Ontario

# Ontario Highway Transport Board

## ANNUAL REPORT 2015

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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, 2015.

Respectfully submitted,

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, 2015.

Respectfully submitted,

Gary R. Stanley
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, 2015)

Gary R. Stanley, Chair, Toronto

Gilles Morin, Member, Ottawa

## *Message from the Chair*

The Ontario Highway Transport Board celebrated its sixtieth anniversary in 2015.

In 1954, the federal government decided that they did not wish to regulate inter-provincial traffic and delegated this responsibility to the provinces under the *Motor Vehicle Transport Act* (1954). A year later, in 1955, the Province of Ontario created the Ontario Highway Transport Board and gave it the authority to regulate and licence both the bus and truck industries extra-provincially and intra-provincially.

The Board administers both federal and provincial legislation, operating as a quasi-judicial, arms-length agency of the Government of Ontario reporting to the Minister of Transportation. In 1987 the trucking industry was de-regulated and now the Board's primary function is to regulate the entry into the business of operating public vehicles as defined in the *Public Vehicles Act* and to regulate the conduct of such undertakings pursuant to the Act.

Throughout the years the Board has continued to streamline the application process for our stakeholders by trying to work with the parties to reach compromises thereby eliminating what could be a costly and time consuming hearing process. Written decisions are made for many of the matters that come to the Board. If a public hearing is absolutely necessary, it is conducted as efficiently as possible to minimize the costs to the parties involved. Board costs related to these hearings are recovered from the parties and together with all the fees for applications are deposited directly into the Consolidated Revenue Fund.

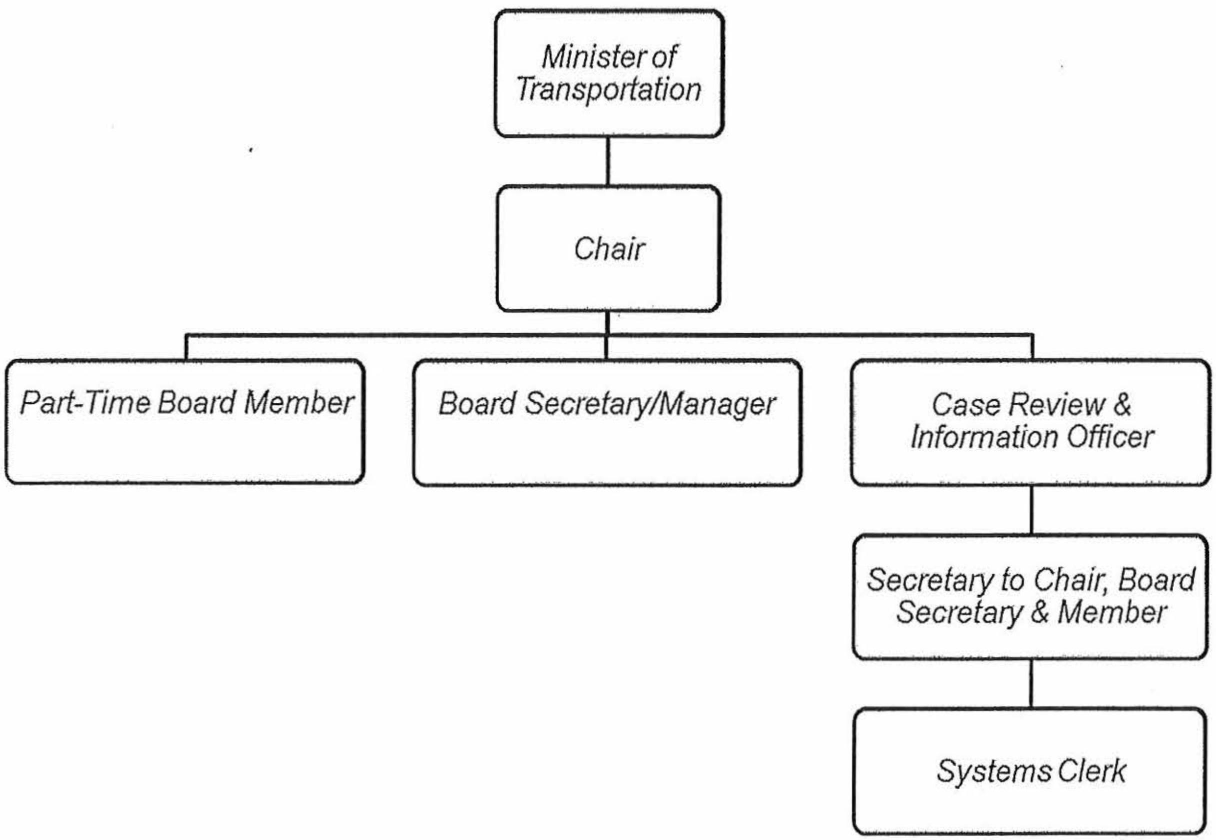
The Board is now staffed entirely by contract and part-time staff yet continues to provide responsive service to our stakeholders and the people of Ontario in a timely fashion meeting all time deadlines set out in the Board's Business Plan.

The Board will continue to ensure that the operators of public vehicles in Ontario operate within the terms of the legislation to the benefit of the traveling public.

