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April 13, 2015

VIA EMAIL

Sarah Chung, Access TransLink Coordinator
TransLink
400 - 287 Nelson's Court
New Westminster, BC V3L 0E7

Re: TransLink Priority Seating Policies

We write to enquire about TransLink's policy with respect to priority seating in transit vehicles. Specifically, we write to request clarification about TransLink's current accessibility policy and to strongly encourage TransLink to consider implementing a policy that prioritizes seating for pregnant passengers over general transit users if it has not already done so.

West Coast LEAF is a legal organization dedicated to promoting women's equality through the law. We have particular expertise in human rights issues that impact women.

Public transportation is a vital public service and everyone is entitled to access it free of discriminatory barriers. TransLink has illustrated a commendable commitment to improving and ensuring the accessibility of its system for people with disabilities and older adults. Passengers who experience physical barriers connected to their pregnancies also have a right to safely access the public transit system.

TransLink's current priority seating policy is unclear

Our office has been informed by TransLink staff, in response to questions about priority seating, that there is no specific policy with respect to pregnant passengers, and priority seating operates on a first come, first served basis. We were concerned about this response so we looked into TransLink's policies on this issue in greater detail.

Based on a review of the policies and statements available on TransLink's website, the current policy with respect to who is entitled to use priority seating it is unclear. TransLink's 2007 Policy for People with Disabilities mentions passengers with strollers utilizing priority seats, but does not mention pregnant passengers:

With this in mind, TransLink would like to remind everyone about its basic policy concerning accessible areas on our buses.

- *Seating areas nearest the doors on SkyTrain, SeaBus and buses are designed for people with disabilities and for seniors.*
- *Seats at the front of buses – trolleys, 40' conventional and 60' articulated coaches – can flip up to accommodate people with mobility devices. Please vacate these seats immediately and help make room for them.*
- *Strollers may use this area; however, when demand dictates, the stroller must give way to people with mobility devices, including walkers. Children in strollers should be removed and the strollers collapsed.¹*

In the November 4, 2011 edition of the Buzzer, Translink noted that priority seats are reserved for a wider range of passengers, including pregnant women:

Other people may need those seats closest to the doors more than you. They're reserved for passengers who need them most, such as people with disabilities, seniors, people with small children and pregnant women. Pretending you don't see them is not an excuse.²

However, TransLink's current website contains a section on rider etiquette that indicates that priority seats are reserved only for people with disabilities and older adults:

Seats closest to the doors are for persons with disabilities and/or seniors. People appreciate you offering these seats to them. It's worth remembering that some people have disabilities that aren't always obvious. If someone asks you to give up a seat because they have a disability, please take their word for it.³

In the fall of 2014, in response to a request by a pregnant woman to extend priority seating to pregnant women, TransLink staff were reported as saying that the request was under "consideration," noting that TransLink has heard similar requests from other customers.⁴

Given the lack of clarity in TransLink's policies, publications, website materials, and

¹ TransLink, "Policy for People with Disabilities" (13 July 2007), <http://www.translink.ca/en/About-Us/Media/2007/July/TransLinks-Policy-for-People-with-Disabilities.aspx>.

² TransLink, *The Buzzer* (4 November 2011), http://www.translink.ca/site-info/search-results.aspx?&cid=9&q=2011_11_04&t=-420.

³ TransLink, "Etiquette on Transit" (undated), <http://www.translink.ca/en/Rider-Guide/Etiquette-on-Transit.aspx>.

⁴ 24Hrs Vancouver, "Give up seats to expectant moms: TransLink" (1 September 2014), <http://vancouver.24hrs.ca/2014/09/01/give-up-seats-to-expectant-moms-translink>.

public statements, clarification of TransLink's current policy with respect to priority seating would be helpful.

Pregnant passengers require access to priority seating

There are many physical changes directly tied to pregnancy that can impair a person's ability to safely stand or hang on while standing on public transit. It is common for pregnant women to experience fatigue, nausea, back pain and sciatica, pelvic and hip pain, leg cramps, hand pain or weakness, swelling of the feet or ankles, false contractions and difficulty breathing at different stages of pregnancy.⁵ It is also common for women to feel faint during pregnancy, and recommended precautions include finding a seat quickly if a women feels faint while standing still, as she would be on a transit vehicle.⁶ There have been examples of pregnant women fainting on public transit because they do not have access to a seat.⁷

We presume that TransLink's underlying rationale for priority seating is to accommodate the needs of passengers who may be unable to safely ride on transit vehicles while standing. As set out above, that is a laudable goal. Just like disabilities or aging, pregnancy can come with valid health-related consequences that may impact a women's ability to safety stand while on transit. Because only women can get pregnant, these health related consequences are inherently connected to their sex, a protected ground under human rights laws.⁸ As a provider of a public service, TransLink has a legal responsibility to take reasonable steps to ensure that no passengers experience barriers because of protected grounds of discrimination, including sex, when using its transit services.⁹

