



Say What? Political Expression and the Charter of Rights

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The Supreme Court of Canada in a decision rendered July 10, 2009 upheld a finding that the exclusion of advertisements which contain political expression from Translink and BC Transit buses contravenes the *Charter of Rights and Freedoms* (the "Charter")¹. The BC Court of Appeal had reversed a lower court finding, and determined that policies of Translink and BC Transit which prohibited political advertising, and which prevented the Canadian Federation of Students and the British Columbia Teachers Federation from therefore purchasing such advertising, were contrary to law.

The Supreme Court of Canada found that Translink, being controlled by the Greater Vancouver Regional District, falls within the "government" category to which the Charter applies. Further, the policies regarding advertising were found to be legislative acts affecting the rights of others, not merely internal policies, and therefore subject to the Charter. The Court stated that governments may regulate the method or location of expression in certain situations, and that there is no general constitutional right to express oneself on all government property. Governments generally have no positive obligation to support or enable expression, but the Court concluded that in this situation the plaintiffs were not requiring BC Transit or Translink to do so. To the argument that buses had not historically been used for political advertising, the Court was not sympathetic. If a historical function of a place has included public expression then expression in that place may be constitutionally protected. The Court found no incompatibility with the use of bus exteriors for expression with the function of public buses. Such buses are "public places" operating on public streets where the public may view the messages. Thus "expression on the sides of buses could enhance them by furthering democratic discourse and perhaps even truth finding and self-fulfillment" (p. 24). The Court concluded that the policies which excluded the purchase of advertising for political expression could not be justified as a reasonable limit on the freedom of expression. While policies could legitimately be enacted to ensure a "safe, welcoming public transit system" and be used to limit expression which is offensive, creates a dangerous or hostile environment, or is discriminatory, the prohibition on all political advertising was far too broad a restriction.

The decision reinforces the view that political expression is a fundamental and core aspect of the Charter right of freedom of expression, and will be guarded by the courts against unreasonable limits by governments. For local governments, the decision reflects the care that must be taken in developing sign regulations and public space advertising policies. While local governments are generally at liberty to regulate location and physical characteristics, such as size, of signs and advertisements in public spaces, the regulation of *content* must be carefully reviewed to ensure such regulation does not contravene the Charter.

¹ *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, 2009 SCC 31 (July 10, 2009)