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CASE SUMMARY: TRANSPORTATION AUTHORITY'S DECISION TO REFUSE ANTI- ABORTION ADVERTISEMENT ON ITS BUSES UPHELD AS REASONABLE AND PROPORTIONATE ON JUDICIAL REVIEW

Transportation Authority's decision to refuse anti-abortion advertisement on its buses was upheld as reasonable and proportionate on judicial review.

Decisions reviewed; Transportation Authority; Human Rights; Charter of Rights and Freedoms; Judicial review; Standard of review; Reasonableness; Proportionality

Canadian Centre for Bio-Ethical Reform v. South Coast British Columbia Transportation Authority, [2017] B.C.J. No. 1560, 2017 BCSC 1388, British Columbia Supreme Court, August 8, 2017, P.D. Leask J.

The respondent corporation operates Greater Vancouver's transit system and refused to allow the petitioner's anti-abortion advertisement on its buses. The advertisement displayed three images, including a fetus at 7 weeks' gestation, one at 16 weeks', and a solid red square. The caption read "Going, Going, Gone" and the advertisement read "Abortion Kills Children." The respondent's refusal was based on its corporate policy stating no advertisement will be accepted which, in the sole discretion of the respondent, is considered to be of questionable taste or in any way offensive in the style, content or method of presentation.

On judicial review, the respondent conceded its decision violated the petitioner's Charter right under s.2(b), freedom of expression. The question was whether the decision was reasonable in the context of a proportionate balance between the Charter protection at stake and the relevant statutory mandate (which was to provide an efficient, safe and welcoming transit system). Applying the modified Oakes test as formulated in *Doré*, the court found the infringement was prima facie justified based on the statutory objective. In considering reasonableness and proportionality, the court concluded the content of the advertisement could potentially cause psychological harm, particularly to children and women who have had abortions, and to that extent, the respondent's decision was reasonable. The petitioner's application for judicial review was therefore dismissed.

This case was digested by [Kara Hill](#) and edited by [William S. Clark](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at khill@harpergrey.com or wclark@harpergrey.com or review their biographies at <http://www.harpergrey.com>.