



Ontario Highway Transport Board

ANNUAL REPORT 2016

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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, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Steven Del Duca', is written above the printed name.

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, 2016.

Respectfully submitted,


Gilles Morin
Acting 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.

Member of the Board (as at December 31, 2016)

Gilles Morin, Acting Chair

Message from the Acting Chair

The Ontario Highway Transport Board (O.H.T.B.) administers both federal and provincial 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.

The Board receives two types of applications: applications for new or extended authority and application, filed by interested parties, alleging a contravention of the legislation.

Board staff is spending more time with the opposing parties in an attempt to reach a compromise situation that is acceptable to everyone and thereby eliminating the requirement for a public hearing. This process has dramatically reduced the number of oral hearings thereby reducing costs to the parties and the time involved.

In the event that this is not the case, then the matter will proceed to a public hearing. Prior to the hearing, Board staff will try to bring the parties together in an attempt to shorten the time required for the hearing. This streamlined approach helps to minimize the costs for the parties involved.

Public hearings are held at any location in the Province and at any time of the day or night to facilitate the process for the applicant, respondent and the general public that appear in support of an application.

Hearings are scheduled as promptly as possible given the number of parties sometimes involved in a hearing. Decisions are issued promptly, usually within the two-week target that the Board has set for itself.

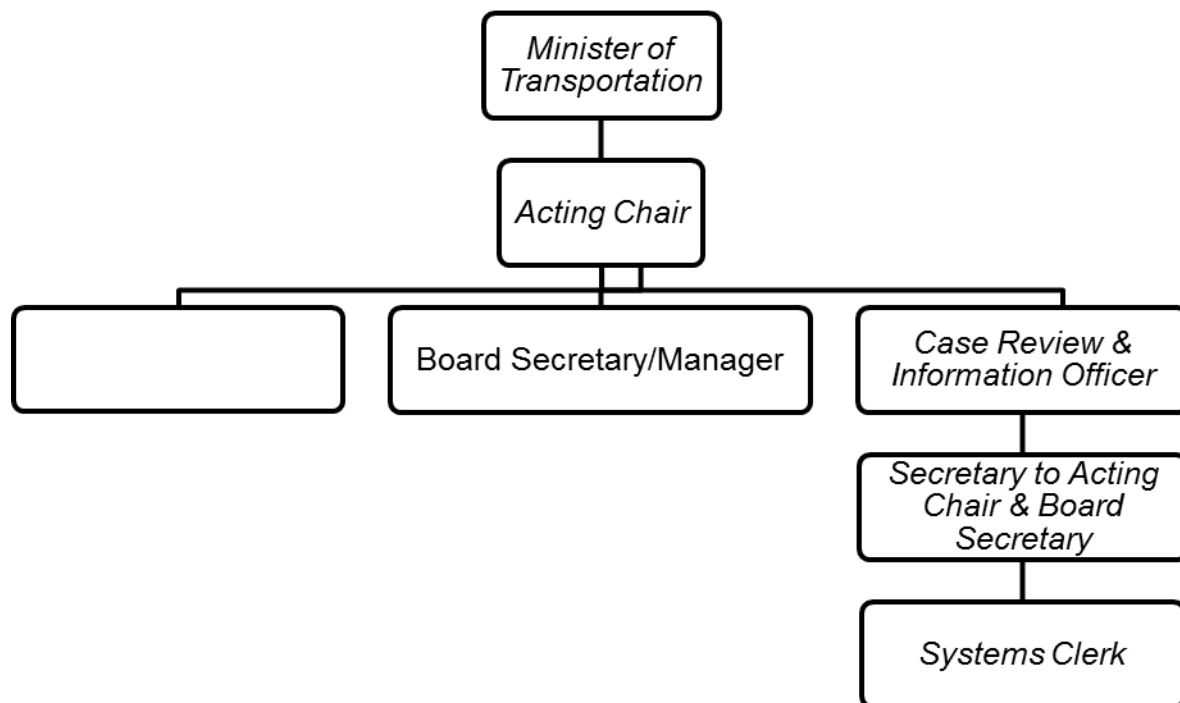
The Board is now staffed entirely by contract and part-time staff yet continues to provide responsive service to our stakeholders and the people of Ontario in a timely fashion meeting all time deadlines set out in the Board's Business Plan. In all matters, the safety of the travelling public is paramount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

The inter-city bus and limousine industry plays a vital role in providing public transportation services to the citizens of Ontario and the Board will continue to ensure that it assists its stakeholders in every possible manner to ensure that the travelling public is well served.

