



September 5, 2017

BY EMAIL – Tim.Hillier@otc-cta.gc.ca

Canadian Transportation Agency
15 Eddy Street
Gatineau, QC J8X 4B3

Attn: Tim Hillier, Director of Communications

Dear Mr. Hillier,

I write on behalf of the British Columbia Civil Liberties Association (“BCCLA”). It has come to our attention through media reports that the Canadian Transportation Agency (“CTA”) has been deleting public comments left under posts on its Facebook page, and intends to continue this practice.

More specifically, the CTA has stated that any comments with links to another webpage “will be deleted” due to a breach of the CTA’s social media policy.¹ These stories led us to review the nature of the comment that was allegedly in violation of your policy as well as a review of the social media policy itself.

As explained at greater length below, the CTA’s stated intention to delete any comments that include a certain hyperlink, and the policy upon which it is based, are concerning to the BCCLA. We believe that these practices have negative implications for freedom of expression. I am writing to ask that you conduct a review of your social media policy and revise as needed to better protect freedom of expression for Canadians.

¹ See Appendix 1.

Freedom of Expression and Social Media

The right to free expression is a cornerstone of Canadian democracy. Under section 2(b) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”), Canadians are free to peacefully express opinions and ideas contrary to those held by government, subject only to such reasonable limits as may be justified in a free and democratic society. Our courts have been clear that the search for political, artistic and scientific truth, the protection of individual autonomy and self-development, and the promotion of public participation in the democratic process are the core values protected by this constitutional provision. The protection afforded by the *Charter* to this right diminishes as a person’s conduct moves further away from these core values.

In the modern era, as our courts have observed, social media has become a valuable public forum²- comparable to a digital public square - with a potentially unlimited audience. It is also recognized by the Government of Canada as an essential means of communication with the public.³ Government social media accounts on platforms such as Facebook, Twitter and YouTube, are an online equivalent of government property and are therefore spaces in which Canadians should be free to exchange opinions, debate ideas and praise or criticize the government.

We recognize that the public’s right to free expression is not absolute. Our constitution accepts that some limits may be imposed and courts have recognized such limits for example to protect a person’s reputation or to prohibit the willful promotion of hatred against an identifiable group. Further, we appreciate that statutory privacy laws and appropriate moderation do sometimes require interceding in comments. However, we feel that the guidelines need review.

² R. v. Elliott, 2016 ONCJ 35; R. v. MacKinnon, 2015 ABPC 268 at para. 6.

³ Government of Canada, Directive on the Management of Communication, ss. 6.20 and 6.21, available at <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=30682>

Deletion of Comments left by Gabor Lukacs

The CBC has recently reported that the CTA's "social media co-ordinator" messaged Gabor Lukacs threatening to block him from the agency's Twitter and Facebook accounts if he continues to include a hyperlink to a specific webpage "5 Reasons not to Trust the Canadian Transportation Agency."⁴ The BCCLA subsequently reviewed the CTA Facebook page and found a post from July 28, 2017 informing the public that comments with links to that same webpage would be removed because it breaches the agency's social media policy in four ways.⁵

One of the reasons cited for deleting the comment is that the post "puts forward serious, unproven or inaccurate accusations against individuals or organizations." The CBC story provides that your agency did not respond to repeated requests for specific inaccurate accusations in the post. Another reason cited is that the post was "repetitive or spam." The repeated posts by Gabor Lukacs, each made after a previous post of his was deleted, could instead be interpreted as persistence in wanting to express himself in the face of repeated silencing by the CTA.

We are concerned by the precedent that the CTA is setting in this context. Gabor Lukacs' posts to your agency's social media account is relevant, a matter of public interest, and a legitimate exercise of his right to freedom of expression. Your agency's repeated removal of his comment with the link to another website that is critical of the CTA does not appear to the BCCLA to be reasonably justified in these circumstances. It appears as if the CTA is acting to silence a dissenting opinion. We urge you to reconsider your position and your agency's moderation of comments on social media platforms.

⁴Yvonne Colbert, "Transportation agency accused of censorship after deleting online criticism", *CBC News*, August 8, 2017, online at <http://www.cbc.ca/news/canada/nova-scotia/canadian-transportation-agency-facebook-post-gabor-lukacs-1.4235123>

⁵ See Appendix 1.

Use of Social Media Rules are Problematic

As discussed above, we acknowledge that there are legitimate reasons to moderate discussion on social media platforms. We also realize that it can be difficult to develop public policy that accounts for all possible social media interactions.

There are a number of criteria that the CTA uses to edit or delete comments from the public on social media that are problematic to the BCCLA. The criteria that stand out as the most likely to be incompatible with the *Charter* right to free expression are the following:⁶

- Contain announcements from labour or political organizations;
- Are written in a language other than English or French;
- Are unintelligible or irrelevant;
- Are repetitive or spam; and
- Do not, in our opinion, add to the normal flow of the discussion.

We urge you to restore the unjustifiably deleted comments on your Facebook page, and to undertake a review and revision of CTA's Use of Social Media policy.

We hope to hear from you soon about this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Vonn", with a horizontal line extending to the right from the end of the signature.

Micheal Vonn
Policy Director

⁶ <https://www.otc-cta.gc.ca/eng/use-social-media>

Appendix 1: Screenshot of the CTA’s Facebook Post about Reasons for Deleting Comments with Links to “5 Reasons Not to Trust the Agency.”

Canada
Canadian Transportation Agency
@CanadianTransportationAgency

Home
About

Canadian Transportation Agency
July 28 at 12:34pm · 🌐

Comments with links to "5 Reasons Not To Trust The Agency" will be deleted as it is deemed to be in breach of our social media policy, as well as Facebook's Community Guidelines, based on:

- It is repetitive or spam;
- Contains references to personal information;
- Puts forward serious, unproven or inaccurate accusations against individuals or organizations;
- Do not, in our opinion, add to the normal flow of the discussion.

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