

Our File/N/Réf.
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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

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.