



Office of the Police
Complaint Commissioner
British Columbia, Canada

Fair Independent Principled

NOTIFICATION OF
INADMISSIBILITY OF COMPLAINT
(Pursuant to s.83(1) of the *Police Act*)

Date: February 3, 2011
OPCC File No. 2011-6086

TO: Ms. Jean Wharf (Complainant)

AND TO: Acting Chief Officer Andy Hobbs
South Coast British Columbia Transportation Authority Police Service

On January 26, 2011, our office received a copy of your complaint indicating that you were the subject of a fare check on the sky train by a member of the South Coast British Columbia Transportation Authority Police Service (SCBCTAPS). You report that you were escorted off for failing to provide proof of fare and you offered to purchase a ticket. You were issued a violation ticket but feel that the officer treated you like you were worthless. You further report that you were wearing a pin that said "fuck yoga" and were informed that you could not re-board the train until you removed the pin. You refused and told the officer to "fuck off" and when you attempted to re-board the train he pulled you off by the arm. You feel as though the member had no right to place his hands on you as you were not under arrest.

In British Columbia, a complaint against a municipal police officer or department must be reviewed by the Police Complaint Commissioner to determine whether it is admissible under Division 3 – Process Respecting Alleged Misconduct. If the allegations concern the policies or services provided by a police department, the complaint is then processed pursuant to Division 5 – Process Respecting Department Service and Policy Complaints. A complaint may contain elements of both.

A complaint, or a part of the complaint, is admissible under Division 3 if:

- i) The conduct alleged would, if substantiated, constitute misconduct by the member;
- ii) The complaint is submitted within 12-months of the date of the incident referred to;
and
- iii) The complaint is not frivolous or vexatious.

After reviewing the information provided, you have presented three main concerns with your complaint: 1) potential discourtesy; 2) the legal authority to remove you from the skytrain and transit property; 3) legal authority to ask you to remove a pin with the phrase "fuck yoga". First, our office finds that a lack of friendliness and cordiality does not amount to discourtesy as defined under the *Police Act*. Secondly, section 6(2) of the *South Coast British Columbia*

Transportation Authority Act outlines the authority SCBCTAP members have when dealing with someone who does not comply with the posted rules and signs.

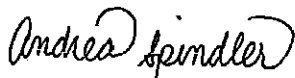
6(2) If a person does not obey a sign or comply with the rules when required to do so by a transit employee acting in accordance with subsection (1), any transit employee may do any of the following:

- (a) refuse that person permission to enter the transit vehicle or other transit property;
- (b) order that person to leave the transit vehicle or other transit property;
- (c) order that person not to enter any transit property or not to enter specified transit properties for a period not exceeding 24 hours from the time the order was made.

In this instance you committed an offence by not paying your fare and as a result the SCBCTAP member had the legal authority to ask you to leave the area and had the authority to prevent you from re-boarding the skytrain, including placing his hands on you to prevent this. Lastly, you are correct in stating you have a right to wear a pin with the phrase "fuck yoga", and you exercised this right by refusing to remove it when requested. According to relevant case law on this issue, if you were not on transit property it is likely there would be a different outcome. However, that is not the case here. There are posted transit rules for passengers indicating there is to be "no foul, insulting, abusive, or inappropriate language" and therefore the SCBCTAP member had the authority to ask you to remove your pin. You were on transit property and had committed an offence and therefore you do not have the right to remain on transit property. The fact that a SCBCTAP member asked you to remove a pin that he considered to be offensive is not police misconduct. Having reviewed the available evidence, and without weighing the evidence beyond what is necessary to perform our gate keeping function, I am satisfied that the conduct you describe does not constitute misconduct as defined pursuant to s. 77 of the *Police Act*.

Accordingly, I have determined this complaint to be inadmissible and pursuant to s. 83(1) (d), I direct that no further action pursuant to Division 3 of the *Police Act* is required or necessary.

Thank you for bringing this matter to our attention.



Andrea Spindler
Investigative Analyst, OPCC