***Gary R. Stanley***
***Chair***
***February 2016***

## *Organizational Chart*

## *(at December 31, 2015)*



# *FINANCIAL INFORMATION*

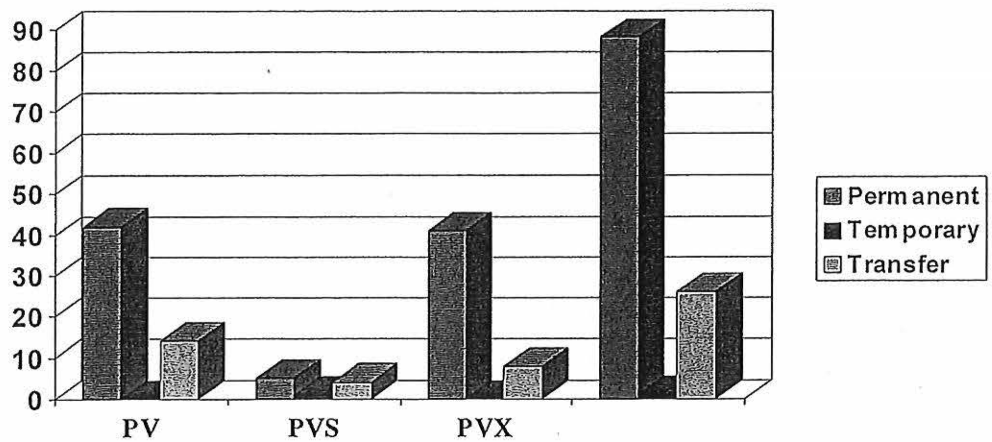
| Revenues/Recoveries (Note 1) | 2015 | 2014 |
|---|---|---|
| Filing Fees | $ 49,532 | $ 60,253 |
| Special Authorities | 3,688 | 3,885 |
| Costs Recovered for Hearings | 17,300 | 12,741 |
| U.S. Exchange | 1,621 | 522 |
| **Total** | **$ 72,141** | **$ 77,401** |

| Expenses | | |
|---|---|---|
| Salaries & Benefits (Note 2) | $ 358,970 | $ 422,269 |
| Travel and Communication | 11,377 | 14,106 |
| Services (Note 2) | 45,025 | 11,881 |
| Equipment and Supplies | 10,855 | 11,594 |
| **Total** | **$ 426,227** | **$ 459,850** |
| | | |
| **Net Cost of Board's Operations** | **$ 354,086** | **$ 382,449** |

**Notes:** 1. Revenues/Recoveries are deposited directly into the Consolidated Revenue Fund.

2. Effective July 9, 2015, the Chair's position was reclassified as part-time. Remuneration since that date is included as "Services." The 2015 Financial Information has been restated to reflect this change.

# *Applications Received*

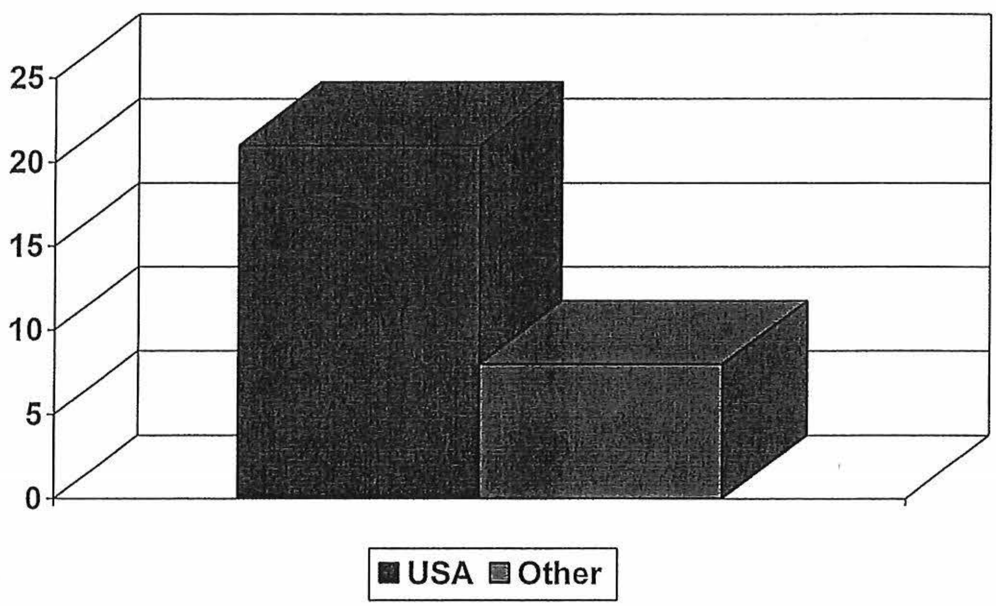



| Type/Class | PV | PVS | PVX | TOTAL |
|---|---|---|---|---|
| Permanent | 42 | 5 | 41 | 88 |
| Temporary | 0 | 1 | 0 | 1 |
| Transfer | 14 | 4 | 8 | 26 |
| TOTAL | 56 | 10 | 49 | 115 |

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. | 21 |
| Other Provinces | 8 |
| **TOTAL** | **29** |

# Applications Received by Region


| Outside Ontario | 16 |
|---|---|
| Manitoba | 1 |
| New Brunswick | 1 |
| Québec | 3 |
| U.S.A. | 11 |

Ontario-Regional Boundaries

| Central Region | 44 |
|---|---|
| Barrie | 2 |
| Durham | 1 |
| Halton | 6 |
| Hamilton | 2 |
| Niagara | 3 |
| Peel | 2 |
| Toronto | 19 |
| York | 9 |

| Northern Region | 7 |
|---|---|
| Cochrane | 2 |
| Nipissing | 1 |
| Sudbury | 3 |
| Timiskaming | 1 |

| North-western Region | 7 |
|---|---|
| Kenora | 2 |
| Thunder Bay | 5 |

| Eastern Region | 19 |
|---|---|
| Hastings | 9 |
| Lennox & Addington | 5 |
| Northumberland | 2 |
| Ottawa | 3 |

| South-western Region | 22 |
|---|---|
| Brant | 2 |
| Bruce | 3 |
| Elgin | 3 |
| Essex | 4 |
| Lambton | 1 |
| Middlesex | 3 |
| Perth | 1 |
| Simcoe | 3 |
| Wellington | 2 |

# Summaries - Reasons for Decisions

**The following summaries of applications for operating licences and applications for sanctions and reviews that were adjudicated by the Board in the 2015 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 by telephone at 416-326-6732 or via email 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.** |

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**Applicant:** **English River Miners Hockey Club Inc. ("English River") Ear Falls, ON** **File No.: 47627/A**

**Respondents:**

1. Iron Range Bus Lines Inc. ("Iron Range")
2. Caribou Coach Transportation Company Inc. ("Caribou")

**Applications:** Intra and extra-provincial applications to transport passengers on chartered trips from the Cities of Dryden and Kenora, the Township of Ear Falls and the Municipality of Red Lake.

