



Ontario Highway Transport Board

ANNUAL REPORT 2014

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To: The Honourable Elizabeth Dowdeswell
Lieutenant Governor of the Province of Ontario

MAY IT PLEASE YOUR HONOUR:

The undersigned takes pleasure in submitting the Annual Report for the Ontario Highway Transport Board for the calendar year ending December 31, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Steven Del Duca', with a stylized, cursive script.

Steven Del Duca
Minister

To: The Honourable Steven Del Duca
Minister of Transportation

In accordance with Section 33 of the *Ontario Highway Transport Board Act*, R.S.O. 1990, c. 0.19, I have the honour to present the report of the activities of the Ontario Highway Transport Board for the calendar year ending December 31, 2014.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Gary Stanley", written in a cursive style.

Gary R. Stanley
Chair

The Board

The Board is constituted by virtue of and in accordance with the provisions of the *Ontario Highway Transport Board Act*, R.S.O. 1990, c. 0.19. It operates as a quasi-judicial administrative tribunal. Under the *Public Vehicles Act*, R.S.O. 1990, c. P.54 and the *Motor Vehicle Transport Act*, 1987, R.S. (1985) c. 29 (3rd Supp.), the Board controls entry and maintains an orderly development in the business of transporting passengers for compensation in public vehicles, into, out of, within and through Ontario.

Members of the Board (as at December 31, 2014)

Gary R. Stanley, Chair, Toronto

Gilles Morin, Part-Time Member, Ottawa

Message from the Chair

Since its creation in 1955, the Ontario Highway Transport Board has administered both provincial and federal legislation – the *Ontario Highway Transport Board Act*, the *Public Vehicles Act* and the *Motor Vehicle Transport Act* (federal) – overseeing market entry control, licensing and administration of all economic enforcement and sanctioning activities related to for-hire intercity public vehicles.

Under this legislation the Board receives two types of applications; applications for new or extended authority and applications, filed by interested parties, alleging a contravention of the legislation. The Board remains, today, as an independent adjudicative and regulatory entity functioning independently and at an arm's length relationship with the government.

Although the Board operates with mainly part-time administrative staff it continues to strive to control costs and serve the public and its stakeholders in a timely fashion. All time deadlines in the Board's Business Plan are always met; in fact, most decisions are issued prior to the two week target.

It is the Board's goal to simplify the application process for our stakeholders. In any confrontational situation, the Board staff attempts to guide the parties toward a solution rather than incur the cost and time of either a written or a public hearing.

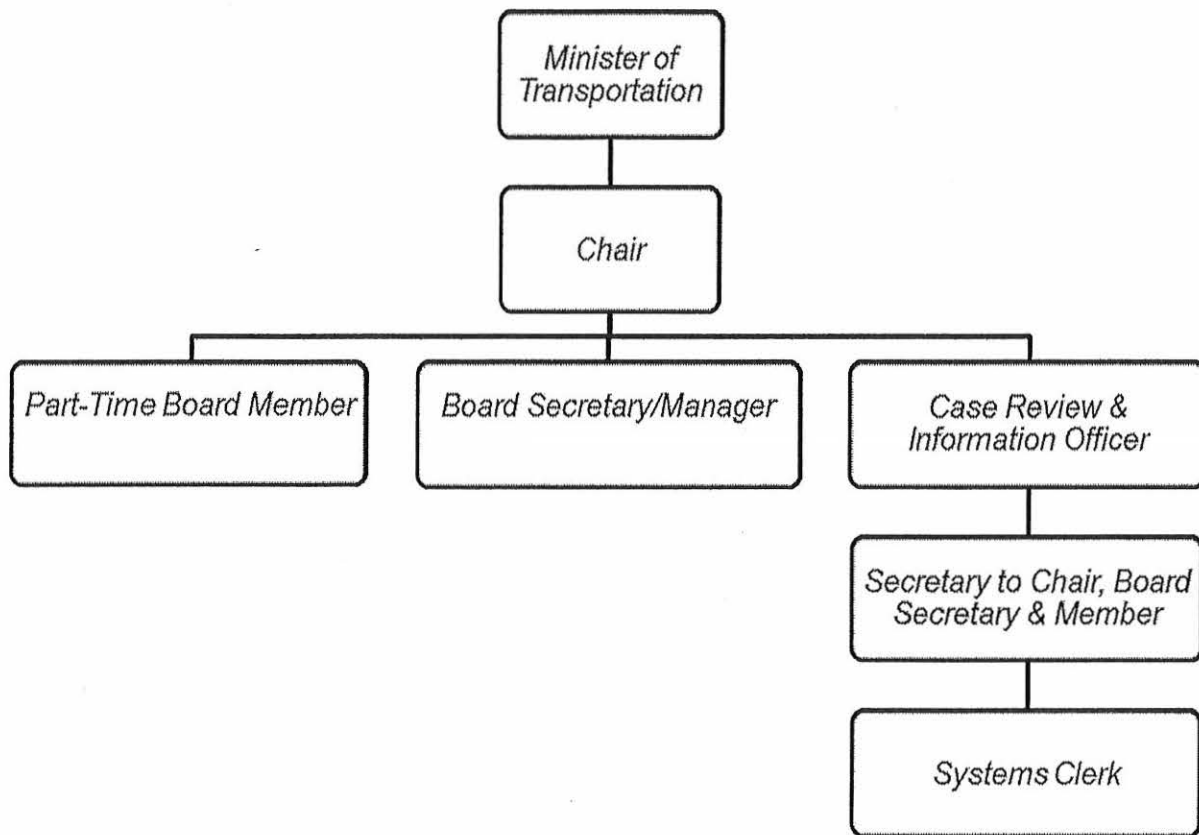
If a hearing is necessary, the Board's costs are kept to a minimum as the legislation allows the Board to assess the parties involved with hearing-related costs. These recoveries are deposited directly into the Consolidated Revenue Fund.

To accommodate our stakeholders, the Board is very flexible and will hold the hearing at any venue in the province; holding night-time hearings to allow the general public to appear in support of an application.

