

1. POLICY ON ANIMALS ON BUSES

COMMITTEE RECOMMENDATION

That the Transit Commission recommends that no change be made to the current by-law which restricts animals on buses to seeing eye and hearing ear dogs.

DOCUMENTATION

1. General Manager's report dated 22 Feb 99 is immediately attached.
2. Extract of Draft Minute, Transit Services Committee, 24 Mar 99 follows the report and contains a record of all votes.

NEXT ITEM: p. 14

Our File/N/Réf.
Your File/V/Réf.

DATE: 22 February 1999

TO/DEST: Co-ordinator
Transit Services Committee

FROM/EXP: General Manager

SUBJECT/OBJET: **POLICY ON ANIMALS ON BUSES**

DEPARTMENTAL RECOMMENDATION

That the Transit Services Committee recommend the Commission make no change in the current by-law which restricts animals on buses to seeing eye and hearing ear dogs.

BACKGROUND

Currently, there is a by-law which prohibits animals, other than guide dogs and hearing ear dogs, on buses.(Sub-section 3.2.12 (8) of the Regional Regulatory Code)

In response to a request for a policy change from the Regional Transit Advisory Committee, the issue was discussed by the Transit Services Committee at its meeting of 26 August 1998. At that time staff was directed to submit a Draft Policy to permit small animals in properly enclosed carriers to board all OC Transpo vehicles, excluding Para Transpo vehicles. Commissioner Bellemare requested that legal research be conducted to determine the disposition of cases arising from the presence or conduct of animals on public transportation carriers.

At the same meeting, the Transit Services Committee passed a motion directing that the owner of the animal would be charged a full adult fare and that the cage must be carried on the owner's lap or on the floor.

The Regional Transit Advisory Committee discussed the matter again at its meeting in September 1998 and passed the following motion:

That an adult fare not be charged for small animals on buses.

During the past six months, as part of the OC Transpo Comprehensive Review, a mixed group of OC Transpo operators, supervisors and management has been meeting to discuss issues associated with driver empowerment. This group has produced an operator's handbook which describes clearly the responsibilities of the driver.

One of the topics covered in these workshops was that of small animals on buses. While it was understood that it would be convenient on occasion for passengers to be able to travel by bus with their pets, the strong recommendation from the group was that the status quo be retained. The reasons for this were concern about health allergy issues, the reaction of other passengers, and the introduction of another potential cause of conflict.

DISCUSSION

A policy allowing small animals on buses has been developed, following the direction on the 26th August of the Transit Services Committee. This is shown in Appendix A. It allows small animals in suitable containers to be carried at off-peak times.

However, in view of the concerns of OC Transpo staff and the liability issues described below as well as concerns about allergies and asthma, it is recommended that the current restrictions remain in place.

The Legal Department of the Region has conducted an extensive search, including computerized legal research services for Canada and the United States. While there appear to be no reported cases in Canada arising from the presence or conduct of animals on transportation carriers, some American cases and cases arising from animal conduct in other settings provide an indication of areas of potential liability.

There is a risk of liability arising from unrestrained or inadequately restrained animals biting passengers. There are some older American cases in which liability has been imposed where an unrestrained dog has bitten another passenger. Liability was based on the carrier's failure to determine the condition and natural tendencies of the dog. While the risk of animal bites may be significantly reduced by having the animal restrained in a cage or other carrier, the mesh should not be of such a width as will permit the animal to bite a person near the cage or so as to permit a person to insert fingers into the cage.

Owners of animals have also been held liable where a sudden noise from an animal has startled a person and caused a fall. Potentially, this could arise near doorways on buses. While there are no reported cases of transportation carriers being found liable for such occurrences, a risk of liability may arise where a bus operator becomes aware that the animal has a tendency to emit sudden sharp sounds which startle passengers.

Some liability may also arise with respect to the presence of animal containers on buses. These containers may be a tripping hazard for other passengers if they are placed in aisles or may strike passengers while being carried within the bus.

There remains a risk of potential liability arising from allergic or asthmatic reactions by passengers on buses as a result of the presence of animals. No cases have been located where such liability has been imposed. However, in a 1995 decision of the Federal Court of Australia, Qantas Airways was found liable to passengers exposed to cigarette smoke during flights because the airline failed to warn passengers in no-smoking sections that they could be exposed to cigarette smoke from other parts of the aircraft.

