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# MEMO

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**To:** You (counsel for the Respondents Canadian Federation of Students and B.C. Teachers' Federation)

**From:** Senior Partner

**Date:** September 22, 2009

**Re:** *Greater Vancouver Transit Authority et. al. v. Canadian Federation of Students et. al.*

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We have been retained by the Canadian Federation of Students and B.C. Teachers' Federation to respond to an appeal at the Supreme Moot Court of Dalhousie. I need you to write the factum and argue the appeal for me.

The appellant's factum is due on October 22, 2009. Counsel for the appellants will provide you with a copy of their factum, so that we'll have an opportunity to respond to it in our factum. I recommend that you begin researching and writing our factum before you receive the appellant's factum – you can always revise your draft to address any additional issues the appellant raises that you didn't anticipate.

Our factum is due on Thursday, October 29, 2009 between 9:00 a.m. – 11:00 a.m. in Room 207.

The appeal will be heard during the week of January 25-28, 2010. I am scheduled to be out of town on discoveries that week. You will need to check the Court's docket to determine the exact date and time of the appeal.

I've summarized the facts of the case below as found by the trial judge and set out the grounds of appeal to which we have to respond. Feel free to use any other facts mentioned in the lower courts' decisions, if you think they might be useful.

Good luck!

Facts

The appellant transit authorities, the Greater Vancouver Transportation Authority (“Translink”) and British Columbia Transit (“B.C. Transit”) operate public transportation systems in B.C. Both earn revenue by posting ads on their buses.

In the summer and fall of 2004, the Canadian Federation of Students (“CFS”) and B.C. Teachers’ Federation (“BCTF”) attempted to purchase advertising space on the sides of buses operated by the transit authorities.

CFS is a society representing thousands of college and university students in B.C. The objectives of the CFS include advancement of the interests of students. CFS sought to encourage young people to vote in the coming provincial election scheduled for May 17, 2005. Their first ad, which was to run the length of a bus, depicted a silhouette of a crowd at a concert with the following text:

Register now. Learn the issues. Vote May 17, 2005.  
ROCK THE VOTE BC.com

The second ad was a banner ad placed along the top of the bus which read:

Tuition fees ROCK THE VOTE BC.com Minimum wage ROCK  
THE VOTE BC.com Environment ROCK THE VOTE BC.com

The BCTF is a society and trade union operating as the exclusive bargaining agent for more than 40,000 public school teachers in B.C. They sought to voice concern about changes in the public education system by posting this message:

2,500 fewer teachers, 114 schools closed.  
Your kids. Our students. Worth speaking out for.

The transit authorities refused to post the respondents’ political advertisements on the basis that their advertising policies permit commercial, but not political advertising on public transit vehicles. Their policies were nearly identical and included the following relevant provisions:

#### 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;

B.C. Transit rejected the ads on the basis that they contravened standards 7 and 9. Translink rejected BCTF's ads on the same grounds, but rejected CFS's ad only on standard 9.

CFS and the BCTF commenced an action seeking a declaration that articles 2, 7, and 9 of the authorities' policies violated their rights to freedom of expression as guaranteed by s.2(b) of the *Charter*. The trial judge dismissed the action, finding that the respondents' right to freedom of expression had not been infringed. The majority of the Court of Appeal reversed the trial judgment and declared articles 7 and 9 of the advertising policies to be of no force and effect either on the basis of s.52(1) of the *Constitution Act, 1982* or on the basis of s.24(1) of the *Charter*. A dissenting judge concluded that s.2(b) included the freedom not to publish a message and found no violation of s.2(b).

The transit authorities appealed to the Supreme Court of Canada. The SCC found that both B.C. Transit and Translink are "government" within the meaning of s.32 of the *Charter* and that the authorities' advertising policies violated s.2(b) of the *Charter* and were not justified by s.1. The appropriate remedy was under s.52 of the *Charter* in the form of a declaration that the policies were of no force and effect to the extent of their inconsistency with s.2(b).

Translink and B.C. Transit have appealed further to the Supreme Moot Court of Dalhousie on two issues:

**First Issue:**

1. Do the impugned policies infringe the respondents' right to freedom of expression under s.2(b) of the *Charter*?

**Second Issue:**

2. If so, are the policies "reasonable limits prescribed by law" within the meaning of s.1 of the *Charter*?

## Sources

You will want to look at the Supreme Court of Canada's decision at 2009 SCC 31. You may also wish to look at the British Columbia Court of Appeal's reasons at 2006 BCCA 529 and the trial decision at 2006 BCSC 455.

The Supreme Moot Court of Dalhousie prefers that counsel cite only the most relevant cases and authorities. You may cite up to five cases on each issue (including the cases mentioned above), any relevant legislation you feel should be brought to the Court's attention, and up to two secondary sources (such as journal articles.) Lower court decisions in this matter do not count towards the five-case limit.