The Board will continue to serve the public in an efficient manner to ensure that the for-hire inter-city public vehicle system in the Province of Ontario operates to the benefit of the public. As always, in all matters, the safety of the travelling public is paramount in the concerns and practices of the Board.

Gary R. Stanley
Chair

Organizational Chart
(at December 31, 2014)



FINANCIAL INFORMATION

<u>Revenues/Recoveries</u>	<u>2014</u>	<u>2013</u>
Filing Fees	\$ 60,253	\$ 54,368
Special Authorities	3,885	4,295
Costs Recovered for Hearings	12,741	12,395
U.S. Exchange	<u>522</u>	<u>-46</u>

Total	\$ <u>77,401</u>	\$ <u>71,012</u>
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Expenses

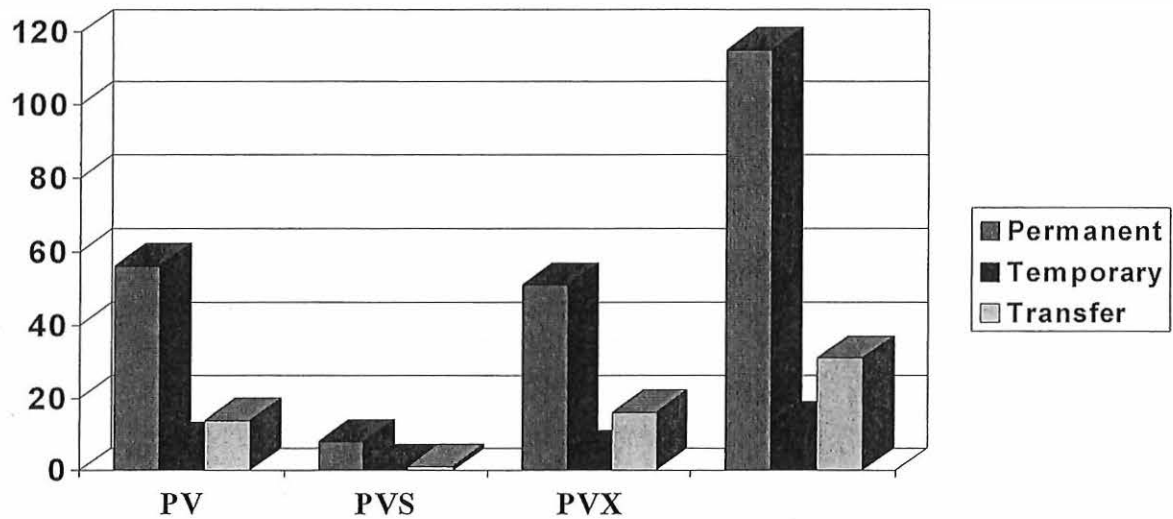
Salaries	\$ 422,269	\$ 416,974
Travel and communication	14,106	11,002
Equipment and supplies	<u>23,475</u>	<u>25,129</u>

Total	\$ <u>459,850</u>	\$ <u>453,105</u>
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Net Cost of Board's Operations	\$ <u>382,449</u>	\$ <u>382,093</u>
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Note: Revenues/Recoveries are deposited directly into the Consolidated Revenue Fund.

Applications Received

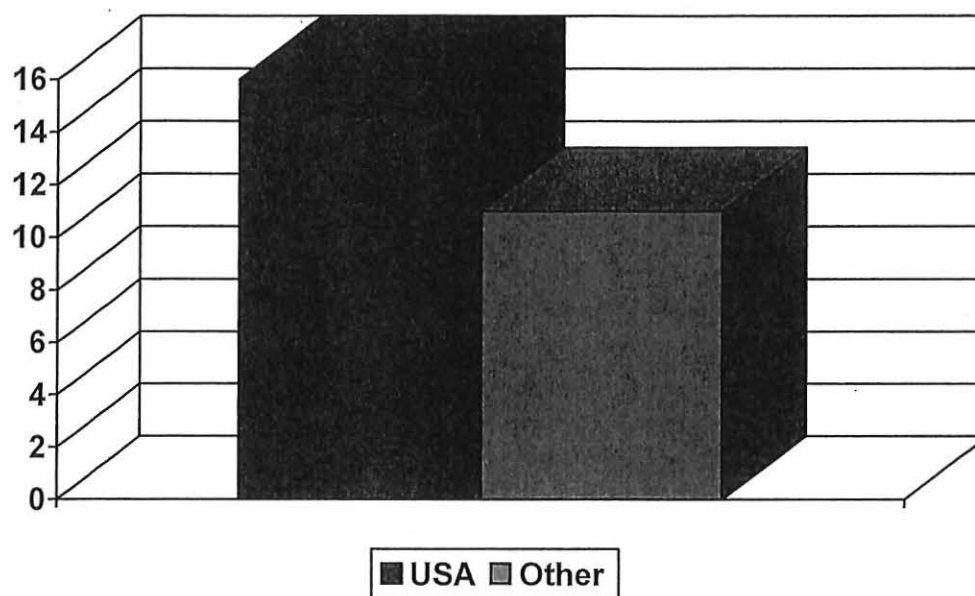


Type/Class	PV	PVS	PVX	TOTAL
Permanent	56	8	51	115
Temporary	7	1	5	13
Transfer	14	1	16	31
TOTAL	77	10	72	159

Legend:

PV	Public Vehicle Applications (Intra-Provincial Undertaking)
PVS	Public Vehicle (School Bus) Applications (Intra-Provincial Bus Undertaking) School Bus ONLY
PVX	Part I Motor Vehicle Transport Act Applications (Extra-Provincial Bus Undertaking)

Special Authorities Processed



APPLICANTS' HOME BASE

U.S.A.	16
Other Provinces	<u>11</u>
TOTAL	27

Applications Received by Region



<u>Outside Ontario</u>	20
Alberta	1
Manitoba	2
Québec	5
U.S.A.	12

Ontario-Regional Boundaries

<u>Central Region</u>	70	<u>Northern Region</u>	13
Barrie	1	Cochrane	3
Durham	3	Muskoka	6
Halton	17	Parry Sound	4
Niagara	3		
Peel	16	<u>Northwestern Region</u>	2
Toronto	20	Thunder Bay	2
York	10		