**Applicant's Case:** English River is a new service that requires a motor coach for the transportation needs of their Junior "A" hockey team and other hockey clubs in Dryden and Kenora. The current service available is minimal and not economical. They would also like to serve local schools, organizations and businesses in Ear Falls, Red Lake, Kenora and Dryden. They would lower the current exorbitant cost of travel and divert these savings to other programs or needs. They are a local company and this would eliminate the deadhead costs of using licensed carriers not available locally and the additional costs for the driver due to excess hours of work and accommodation. Their cost to the users would be significantly lower than what is now being charged by licensed carriers. There are currently no carriers in Ear Falls, Red Lake or Kenora. Both the respondents are located in Thunder Bay, a six-hour drive and charge exorbitant amounts for their services.

The applications were supported by numerous groups/individuals supporting public necessity and convenience for the service. They were not able to get the service from the licensed carriers because there was no equipment available. With respect to the respondents' comments, English River stated that:

- safety would be of utmost concern and the vehicles would be maintained in accordance with industry standards;
- the coach would be domiciled at Red Lake. All costs have been factored into their proposed rates;
- they were not breaking any laws and passenger safety was not at risk; and
- the respondents could not meet the demands of the customers and they disputed allegations of the financial viability of the team.

In conclusion, English River stated that they had met the test of public need and convenience and should be granted the licences.

**Respondents' Case:**

Iron Range stated that:

- they have been serving northern Ontario with motor coaches since 1940. They serve schools, hockey teams, mining companies, corporations and tours;
- the population is on a decline and there are four other licensed carriers in the area; and
- the organizations supporting the applications are their current customers. They have not complained about the service and are only looking for lower prices. English River's business plan was not based on reality. The potential income was not realistic and the operating expenses were unreasonably low and the operation would not succeed.

Caribou stated that:

- there would be an economic impact on their operations if the applications were granted and strongly refuted the allegations by English River with respect to their operations;
- they have provided a number of trips for the English River Miners Hockey Club and are committed to serve customers in the proposed licence area. Their rate structure was standard and not as alleged by English River. They have served the individuals/teams supporting the applications and had met all their needs; and
- the applications, if granted, would economically impact the licensed carriers who have provided a reliable and cost effective service.

**<u>Decision:</u>**

1. <u>Transportation needs of the public and impact on existing carriers</u>

   Public need in support of the applications was demonstrated by several individuals/groups, i.e. skating and golf clubs, The Red Lake District High School, The Royal Canadian Legion, etc. The Board was cognizant that the respondents may lose some revenue if the licences were granted. However the premise of a locally based carrier made sense economically to members of the community and the Board. English River may find it impossible to meet all the public need in Ear Falls and Red Lake and, in the Board's opinion, the respondents may still retain some of the business. Neither of the respondents provided details with respect to loss of revenue from Ear Falls and Red Lake if the applications were granted. This made it difficult for the Board to assess the extent of any economic impact.

In the Board's opinion, the public evidence in support of the City of Dryden was insufficient to grant the licences.

2. Applicant's ability to provide the service

In the Board's opinion, English River has been operating the motor coach for its own use and had the ability to serve the public need.

**The Board granted English River intra and extra-provincial operating licences to operate chartered trips from the Township of Ear Falls and the Municipality of Red Lake. The applications to serve the Cities of Dryden and Kenora were denied.**

**Applicant:** **FirstCanada ULC o/a "First Student Canada" ("First Student") Burlington, ON** — **File No.: 29594-B48/B49**

**Respondents:**

1. Hammond Transportation Ltd. ("Hammond")
2. Campbell Bus Lines Ltd. ("Campbell")

**Applications:** Intra and extra-provincial applications to transport passengers on chartered trips from points in the District of Muskoka, including the District Municipality of Muskoka, in Class "D" vehicles.

**Applicant's Case:** First Student historically provides student transportation. They primarily provide home-to-school service across Ontario and have an established infrastructure. They are looking to put their capital to better use in serving the larger community. They particularly want to serve the many summer camps and serve the outdoors and recreational needs of the community, particularly the large summer seasonal population.

First Student suggests that Campbell has given tacit approval of the applications and provided no facts or figures to support their assertion that they would be economically impacted if the applications were granted. Hammond was firmly ensconced in the District of Muskoka with a commanding 94% market share of the charter market.

First Student agreed with Hammond's suggestion that any licence issued be restricted to the use of school buses only.

**Respondents' Case:** Hammond has been in business since 1944. They have a large fleet and service all types of groups, individuals and corporations. They actively market their service, participate in local industry associations and sponsor many local events and tourism initiatives. Hammond alleged that First Student failed to meet the statutory test of public necessity and convenience as the public support did not require the service from the prospective licensed area.

Campbell is a third generation family-operated school bus company operating out of the Huntsville area. Its current fleet exceeds 60 buses. In addition to providing school transportation, they also provide charters to residences and summer camps in Class "D" vehicles of various sizes.