One area of potential legal exposure not previously addressed to the Committee arises from potential violation of the Ontario *Human Rights Code*. Section 1 of the *Code* provides that every person has a right to equal treatment with respect to services without discrimination because of handicap. An asthmatic condition, triggered by exposure to such things as animals, has been considered to be a handicap coming within the protection of the *Code*. The Commission will have a duty of reasonable accommodation to allow persons who suffer from asthma to use buses.

This could include warnings of the possible presence of animals on buses, restrictions on the types of animals permitted on buses, restrictions on where animals could be located on buses, or, with limited exceptions, a total ban on the presence of animals on buses. It should be noted, however, that the same rights of access to services also apply to blind and hearing impaired persons and the Commission would likely be required to permit them to board buses with a guide dog.

FINANCIAL IMPLICATIONS

There are no financial implications to maintaining the current policy.

Approved by
M. J. E. Sheflin

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Transit Services Committee
24 March 1999

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- General Manager's report dated 22 Feb 99

Commissioner M. Bellemare posited the basic objection to allowing animals on buses stems from the fear of lawsuits from allergy and asthma sufferers. Directing his questions to the Medical Officer of Health, Commissioner Bellemare asked whether Dr. Cushman could confirm that, no matter how strictly hygiene is observed, citizens are regularly bombarded, on a molecular level, with allergens from dogs, cats, rodents, and other biological matter. Dr. Cushman confirmed there are currently more allergies and asthma sufferers in the community, noting this is partly because of better documentation. The main issue is the dander that many animals leave behind for as long as a month after they leave the premises. A number of people with allergies would be adversely affected by the dander: approximately 50% of them are asthmatics, and a small sub-set could, and would, end up in emergency rooms because of exposure.

Commissioner Bellemare asked whether the Health Department has consulted with those transit properties that allow animals on buses (the STO, the TTC, Hamilton, Montreal, Calgary, and Winnipeg) to alert them about potential health problems. Dr. Cushman replied this would be the responsibility of the medical community. Speaking in reference to those transit authorities that allow animals on buses, Dr. Cushman pointed out that many others do not, and approval is subject to change and in response to situations arising. He added that, based on consultation with local experts from the Children's Hospital, chest physicians, immunologists and others, the Health Department believes this could create public health problems and could be life-threatening for certain individuals.

Commissioner J. Legendre pointed out that the Commission is not imposing a total ban, as seeing eye/hearing ear dogs will still be allowed on buses. He posited they will continue to pose the same hazard as animals brought on board in cages. Dr. Cushman agreed that many seeing eye dogs are long-haired breeds, and continue to pose a problem with dander, however he opined that, in this instance, it is a matter of assessing the benefits against the risks and the number of times passengers are exposed to assistance animals on buses.

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Commissioner Legendre asked about liability, noting the Legal Department indicates no instances have been found in Canada or the United States. Mr. Paul Hughes, Manager, Civil Litigation, confirmed this was the case and the one instance identified in Australia had to do with smoking during airline flights. Mr. Hughes noted there are reported cases arising from being startled by an animal (a dog) and falling off the steps thereby sustaining injury.

Commissioner Legendre asked whether OC Transpo staff could elaborate on their concerns, since these are not identified in the report. The General Manager, M. Sheflin, responded by saying concerns focus principally on matters of convenience and inconvenience and on whether or not changing the existing policy would be a positive move. Dr. Cushman posited the Committee, in trying to provide access for pet owners, may be discouraging access for people who suffer from allergies and/or asthma. He added that, while a review of the literature may not have revealed any cases, it was his “gut feeling” affected persons may be avoiding buses and the Committee may be pushing the gradient further in the wrong direction.

Commissioner Legendre pointed out only a very small, sub-group of individuals will react to animals, and this is illustrated by the fact there have been no liability cases in North America. Dr. Cushman indicated that, even at 5% of the population, 1 in 20 persons have problems with animal dander. They may be discouraged from using public transit if they are going to be affected. He spoke about some asthmatics who end up in emergency rooms within one-half hour of coming into contact with a cat, in a house. Dr. Cushman said he was only trying to clarify the risks without going into the legal domain.

