



NEWS RELEASE

Tuesday December 14, 2021

St. Augustine School files legal action against Broadway Subway Project, Province of BC, BC Transportation Financing Authority to demand significant improvements to children's safety at construction site of Arbutus and West Broadway SkyTrain Station

VANCOUVER – St. Augustine School has filed legal action in BC Supreme Court against the \$3 billion Broadway Subway Project, the BC government and the BC Transportation Financing Authority to demand significant improvements to children's safety at the construction site of the new SkyTrain Station being built at Arbutus and West Broadway.

St. Augustine School, which has over 450 students and is located just 25 meters from the planned Arbutus Station, says in a legal petition filed in BC Supreme Court that the respondents named have breached the Project Agreement on nine different sections, including: failure to produce or follow a traffic management plan; failure to produce or follow a noise and vibration plan; failure to install noise barriers; and failure to consult the school on mitigation measures prior to the start of construction. [Full list at end of release.]

“Our school community is very disappointed and extremely concerned about the lack of appropriate measures to protect the health and safety of the school children, despite our calling for traffic, noise, vibration, dust and other mitigation measures for nearly two years,” says Michael Yaptinchay, St. Augustine School Principal. “We have been frustrated and ignored at every attempt to protect our students and we are now forced to ask the BC Supreme Court to order that safety measures be implemented immediately.”

“We are extremely frustrated with this lack of action on children's safety. We are terrified that a serious accident is just waiting to happen,” Yaptinchay said. “The Arbutus Subway Station construction started with no safety measures in place to protect the school children aged 3-12, and this needs to be rectified immediately”

Yaptinchay said St. Augustine School retained veteran litigator Brent Olthuis to represent it in court. Olthuis has been recognized as one of Canada's best lawyers in corporate and commercial litigation and has appeared 10 times before the Supreme Court of Canada, as well as in the Federal Court, the Federal Court of Appeal and BC, Ontario, Alberta and Yukon courts.

“We have exhausted every avenue to get these problems fixed – without success,” Yaptinchay said. “Broadway Subway Project, the Province of BC and the BC Transportation Financing Authority have all ignored our pleas to act before construction began and to meaningfully consult with us, so court is our only choice left.”

St. Augustine School will seek a hearing of its legal petition as soon as possible because construction on the Arbutus Subway Station has begun and traffic and noise problems are already affecting students' safety and learning.

"This is an urgent situation for our students and their parents, as well as the entire community near the Arbutus Subway Station," says Yaptinchay. "We hope that the BC Supreme Court will understand that urgency and move to schedule a hearing as soon as possible."

Yaptinchay says the school supports the Broadway Subway in principle but the lack of mitigations to protect students is unacceptable.

The petition states that: "Numerous traffic safety incidents have been reported. This includes: St. Augustine students being forced to use unmarked crosswalks without crossing guards; Project Co flaggers working in the middle of traffic without signs or radios; and construction vehicles travelling northbound on Arbutus Street, despite the Province's commitment that this would not happen."

The legal action seeks from the court: "A declaration that the respondents must consult with the petitioner in good faith to meet their obligations as set out in the Project Agreement."

The petition filed in court says St. Augustine School only learned of the final Arbutus Station location when it was announced to the public in September 2019. Since this date the school has had over 100 meetings, exchanged hundreds of emails and letters with the involved parties including the Broadway Subway Project, City of Vancouver, TransLink, the Vancouver Police Department, and Vancouver Coastal Health and others – without coming to resolution of the 19-point mitigation plan it proposed, estimated at a cost of less than \$5 million to enhance the safety, health, and security of the school and surrounding area.

Yaptinchay added that there are other serious health and safety concerns for St. Augustine School students. Children will be exposed to high levels of diesel exhaust fumes from Broadway B-Line buses running every couple of minutes from Arbutus to the University of BC. The school has called on TransLink and Vancouver Coastal Health to conduct an environmental health assessment of emission levels on children in close proximity to the station and bus loop.

Background information follows.

St. Augustine website information on Arbutus Station: [BACKGROUND](#)

Full legal petition available [here](#). Here is an excerpt:

Legal Petition orders sought by St. Augustine School:

A declaration that the respondents must undertake the following mitigation measures, without undue delay:

- a) Installing a visual barrier around the construction site of Arbutus Station at Arbutus Street and W Broadway Avenue;
- b) Installing a sound barrier on the south and east sides of the petitioner's property;
- c) Monitoring, maintaining, and replacing the petitioner's HVAC filters for the duration of the construction project;
- d) Producing a traffic management plan for the Arbutus Station construction site that includes the mitigation measures (e) to (j) set out below;
- e) Providing and funding dedicated traffic control personnel to protect the petitioner's students using crosswalks and to direct construction vehicles driving through school zones of the petitioner;
- f) Diverting all construction vehicle traffic southbound on Arbutus Street, and away from the petitioner's property;
- g) Eliminating all construction vehicle traffic on Arbutus Street during the petitioner's pick up and drop off periods (8:25am – 8:50am and 2:50pm – 3:15pm);
- h) Establishing a left turn onto W 7th Avenue from the petitioner's laneway;
- i) Installing flashing lights at W 7th Avenue and Arbutus Street; and
- j) Re-establishing an entry onto Yew Street from W Broadway Avenue to reduce traffic on Arbutus Street.

A declaration of breach of Schedule 6 to the Project Agreement for:

- a) Failure to produce and/or follow a traffic management plan;
- b) Failure to engage with the petitioner to manage construction-related disruption;
- c) Failure to produce and/or follow a noise and vibration management plan;
- d) Failure to consult with the petitioner about the suggested site-specific mitigation measures prior to the start of construction;

- e) Failure to install permanent noise barriers and/or parapet noise barriers where warranted;
- f) Failure to install temporary noise barriers;
- g) Failure to produce and/or follow an air quality and greenhouse gas management plan;
- h) Failure to use water spray to reduce the generation of dust at excavation sources; and
- i) Failure to sweep paved surfaces and roadways to remove sand and dirt.

A declaration that the respondents must consult with the petitioner in good faith to meet their obligations as set out in the Project Agreement.

Such interlocutory relief as is justified to address imminently dangerous conditions for the petitioner's students and staff caused by the actions or omissions of the respondents.

Costs.

Such further and other relief that this Court may permit.