Campbell alleged that the loss of income if First Student was licensed would have a detrimental impact on their operations. In excess of 10 carriers are licensed to serve the area and licensing another carrier would have a negative impact on their operations.

**Decision:**

1. Transportation needs of the public

   Although Hammond did dispute some of the public support, First Student did provide the certificates of support from the public for the proposed service.

2. Impact on existing carriers

   Campbell claimed that they would be economically impacted if the applications were granted but provided no detailed evidence as to where this economic impact would originate from, i.e. loss of specific business, etc. Without this evidence it was not possible for the Board to determine the severity of any impact and, accordingly, the Board dismissed their opposition.

   Hammond, on the other hand, offered some sound reasoning why the licences must not be granted. However, in the final analysis, Hammond proposed that if the applications were approved, they should be restricted to the use of school bus type vehicles only.

3. Applicant's ability to provide the service

   The Board had no doubt that First Student had the ability to provide the service as they have been operating successfully for several years.

**The applications were approved but restricted to the use of school buses as defined in Section 175(1) of the *Highway Traffic Act*, R.S.O., 1990, Chapter H.8.**

**Applicant:** **Franklin Coach Lines Limited ("Franklin")** **File No.: 17244-Z/A1**
**Belleville, ON**

**Respondents:**

1. McCoy Travel Limited ("McCoy")
2. 417 Bus Line Ltd. ("417")
3. Delaney Bus Lines Limited ("Delaney")
4. Leduc Bus Lines Ltd. ("Leduc")

**Applications:**

Intra and extra-provincial applications to transport passengers on chartered trips from points in the Cities of Toronto, Hamilton, Ottawa, Quinte West and Kawartha Lakes, the Regional Municipalities of Halton, York, Peel, Durham and Niagara, and the Counties of Haliburton, Hastings, Frontenac, Lanark, Lennox and Addington, Northumberland, Peterborough, Prescott and Russell, Prince Edward, Renfrew and the United Counties of Leeds and Grenville and Stormont, Dundas & Glengarry.

The respondents primarily opposed any licences issued for the Cities of Ottawa. Quinte West and Kawartha Lakes, the Counties of Frontenac, Haliburton, Lanark, Lennox and Addington, Northumberland, Peterborough, Prescott and Russell, Prince Edward and the United Counties of Leeds and Grenville, and Stormont, Dundas & Glengarry.

No opposition was received for the Cities of Toronto and Hamilton, the Regional Municipalities of Halton, York, Peel, Durham and Niagara and the Counties of Hastings and Renfrew and these areas were granted.

Subsequently, Franklin deleted Haliburton from the applications and Hammond withdrew its objection.

Franklin further proposed that for the balance of the applications which are opposed, to add a provision "that the chartered trips would only be those initiated, organized and advertised by Franklin Tours." Franklin also agreed to a further condition at the request of McCoy that "all persons traveling on these charters shall have paid an individual fare to the trip/tour organizer for which they will receive, in return, accommodation, meals or a ticket of admission."

417, Delaney and Leduc did not withdraw their opposition to the applications. They alleged that Franklin had failed to prove the test of public necessity and convenience as they had presented very weak evidence in support of the applications.

**Decision:**

The Board applied two tests to make its decision:

1. did the applicant prove that the issuance of the licences will serve public necessity and convenience?; and
2. did the respondents prove that there would be an economic impact on their operations if the applications were granted?

The Board acknowledged that the chartered trips were only for Franklin's tour company and only for those charters/tours organized, advertised and arranged by the tour company and that all fares paid by the travelling public would be individual fares paid to the tour company. No other charters/tours would be permitted.

In the Board's opinion, the tour company is representative of the public necessity and convenience confirming a need for the service.

The respondents, as interested parties, have to demonstrate that they would be economically impacted if the applications were granted. The onus is on them to provide hard facts to demonstrate how much business and how many jobs would be lost, any decrease in equipment utilization, etc. No such evidence was presented. Without this information, it was not possible for the Board to determine the impact, if any, the applications would have on the respondents. The Board also noted that many licensed carriers chose not to oppose the applications and could therefore only assume that the applications would not economically impact their operations.

**The applications were granted pursuant to the agreements between the parties and chartered trips restricted to Franklin Tours were also approved.**

**Applicant:** **Paradise Toronto Livery Inc. ("Paradise") Vaughan, ON** **File No.: 47560/A**

**Respondents:**
1. Hammond Transportation Ltd. ("Hammond")
2. Hamilton Limo Inc. ("Hamilton")

**Applications:** Intra and extra-provincial applications to transport passengers on chartered trips from points in the Cities of Toronto, Kawartha Lakes and Hamilton, the Counties of Brant, Dufferin, Haldimand, Huron, Northumberland, Oxford, Peterborough and Wellington, the District of Muskoka, the Municipality of Chatham-Kent and the Regional Municipalities of Durham, Halton, Niagara, Peel, Waterloo and York in Class "D" vehicles.

**Applicant's Case:** Paradise operates in Toronto and wants to expand their operations. They are targeting both small and large groups with transportation options for weddings, proms, tours and other special events. Their fleet includes unique vehicles, i.e. pink limousines, stretch hummer limousines and large limo buses. They intend to expand gradually and only as the need arises from their clients. They would not cause any economic hardships to existing carriers as they planned to provide a unique service in unique vehicles that is not available elsewhere. Three event planners supported the applications.

**Respondents' Case:** Paradise withdrew the City of Kawartha Lakes and the District of Muskoka from their application in response to Hammond's objections.

Hamilton has been in business since 2003. They serve the Cities of Hamilton, Toronto, the Regional Municipalities of Niagara, Waterloo and Halton and Brant County, both intra and extra-provincially. They operate 10 vehicles with seating capacities from 10 to 28.

