

## BC Transit Case Summary

### Background

As the provincial government headed towards the mid-point of its first term, the BC Teachers' Federation (BCTF) continued to oppose many of its education initiatives. At its 2003 AGM, the BCTF established a "Public Education Defence Fund to help implement their advocacy plan." At its March 2004 AGM, BCTF members voted to spend \$5 million during the 2005 provincial election campaign to make education a "vote-changing issue" and to work for what they characterized as a *government that is supportive of public education and adequate funding* (Dobbin, 2007, p. 8).

Opposition to provincial initiatives during this period gave rise to issues concerning what the BCTF and its members could say and where they could say it. What would begin in 2004 as part of the latest BCTF campaign would set the stage for contentious disagreements regarding union-teacher freedom of speech in 2007, 2008 and 2009.

In the fall of 2004, the BCTF planned to run an ad on transit buses stating "2500 fewer teachers. 113 schools closed. *Our students. Your kids. Worth speaking out for.*" These ads were rejected by the Greater Vancouver Transportation Authority (TransLink) and British Columbia Transit (BC Transit), who argued that the advertisement could not be accepted as it contravened their advertising policies:

#### Policy

2. Advertisements, to be accepted, shall be limited to those which communicate information concerning goods, services, public service announcements and public events.

#### Standards and Limitations

7. No advertisement will be accepted which is likely, in the light of prevailing community standards, to cause offence to any person or group of persons or create controversy.
9. No advertisement will be accepted which advocates or opposes any ideology or political philosophy, point of view, policy or action, or which conveys information about a political meeting, gathering or event, a political party or the candidacy of any person for a political position or public office.

The BCTF challenged the transit authorities' decision, contending that refusal to run the ads contravened their rights to freedom of expression under the *Charter of Rights and Freedoms* (the Charter). The case was heard in British Columbia Supreme Court, with Justice Halfyard concluding that the policies of the transit authorities did not infringe on the BCTF's Charter-protected right to freedom of expression.<sup>1</sup> The BCTF appealed the decision.

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<sup>1</sup> The Canadian Federation of Students (the "CFS") was also a party to the action against the transit authorities. The CFS had also attempted to purchase advertising space on the side of buses to encourage young people to vote in the provincial election by posting, on buses, advertisements about the election.

On November 28, 2006, the majority of the BC Court of Appeal issued its decision to allow the BCTF appeal. The Court of Appeal disagreed with the trial judge and found that the policies of the transit authorities did in fact breach the BCTF's right to freedom of expression, finding that the transit authorities' policies regarding political advertising were inconsistent with the protection of freedom of expression guaranteed under the Charter.

**Decision:** In a decision issued Friday, July 10, 2009, the Supreme Court of Canada held that TransLink and BC Transit could not prohibit political advertising on buses. The Court unanimously upheld the right to advertise on public transit as a freedom of expression right protected by the Charter.

In its decision, the Court first held that both TransLink and BC Transit are government entities within the meaning of section 32 of the Charter and, therefore, all their activities are subject to the Charter, including operation of the buses they own. In addition, the Court determined the side of a bus is a location where expressive activity is protected by s.2(b) of the Charter. The Court also held that the very purpose of the policies at issue was to restrict the content of expression in the advertising space on the side of buses.

The Court held that the transit authorities' policies limited the BCTF's right to freedom of expression and, therefore, TransLink and BC Transit had to justify the limit under section 1 of the Charter. The Court accepted that the transit authorities' policies were adopted for the purpose of providing "a safe, welcoming public transit system" and that this was "a sufficiently important objective to warrant placing a limit on freedom of expression." It held, however, that the advertising policies under question were not sufficiently connected to the objective to warrant limiting freedom of expression.

The Court concluded that:

- the policies amount to a blanket exclusion of a highly valued form of expression in a public location that serves as an important place for public discourse
- in exercising their control over such advertising, the transit authorities failed to minimize the impairment of political speech, which is at the core of s.2(b) of the Charter, and
- having chosen to make the sides of buses available for expression on such a wide variety of matters, the transit authorities cannot, without infringing s.2(b) of the Charter, exclude a particular kind or category of expression otherwise permitted by law.

Concluding that the transit authorities' advertising policies infringe s.2(b) of the Charter and that this infringement is not a reasonable limit prescribed by law as can be demonstrably justified under s.1 of the Charter, the Court declared articles 2, 7 and 9 of the transit authorities' policies are of no force or effect to the extent of their inconsistency.