<u>Eastern Region</u>	36	<u>Southwestern Region</u>	18
Frontenac	5	Brant	1
Hastings	3	Bruce	3
Lennox & Addington	2	Essex	1
Ottawa	4	Huron	2
Peterborough	5	Middlesex	1
Prescott and Russell	7	Perth	2
Renfrew	2	Simcoe	2
Stormont, Dundas & Glengarry	8	Waterloo	6

U.S.A.
12

Summaries – Reasons for Decision

The following summaries of applications for operating licences and applications for sanctions and reviews that were adjudicated by the Board in the 2014 calendar year represent examples of the type of matters handled by the Board. The Board's complete decisions are available and may be requested from its office, telephone: 416-326-6732 or via e-mail at ohtb@ontario.ca.

Public Vehicles Act

PVA

Motor Vehicle Transport Act

MVTA

Scheduled Service:

A bus transportation service for which an applicant or licensee files a timetable indicating the times of arrivals and departures.

Chartered Trip:

A bus transportation service exclusively for a group of persons going on a trip.

Applicant:

**Trentway-Wagar Inc. ("TWI")
Peterborough, ON**

File No: 14198

Intervenor:

**Greyhound Canada Transportation ULC
("Greyhound")**

Application:

Trentway requested the Board for a determination of whether, under the terms of Public Vehicle Operating Licence PV-5000, Trentway may offer one or both of the following services:

1. A service between Toronto and Ottawa, via Kingston, on one ticket; or
2. A service between Toronto and Ottawa, via Kingston, with a ticket for the Toronto to Kingston service and a separate ticket for the Kingston to Ottawa service.

Applicant's Case:

The applicant stated that:

- their operating authority was not uncertain and they presented documents as evidence. The authority had been assembled over time and it should be looked at as a whole licence;
- the licence permitted TWI to transport passengers between Kingston and Toronto and also between Kingston and Ottawa and there were no limitations to combine these portions;
- TWI proposed to show on its website that a service would be offered between Toronto and Ottawa with a stop in Kingston. They sought the Board's direction as to whether this service should be offered with the use of one ticket for the entire trip or two tickets, one for each leg of the trip;

- TWI cited several examples of Greyhound's service that they claimed was similar to what TWI was proposing. Also, Megabus was offering a service from New York City to Charlotte, NC with a transfer through Washington, DC; and
- TWI stated that there would be no transfer of vehicles but there would be a transfer of drivers. A ticket, electronic or paper, would be issued with two bar code numbers, one for each segment of the trip.

TWI offered three scenarios:

1. A passenger travels from Ottawa to Toronto with a brief stop in Kingston. Is that permitted?
2. A passenger travels from Ottawa to Toronto and elects to take a two-hour break in Kingston. Is that permitted?
3. A passenger travels from Ottawa to Toronto and decides to stay in Kingston for some sightseeing for several days. That is permitted.

TWI asked if it made sense that if scenario #3 is permitted then why isn't scenario #2 allowed? They requested that the Board allow them to operate the service using a two-part ticket.

TWI alleged that Greyhound did not contest the fact that they could offer a service between Toronto and Kingston and between Kingston and Ottawa. They could therefore provide the service on two tickets and asked the Board to authorize one seamless entity. They currently provide no service between Kingston and Ottawa.

Intervenor's Case:

Greyhound stated that:

- the operating licence in question has a long history with respect to what was originally intended when it was purchased from Voyageur Colonial Limited ("Voyageur"). The exclusion that TWI was not able to provide a Toronto to Ottawa service was inserted because Voyageur wanted to continue to operate that service. The licence was subsequently sold to Greyhound and approved by the Board; and
- the operating authority was not ambiguous, not unclear, could easily be interpreted and has had no issue before the Board. TWI was endeavouring to re-write the rules of tacking. Tacking fundamentally authorizes a licence to travel from A to B and can only travel from A to C if the licence contains no restrictions. The restriction in the licence prevents tacking and therefore TWI cannot go from A to C, i.e. Ottawa to Toronto. The restriction was written into the licence to prevent tacking from happening and therefore TWI cannot go from A to C, i.e. Ottawa to Toronto.

TWI had two options if they want to provide the Ottawa to Toronto service:

1. Make an application to the Board to remove the restriction; or
2. Make an application to the Board to provide the service and present a case to meet the test of public necessity and convenience.

Until an application is successful, the wording of the existing licence rules.

- Greyhound offers many trips where the passenger transfers at certain points on the journey. They ensure that they always abide by the terms of their operating licences; and
- TWI's licences contain a very clear and unambiguous restriction that does not allow TWI to transport passengers between Toronto and Ottawa.

Decision:

Section 8 of the *Public Vehicles Act* reads as follows:

Licence referred to Board for interpretation

1. The holder of an operating licence may, at any time, apply to the Board to interpret ambiguous provisions of the holder's licence or uncertain rights granted by the licence.

Hearing

2. Upon receipt of an application under subsection (1), the Board may, if it considers it appropriate, hold a hearing to resolve the ambiguity or uncertainty.

Licence may be amended

3. At the conclusion of the hearing, the Board may amend the licence to resolve the ambiguity or uncertainty, 1966, c.9, s 17.

The Board must decide if tacking of two portions of a licence is permitted, when there is restriction in the same licence.

The Board referred to past decisions for reference:

- an opinion from the MTO's legal counsel stating that tacking was permitted so long as the conditions attached to each component was respected;
- the Penetang Midland Coach Lines Limited decision, dated November 12, 1996, stated that "provisos do not become inoperative just because a licence is tacked to another licence." It further stated that "if they don't like this provision or the licence as worded, they have every right to apply before the Board to amend it";

- in the Decision in the matter of TWI, dated January 14, 1997, The Board stated: "The Board accepts the fact that a licensee can tack licences together to provide a single continuous service but it takes the position that when licences are tacked together, the terms and conditions of the various constituent licences must be respected. They do not become inoperative when they are tacked together with other licences." This current Board agrees with this statement and further adds that when portions of a licence are tacked with other portions of the same licence, then any and all restrictions must still be respected; and
- TWI agreed to the restriction in the licence when they purchased the licence from Voyageur in 1996 as it was not in the original licence. TWI knew what they were buying and since then have done nothing to remove the restriction.