Hamilton claims to offer the same service proposed by Paradise and their revenues have declined annually. They claimed that there is a surplus of stretch limousines and buses in the market to serve the public need. Licensing Paradise would cause "peril and layoffs" to their business.

**Decision:** Paradise responded to Hammond's concerns and Hammond withdrew its opposition to the applications.

With respect to Hamilton's concerns, it was difficult for the Board to assess the economic impact on its operations as Paradise would only be entering their marketplace in response to customer demands for unique equipment that was not currently available. The Board concluded that it would not be economically viable for Paradise to deadhead small limousines into the new market areas to compete with the local companies.

**The applications were granted.**

**Applicant:** **Zoom Tours Inc. ("Zoom")**
**Toronto, ON**
**File No.: 47618/A**

**Respondents:**
1. McCoy Travel Limited. ("McCoy")
2. Optimus Prime Corporation ("Optimus")

**Applications:** Intra and extra-provincial applications to transport passengers on a chartered trip from points in the Cities of Toronto, Hamilton and Ottawa, the Regional Municipalities of Peel, Durham, Halton, Niagara, Waterloo and York, the Counties of Dufferin, Frontenac, Middlesex, Wellington, Bruce, Elgin, Essex, Peterborough, Renfrew, Haliburton, Hastings, Northumberland, Oxford, Perth, Grey and the United Counties of Leeds & Grenville and Stormont, Dundas & Glengarry.

**Applicant's Case:** Zoom stated that:

- they have been in business since 2011 and offer services within the Greater Toronto area, i.e. sight-seeing, corporate meetings, school groups, social events, etc.;
- clients are requesting larger vehicles to a variety of destinations; and they want to offer the lowest possible competitive rates to meet the needs of their clients and provide outstanding and professional customer service.

The applications were supported by a Toronto-based tour company, Co-Operative Students Association and Active Mind's Students Association, York University.

**Respondents' Case:** McCoy stated that:

- they offer chartered bus service throughout Ontario with the majority of the service in Eastern Ontario;
- they provide chartered bus service to St. Lawrence College, Queen's University and numerous elementary and secondary schools in Eastern Ontario;
- their level of utilization has been stagnant. There is no increase in ridership to warrant an additional licensed carrier in Eastern Ontario. It could reduce the current work available for staff and could lead to job losses; and

- there was no public support for the applications to justify the granting of a licence for any region east of Toronto.

Optimus stated that:

- they have been in business since 2003 and serve the City of Ottawa, and the United Counties of Leeds & Grenville and Stormont, Dundas & Glengarry; and
- they have experienced a decline in charter revenue in recent years. An additional licensee would further hinder their declining sales.

**Decision:**

After reviewing the evidence of all parties, the Board concluded that the public support for the applications was inadequate to justify the granting of licences for the vast area. The public support is all based in the Toronto area and does not support chartered trips originating outside of Toronto.

**The Board granted intra and extra-provincial operating licences to transport passengers on chartered trips from Toronto only.**

**Applicant:**

**Sharp Bus Lines Limited ("Sharp")**
**Brantford, ON**

**File No.: 21605-A37**

**Respondents:**

1. Hammond Transportation Limited ("Hammond")
2. Switzer-Carty Transportation Services Inc. ("Switzer-Carty")
3. First Student Inc. ("First Student")
4. Student Transportation of Canada Inc. ("Student")

**Application:**

An intra-provincial application to transport passengers on chartered trips from points in the City of Toronto, the Municipality of Chatham-Kent, the Regional Municipalities of Peel, York and Durham and the Counties of Essex, Middlesex, Elgin, Oxford and Simcoe in Class "D" vehicles.

In response to the opposition, Sharp withdrew the City of Toronto and the Regional Municipalities of Peel and Durham from the application.

**Applicant's Case:**

Sharp stated that:

- the goal is to provide service to current customers in locations that they are currently not licensed to provide service. They currently serve the school boards only; and
- they have a large fleet of equipment located across Ontario which is currently underutilized. They would like to serve the more populated areas of Ontario. They constantly turn away requests from outside charter groups and the demand for vehicles at times is greater than the number of vehicles available. Sharp would offer an additional choice.

The application included two support statements. Shoreline Charters & Tours Inc. ("Shoreline") requires school buses and mini buses frequently during the high season from points in south-western and central Ontario. They have used First Student in the past but the demand outpaces the supply at peak times.

Niagara Airbus Inc. ("Niagara") also supported the application. They required school buses and mini buses frequently during the high season from all points in south-western and central Ontario.

In response to the respondents' objections, Sharp stated that:

- they provide a home-to-school service in Simcoe County and the application, if approved, would allow service for non-school groups in Simcoe;
- the granting of the application would provide more options to businesses;
- shortage of vehicles during peak periods would continue; and
- Sharp has the staff and vehicles to meet the needs of the public.

**Respondents' Case:**

Hammond stated that:

- they provide a reliable transportation service in Simcoe with school bus routes and charter services. They have significant investment in equipment, office employees and drivers. They can meet all peak demands. Their charter service subsidizes some scheduled service where ridership has declined. They can provide Simcoe County's public needs for chartered trips in all types of vehicles;
- their chartered revenue has been on the decline and they see no increase in the travel market in the immediate future. Licensing another carrier would economically impact Hammond's operations and their employees who are dependent on the charter operations for their livelihoods; and
- no evidence was submitted that the current licensed carriers were unable to provide a service when requested or provided a poor service when contracted.

Switzer-Carty stated that:

- they serve Peel, York, Toronto, Simcoe and Windsor-Essex and operate 669 school buses. They primarily serve home-to-school transportation with multi-year contracts with local school boards. They also offer charter services to the general public which accounts for approximately 10% of its total revenue. It has equipment available for public charters at all times. The licensed carriers vigorously compete for the limited business available. The charter revenues subsidize the home-to-school contracts in a major way. Granting the application to Sharp would lead to loss of revenues and severely impact the company's overall viability; and
- support from only two companies for the vast geographic area applied for did not meet the test of public necessity and convenience. The licensed carriers can meet the public demand for charter services and the application should be denied.