Gilles Morin
Acting Chair

Organizational Chart

(at December 31, 2016)

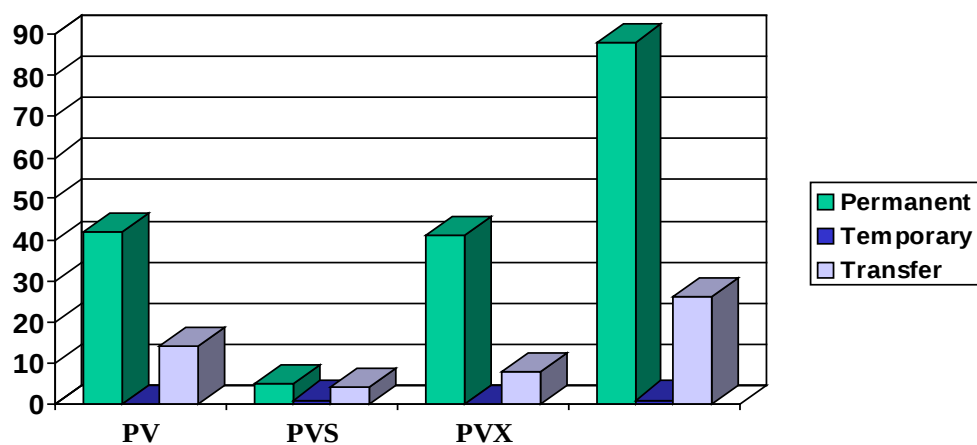


FINANCIAL INFORMATION

<u>Revenues/Recoveries</u>	<u>2016</u>	<u>2015</u>
Filing Fees	\$ 41,788	\$ 49,532
Special Authorities	2,599	3,688
Costs Recovered for Hearings	2,500	17,300
U.S. Exchange	<u>737</u>	<u>1,621</u>
Total	\$ <u>47,624</u>	\$ <u>72,141</u>
<u>Expenses</u>		
Salaries & Benefits	\$ 228,418	\$ 358,970
Travel and Communication	29,916	11,377
Services	89,227	45,025
Equipment and Supplies	<u>12,681</u>	<u>10,855</u>
Total	\$ <u>360,242</u>	\$ <u>426,227</u>
Net Cost of Board's Operations	\$ <u>312,618</u>	\$ <u>354,086</u>

Note: Revenues/Recoveries are deposited directly into the Consolidated Revenue Fund.