It was concluded that:

After having heard the presentations from both parties, it is the Board's opinion that the proviso, inserted in PV-5000, namely,

No passenger shall be carried whose full ride is between the City of Ottawa or the Town of Carleton Place on the one hand, and Metropolitan Toronto or the City of Mississauga on the other hand

does not allow the tacking of the two pertinent sections of PV-5000 and precludes both:

1. a service between Toronto and Ottawa via Kingston, on one ticket; and
2. a service between Toronto and Ottawa, via Kingston, with a ticket for the Toronto to Kingston service and a separate ticket for the Kingston to Ottawa service if the stopover in Kingston is not for a reasonable length of time and just done to circumvent the above restriction.

In other words, **TWI cannot offer a "full ride" service to a passenger between Toronto and Mississauga and Carleton Place and Ottawa no matter how many tickets they use for the trip.**

Applicant:

**A-1 Limousine Service Ltd. ("A-1")
Belleville, ON**

File No.: 45637-D

Respondent:

1324474 Ontario Ltd.
o/a "Ontario Coachway" ("Coachway")

Applications:

Intra and extra-provincial applications to delete the current restrictions on the operating licences limiting the vehicles to a maximum seating capacity of seven passengers, exclusive of the driver.

Applicant's Case:

The applicant has been in business since 1978 serving Eastern Ontario. Their clientele includes corporate businesses, transportation events and airport services. They are not in the business of offering an airport shuttle service similar to the respondent. Their operation is strictly chartered trips in upscale vehicles. More recently, they have received an increasing number of requests to provide chartered trips to the Lester B. Pearson International Airport for groups of more than seven passengers. The groups are corporate, families and conference delegates. They turn away 3 to 4 trips per month.

The applications were supported by 13 certificates of support from individuals and corporations requesting that the Board remove the seating restrictions to accommodate the needs of larger corporate and family groups.

Respondent's Case:

Coachway stated that:

- they have provided scheduled and chartered service since 1996. Their service is 24 hours a day, 365 days a year to individuals and corporations in a variety of vehicles. They are primarily an airport shuttle service;
- to or from the Lester B. Pearson International Airport is their primary business which has seen a drastic decline of 39% since 2008;
- there was no need for an additional service when their vehicles are sitting idle. The insurance costs were also too high. Confidential financial information was provided to the Board. Coachway was a member of the Airport Ground Transportation Association serving the public need; and
- there was no proof of public need in the application that required the additional seating capacity and the application should be denied.

Decision:

The Board considered the following factors to determine if the applicant had met the statutory test of public necessity and convenience:

1. the transportation needs of the public as seen through the public witnesses;
2. the impact on existing carriers if the application was granted; and
3. the applicant's ability to provide the service.

Transportation Needs of the Public

The thirteen certificates of support from the public and large number of enquiries from potential customers for service in larger vehicles definitely expressed a public need. The public was seeking 10-15 or 15-20 passenger vehicles. They were current users of the applicant's service and were both satisfied and impressed and fully supported the application to increase the seating capacity of the vehicles. They also commented on

the need for a “door-to-door carrier.”

Impact on Existing Carriers

Coachway made allegations with respect to decreased revenues but provided no detailed statistics to back the allegations. The revenue figures provided by Coachway did not relate to losses if the application was granted. The applicant's operation is limited to chartered trips only and it will not impact Coachway's scheduled airport shuttle service.

Applicant's Ability to Provide the Service

The applicant has successfully operated the business for many years and, in the Board's opinion, they can offer the additional service if the application was approved.

The application was granted.

Applicant:

**417 Bus Lines Limited (“417”)
Casselman, ON**

File No.: 31161-K/L

Respondent:

Greyhound Canada Transportation ULC
("Greyhound")

Applications:

Intra and extra-provincial applications to amend the licences by deleting the proviso that states:

“Provided that this authority shall terminate automatically if a valid contract for commuter bus service is not in effect with the North Glengarry Prescott Russell Transport Board.” In addition, a place known as Crysler in the Township of North Stormont, was added and the Township of North Glengarry was deleted from the original licences.

Applicant's Case:

417 was caught by surprise when the North Glengarry Prescott Russell Transport Board decided not to continue subsidizing the operation of a scheduled bus service from points in their geographic area to and from the City of Ottawa. They were convinced that they could provide the service under other sections of their operating authorities but this was challenged by Delaney Bus Lines Ltd.

They then developed a customer base that needed the service to and from Ottawa and Gatineau. The Board granted 417 temporary licences as no other bus operator was able to provide the service. 417 alleged that the service would have no economic impact on existing carriers as they were operating at maximum capacity. The applications were supported by eight members of the public needing the service. 417 alleged that this was not a new service and they only wanted to continue an operation to provide Monday to Friday service for commuters working in Ottawa and Gatineau.

Respondent's Case:

Greyhound objected to the removal of the restriction as it adequately protected their interests. They were concerned that 417 would be permitted to operate Class "A" vehicles rather than Class "D" vehicles. They also requested the Board to add a "no tacking" clause to prevent future tacking of this authority to other authorities acquired in the future either by purchase or merger. Any tacking in the future might create a service in the Ottawa-Toronto and Ottawa-Montreal corridors currently serviced by Greyhound. They had no objections to the need of the service or the fitness of the applicant.

Decision:

The Board considered the following factors when making its decision:

1. the transportation needs of the public as seen through the public witnesses;
2. the applicant's fitness and ability to provide the service; and
3. the impact on existing carriers if the applications were granted.

Greyhound had no objections to (1) and (2). The Board was satisfied that there was a public need for the service and had no reservations regarding the applicant's ability to provide the service.