First Student stated that:

- they provide school bus service to over thirty-five school boards and also undertake commercial charters. They are the largest charter operator in the province and operate 2,245 school purpose vehicles. They have 16 facilities and employ over 2,000 drivers and operational staff;
- they operate extensive commercial charters for various groups and the growth in this business has been in decline. Vehicles to serve the public are always available and they see no evidence of demand out-stripping supply presently or in the future;
- the total financial impact on their operations, if the application was granted, would be massive both financially and employee reduction; and
- Sharp failed to meet the test of public necessity and convenience with its few supporting witnesses. Licensed carriers can provide the service and fulfil the public need and the application should be denied.

Student stated that:

- they were founded in 1997 and operate 725 school purpose Class "D" vehicles in the geographical area included in the application. They are based in Barrie and have ten branches throughout the territory they serve. They currently have seventy-four full-time staff and eight hundred and forty part-time drivers;
- they provide school busing under contract to school boards. They also provide charter services to church groups, universities, colleges, the Department of National Defence, amateur sports groups, private schools, various clubs and organizations, the motion picture industry, the OPP, hospitals, seniors groups and special events (LPGA, Pan-Am Games, etc.);
- there has been a 3% decline in the public charter business in the past two years. There is an abundance of licensed operators to perform the charter service and meet the needs of the public. The charter revenues supplement the revenues lost as the result of losing a school bus contract. Without the charter service revenues, Student would have to close a branch and over 60 employees would lose their jobs;
- there was inadequate public support for the application to cover a large area. There are currently a significant number of licensed carriers to serve the area applied for and there is an over-supply of vehicles. There was nothing unique about the service requested which could not be provided by the licensed carriers. Granting the application would impact the revenues, jobs, etc. of the licensed carriers; and
- they requested the Board deny the application.

**Decision**

1. <u>The transportation needs of the public</u>

   The two support statements had no complaints against the licensed carriers but wanted the choice of an additional carrier. They offered no specific examples of equipment unavailability. There were no specific examples of a need that was not met by the existing licensed carriers. Sharp alleged that they frequently turned down charter requests from groups, organizations, etc., yet they did not get their support to show a demand for the service. Had they done so, Sharp would have demonstrated a demand and need for the service from the public.

2. The service provided by currently licensed carriers

   Evidence by the respondents indicated that they could meet the needs of the public. There were no complaints about their service.

3. The impact on existing carriers if the application was granted

   The respondents all indicated that there was a decline in revenues, high unused capacity of available equipment and the public had ample choice of carriers. There was no need for another carrier to be licensed. Their charter revenues were on the decline and the Board concluded that granting the application would negatively impact the respondents.

4. The viability of the proposed service and the applicant's ability to provide the service

   Sharp has been in business for many years and, in the Board's opinion, they could provide the service applied for. Sharp had the option of reaching a compromise with the respondents or choosing the option of an oral hearing to prove their case; Sharp chose not to do so.

**The Board denied the application.**

**Applicant:** **Winnipeg Exclusive Bus Tours Inc. o/a "Exclusive Bus Lines" ("Exclusive") Headingley, Manitoba** — **File No.: 47662**

**Respondent:** Beaver Bus Lines Limited ("Beaver")

**Applications:** Intra-provincial application for chartered trips from the City of Kenora and an extra-provincial application to do chartered trips from the City of Kenora and points in the Province of Manitoba.

**Applicant's Case:** Exclusive is licensed in Manitoba and is applying to provide charter services for businesses and groups in Ontario and to take tourists to Winnipeg. They provide fully guided, reliable and fun trips for both short-term and long-term needs. Their market is sightseeing, weddings, corporate events, sports teams, airport shuttles and escorted tours. This service would increase tourism in Ontario and Manitoba. They alleged that there was a shortage of equipment to serve the public need. The applications were supported by four organizations: Keewatin Skating Club, AA/AAA Thistle Council, Beaver Brae Secondary School Athletics and Winnipeg High School Football League. They require motor coaches on a regular basis and it is difficult to get buses during a school season. They have used Beaver at times but the costs are high and they are supporting the applications in the hope that costs can be negotiated.

Exclusive also emphasized that there was no opposition to the applications from any licensed carriers in Ontario. They intend to look for new customers and use new marketing campaigns and also hire local personnel to stimulate the economy.

**Respondent's Case:** Beaver has been in business since 1972 with modern coaches travelling across Canada and the United States. They offer services to schools, universities, colleges, sports teams, churches, corporate groups, seniors and tour companies. Their revenues, in the past year, have decreased by one percent. They have served Keewatin Ice Skating, Beaver Brae and Kenora Thistles. Their rates are competitive. Revenue from Kenora is 4% of their total revenue. Licensing another carrier would cause their revenues to drop and that is the reason for their objection to the application to transport passengers extra-provincially from the City of Kenora.

**Decision:**

1. Transportation needs of the public

   The supporting witnesses require service from Kenora and have used Beaver but they allege that there is a shortage of equipment availability. They were also concerned about the costs of the charters. In the Board's opinion, an additional carrier would assist the public need with respect to the lack of equipment and availability on a regular basis.

2. The economic impact on existing carriers

   Exclusive has marketing plans to develop new business and is not planning to take any of Beaver's share of the market. The Board also noted that Ontario-based carriers, currently licensed to serve Kenora, did not oppose the applications and concluded that the applications would not economically impact their operations.