Applications Received

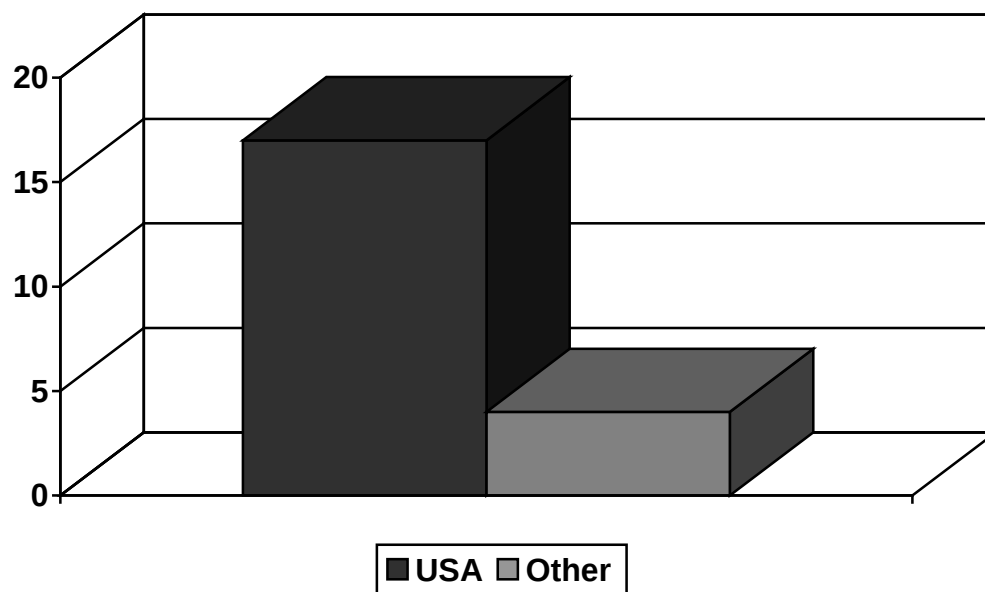


Type/Class	PV	PVS	PVX	TOTAL
Permanent	44	7	40	91
Temporary	9	1	10	20
Transfer	6	1	7	14
TOTAL	59	9	57	125

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)

