



**Canada's  
Gay & Lesbian  
Media Group**

Chair Adam Giambrone  
Toronto City Hall  
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Toronto, ON M5H 2N2

General Secretary Vincent Rodo  
Toronto Transit Commission  
Executive Branch, 7<sup>th</sup> Floor  
Toronto, ON, M4S 1Z2

February 22, 2010

Dear Chair Adam Giambrone and Commissioners:

I am writing you on behalf of Pink Triangle Press, publishers of Xtra, Toronto's gay and lesbian newspaper founded in 1984.

We are concerned about a policy direction currently being undertaken by staff and request that Commissioners intervene to make a 'course adjustment' that better reflects the values of the great city of Toronto, properly reflects the provisions of Canada's Charter of Rights and Freedoms, and avoids potentially drawn out and costly legal battles with their attendant media spotlight and divisiveness.

We are asking you to please intervene and direct staff to return the Xtra newspaper distribution box to Wellesley subway station and to abandon their plans to remove newspaper publication boxes from the entire system. We ask you to instead direct your staff to create a well-functioning licensing permit system for newspaper boxes on TTC property. The arbitrary removal of our newspaper box from this important long-standing location cannot be justified. It posed no interference with pedestrian traffic, nor any safety concern. The loss of this key location for our Wellesley/Church community readers is indefensible and must be reversed immediately.

### **BACKGROUND FACTS**

In recent weeks, TTC staff contacted Xtra to demand that we remove our newspaper box on TTC property along the outside facing of the Wellesley subway station. We objected, noting that the location, nicely recessed from the sidewalk, is an ideal location for newspaper boxes. Our staffer was told

on the phone by a TTC staffer that the decision to label the Wellesley station as one that was inappropriate for hosting newspaper boxes was taken partly at the request of the office of Coun. Kyle Rae and the local homeowner's association. We contacted Coun. Rae, who assured us that he was unaware of such a request and understood our position that there had to be an Xtra box at the Wellesley station, given its location in the heart of the Church St Village — the Wellesley stop is considered to be the "gay" subway stop by much of our community.

As you can no doubt understand, we find it suspicious that the TTC is ordering the removal of all boxes from the gay-neighbourhood subway station. Gays are citizens too, and in common with all other citizens living under the Canadian Charter of Rights and Freedoms, we have the right to easily access the reading material of our choice. As you know, in Canada the citizens are sovereign and our Charter and our courts have recognized that public bodies, like city hall and the Toronto Transit Commission, have a responsibility to tolerate and promote access to media on their properties. Why would gays be deprived of this access to Xtra and to other media that they need access to in order to educate themselves and be active and responsible citizens? Freedom of the press, freedom of speech, is not solely about the rights of the publisher of a newspaper; it is about the rights of the reader, the citizen, to conveniently access their news source of choice.

Coun. Rae also referred us to TTC Chair Adam Giambrone's office. Together, they asked TTC staff to hold off on enforcing the order to remove our box from the stop, pending a meeting between Xtra, TTC staff and Chair Giambrone's staff. Nevertheless, a warning was posted on our box prior to that meeting, ordering that the box be removed by Tues Feb 16. The meeting itself was also scheduled for Tue Feb 16. On Friday, Feb 12, Vincent Rodo sent an email agreeing not to remove the box until after the meeting. Strangely, the box was picked up by TTC staff that morning, prior to the 2pm meeting. I am sorry to bog you down with details, but we are profoundly concerned that a box would be scooped by TTC staff after the general secretary had committed to exactly that not occurring.

Prior to the meeting, Chair Giambrone's staffer copied us on an email to the general secretary's office, concerning the upcoming meeting, at which he noted: "Councillor Rae has advised that the sidewalk outside the station is far too heavily used to be an appropriate place to license boxes, and as the station is set back, the space they currently occupy does seem to be the appropriate one."

Despite having our box confiscated contrary to agreement, we at Xtra had a spirit of goodwill when we went into the meeting with TTC staffers Domenic Garisto (manager, property development) and Paul Buttigieg (coordinator, leasing and commuter parking). But we found no openness to discussion or negotiation on the other side. Instead of discussing our suggestions on how this could be resolved, we were simply told we had two options: wait until

the city installed a multiple-publication box at the station at some future, undefined, time; or alternatively, place our box on city land. The latter would result in missing many of the people entering or leaving the subway station, and the former is too nebulous, vague and unsubstantial a proposition to agree to.

In his conversation with Xtra's Community Relations Manager, Brandon Sawh, in which we first learned that TTC wished to remove boxes from Wellesley, a TTC employee said the reason that the boxes were being removed is because they were "unsightly." It is our belief that the proper and legal response to such a situation is to have a proper and functioning system in place to license boxes at TTC stations — a potential source of revenue — and to set and enforce standards of cleanliness and box functionality. This is the course of action followed by the transit authorities in Vancouver and Ottawa, the other two cities in which we have boxes. We suggested this course of action at our meeting with TTC staff. They were not interested in discussing it, to our amazement, and in fact described the TTC permitting system as being dysfunctional and "not working."