3. Applicant's ability to provide the service

   Exclusive is an established company with a fleet of seven vehicles and plans to add three more with expansion. They can provide the service for the area covered by the applications.

**The applications were granted as applied for.**

**Applicant:** **A. Filion Bus Line Ltd. ("Filion")**
**Moonbeam, ON**

**File No.: 34075-F/G**

**Respondents:**

1. Blue Bird Bus Lines Inc. ("Blue Bird")
2. Tisdale Bus Lines Limited ("Tisdale")
3. Lacroix Bus Service Inc. ("Lacroix")

**Applications:** Intra and extra-provincial applications for chartered trips from points in the District of Cochrane in Class "D" vehicles.

**Applicant's Case:** Filion is a second-generation bus company, in operation since 1972. They currently serve parts of the District of Cochrane and the applications are to serve the entire District. They want to develop an orderly and sustainable growth and provide more driver employment. They provided an equipment list and photographs of the executive-style Class "D" vehicles they will operate.

Eight individuals, corporations and organizations supported the applications. They have a number of trips every year and have been served by the respondents but they want more competition and lower prices. Ganotec Inc. required a service from Cochrane for their staff to Timmins airport; three return trips, twice a week.

Filion stated that the public support made up of diverse groups required numerous chartered trips throughout the year. The public wants a reliable carrier and was tired of using unsuitable Class "D" vehicles. The City of Timmins is served by one licensee in Class "D" vehicles, i.e. Tisdale. The applications, if granted, would have no impact on the bottom line of the respondents.

**Respondents' Case:** Blue Bird alleged that Cochrane District was suffering an economic slowdown and lay-offs were a regular occurrence. The population was declining and consequently the demand for charter services was declining. Granting the licences would only add to their decline in revenues.

Tisdale has been in business since 1965 and provides charter services in a variety of vehicles. They operate two Class "D" vehicles and serve schools, sports organizations, seniors, weddings, corporate groups, etc. There has been a decline in ridership/revenues. The population is on the decline and lay-offs in industries are common occurrences. Licensing another carrier would have a negative impact on their operation and the applications should be dismissed.

Lacroix, established in 1974, operates Class "D" vehicles and serves the public need. The decline in population and industry has led to declining ridership and revenues. There is nothing unique about the service offered by Filion and the applications should be dismissed.

**Decision:**

1. Transportation needs of the public and impact on existing carriers

   This factor is the most important consideration to determine if the applicant has met the statutory test of public necessity and convenience. The District of Cochrane is made up of thirteen municipalities of which Filion is currently authorized to serve five of them. There was no public support for five other municipalities and the applications for these areas were dismissed. The Board had to decide if the applications warranted the issuance of licences for

Timmins, Cochrane and Hearst.

There were no complaints filed against the services of the respondents. The public sought more competition and better pricing. Timmins is the largest and most populated municipality and Tisdale is the only licensee authorized to serve the city. They primarily operate Class "A" vehicles and, in the Board's opinion, their Class "D" service is inadequate to meet the public need. Also Ganotec Inc. required a dedicated chartered service for its employees from the Town of Cochrane. Filion has the capacity to provide that service.

2. Service provided by currently licensed carriers

   Only one complaint from the supporting witnesses was made. The witnesses primarily wanted the choice of a carrier and the rates being charged. The respondents filed no evidence to indicate that they provide the type of equipment required by the public. The more upscale features of Filion's equipment were unique.

3. Impact on existing carriers if the applications were granted

   The respondents detailed the declining natural resources industry, business closures, decreasing population, shrinking market, etc. The profit margins were very low and adding another carrier would have a serious financial impact on their operations. Filion responded that the economy in north-eastern Ontario was not quite as grim as the respondents claimed and that Tisdale's Class "D" operation originating in Timmins was insignificant to their overall bottom line. The Board is aware that Tisdale's main business is the operation of Class "A" coaches.

4. Applicant's ability to provide the service

   Filion has been in business for forty years and the Board has no doubt that they had the ability to provide the serve.

**Intra and extra-provincial licences were granted to Filion to originate chartered trips from Timmins. An intra-provincial licence to serve Ganotec Inc. from the Town of Cochrane was also granted.**

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| **Applicants:** | **Autocar Maheux Ltee ("Maheux")**<br>**La Sarre, Québec** — **File No.: 47244-B** |
| **Respondents:** | 1. Tisdale Bus Lines Limited ("Tisdale")<br>2. Lacroix Bus Services Inc. ("Lacroix") – prior to the hearing, Lacroix withdrew their opposition. |
| **Application:** | An intra-provincial application to operate chartered trips for Detour Gold Corporation from points in the District of Cochrane. |
| **Applicant's Case:** | Rachel A. Pineault, Vice-President, Human Resources and Aboriginal Affairs, Detour Gold Corporation ("Detour") testified |

that:

- she specializes in opening remote mines from start-up to fully operational. The first gold bar was poured in 2013. The life cycle of the mine is twenty years. Corporate policy is to keep benefits local, use the closest qualified person to Cochrane and have an "Impact Agreement" with the local First Nations people. Detour has a commitment to provide employment, training and to do business with the local First Nations people. In this respect, they had four signed agreements with the First Nations;
- the bus service to the mine site is an absolute necessity and safety was mandatory. She receives all complaints. She had experienced no heat, dust and mechanical problems on three bus trips. The new tender package required the supplier to provide new buses and be located in Cochrane;
- she was not part of the Request for Proposal Process ("RFP"). Maheux is not a local firm and must build/rent facilities in Cochrane. Tisdale is located in Timmins and offered to build a facility in Cochrane; and
- Tisdale has been responsive to any problems and she had nothing negative to say about their service. There were record breaking low temperatures last winter and the road conditions were very poor. She did not deal with complaints as they were handled by a joint consulting group of employees, contractors and Detour.