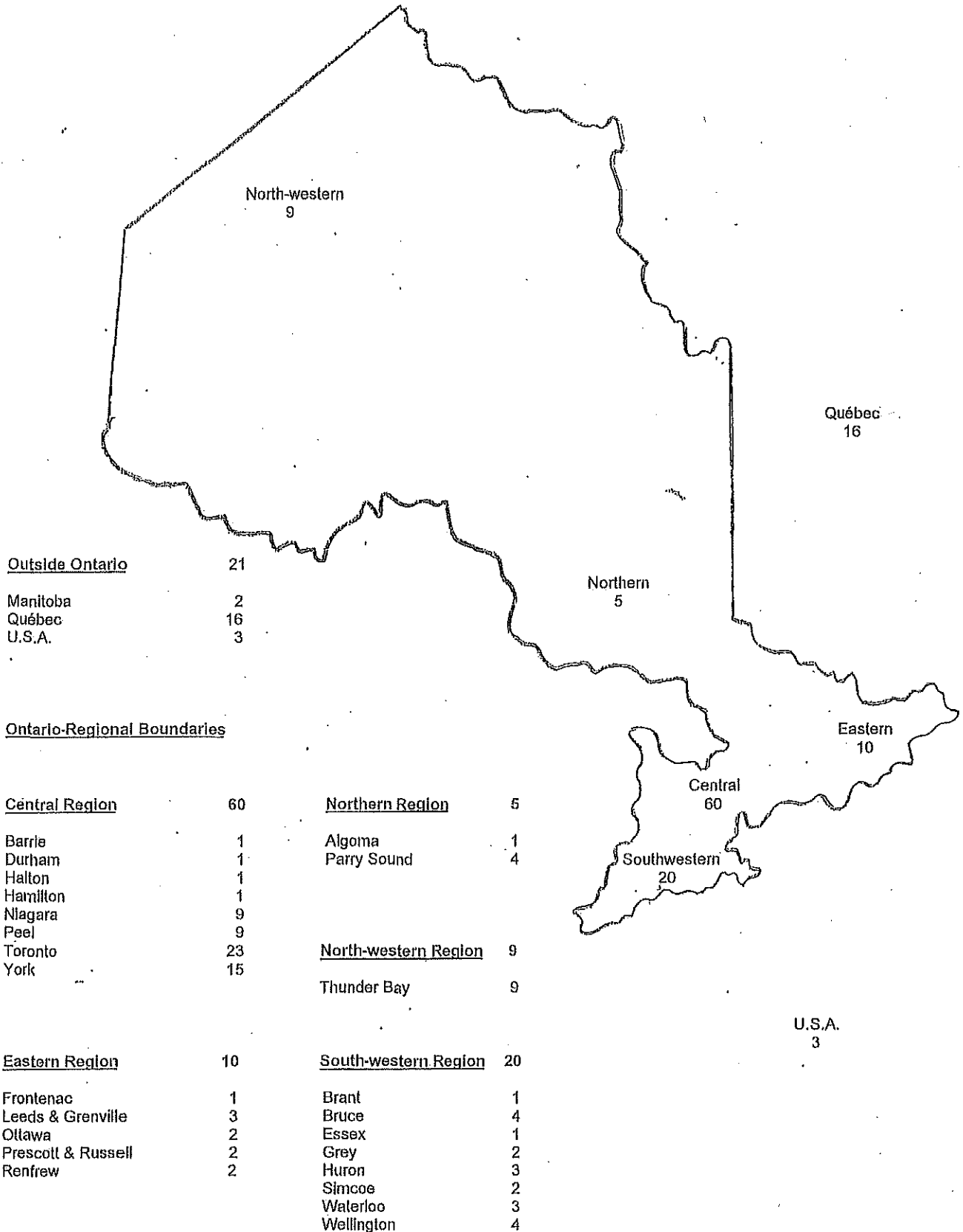
Special Authorities Processed



APPLICANTS' HOME BASE

U.S.A.	17
Other Provinces	<u>4</u>
TOTAL	21

Applications Received by Region



Summaries - Reasons for Decisions

The following summaries of applications for operating licences that were adjudicated by the Board in the 2016 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.**

<u>Applicant:</u>	Martin Abner Fordwich, ON	<u>File No.: 47691/A</u>
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Respondent:	Kunkel Bus Lines Ltd. ("Kunkel")
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Applications:	Intra and extra-provincial applications to transport passengers on chartered trips from points in the Regional Municipality of Waterloo and the Counties of Huron, Perth, Wellington, Bruce and Grey in Class "D" vehicles.
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Respondent's Case:	Kunkel is a third generation family-owned business started in 1953. They provide school bus and motor coach transportation. They operate 103 school bus routes, nine 56-passenger highway coaches, two 34-passenger coaches, 7 dedicated 72-passenger school buses and 2 mini vans for smaller groups. A large portion of their business is to serve local groups, i.e. church, Mennonites, sports teams and tour groups.
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They have seen an increase in school group charters and proposed to increase their fleet size. Kunkel serves groups from points in all of the areas in the proposed applications, including Mennonite groups with whom they have a good relationship. They have invested heavily and were now starting to see revenue generated from the Mennonite community. The introduction of another carrier would

incur significant financial losses to Kunkel.

Decision:

The Board considered the following factors in making its decision:

1. the transportation needs of the public and the economic impact on existing carrier if the applications were granted; and
2. the applicant's ability to provide the service.

1. Transportation needs of the public/Economic impact on existing carrier

The applicant primarily wants to serve the needs of groups that he is affiliated with in two Class "D" public vehicles. They will serve their needs, i.e. attend weddings, etc. in distant communities in Ontario, other provinces and the United States. There is a constant traditional demand for the van service. In the Board's opinion, there was sufficient public support to meet the statutory test of public necessity and convenience in Class "D" public vehicles with a maximum seating capacity of fourteen (14) passengers.

The onus was on Kunkel to prove to the Board that the issuance of operating licences to the applicant would have an economic impact on their operations. Kunkel alleged that they would ensue significant losses if the applications were granted. However, Kunkel provided no information to quantify any alleged anticipated economic impact on their current operation. Without such back-up supporting information, the Board was unable to determine the economic impact on Kunkel's operation if the applications were granted.

The applicant will be limited to Class "D" vehicles with a maximum seating capacity of fourteen (14) passengers and, in the Board's opinion, none of Kunkel's current service will be economically impacted.

2. Applicant's ability to provide the service

The applicant was proposing to set up a very small operation. As a former driver, he is familiar with the day-to-day functional requirements. In the Board's opinion, the applicant has the ability to provide the service.

The applications were granted as applied for with the condition that the applicant will only operate Class "D" vehicles with a maximum seating capacity of fourteen (14) passengers, inclusive of the driver.

Applicant: 2117941 Ontario Inc. **File No.: 46958-B/C**
Brampton, ON

Respondent: Hammond Transportation Limited (“Hammond”)

Applications: Intra and extra-provincial applications to transport passengers on chartered trips from points in the Cities of Ottawa and Kawartha Lakes and the Counties of Brant, Grey, Bruce, Simcoe, Haldimand, Northumberland, Peterborough, Wellington and Oxford.