Commissioner Legendre said he found the tone of the report very heavy, citing as example the comment about children having to be prevented from placing their fingers inside or near a carrier. Paul Hugues indicated the basis for this comment was that a child on a bus may be attracted by seeing a pet in a cage, and be injured trying to touch the caged animal.

Commissioner W. Byrne asked about allowing guide dogs and whether this would include all service dogs, specifically animals that were trained to assist people in wheelchairs. Dr. Gault indicated that all service dogs would be allowed on buses. Commissioner Byrne wanted to know whether asthma can be caused by irritants other than dander.

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Dr. Cushman indicated that smoke, and also perfumes and scents, can be triggers. As to whether asthma can be life-threatening, Dr. Cushman replied in the affirmative, reiterating that asthmatics can end up in emergency situations from exposure to irritants. He added that, for many people, the effect could be more of an inconvenience, such as runny noses, watery eyes and coughing. Commissioner Byrne inquired whether there have been deaths from asthma. Dr. Cushman said there were two forms of death from asthma, one through lack of medical care and a worsening condition over a period of time and the second through anaphylactic shock.

Commissioner L. Davis pointed out the report is silent about persons who are afraid of animals. She also alluded to the fact that many persons now have exotic pets. She asked whether there was anything to preclude someone from getting on a bus with a de-scented skunk in a cage. Dr. Cushman responded by saying operators would need to make judgement calls in such instances. He spoke about children being unpredictable and tending to annoy pets, and about pets tending to be very territorial and protective of their owners. There is also the possibility an animal will be startled and react aggressively. Commissioner Davis said that many seniors are also afraid of animals, and would not want to see them on buses. There is also the concern about animals fouling their cages while on a bus, inconveniencing the other passengers around them. She mentioned there already are problems with people who want to bring baby strollers on board and who get no consideration from other passengers. She wondered what will happen if people are now permitted to have caged animals on their laps.

Commissioner Davis said no one knows about the onset of anaphylactic shock. The fact that there will be no way to control the number of animals on a bus at any given time will mean the increased possibility of anaphylactic shock for those persons who are severely asthmatic. She pointed out that doctors at the Children's Hospital (CHEO) state asthma in children is the largest growing segment of the population that comes to CHEO. She asked if Dr. Cushman could confirm this observation. He responded by saying that the vast majority of admissions, at night, in the emergency room, are asthma admissions. Councillor Davis expressed the hope that Commission members will not put the citizenry in this kind of jeopardy, given all the facts that have come to light in the discussion.

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Commissioner Byrne said that, like Commissioner Davis, she is fairly impassioned about this issue. She expressed her amazement at the fact the recommendations were brought forward, given that there are so many reasons not to proceed, whereas there is only one reason for proceeding, that is to allow individuals to bring their pets on buses. She spoke in support of retaining the existing policy, as it confirms her position on the issue.

Councillor Byrne said that, in the 12 years she has owned a pet, there has been a proliferation of veterinarians and animal hospitals throughout Ottawa-Carleton, many of them in residential neighbourhoods. Because of this, individuals might have to expend a small amount to take a taxi for their pets' appointments, considering that the benefit to them far outweighs the health risks to others. Councillor Byrne posited animals don't have a right to public transportation but people do and allowing animals that can cause a health reaction on buses infringes on this right. She posited this would be counter to the goal of increasing ridership because a lot more people with allergic reactions will not take the bus in comparison to pet owners who won't take the bus because their pets are not to travel with them. There are social and a health responsibilities that go beyond any legal liability. As well, it is unreasonable to expect a two-year-old child to keep from inserting his/her hands into a cage to try to pet an animal. Putting someone at risk of harm is an abdication of Commissioners' responsibility to act in the best interest of the population they represent.

Commissioner Byrne felt a distinction had to be made for service animals, regardless of their genus. These animals are generally at the front of the vehicle and fairly visible, and under the control of their owners. Persons with allergies or who fear animals have the option of either boarding or not boarding the vehicle. Service animals are not a nicety but a necessity and this is the rationale for allowing them on buses as opposed to other animals. Commissioner Byrne expressed the hope Commission members will do the responsible thing and keep in mind the health concerns of their constituents and approve the staff recommendation.