In addition, Greyhound provided no substantial proof of any real economic impact on their operations if the applications were granted. They also acknowledged that they do not operate a service between Ottawa and the towns in question. The Board rejected the request by Greyhound to put a clause in the licences that no tacking of licences be permitted because there was no proof to substantiate the request.

The applications were granted.

Applicant:

**Park Lane Limousine Services Inc.
("Park Lane")
Toronto, ON**

File No.: 46890-D/E

Respondents:

1. Barrie Newmarket Limousine Services Ltd.
2. Barrie Executive Transportation & Limousine Inc.
3. Hammond Transportation Limited

Applications:

Intra and extra-provincial applications to operate chartered trips from points in Simcoe County.

Applicant's Case:

Park Lane stated that:

- they offer quality transportation services using a large fleet of limousines and limo buses that are not available in Simcoe County. They offered to expand business beyond the Greater Toronto Area at a reasonable pace; and
- they disputed the similarity of their vehicles and the respondents' vehicles. The respondents' financial information was un-

substantiated. There was no opposition for licences from the City of Hamilton. Their expansion into the County of Simcoe would not have an economic impact on the respondents.

Respondents' Case

The respondents have been in business in Simcoe County for two to seven decades and offer the service applied for.

They claim to have experienced declining revenues and escalating costs due to customers having less disposable income to spend on luxury transportation. They filed financial information to support the decline in business and claimed that licensing another carrier would further deplete their market share in the area.

Decision:

The Board had three options:

1. to grant the applications, in whole or in part, by a written hearing;
2. to deny the applications, in whole or in part; or
3. to order an oral hearing of the applications, in whole or in part.

The applications are to serve two areas: the County of Simcoe and the City of Hamilton.

In the Board's opinion based on the evidence, a written hearing to determine Simcoe County would not satisfy the requirements of natural justice and ordered an oral hearing to determine the matter. This would give the applicant an opportunity to present evidence in support of the applications. The respondents would have the opportunity to present evidence of their business, the income generated and the potential loss of income if the applications were granted.

With respect to the applications for the City of Hamilton, the public evidence was not strong but there was no opposition to that part of the application and they were granted.

Applicant:

**Park Lane Limousine Services Inc.
("Park Lane")
Toronto, ON**

File No.: 46890-D/E

Respondents:

1. Barrie Newmarket Limousine Services Ltd.
2. Barrie Executive Transportation & Limousine Inc.
3. Hammond Transportation Limited

Applications:

Intra and extra-provincial applications to operate chartered trips from points in Simcoe County.

Applicant's Case:

Park Lane testified that:

- their equipment was the most diverse and they provided services to a large part of Ontario;

- they regularly received customer inquiries for the larger vehicles that were not available in the local markets. Local carriers offer cheaper rates for smaller vehicles as they have no deadhead travel;
- based on the evidence, none of the respondents have the range of equipment that they have. Consequently, there would be no economic impact on the respondents. The public in Simcoe were willing to pay the additional costs involved for the use of the larger vehicles; and
- they provided no public evidence at the hearing, as they felt it was not necessary, since there was already public support on the file. In their opinion, there was no legal requirement to provide public evidence at the hearing. The need had already been established on file and it was up to the respondents to refute the evidence and to prove that the need did not exist. In their opinion, the Board should not dismiss the applications because they had no opportunity to cross-examine the respondents when the respondents decided not to present any evidence as they believed Park Lane had not met the test of public need and convenience.

Respondents' Case:

The respondents testified that:

- the Board should dismiss the applications on the grounds that the applicant had failed to meet the statutory test of public necessity and convenience. The hearing notice clearly stated evidence in support of the applications must be given orally by persons proposing to use the transportation service. Park Lane decided to produce no public evidence;
- they referred to previous Board decisions that stated that it was the applicant's responsibility to provide evidence of public necessity and convenience for the proposed service that could be tested by both the Board and the respondents; and
- the Board's threshold was clear that there must be public support for an application. They requested the Board to dismiss the applications with costs.

Decision:

The Board stated that:

Park Lane was ready, willing and able to provide the service. However, the Board's hands were tied in that they had failed to meet the test of public necessity and convenience. Public evidence at a Board hearing is mandatory. The Notice of Hearing clearly stated that public witnesses must testify in support of the applications and no written support would be accepted. This would allow the respondents and the Board to cross-examine any of their testimony. The onus is on the applicant to prove that there is a need and they chose not to do so.

The Board also addressed the allegations by Park Lane re:

- (a) the Hearing Notice was not an official document;
- (b) public evidence not required at an oral hearing;

-
- (c) letters of support on file should be considered as evidence of public support; and
 - (d) respondents are responsible to prove that there was no need for the applicant's service and they chose not to testify at the hearing.

The Board stated that:

- (a) The Hearing Notice is an official document as it is developed pursuant to Section 6 of the *Statutory Powers Procedure Act* that applies to Board hearings.
- (b) In regard to public evidence requirements at a hearing, the Board stated that there was no precedent whereby public witnesses did not testify at a hearing. This was mandatory.
- (c) The letters of support on file had been considered by the Board but they failed to meet the test of public necessity and convenience. The Board then ordered that the matter be dealt with at an oral hearing.
- (d) As there was no public evidence at the hearing, the respondents rightfully chose not to testify at the hearing as they had no case to meet.

The applications were dismissed.

Applicant:

**Barrie Executive Transportation &
Limousine Inc. ("Barrie Executive")
Barrie, ON**

File No.: 46890-RE(5)

Interested Parties:

1. Hammond Transportation Limited ("Hammond")
2. Barrie Newmarket Limousine Services Ltd.
("Barrie Newmarket")

Respondent:

Park Lane Limousine Services Inc. ("Park Lane")

Application:

An application by Barrie Executive under Sections 10 and 11 of the *Public Vehicles Act* alleging that Park Lane conducted chartered trips from Simcoe County and was operating in contravention of the terms and conditions of their operating licence.