Applicant’s Case: The applicant has been in business since 2006 and has grown from two motor coaches to the current number of seven. They primarily serve senior social clubs, legions and other service clubs. The applications are made to serve this demand from the public during peak periods from points they are not currently authorized to serve.

They are a small family-run company. 2015 was a very busy year and they predict that 2016 “will be even busier.”

The applications were supported by four organizations briefly summarized as follows:

- they needed various sizes of highway coaches on a weekly/monthly basis, especially during peak periods when there is a shortage of coaches everywhere;
- the coaches would originate from the areas applied for, both intra and extra-provincially. They used the services of the applicant in the past and were very satisfied with the service;
- they are aware of other carriers that provide a good service but were unable to meet the public need during peak periods as there is a shortage of coaches in all areas.

In response to Hammond’s allegations that two of the four supporters of the applications were related to the applicant by virtue of common ownership, they alleged that other carriers also have licence extensions for their own tour companies.

Respondent’s Case: Hammond has been in business since 1944 and has earned a reputation for providing reliable transportation services. They are involved extensively in community and industry activities and support many local charities and tourism initiatives.

Hammond alleged that two of the four supporters of the applications were licensed carriers and not members of the public requiring transportation. One of them was related to the applicant by virtue of common ownership.

There was only one support from Simcoe County and none from the City of Kawartha Lakes. They only operated at 43% capacity during peak periods and did not attain 100% fleet utilization on any day

during the peak period. There was no need established for Simcoe County and the City of Kawartha Lakes and those areas of the applications should be denied.

Decision:

1. Transportation needs of the public

The public support from two licensed carriers and two tour operations was only for additional equipment during peak periods and no mention was made for other times of the year. There was no support from their primary market as stated in their business plan, i.e. senior social clubs, legions and other service clubs.

The support from two licensed carriers was rejected by the Board as they “are not members of the public requiring transportation.” The remaining two other supporting documents from the tour companies were accepted. The lack of support for the applications from the general public in the Board’s opinion was woefully inadequate to meet the statutory test of public necessity and convenience for such a vast geographical area.

2. The economic impact on existing carriers

The Board concurred with Hammond, i.e. there would be an economic impact on their operations if operating licences were granted to serve Simcoe County and the City of Kawartha Lakes.

3. Applicant’s ability to provide the service

In the opinion of the Board, the applicant is an established company and they were not aware of any reason why they could not provide the service for areas covered by the applications.

After reviewing the evidence, the Board granted intra and extra-provincial operating licences to serve CBS Tours 2005 Inc. and MacLaren Tours only from points in the City of Ottawa, the Counties of Brant, Grey, Bruce, Haldimand, Northumberland, Peterborough, Wellington and Oxford.

The charters were restricted to only those initiated, organized and advertised by the tour companies and that all fares paid by the travelling public would be individual fares paid to the tour companies. The applications to serve Simcoe County and the City of Kawartha Lakes were denied.

Applicant:

Kunkel Bus Lines Ltd. (“Kunkel”) Hanover, ON

File No.: 28419-S/T

Applications:

Intra and extra-provincial applications to operate chartered trips from points in the Cities of Hamilton, Kawartha Lakes and Greater Sudbury,

the Regional Municipality of Niagara, the Counties of Haldimand, Norfolk, Northumberland, Peterborough and Haliburton, and the Districts of Muskoka and Parry Sound.

Respondent's Case: Hammond Transportation Limited ("Hammond")

Hammond has been in operation since 1944. They provide scheduled services and chartered trips in large areas of Ontario. They provide luxurious motor coach tours, excursions and escorted holidays from the Muskoka, Parry Sound and Simcoe County areas. They provide highway coaches, activity buses, school buses, wheelchair accessible buses, vans and limousine vehicles, including a limousine bus.

They actively market their services and are also involved in industry associations, community and local sports sponsorships, etc. The introduction of a new charter carrier in their area would significantly affect their charter revenues and line runs. In 2015, Hammond experienced a decline of 8% in the number of charter trips from 2014.

The public support of the applications had no complaints of services provided by licensed carriers and the applications to serve their territory should be denied.