If TransLink does not have a policy recognizing that pregnant passengers may need priority seating , or if TransLink has such a policy but it takes no steps to inform the general public, individual passengers are left to assert their pregnancy-related need without any confirmation from TransLink that such a request is valid. In fact, the general public may infer that a pregnancy-related request is actually invalid because pregnant passengers are excluded from the current depictions on priority seating decals. The failure to take any steps to inform the public of the needs of pregnant

⁵ HealthLinkBC, "Pregnancy" (last reviewed 18 April 2014), <http://www.healthlinkbc.ca/healthtopics/content.asp?hwid=hw197814#aa88889>.

⁶ National Health Services, "Common health problems in pregnancy" (last reviewed 20 March 2014), <http://www.nhs.uk/conditions/pregnancy-and-baby/pages/common-pregnancy-problems.aspx#Faintness>.

⁷ See for example: The Huffington Post Alberta, "Pregnant Calgary Women Upset After Not Being Offered Transit Seat" (9 April 2014), http://www.huffingtonpost.ca/2014/04/09/pregnant-calgary-transit-seat_n_5120630.html; New York Daily News, "Pregnant woman passes out after subway train stalls during morning commute" (13 September 2013), <http://www.nydailynews.com/new-york/pregnant-woman-passes-stalled-subway-train-article-1.1455275>.

⁸ *Human Rights Code*, 1996 RSBC c. 210; *Brooks v. Canada Safeway Ltd.*, [1989] 1 SCR 1219.

⁹ *Human Rights Code*, s. 8.

passengers may constitute discrimination.¹⁰ While there may be reason to ensure priority seating policies reflect the potentially competing needs of different passenger groups accessing it, it is not acceptable or in compliance with human rights laws for TransLink to take *no steps* to recognize and meet the accessibility needs of pregnant passengers. While accommodation does not need to be perfect, it does need to be reasonable.

Other jurisdictions have taken active steps to recognize the accessibility needs of pregnant passengers on public transit. For example:

- The Toronto Transit Commission has a clear and enforceable policy that priority seating is intended for customers with disabilities, the elderly or pregnant women. The TTC utilizes different coloured seats to distinguish priority seating and marks the seats with decals that include depictions of different types of physical barriers, including pregnancy. TTC by-laws create a fine of up to \$235 for failing to comply with priority seating signs.¹¹
- Kingston Transit uses a courtesy seating system that prioritizes an area for passengers using wheelchairs, scooters, walkers and/or other assistive devices. If the area is available, passengers with other needs, such as caregivers travelling with a collapsible stroller, pregnant women and passengers travelling with a collapsible bundle buggy, may use the courtesy space provided they vacate the space for passengers using disability-related assistive devices.¹²
- The OC Transpo system in Ottawa uses a “cooperative seating” system with priority seats for persons with disabilities, seniors, persons with assistive devices (wheelchairs, scooters, walkers, canes), pregnant women, and customers with small children or open strollers. Their seating designation decals clearly depict all of these passenger groups.¹³

Conclusion

With all of the above in mind, we write to ask for the following information:

- (1) Does TransLink currently have a policy with respect to pregnant passengers and priority seating?
- (2) If there is no current policy:

¹⁰ *Rodriguez and others v. Coast Mountain Bus Company and another* (No. 3), 2008 BCHRT 427 at para. 224.

¹¹ Toronto Transit Commission, “Priority Seating on all TTC Vehicles” (undated), https://ttc.ca/Riding_the_TTC/Frequently_Asked_Questions/Priority_Seating_FAQ1.jsp.

¹² Kingston, “Accessible Transit Services, (undated), <https://www.cityofkingston.ca/residents/transit/about/accessible-transit>.

¹³ OC Transpo, “Cooperative Seating” (undated), http://www.octranspo1.com/accessibility/cooperative_seating.

- Has TransLink considered a policy with respect to pregnant passengers? If so, what was the result of that consideration?
- Has the Users' Advisory Committee considered the issue of priority seating for pregnant passengers? If so, what was the result of that consideration?

(3) Will TransLink commit to adding pregnant passengers to the list of people who are entitled to priority seating? If not, why?

We thank you in advance for providing this information and for continuing to work towards a public transit system that is accessible and inclusive for all its users. We are happy to meet with you to provide further feedback, if that would be helpful. We look forward to hearing from you.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Milne', with a long horizontal flourish extending to the right.

Kendra Milne
Director of Law Reform