Applicant's Case:

Barrie Executive alleged that:

- Park Lane's unlicensed trips were escalating to about one per week in spite of a Board Order to cease unlicensed operations. They continued to advertise that they provide a service in Simcoe County even though they were not licenced to do so;
- Park Lane repeatedly operated in violation of the terms and conditions of their operating authority. They have admitted to having operated unlawfully; and

-
- they asked the Board to cancel Park Lane's operating licences and also asked the Board to award them costs for time, effort, and preparation for the hearing, consultants, etc.

Interested Parties Case:

They requested the Board to cancel Park Lane's operating licences for their continuous disregard for the legislation. The unlawful activity was economically impacting their businesses. They also requested the Board to award them costs for incurred expenses.

Respondent's Case:

Park Lane stated that:

- they have put procedures in place to ensure that all staff were aware that they were not authorized to serve Simcoe County. A map indicating a list of municipalities in Simcoe County was provided to the staff;
- in spite of repeated requests from the public in Simcoe County, staff were strictly advised not to provide the service. They were unsuccessful in their application before the Board to obtain the authority to serve Simcoe County; and
- they asked the Board not to cancel their operating licences but insert a provision in the licences that they would be cancelled if unlicensed trips occur in the future. They have been in business since 1971. Safeguards and new policies have been put in place to ensure that there are no future unauthorized operations.

Decision:

Section 10(2) of the *Public Vehicles Act* states:

At the conclusion of the hearing, the Board may suspend or cancel the operating licence or impose temporary or permanent conditions on the licence.

Section 11(3)

At the conclusion of the hearing, if it determines that there has been a contravention, the Board may,

- (a) order that the operation of the transportation service in the manner that caused the contravention stop.

The Board stated that:

- Park Lane did conduct business in Simcoe County outside the terms of their operating authority. Despite three Board Orders to cease and desist the illegal trips, Park Lane continued to provide the unauthorized business. Senior management failed to ensure that the unauthorized service ceased. They only implemented new procedures to prevent any future unauthorized trips when the situation got out of hand; and
- ordering Park Lane to cease all illegal operations would have little impact on its operations. Cancelling Park Lane's operating licences would have a serious impact on the employees and the public as its many customers would have no access to its very

specialized fleet of equipment.

The Board ordered that Park Lane's current operating licences be cancelled and be re-issued as temporary licences for a one-year period ending September 30, 2015. At that time, these licences may be made permanent under two conditions:

1. an application to make these licences permanent is made to the Board by Park Lane Limousine Services Inc. by July 1, 2015; and
2. subsequently, an audit will be conducted on behalf of the Board, at the expense of Park Lane Limousine Services Inc., to ensure that Park Lane Limousine Services Inc. has complied with the *Public Vehicles Act* and the *Motor Vehicles Transport Act*.

All the required records must be maintained by Park Lane and made available for the Board's audit. If the audit discloses any violations of the *Public Vehicles Act* or the *Motor Vehicle Transport Act*, the licences may be suspended or cancelled.

The Board also assessed costs payable by Park Lane to the Board, the Applicant and the Interested Parties.

Applicant:

Optimus Prime Corporation
o/a "Wubs Transportation Services"
or "Wubs Transit" ("Wubs")
Winchester, ON

File No.: 46174-I/J

Respondent:

Delaney Bus Lines Ltd. ("Delaney")

Applications:

Extra-provincial applications to provide chartered trips:

- (a) from points in the United Counties of Stormont, Dundas & Glengarry in Class "D" public vehicles; and
- (b) for students, staff and chaperones under the jurisdiction of the Student Transportation of Eastern Ontario (Consortium) from points in the United Counties of Stormont, Dundas & Glengarry in school buses.

Intra-provincial application to provide chartered trips from points in the United Counties of Stormont, Dundas & Glengarry in Class "D" public vehicles.

Applicant's Case:

Wubs stated that:

- they have operated school transportation and chartered trips since 2003. They served the City of Ottawa and the United Counties of Leeds and Grenville. They sold their scheduled

service authority to Evans Bus Lines with the intention that they would re-apply for chartered trips subsequent to the sale being finalized as Evans Bus Lines did not wish to operate chartered trips. Wubs developed the charter business over the years and these applications are re-applications for the licensed areas they served previously;

- Delaney does not have the authority for all of Stormont, Dundas & Glengarry. They deleted the City of Cornwall from the application to protect the interests of Delaney. None of the other licensed carriers opposed the applications;
- Wubs purchased eight 72-passenger school buses to service the school contract. As the vehicles are strictly to service the contract, operating chartered trips for the general public was important for their survival;
- Wubs alleged that they would have no impact on Delaney's current business; they have an established clientele. Delaney is only licensed for specific areas and does not serve a large part of the area applied for; and
- the applications were supported by churches, municipalities, the school board and individuals.

Respondent's Case:

Delaney stated that:

- they have been in business since 1948 and serve the United Counties of Stormont, Dundas & Glengarry. They operate a contract with the school board and also offer a chartered service in highway coaches throughout North America. They also run a scheduled service for commuters between the County of Stormont, Dundas & Glengarry and Ottawa;
- they have experienced a decline in revenue in the charter business. They listed carriers licensed in the area applied for and alleged that licensing another carrier would further impact declining sales to all licensed carriers; and
- there was no evidence to indicate a public need and convenience for the service. They meet the needs of the public and are able to accommodate the required volume. They requested the Board to deny the applications.

Decision:

The applications filed by Wubs were to fill the void created by the sale of their business to Evans Bus Lines. The market decline referred to by Delaney impacted bus business between 2011 and 2014. The decline in revenues reflected Delaney's entire chartered trip revenues. It was not broken down to isolate the revenues affected if the applications were granted by the Board. Consequently, the Board was unable to ascertain the definite impact if the applications were granted. In the Board's opinion, the granting of the applications would not increase the number of carriers but just restore the status quo.

Delaney referred to a list of licensed carriers serving the area applied for. However, none of them chose to oppose the applications. The Board could only assume that the granting of the applications would have no negative economic impact on their

operations.

Wubs has been in business since 2009. There was a brief three-month period when they were not active due to the sale to Evans Bus Lines. The current applications are to restore the previous market situation. They are not a new entrant.