Chair Loney pointed out that staff have been consistent in their approach of allowing on the buses animals that assist people. He reminded members that the initiative for change came from the Committee, not from staff, and they should not be made to feel guilty for changes in policy.

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Commissioner Bellemare expressed the view the Commission should be careful when looking at the United States to try to establish the potential for liability in Ottawa-Carleton. He pointed out that the US is the most litigious country in the world, where the costs of litigation have been described as being akin to a tax imposed on anything that is produced, bought, sold or used therein. Commissioner Bellemare said there are not as many incentives to sue in Canada, there is more control over the size of settlements, stricter rules governing class actions suits, and losing parties often have to pay the other party's legal costs. He posited what is important is that staff have ascertained there were no reported lawsuits in Canada with respect to animals on buses. Other transit properties such as the STO, the TTC, Montreal and Calgary among others, permit animals on buses and it is unlikely that the general population in Ottawa-Carleton is more sensitive to allergens than the population in those urban centres.

Commissioner Bellemare continued by saying the public is exposed to dander and to other allergens in the environment, as well as in confined loci such as mass transit vehicles. Someone susceptible to a reaction is just as likely to get it from someone who has held a cat, or petted a dog, earlier in the day as from sitting beside that animal in a cage on a bus. The policy developed by staff appears to cover all the bases, as it envisions an animal, contained in a secure, leak-proof, closed container: this animal is not running wild in the aisles of a bus. He said he did not believe such a policy would open the floodgates, that there would be animals every hour of every day on the 850 vehicles owned by the Commission. Furthermore, these animals would be confined to cages and pose no threat to other passengers.

Commissioner Bellemare made reference to the mandatory policy in Ottawa-Carleton calling for all dogs and cats to be vaccinated against rabies. He speculated the compliance rate on this is almost at 100% and the Region should be making it as easy as possible for people satisfy this mandatory requirement. Commissioner Bellemare put forward a Motion calling for the draft policy to be amended, specifically that no fee be charged for caged animals and that only cats or small dogs be permitted on buses. The rationale for allowing only the animals named is to negate the impact on persons who suffer from phobias to rodents or reptiles, the most common phobias, as indicated in an earlier report. Commissioner Bellemare pointed out that the Commission needs to be as flexible as it can with its policies and to give operators as much discretion as it can to determine whether, in accordance with the draft policy outlined, a person who is carrying a disruptive animal should be put off the vehicle.

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He posited that the only criteria needed was reasonableness and not a policy which turns on a small and potential number of riders.

Commissioner Legendre put forward the view the report before the Committee was “balderdash”, as were many of the comments expressed around the table. He said the idea was to provide a service for the convenience of people who own animals. He wondered, in terms of frequency, how many times a pet owner will actually want to take a bus and will actually find it convenient to cage the pet, carry the cage, and board the bus. Commissioner Legendre said that indications from the STO, which allows the practice, are that there are no problems and no complaints. In Europe, the entire continent uses mass transit considerably more than North America does, and animals are allowed on buses without having to be caged. The Commission is not proposing this be the case. Commissioner Legendre posited this is a matter of live and let live. The situations described are imaginary, and staff, through extensive research, have found no documented cases of liability. Regardless of this fact, the recommendation is to maintain the existing policy, something Commissioner Legendre said he found amazing. He expressed support for the amendments proposed by Commissioner Bellemare, reserving his right to propose further modifications if it is approved.

Commissioner H. Kreling mentioned the need for continuity of policies around the Commission table and throughout the RMOC. He recalled that, not long ago, the Commission was asked to impose restrictions on wearing perfumes and colognes on buses, in recognition of other persons’ sensitivities to these products. In another instance, at another Committee meeting, an environmental advisory group was created to address the needs of persons with environmental sensitivities. Commissioner Kreling said that, in light of these initiatives, it would make no sense to go in the opposite direction by allowing cats and dogs on buses. In order to continue to address emerging issues, the Commission should continue to operate the bus system as it has before. He suggested that the staff recommendation be approved and that OC Transpo get on with the business of moving people

Speaking in response to Commissioner Bellemare’s amending Motion, and to Commissioner Legendre’s comment about having to “live and let live”, Commissioner Davis posited it really is a matter of life for persons who are allergic and who travel by bus. Allowing animals on buses will unnecessarily create a dangerous situation, and will show that the Commission is not listening to the public.

