed where someone communicates information in the abstract without intending to accomplish some other purpose as a result of that communication. Unless one is writing in one's personal diary, the expression of information in written form must be designed to educate, convince or persuade.
>
> The fact that the communication of information will likely be for the purpose of persuasion ought not to take the case out of s. 430(7) if all that is done is the communication of that information. In my view, if the result — indeed, even the intended result — of the communication of information is to interfere with an employer's business in the course of a lawful labour dispute, the defence of s. 430(7) remains available, provided the only thing done is the communication of that information. The results of that communication are irrelevant."

[112] In ***R v Tremblay*** 2010 ONCA 469, Blair, J.A., speaking for the Court, "agree[d] generally" with the above statements, and went on to say that the phrase "for the purpose only of ...communicating information" should include "communication with the intention of accomplishing some other purpose as a consequence of that communication".

[113] In the case at bar, the Crown submitted that Mr. Reimer's actions (namely, his entering of the adult programming room, moving through the attendees to stand directly behind the program facilitator and presenters while shouting over top of them, and, after being removed from that room, his pacing along the glass walls while shouting and knocking on the glass) obstructed, interrupted and interfered with the programming inside the room, and was thus more than reasonably necessary to communicate information.

[114] However, I have already concluded that despite Mr. Reimer's presence in the adult programming room, including his movement and shouting, Ms. Gray was able to continue with her song. Moreover, after Mr. Reimer was ejected from the adult programming room, his continued shouting, pacing and knocking did not deter, prevent or impede library patrons in their

normal use and enjoyment of the library space. This was, in part, because Seton Library is not a traditional "make no noise" library, but one in which play, and conversation is encouraged.

[115] The Crown submitted that Mr. Reimer could have easily stood outside the library, and that by going inside the library, he chose the most intrusive method by which to communicate information. However, since I have found that Mr. Reimer's actions while in the library did not obstruct, interrupt, or interfere with the lawful use, enjoyment or operation of the library by the Calgary Public Library Board, the fact that he entered the library to communicate information is not relevant. The Court said in ***R v Dooling***, *supra*: "[t]he fact that the space was confined and the signs were large and the appellant could have picketed outside does not add to the external circumstances of the offence because, as was found by the trial judge and is abundantly clear from the evidence, there was, in fact, no physical prevention or hinderance of people entering the store" (at paragraph 41) [emphasis added].

[116] In the case at bar, the way in which Mr. Reimer communicated information did not result in one of the prohibited events set out in section 430(1)(d). Consequently, the fact that Mr. Reimer entered the library to communicate information does not, in and of itself, deprive him of the benefit of section 430(7). For examples of when the actions which accompanied the communication of information deprived a person of the benefit of the section, see: ***R v Tan*** (1992) 15 BCAC 231; and ***R v Osborne*** 2007 NBPC 3.

[117] The Crown further submitted that section 430(7) is not available to Mr. Reimer because his communication was a mask or subterfuge for a different purpose, namely, to disrupt or cancel the "Reading with Royalty" event. However, Mr. Reimer's acts in the library consisted only of the communication of information, and did not, in fact, deter, prevent or impede library patrons from their normal use and enjoyment of the premises. The fact that Mr. Reimer's ultimate objective may very well have been to disrupt or cancel the "Reading with Royalty" programme, does not take his actions outside the protection of section 430(7). As stated by Justice Blair, writing for the majority in ***R v Tremblay***, *supra*:

> [16] [...] the communication of information will already carry with it the willful intention or purpose to interrupt or interfere with the lawful use or enjoyment of property, or recklessness in that regard, before the s. 430(7) defence can even be activated. To hold that communication with those consequences alone cannot trigger the defence because such communication is not intended only for the purpose of communicating information (as the SCAJ did), or that it does not constitute an attempt to persuade by rational argument (as the trial judge did), would be to render the defence ineffective. That cannot have been Parliament's intent.

[118] There is one additional broad issue relating to section 430(7), and that is whether that which was being communicated by Mr. Reimer was "information" as that term is used in section 430(7), or whether it was simply his opinion. That, in turn, leads to the question of whether the act of communicating his opinion (i.e., that the "Reading with Royalty" programme was inappropriate) constituted the communication of "information" (information about his opinion)

under section 430(7). Does the word "information" as used in section 430(7) include opinions as well as facts? Until those issues are resolved, one cannot opine definitively on whether section 430(7) is available to Mr. Reimer. Given my earlier findings, it is not necessary for me to do so.

Verdicts

[119] My task is a narrow one. It is to determine whether the Crown has proven beyond a reasonable doubt that the accused committed one or both of the criminal offences with which he has been charged.

[120] Not all actions which are inconsiderate or disrespectful of others are criminal. The actions committed by Mr. Reimer on February 25, 2023, in the Seton branch of the Calgary Public Library may have been many things, and some of them, on any objective basis, were inconsiderate and disrespectful of others, but, for the reasons which I have set out above, I am of the view that they did not cross the line into criminal acts.

[121] I find the accused not guilty of Counts 1 and 2.

Dated at the City of Calgary, Alberta this 24th day of September, 2024.

A.A. Fradsham
A Justice of the Alberta Court of Justice

Appearances:

M. Dalidowicz
for the Crown

A. Mckenzie
for the Accused