Stuart Gilray, Supply Chain Superintendent – Detour Mine Site, testified that:

- he is in charge of logistics which included the bus service. The new contract was for five years which was equivalent to the expected life of a bus under the tough road conditions. New buses were required for the upcoming contract which was put to tender;
- he introduced an Incident Report with respect to the problems of the current services. Tisdale always responded to all incidents and resolved the problems on a regular basis;
- prior to the RFP, Detour requested Maheux to make a proposal with respect to the bus service they could offer to and from the mine. The bus schedules are very tight, running 24 hours a day, seven days a week and every hour of delay was money to Detour. He stated that Maheux would meet the needs of Detour;
- any mechanical failures on the buses were caused by the severe weather and road conditions;
- he was a "party to" the RFP but did not make the final decision. The RFP process was rigorous and Maheux's lack of the provincial authority to provide the service should have been "questioned in more depth"; and
- he had no problem with Tisdale's service but price and First Nations' involvement was a factor. They did not consider re-

negotiating with Tisdale without the RFP because it was not a good business practice.

William Small representing Cree Transport testified that:

He brought Detour and Maheux together. They were looking for opportunities to build businesses, recruit drivers and increase employment among First Nations people.

Francois Barette, Vice-President of Maheux testified that:

- at the request of Detour he attended a meeting where he was advised of the bus problems that Detour was experiencing and he offered some solutions. Maheux was experienced in this transportation and they could eliminate the bus problems. They would establish a Cochrane operation with respect to garage facilities, equipment, etc. with Cree Transport, a First Nations partner. This was necessary to bid on the contract;
- they would give Detour the best service they ever had. The buses would be for their exclusive use and the operation would be profitable; and
- he admitted that Maheux did not have the licence to provide the service and therefore did not meet the requirement of the RFP.

**Respondents' Case:**

Joseph J. Parisi (chartered accountant) testified that:

- he had reviewed Tisdale's financial statements from 2001 through 2014. Without the income generated by the Detour contract, the results for Tisdale would have been somewhere between a loss and break even. The Greater Timmins area was in a negative growth phase with very few prospects for the chartered bus industry. The loss of the contract would probably cause Tisdale to reassess their operations or get out of the bus business totally; and
- it was difficult to compare the Tisdale quote with the Maheux quote as there were differences in fuel costs, equipment write-off and the restricted or unrestricted use of the buses.

Ron Malette, General Manager of Tisdale testified that:

- most of the chartered trips were undertaken on weekends and very little in the mid-week. There was a downturn in business because of the lower air fares available;
- the 38 kilometre road used in the Detour service that was not under provincial jurisdiction was not well maintained, resulting in the loss of windshields, tires, etc. Heavy rains resulted in huge potholes. In the winter, there was no snow ploughing. Assisted heating systems were required on the buses because of the extreme low temperatures;
- Tisdale had an excellent safety record. They maintain constant discussions with the manufacturers to mitigate future problems. The wear and tear on the mine roads was double that under normal conditions. The drivers took special training to drive on

the mine road. The new fleet of buses would be very beneficial to the project and would be for the exclusive use of Detour;

- if the Detour contract was lost, Tisdale would service the existing market and downsize the company due to the economic impact; and
- with respect to Tisdale's involvement with First Nations, 5% of the gross profit from the contract is given to an arms-length division of the Taykwa Tagamou Nation to be used for the education of children and training and employment of adults.

Tisdale requested the Board deny the application as Maheux had not met the test of public necessity and convenience.

**Decision:**

1. Transportation needs of the public as seen through the public witnesses:

Two Detour witnesses testified in support of the application. They were aware of a few problems with the bus service. Ms. Pineault knew very little of the RFP tender process and her testimony was of little assistance to the Board in reaching a decision with respect to meeting the statutory test of public necessity and convenience.

On the other hand, Mr. Gilray knew the operation of the mine site very well, i.e. dependable service, keeping in mind the hazards of the mine road and the ravages they took on the buses. All bus incidents were reviewed on a regular basis between Detour and Tisdale. Tisdale always responded to all incidents and resolved the problems.

All parties agreed that new buses would fix many of the problems. The Board did conclude that the road-related problems would be better addressed by better maintenance of the road by Detour for their section of the road. Detour must assume some of the blame for the bus accidents and delays.

Based on Mr. Gilray's testimony, he did not make the final decision to award the tender. The Board then questioned who made the final decision to award the tender. The person who made the final decision did not testify at the hearing in support of the application. Consequently, in the Board's opinion, there was insufficient evidence of public necessity and convenience to grant the application.

2. The service provided by currently licensed carriers

Detour has experienced bus breakdown incidents with the Tisdale service. However, based on the evidence, many of the incidents were beyond Tisdale's control because of the road conditions. Neither Mr. Gilray nor Ms. Pineault had anything negative to say about Tisdale's service. There would be fewer problems with the new buses and the Maheux service would not be any better than the Tisdale service in the future.

3. The impact on existing carriers if the application was granted

   The potential effect on Tisdale's future, should they lose the contract, would be significant. There would be downsizing of the company. Timmins is not experiencing any economic growth and Tisdale would find it difficult to replace the business. Downsizing the company would put the community at risk as there were no other bus companies to fill the void that would be created by Tisdale's closure or downsizing.

   In the Board's opinion, the economic impact on Tisdale's operations would be severe, if the application was granted. There would also be a ripple-down effect on the Greater Timmins area.

4. The viability of the proposed service and the applicant's ability to provide the service

   Based upon the many years of business experience, the Board had no doubt that Maheux was capable of providing the service.

**After reviewing all the evidence, in the Board's opinion, Maheux failed to meet the test of public need and convenience and the application was denied.**