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Several Commission members have spoken eloquently about the impact of allergens on family members: the Medical Officer of Health has also expressed his opinion, all of which have been negative. The only positive aspect was that some persons would be spared taxi fare to take their pets to the veterinarian. Commissioner Davis asked that the Committee not support the amendment.

The Committee heard from Commissioner R. Cantin, who reinforced the idea that humans have a right to public transit but not animals. He asked whether animal rights should be put before the rights of humans. The Commission has taken decisions to increase the use of public transit and to try to limit the numbers of cars on roadways. Allowing animals on buses will increase the number of persons who won't get on a bus because it is possible someone with an animal is on board. Commissioner Cantin agreed an exception must be made for service animals, even in restaurants, but the Commission should not go from the sublime to the ridiculous.

Chair Loney spoke about having mixed feelings because many of the comments made by Commissioners overstate the case on either side of the argument. He said he felt the issue was simply whether persons with allergies would be sufficiently inconvenienced, making the policy more of a deterrent to increased transit ridership, or whether it would enhance the number of persons using public transit. Chair Loney said his inclination was to side with persons with medical conditions, and although this is a small minority of the potential passenger load, it is an element that must be considered.

Chair Loney shared with the Committee his experience of having seen a variety of animals on buses in Europe. He added it is not uncommon to find, in very nice restaurants, dogs under their owners' tables. Generally, these animals are well-behaved, and perhaps are treated as a member of the family. With regard to animals on public transit, their owner pays the child fare, and the animal has to be under control or both can be forced off the vehicle. Chair Loney expressed the view North Americans are not yet at this stage. He said the fact that there are no public speakers on this matter indicates strong public support for maintaining the existing policy. Chair Loney said he agreed that the existing policy should be maintained.

Extract of Draft Minute
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Moved by M. Bellemare

That the Draft Policy at Appendix A be adopted, with the following amendments:

1. that no fare be charged for small animals on buses
2. that only cats or small dogs be permitted on a Commission vehicle.

LOST

YEAS: M. Bellemare, J. Legendre 2

NAYS: W. Byrne, L. Davis, C. Doucet, H. Kreling, A. Loney.....5

Moved by C. Doucet

That the Transit Services Committee recommend the Commission make no change in the current by-law which restricts animals on buses to seeing eye and hearing ear dogs.

CARRIED

YEAS: W. Byrne, L. Davis, C. Doucet, H. Kreling, A. Loney.....5

NAYS: : M. Bellemare, J. Legendre 2

APPENDIX A**DRAFT POLICY**

A person shall be permitted to bring an animal on a Commission vehicle under the following conditions:

- a) the animal shall be contained in a secure, leakproof and closed container carried on the passenger's lap throughout the trip;
- b) the container shall include openings which will permit the animal to breathe but which openings shall not be of such size as will permit the animal to bite anything located outside the container;
- c) no container shall be of such a size as to prevent another passenger from occupying an abutting seat;
- d) the animal shall be of such a size that it is capable of standing while in the container;
- e) the person carrying the animal shall pay a full adult fare for the carriage of the animal;
- f) no person shall be permitted to board a Commission vehicle with an animal where all of the seats in the vehicle are occupied by other passengers;
- g) where, in the opinion of the operator of the Commission vehicle, the conduct of an animal on the Commission vehicle is disruptive to other passengers, the operator may require that the person carrying the animal leave the vehicle with the animal (without any compensation being payable to the person required to leave the vehicle);
- h) the person carrying the animal shall ensure that no other persons on the Commission vehicle are permitted to touch the animal or otherwise attempt to access the interior of the container in which the animal is located;
- i) no person shall board a Commission vehicle with an animal during the hours of 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 7:00 p.m. from Monday to Friday (with the exception of statutory holidays);
- j) no person shall enter a Commission vehicle with a reptile; and
- k) no person shall board a Commission vehicle with an animal that person knows to have an illness, disease or other condition communicable to humans or other animals.

The conditions set out in paragraphs (1) to (11) above shall not apply to the entry or carriage of a visually impaired or hearing impaired person accompanied by a guide dog.