Kawartha Bus Lines Ltd. ("Kawartha")

Kawartha holds a public vehicle (school bus) operating licence to serve school boards. They also hold a public vehicle operating licence to provide chartered trips from the City of Kawartha Lakes in Class "D" vehicles to schools, student groups and sports teams, service clubs, summer camps, weddings, seniors' clubs, hospitals, corporate groups, etc.

They depend on charter revenues as an important part of their business. The charter trip revenues make up 10% of their business and their drivers depend on this income in the summer months when there are no school bus routes.

Campbell Bus Lines Ltd. ("Campbell")

Campbell provides charter trips in their licensed area. They transport school groups, sports teams, seniors' groups, summer camps and private groups in Class "D" vehicles and also provide wheelchair accessible buses.

Ridership has not increased since 2012. There was no public support for the applications in Muskoka and Haliburton. The charter income in the summer ensures the jobs of the office employees, drivers and mechanics. The applications, if granted, would be devastating for the company.

Tisdale Bus Lines Limited (“Tisdale”)

Tisdale is a northern Ontario-based company started in 1965. They provide bus charters and motor coach tours in luxury 56 and 32-passenger motor coaches and serve large areas of north-eastern Ontario, including the Greater Sudbury area.

They serve school groups, sports organizations, seniors, wedding groups, health care organizations, commercial and industrial clients, mining groups and service clubs.

66% of their charter revenues are from the Sudbury and North Bay areas. There is more than an adequate supply of carriers to meet the charter demand in these areas. Granting Kunkel the authority to serve the Sudbury area would have a direct impact on Tisdale's operations. Kunkel failed to meet the statutory test of public necessity and convenience in the Sudbury area. The authority to serve the Greater Sudbury area should be denied.

Based on the objections, Kunkel subsequently amended their applications to operate intra and extra-provincial charter trips from the City of Hamilton, the Regional Municipality of Niagara, the Counties of Haldimand, Norfolk, Northumberland and Peterborough only.

Decision:

Based on the amended applications, all objections to the applications were officially withdrawn.

The applications were granted in the amended terms.

Applicant:

**Beaver Bus Lines Limited (“Beaver”)
Winnipeg, MB**

File No.: 25147-C/D

Respondent:

Caribou Coach Transportation Company Inc. (“Caribou”)

Applications:

Intra and extra-provincial applications to operate charter trips from points in the Districts of Kenora, Rainy River and Thunder Bay.

Applicant's Case:

Beaver has provided intra and extra-provincial charter trips since 1972. They also operate a private school-run and a commuter service in Manitoba. They operate highway coaches and transit buses. They employ 75-80 employees. They also hold operating licences in Ontario authorizing charter trips from points in Jaffary, Melick, Kenora, Keewatin and Sioux Narrows since 2013. The market to be served would be schools, sports teams, seniors' clubs, universities, colleges, armed forces and airlines. There has been a decline in the supply of charter bus availability in northern Ontario. Beaver would be an additional option to serve the public need and also generate additional employment. Fehr-Way Tours Ltd., an affiliate of Beaver, organizes

tours throughout Canada and the U.S.A. and would benefit the public in north-western Ontario.

1. Fehr-Way Tours Ltd.

They require highway coaches all year round for their tours and will originate in the areas applied for and would be destined to all of Canada and the U.S.A. Beaver has given them an excellent service since 1979 with quality motor coaches.

2. Fehr-Way Educational Tours

They need highway coaches all year round from the area applied for and destined to all of Canada and the U.S.A. They use Beaver and their service is always outstanding.

3. North-western Ontario Student Services Consortium

They need highway coaches for school-purpose trips during the school year. The trips will originate from points under the jurisdiction of the consortium and be destined to points in Canada and the U.S.A. They have used the services of other licensed carriers. An additional carrier would be more competitive and result in lower costs.

4. Keewatin-Patricia District School Board

They need highway coaches for school-purpose trips on a weekly and monthly basis and would originate from points under the jurisdiction of the Board. The trips would be destined to points in Canada or the U.S.A. Beaver has the highway coaches to meet their needs. They have used "other carriers and found them expensive." They support Beaver to have more competition and provide pricing reflecting other markets.