The applications were granted.

Applicant:

**Autolux Ltd. ("Autolux")
Pickering, ON**

File No.: 46326-INT

Application:

An application under Section 8 of the *Public Vehicles Act* asking for an interpretation of their public vehicle operating licence.

Applicant's Submissions:

The request for an interpretation of the licence was being made at the suggestion of one of Autolux's clients – the Workplace Safety and Insurance Board ("WSIB"). They are seeking clarity regarding a service that starts and ends within the same municipality. Autolux offers a concierge style full service to its passengers. There was no curbside parking and each passenger was accompanied by an escort; a seamless service that goes beyond the service offered by a regular taxi or limousine.

Autolux argued that the "point" referred to in their licence referred to the origin and the destination. They argued that the point could both be within the same municipality. WSIB was seeking this clarification. Thirteen municipalities are of the opinion that Autolux does not require a municipal licence to pick-up and drop-off passengers inside their municipalities. Autolux requested the Board to re-write their operating licence to reflect the authority to provide a service that starts and ends inside a municipality. This would eliminate any confusion about the service that they provided.

Decision:

The Board stated that:

Section 8 of the *Public Vehicles Act* states as follows:

Licence referred to Board for interpretation

- (1) The holder of an operating licence may at any time apply to the Board to interpret ambiguous provisions of the holder's licence or uncertain rights granted by the licence.

Hearing

- (2) Upon receipt of an application under subsection (1), the Board may, if it considers it appropriate, hold a hearing to resolve the ambiguity or uncertainty.

Licence may be amended

- (3) At the conclusion of the hearing, the Board may amend the licence to resolve the ambiguity or uncertainty, 1966, c.9, s17.

The 2011 Annual Report of the Ontario Highway Transport Board states:

The Ontario Highway Transport Board (OHTB) administers both provincial and federal legislation – the *Ontario Highway Transport Board Act*, the *Public Vehicles Act* and the *Motor Vehicle Transport Act* (federal). Under this legislation, the Board oversees the entry into and the orderly development of the business of transporting passengers for compensation in **public vehicles** within Ontario and to and from other jurisdictions (emphasis added).

Section 1 of the *Public Vehicles Act* defines a public vehicle as a:

“motor vehicle operated on a highway by, for or on behalf of any person for the transportation for compensation of passengers, or passengers and express freight that might be carried in a passenger vehicle, but **does not include** the cars of electric or steam railways running only upon rails, taxicabs, car pool vehicles, nor **motor vehicles operated solely within the limits of one local municipality**” (emphasis added).

Section 9(2) of the *Public Vehicles Act* states:

Municipal licence and fares, when applicable

Where such a person takes on passengers or express freight within the limits of a local municipality and discharges such passengers or express freight within the limits of that municipality, the person **may be required to obtain a licence under a by-law of that municipality** and shall, as to such passengers and express freight, comply with any tariff of fares or rates established by by-law of that municipality (emphasis added).

The Board’s mandate and legislative powers are restricted to the licensing of public vehicles. Public vehicle is defined in Section 1 of the *Public Vehicles Act* and **does not include** “vehicles operated solely within the limits of one local municipality.” Section 9(2) of the *Public Vehicles Act* states that an operator may require a licence from a local municipality to operate within that municipality.

To summarize the licensing of a public vehicle within a municipality, is outside the Board’s jurisdiction.

Therefore, based upon the Board’s mandate and this legislation, it is the Board’s opinion that Public Vehicle Operation Licence, PV-5364, does not automatically authorize Autolux to pick-up or drop-off passengers within a local

municipality.

Although Autolux has been fortunate enough to have been given permission to operate within thirteen municipalities, the legislation states that a licence **may be required** and that decision is made by the municipality and not by this Board. It is the Board's suggestion that the argument emphasizing the special nature of the service offered by Autolux, the fact that they are neither a taxi nor a limousine and the unique nature of its clientele, that was so ably made by Mr. Bronskill to this Board, be made to the municipalities in question.

A second issued raised by Mr. Bronskill was the interpretation of the following clause in PV-5364:

"For the transportation of passengers on a scheduled service between points in Ontario."

It is the Board's opinion that this clause allows Autolux the authority to pick-up passengers at any point in Ontario and drop-off those passengers at any other point in Ontario providing the origin and destination of the trip are not within the same municipality. Under the terms of the licence, this service is to be offered "On Demand" and "Door-to-Door."

Applicant:

**Tisdale Bus Lines Limited ("Tisdale")
South Porcupine, ON**

File No.: 23407-U/V

Respondents:

1. Lacroix Bus Lines Inc. ("Lacroix")
2. Autocar Maheux Ltee. ("Maheux")

Applications:

Intra and extra-provincial transfer applications to transfer the operating licences of Rochon's Bus Lines Limited.

Applicant's Case:

The actual sale of the business took place in 2011. Through oversight, Tisdale failed to file the transfer applications concurrently with the negotiated purchase of the licence.

Tisdale alleged that the objections are without merit. The applications are to transfer existing licences from one area bus company to another area bus company.

Lacroix failed to demonstrate how the transfer of the licences would prejudice public necessity and convenience served by the licences. They made several allegations that were not supported by details or specifics.

Tisdale alleged that Maheux is not an "interested person" as defined in the *Public Vehicles Act* and they therefore cannot object to the applications. The transfer applications have no connection to Maheux's operations and they were endeavouring to be obstructionist based solely on business strategy. Tisdale was

operating entirely within the terms of their operating licence and Maheux had no basis to oppose the transfer applications.

Respondents' Case:

Lacroix has been in business for forty years. The decline in population has resulted in a decline in ridership, gross revenue and equipment and utilization. They have objected to the transfer applications because the additional licence will be harmful to their business, both economically and financially.

Maheux stated that they do not have licences that serve Cochrane District but they do have an economic interest in the applications as they have an application pending to serve Detour Gold Mine ("DGM") from points in the District of Cochrane.

Tisdale currently serves DGM without being properly licensed to do so. The Board should consider the illegal practices that are brought to its attention and not approve the transfer applications as it would prejudice the public necessity and convenience served by the licences.

