



Translink Board of Directors
c/o Nancy Olewiler, Chair

Translink Mayors' Council
c/o Richard Walton, Chair

Translink
1600 - 4720 Kingsway
Burnaby, BC
VIA FAX: 604-453-4626

Transit Police
307 Columbia Street
New Westminster, BC
VIA FAX: 604-515-8301

September 20, 2012

Dear Sirs/Mesdames:

Re: Free expression in Skytrain stations and on transit property

I write to you in my role as President of the BC Civil Liberties Association, Canada's oldest and most active civil liberties group, on behalf of that organization. Our mandate includes the promotion and protection of rights and freedoms across Canada, with particular focus on British Columbia. We write to you to advise you of an extremely concerning event that we respectfully request you investigate immediately.

We are advised by a group of individuals who publish a free political newspaper called "Fire This Time" that on August 31, 2012, at the Metrotown Skytrain station, members of their organization were handing out free copies of their publication to transit users. The organization advises us that they had done similar distributions of this publication in the past, that the station's common areas (excepting the "fare paid zones") are regularly used for the distribution of free newspapers including 24 Hours and Metro, and that rules posted on the wall of the common areas of the station advise that distribution of non-commercial free literature is permitted.

On August 31, the group alleges that transit officials and transit police arresting these individuals for distributing their newspaper. They have produced video that appears consistent with this allegation. We understand that no appearance notices or tickets were issued to those arrested, and that all were released shortly after the arrests. Witness accounts we have reviewed indicate that arrests may have been made on the basis of a shifting justification that began with an improper assertion that Translink staff and police can restrict the distribution of non-commercial political materials at transit stations, and concluded with an allegation of breach of the peace. Those arrested allege that either Translink staff and/or the transit police illegally seized 150 copies of their newspapers and did not return them.

The Greater Vancouver Transit Conduct Safety Regulation provides Translink with the authority to post rules, and we note that this Regulation also provides transit employees with the authority to enforce transit rules. Section 6 of the South Coast British Columbia Transportation Authority Act provides Translink with similar authority to that of a municipal authority, but the context of this authority is centered on land use and the management of transit infrastructure. This section, by any reading, does not provide Translink with authority to regulate lawful and Charter-protected free expression of political ideas through a free newspaper.

Translink can make rules to manage its infrastructure and provide transit services; however, its ability to do so has already been restricted by the Court in the *Greater Vancouver Transportation Authority v. Canadian Federation of Students*. In that case, as we have advised Translink in the past, the Court was unambiguous with respect to the free expression values which limit Translink's ability to interfere with paid advertising in the transit system:

I accept that the policies were adopted for the purpose of providing "a safe, welcoming public transit system" and that this is a sufficiently important objective to warrant placing a limit on freedom of expression. However, like the trial judge, I am not convinced that the limits on political content imposed by articles 2, 7 and 9 are rationally connected to the objective. I have some difficulty seeing how an advertisement on the side of a bus that constitutes political speech might create a safety risk or an unwelcoming environment for transit users. It is not the political nature of an advertisement that creates a dangerous or hostile environment. Rather, it is only if the advertisement is offensive in that, for example, its content is discriminatory or it advocates violence or terrorism — regardless of whether it is commercial or political in nature — that the objective of providing a safe and welcoming transit system will be undermined.

These values articulated by our highest Court would only be heightened in the context of personal expression in the form of a non-commercial, free political newspaper distributed in common areas of the station.

In any event, Translink "Rules and Regulations" appear to specifically permit, under Rule 9(a), the distribution of printed material for non-commercial purposes, so long as such distribution does not interfere with the use of the transit station.

Given that, in light of the posted rules, the case law, and the Charter of Rights and Freedoms, this group was entirely within their rights to distribute this publication, we request that you investigate this incident immediately to determine the basis for their detention and arrest. We also ask that your investigation include locating the seized newspapers, and explore whether or not additional training is required for all Translink staff and Transit Police on their obligations to protect and facilitate free expression.

It is not clear to our office whether this incident was the responsibility of Translink staff, or the Transit Police, or some shared responsibility, so we have included the Transit Police in this correspondence. The Transit Police are established to serve the public interest, and it is very well established in law and under the Canadian Charter of Rights and Freedoms that political expression and artistic expression are particularly protected from regulation by police.

You will recall that in January 2010, the Transit Police agreed to revise wording of a public bulletin that told members of the public to be cautious and report to police if citizens were preparing to stage or were engaged in political demonstrations or "shouting slogans" in a demonstration. In doing so, the Transit Police recognized the need to facilitate – not just refrain from repressing – free expression. The idea that the Transit Police would, at the request of a Translink employee or on their own initiative, arrest citizens distributing political materials and seize those materials is extremely concerning. We have trouble reconciling the Transit Police's previous commitment to facilitating free expression with the allegations surfacing from this incident. We look forward to your full report about this incident and the return of the publications to their proper owners.

Yours truly,

A handwritten signature in black ink, appearing to read "Lindsay M. Lyster". The signature is fluid and cursive, with a large initial "L" and a stylized "M".

Lindsay M. Lyster
President

TransLink Rules & Regulations

RULES

1. No loitering.
2. No foul, insulting, abusive, or inappropriate language.
3. No conduct contrary to public order.
4. No baggage or objects permitted which may obstruct or interfere with others or cause damage to property.
5. No riding bicycles, skateboards or similar devices on transit property, except on bike paths. Bicycles are only permitted on exterior racks of buses and on other transit vehicles as authorized by signage.
6. No use of audio devices unless sound is audible only to the user.
7. No soliciting.
8. No panhandling.
9. No distribution of merchandise or printed material, except:
 - (a) distribution of printed material for non-commercial purposes will be permitted on transit properties, other than transit vehicles or fare-paid zones, provided such activities:
 - (i) do not impede the movement of passengers,
 - (ii) do not hinder access to ticket vending machines,
 - (iii) do not result in littering, and
 - (iv) are not otherwise incompatible with the provision of transit services; or
 - (b) as authorized by a transit employee.
10. No littering or spitting. All litter and recyclables must be placed in the appropriate receptacle.

OFFENCES

In addition to compliance with the transit rules, posted signage and other applicable legislation and regulations, under the Greater Vancouver Transit Conduct and Safety Regulations it is an offence to:

1. Fail to pay the applicable fare or possess or present proof of payment
2. Improperly use proof of payment
3. Illegally sell proof of payment
4. Illegally operate or park a vehicle on transit property
5. Illegally go on or through transit property or enter tracks, docks, bridges, guideways, tunnels, roads, rights of way
6. Improperly use an alarm or emergency device
7. Disobey signs or posted rules after using an emergency device or fail to report use of an emergency device
8. Place object (obstacle) on tracks, dock, bridge, guideway, road, right of way or in tunnel
9. Damage, remove or tamper with equipment on vehicle or other transit property
10. Interfere with or prevent operation of a vehicle
11. Improperly occupy a place in vehicle
12. Impede an employee operating vehicle
13. Prevent or delay the closing of a door
14. Extend part of body or object through window
15. Ride, stand or hold onto exterior of vehicle
16. Failure to obey refusal of access, order to leave or non-entry order

Non-compliance of the foregoing regulations is subject to a fine established under the Offence Act.

This summary is provided for reference only and may not be an exhaustive or current list of transit related offences. A complete copy of the applicable legislation can be obtained through the provincial government website www.gov.bc.ca or at www.bclaws.ca