5. Rainy River District School Board

They need highway coaches for school field trips and overnight excursions throughout the school year. The pick-ups would be from points under the jurisdiction of the Board and destined to points in Canada and U.S.A. They have not used Beaver in the past. They use other licensed carriers and have faced a bus delay or cancellation due to bus availability. They want enhanced competition and back-up source for buses.

Respondents' Case: Caribou Coach Transportation Company Inc. ("Caribou")

Caribou stated that:

- they had an agreement with Beaver not to do business in certain agreed geographical areas to avoid duplication of services.

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- Beaver's applications violate the agreement. Caribou competes with seven other carriers in the areas applied for by Beaver. They all offer safe, well-maintained coaches with a variety of amenities;
- charter sales in 2015 have shown a decrease of 23%. Due to a decrease in the value of the Canadian dollar, groups travel less to the U.S.A. or do not travel at all due to expenses involved;
 - the issuance of new licences has forced additional competition and the drastic increase of out-of-province/country carriers who operate at lower rates appeals to many groups/organizations. Caribou alleged that the O.H.T.B. continued to overlook the foreign carriers resulting in financial losses to local carriers;
 - Fehr-Way Tours Ltd. & Fehr-Way Educational Tours are subsidiary companies of Beaver and their support should be disallowed. Caribou and other licensed carriers can meet and satisfy all their needs;
 - North-western Ontario Student Services Consortium needs carriers to do their school trips but they do not book the actual service. The trips are booked, arranged and conducted solely by the contact leader at the particular educational institution. The consortium played no role in arranging the trips and can therefore not justify supporting the applications;
 - Keewatin-Patricia District School Board was misled by Beaver with respect to licensing requirements. The Board's assertion that carriers are expensive for some trips was not valid as Beaver is also one of the carriers providing a service in the Kenora District. Caribou remains willing and able to serve the board;
 - they have served Rainy River District School from 2010 to 2013 until the issue of non-payment led to less usage of Caribou's service. As a result of Caribou undertaking other bookings, they were unable to meet the needs of the school board which frustrated them. The school board has used other carriers and an unlicensed carrier. Beaver is based in Manitoba and has an unfair economic advantage due to lower sales tax, fuel prices, fuel tax, operational tax base and labour costs and this will have a direct impact on all existing carriers;
 - in the last year Caribou operated charter trips at an overall operating capacity of only 13%; and
 - they had been advised by Beaver that the O.H.T.B. staff encouraged Beaver to apply for Thunder Bay as well and if that were true, the matter should be investigated.

Should the applications be granted, they and other carriers would be economically impacted. Beaver failed to meet the test of public necessity and the applications should be dismissed.

Applicant's Reply to Respondent's Submissions:

Beaver stated that:

- Caribou said on several occasions that other carriers would be

affected by the applications and yet Caribou was the only carrier to oppose the applications;

- Beaver's subsidiary tour companies market, promote and provide group bus tours in North America for educational and senior groups, schools, colleges and universities. The applications are to expand the area to promote and market tours in north-western Ontario up to and including Thunder Bay, i.e. Maritimes and Agawa Canyon tours, etc.;
- the support from the North-Western Ontario Student Services Consortium, the Keewatin-Patricia District School Board and the Rainy River District School Board was based solely on public need and convenience to have another option for another carrier, i.e. no buses available, proximity of available carriers, competitive pricing, etc.;
- the rates for their services are no different from Caribou's. They provide a fleet of modern highway coaches;
- being located in Manitoba is the choice of the carrier;
- Caribou's assertion that they were only operating at 13% capacity can be attributed to competing with other local carriers and not Beaver's applications;
- no staff at the O.H.T.B. suggested the terms for the proposed service.

The staff ensured that the terms of the applications met Beaver's needs and confirmed it in writing;

- the reason for including Thunder Bay and Rainy River was to allow Fehr-Way Tours the opportunity to promote and market their tours;
- they are prepared to restrict the application to Kenora and Rainy River with the exception of service to Fehr-Way Tours to include Thunder Bay District if this amendment is acceptable to Caribou; and
- more competition would help in driving costs down and providing better service, etc. They are focusing on new markets and there will be no economic impact on Caribou's operations.