Decision:

Sections 7(1) 7(4) of the *Public Vehicles Act* states:

- (1) No operating licence shall be transferred, directly or indirectly, without the written approval of the Board.
- (4) At the conclusion of the hearing, if the Board is of the opinion that the transfer will not prejudice the public necessity and convenience served by the licence, the Board shall approve the transfer and amend the licence in the name of the transferee and may further amend the licence to contain any provision permitted by subsection 6(7).

Lacroix's opposition to the transfer was presented as if it was an application for a new licence that required the applicant to meet the statutory test of public necessity and convenience, i.e. the applications would have a devastating economic and financial impact on its operations. Pursuant to subsection 7(4) of the *Public Vehicles Act*, Lacroix had to demonstrate how the transfer applications would prejudice the public necessity and convenience served by the licences. In the Board's opinion, they failed to do so and Lacroix's objection was dismissed.

With respect to Maheux's objections, the Board concluded that, as they did not hold any licence with an operational area like or similar to the licence that is the subject of the applications, they did not meet the definition of an "interested party" and their objection was dismissed.

The Board concluded that the transfer of the operating licences to the applicant will not prejudice the public necessity and convenience served by the licences and the applications were granted.

Applicant: Autocar Maheux Ltée ("Maheux") **File No.: 23407-RE(1)**
La Sarre, QC

Respondent: Tisdale Bus Lines Limited ("Tisdale")

Application: An application under Sections 10 and 11 of the *Public Vehicles Act* alleging that Tisdale was operating passenger transportation without holding the appropriate operating licence.

Applicant's Case: Maheux claimed to be an "interested person" as defined in Section 1 of the *Public Vehicles Act*. They have a pending application before the Board to serve Detour Gold Mine ("DGM") in the District of Cochrane and they therefore have an economic interest in the outcome of the matter. Tisdale currently serves DGM and they are not licensed to do so. Maheux requested the Board stop the illegal practices being undertaken by Tisdale.

Respondent's Case: Tisdale alleged that Maheux is not an interested person as defined in Section 1 of the *Public Vehicles Act* and consequently had no standing to file the application and, therefore, the application should be dismissed. Maheux holds no licence to operate in the District of Cochrane and there is no direct economic impact on their operation if the application is granted. Tisdale alleged that the transfer of the operating licence from Rochon's Bus Lines Limited to Tisdale had resolved the issue of improper authority and Maheux's application should therefore be dismissed.

Decision: "Interested person" as defined in the *Public Vehicles Act* means a person who has an economic interest in the outcome of a matter that is within the Board's jurisdiction.

Since the legislation was passed in 1996, the Board's practice has been to interpret an interested person as being a carrier that has an economic interest in a matter because they hold an existing licence that may be economically impacted by the outcome of an application.

To permit anyone without a proper licence to oppose an application or file an application under Sections 10 and 11 of the *Public Vehicles Act*, would create chaos in the industry. An application under Sections 10 and 11 of the *Public Vehicles Act* must be filed by an existing licenced operator that has an economic interest in the matter.

In the Board's opinion, Maheux did not meet the definition of an "interested person" and the application was dismissed.

Applicant: Autocar Maheux Ltée ("Maheux") **File No.: 15150-RE(1)**
La Sarre, QC

Respondent: Rochon's Bus Lines Limited ("Rochon")

Application:

An application under Sections 10 and 11 of the *Public Vehicles Act* alleging that Rochon had failed to carry on operations as a carrier for a continuous period of 30 days.

Applicant's Case:

Maheux claimed to meet the definition of "interested person" as defined in Section 1 of the *Public Vehicles Act* even though they do not serve Cochrane District. They have an application to serve Cochrane District pending before the Board on behalf of Detour Gold Mine ("DGM"). Tisdale Bus Lines Limited ("Tisdale") currently serves DGM but they are not licenced to do so.

Maheux alleged that Rochon has not operated its authorities for many years and, in fact, the whole operation closed down in 2010. As Rochon failed to continuously operate their licence in accordance with its terms and conditions, the Board should cancel their operating licence.

Respondent's Case:

Rochon alleged that:

- Maheux is not an interested person as defined in Section 1 of the *Public Vehicles Act* and they have no immediate economic interest in the matter;
- Tisdale has applied to transfer Rochon's licences. The transfer represents the potential for better service to the community and natural growth of Tisdale's business;
- Maheux has no current licence in the District of Cochrane and they therefore do not have a direct interest in Rochon's licences;
- Section 10(2) of the *Public Vehicles Act* states that the Board may suspend or cancel an operating licence if the licensee failed to carry on operations for a continuous period of thirty days. The language is deliberately permissive and affords the Board wide discretion; and
- Rochon's bus operations were seriously impacted when they lost a school contract in 2011. However, at Rochon's request, the Board did not cancel their licences. The licences were eventually sold to Tisdale Bus Lines Ltd. ("Tisdale"). There is no prejudice to the issue of public necessity and convenience as it applied to Rochon's licences that are being transferred to Tisdale.

Decision:

The sanction powers under Sections 10 and 11 of the *Public Vehicles Act* were introduced in 1996 and licensed carriers were encouraged to monitor illegal operations. They could then, as an interested person, as defined in the *Public Vehicles Act*, file applications with the Board to cancel or suspend operating authorities. Interested persons, as defined in the *Public Vehicles Act*, means a person who has an economic interest in the outcome of the matter that is within the Board's jurisdiction. It has been the Board's practice to interpret an interested person as being a carrier who holds an existing licence that may be economically impacted as a result of unauthorized operations. There is no precedent to file an application under Sections 10 and 11 of the *Public Vehicles Act* by any person that does not hold a licence.

Maheux did have an application pending, but that does not make them an interested party. You have to be the holder of an operating licence that may be economically impacted to qualify as an interested person.

In the Board's opinion, Maheux does not currently hold a licence that may be economically impacted and, therefore, does not meet the definition of an "interested person" as defined in the *Public Vehicles Act*.

The application was dismissed.