At our meeting with TTC staff, we learned they are working on plans to eliminate boxes from all TTC property and so are not interested in allowing us or others to get permits for our boxes or establish standards for cleanliness. Instead, they are hoping to deal with aesthetic concerns by removing all boxes — the Wellesley location was just the first that involves an Xtra box. This is most alarming. At the meeting, our staffer Brandon Sawh raised the matter of the TTC's responsibility to ensure that as a public body, they make space available to publications so that the citizens using the system can access their news source of choice. The staffer wrongly replied that the TTC could do whatever it wanted on its property, and that the TTC was asking city hall to put multiple-publication boxes at stations — eventually. In the meantime, Brandon was told, boxes would be removed from Wellesley station and eventually all stations and a survey was underway to determine the location and ownership of all boxes in the system.

## **LAW & POLICY**

This approach is not legal, and will lead to expensive court proceedings — and probably human rights commission proceedings — if TTC Commissioners do not intervene to move the organization to a more fruitful and non-divisive path. There are many court decisions (to name just a few Supreme Court of Canada decisions: *Ramsden v. Peterborough City* 1993; *Committee for the Commonwealth of Canada v. Canada* 1990; *Greater Vancouver Transportation Authority v. Canadian Federation of Students - British Columbia Component* 2009) that clearly establish that the TTC is a public body (you no doubt recognize the obviousness of that, given that commissioners are drawn from city council), that its property is public and not private, and that it is therefore subject to the same requirements of

public access and freedom of expression as other public spaces such as the streets of Toronto.

With respect, the proper solution to solving a problem of unsightliness is to solve the TTC's own internal problem with its permitting and enforcement system. It's common sense. But it's also the law: Canada's high courts have repeatedly made clear that government bodies such as the TTC are to solve their problems by instituting the least intrusive solution possible. Eliminating the boxes is not the least intrusive system for newspaper readers or newspaper publishers. Establishing a functioning system of licensing and standards is the appropriate response, and one that other transit authorities have adopted to stay within the law. As well, the TTC failed in its duty to act fairly in respect to its arbitrary and capricious decision to remove these boxes without a proper process or justification.

Simply put, your staff cannot order the boxes out of TTC locations and then, perhaps years later, have city hall install multiple-publication boxes and allow some of the old publications back in. You cannot pick and choose between publications. You cannot choose to get rid of the publications. You must make room for new publications and publications of various minorities (like Xtra, from the gay and lesbian minority community). You cannot remove existing publications prior to building a replacement system (such as multiple-publication boxes) to replace existing boxes. You must do the absolute minimum necessary to achieve your stated objective — allegedly to improve aesthetics — and in this case it means that you need to fix your licensing system, allow publications like ours to pay our fees, and institute a reasonable standard and enforcement of aesthetics and functionality.

We are confident of the law on this issue. This is not the first time that Pink Triangle Press has had to argue it before city councils and transit commissions. Through our lawyers, we are experienced in these matters because we are committed to fighting for the rights of our community of gays and lesbians, and also for the rights of other political, cultural, economic, and religious minorities, including those whose publications have not grown to the point where they can even yet afford to put their own media in public spaces. We know the law says that public space such as TTC property is exactly the right place for citizens to express themselves and to access multiple and diverse viewpoints. We know that only recently has our community media been able to afford the cost of putting out our message through newspaper boxes and that other minorities will follow us.

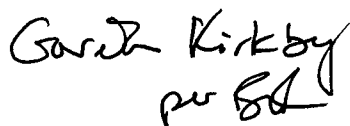
## **A SOLUTION IS POSSIBLE**

As I noted, we have successfully argued this in the past, sometimes with the help of lawyers. And always the city or transit authority has responded favourably. For a reason we do not comprehend, our attempt to create reasonable discussion with TTC staff has failed. They appear to be profoundly

committed to a course of action that we are convinced is illegal and wrong-headed, discriminates against minority groups and is a form of systemic discrimination, is divisive and will lead to a confrontation not only with us but also with other media.

We request that you exercise your prerogative and responsibility as public representatives to avoid all this by instructing your staff to pursue a better path. We'd be happy to help them in that task in any way we can. In the meantime, we request that you return our confiscated box to the Wellesley subway station, allow us to purchase permits for our other boxes on TTC property, and put a freeze on removal of any other groups of boxes — of any publisher — at other TTC locations until the matter is fully resolved.

Yours sincerely,



Gareth Kirkby  
per SD

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Cc: by email only

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