Overview

The Board initially addressed the statements/allegations made by Caribou:

- Caribou's agreement with Beaver was not binding on the Board as it was a personal issue that had to be resolved by the parties themselves. The Board's mandate is to determine from the evidence on file, if the issuance of operating licences will serve public necessity and convenience;
- Caribou alleged that the O.H.T.B. has refused to review or investigate an unlicensed carrier providing unlicensed services for many years. The Board stated that enforcement of the *Public Vehicles Act* is by statute undertaken by the Ontario Provincial Police or an enforcement officer of the Ministry of Transportation

only. However, under Sections 10 and 11 of the *Public Vehicles Act*, the Board has the authority to deal with licence suspensions, cancellations, operations, conduct, etc. subject to receiving an application to deal with the matter by an interested person. No such application was received by the Board;

- with respect to Caribou alleging that the Board was issuing new operating licences to applicants resulting in licensed carriers having to compete with additional carriers, the Board stated that Decisions/Reasons for Decisions are issued on all opposed matters. All factors that contributed to the final outcome are outlined. For Caribou to allege that the Board allows applicants to enter the market arbitrarily was unfounded;
- with respect to an increase in out-of-province/country carriers that have lower operating costs, the Board stated that there was no prohibition for anyone to make an application, whether Ontario-based or non-Ontario based. All applications have to meet the statutory test of public necessity and convenience; and
- Board staff do not advise applicants with respect to what areas to apply for. That is the sole jurisdiction of the applicant. The staff ensures that all applications meet the requirements under the *Public Vehicles Act/Regulations*. This was further confirmed by Beaver.

Decision:

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

In their Business Plan, Beaver proposed to provide chartered trips for schools, sports teams, seniors, clubs, universities, colleges, armed forces and airlines from points in the Districts of Thunder Bay, Kenora and Rainy River. Two school boards, a consortium and two subsidiary tour companies of Beaver were the only groups to support the applications. There was no support from other groups proposed in the Business Plan and the Board can only make a decision based on the public support on file. Beaver currently provides the two subsidiary tour companies with an excellent service in Manitoba and wants to provide the same service to the public in north-western Ontario to visit destinations in the Maritimes, U.S.A., etc. Caribou's suggested that, as the tour companies were subsidiaries of Beaver, their evidence should be disregarded. The statement had no merit. Some licensed carriers in Ontario also operate subsidiary tour companies and their operating licences authorize them to provide the service with conditions that the tours are "initiated, organized and advertised" by tour companies only and the rate to be charged to the public is also a condition in the operating licence. Direct service to the general public is prohibited and consequently Caribou and other licensed carriers will not be economically impacted. The public in north-western Ontario will be the beneficiaries of these tours.

The support from the school boards and consortium stated that they have limited travel opportunities due to their geographical location resulting in booked trips where vehicles were not available. More competition would resolve this issue and pricing would reflect the market price. They want to ensure that the weekly/monthly trips would always be served and also ensure competitive pricing. The support had its merits. Caribou was the only carrier to oppose the applications and they have disagreements with the boards/consortium leading to a poor relationship.

Caribou consistently emphasized that licensed carriers in the Districts of Kenora, Rainy River and Thunder Bay would be economically impacted if the applications were approved. However, none of the licensed carriers opposed the applications save and except for Caribou. The Board concluded that the lack of opposition from the licensed carriers was an indication that they would not be economically impacted if the applications were approved. All carriers would still be utilized subject to the needs of the school boards/consortium. The limited travel opportunities, the non-availability of vehicles, lack of competition and competitive pricing ensured that there was a public need and convenience for Beaver's services.

2. Applicant's ability to provide the service

Beaver has been operating successfully for several years and the Board had no doubt that they had the ability to provide the service applied for.

The Board granted Beaver intra and extra-provincial operating licences to serve:

- 1. Fehr-Way Tours Ltd. and Fehr-Way Educational Tours on a chartered trips from points in the Districts of Kenora, Rainy River and Thunder Bay under certain conditions; and**
- 2. North-western Ontario Student Services Consortium, Keewatin-Patricia District School Board and Rainy River District School Board on chartered trips from points in the Districts of Kenora and Rainy River.**