
Ontario Highway Transport Board

ANNUAL REPORT 2019-2020

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To: The Honourable Caroline Mulroney
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 2019.

Respectfully submitted,

Original signed by

Gilles Morin
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

Gilles Morin, Chair

Message from the Chair

The Ontario Highway Transport Board (OHTB) 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 applications filed by interested parties, alleging a contravention of the legislation.

Board staff are spending more time with the opposing parties in an attempt to reach a compromise situation that is acceptable to everyone and that eliminates 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 proceeds to a public hearing. Prior to the hearing, Board staff tries to bring the parties together in an attempt to shorten the time required for the hearing. This streamlined approach helps 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(s) and the general public that appear in support of an application.

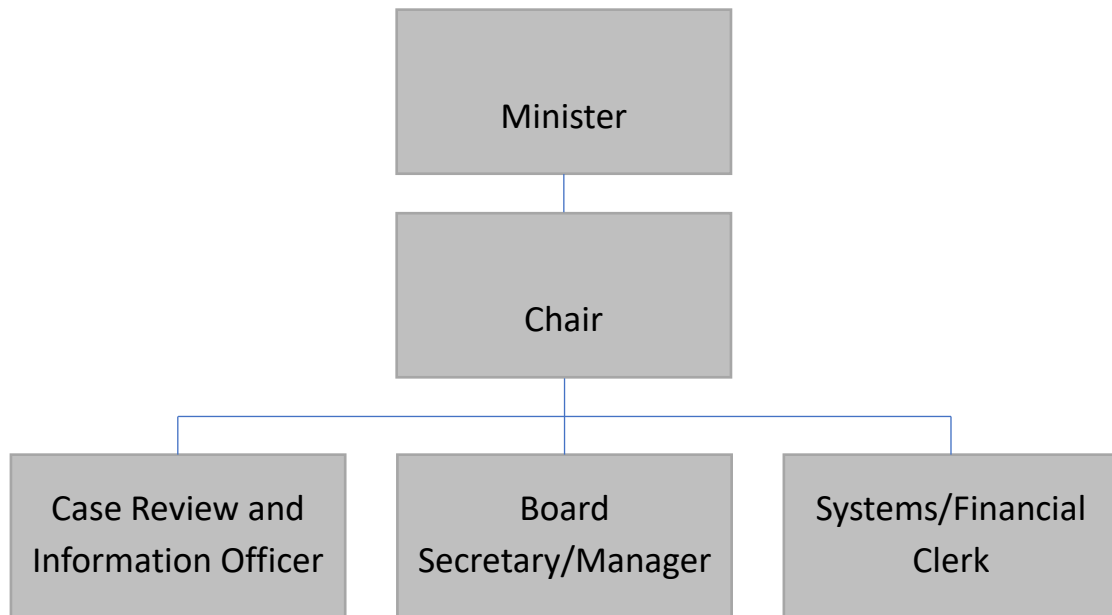
Hearings are scheduled as promptly as possible given the number of parties involved in a hearing. Decisions are issued promptly, usually within the two-week target that the Board has set for itself.

The Board is staffed entirely by full-time 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. There were no recruitment activities performed. 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
Chair

Organizational Chart



Performance Measures

Outcome	Performance Measures	Achievements
Efficient customer service for applications and reviews.	Length of time to render decision after completion of written or oral hearing.	To date, all decisions have been made within 14 days of completion of hearing date.
To provide the highest quality service to the public; efficient response to public complaints.	Length of time to appropriately respond to complaints from the public concerning the quality of service received.	No complaints from the public received.
To provide the highest quality service to the public; efficient and timely response to any inquiry from the public.	Length of time to respond to any inquiry from the public.	All general inquiries responded to within two days.

Financial Information

<u>Revenues/Recoveries</u>¹	<u>2019/2020</u>	<u>2018/2019</u>
Filing Fees	\$46,838	\$44,391
Special Authorities	1,468	2,889
Costs Recovered for Hearings	1,900	9,510
U.S. Exchange	<u>2,390</u>	<u>1,394</u>
Total	<u>\$52,596</u>	<u>\$58,184</u>
<u>Expenses</u>		
Salaries & Benefits	\$218,338	\$223,649
Travel and Communication	5,066	14,970
Services ²	41,908	52,291
Equipment and Supplies	<u>12,596</u>	<u>10,186</u>
Total	<u>\$277,908</u>	<u>\$301,096</u>
Net Cost of Board's Operations	<u>\$225,312</u>	<u>\$242,912</u>

1. Revenues/Recoveries are deposited directly into the Consolidated Revenue Fund
2. The Chair's remuneration is reported under Services. In 2019/20 the Chair's remuneration was \$37,944 and was \$49,300 in 2018/19.

Applications

Special Authorities Processed

Applicant's Home Base	
U.S.A.	10
Other Provinces	3
Total	13

Applications Received

Type/Class	PV	PVS	PVX	TOTAL
Permanent	42	4	41	87
Temporary	7	1	3	11
Transfer	10	1	7	18
Total	59	6	51	116

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)

Applications Received by Region

Outside Ontario 25

Manitoba	2
Québec	2
U.S.A.	21

Ontario Regional Boundaries

Central Region 62

Durham	8
Halton	3
Niagara	1
Peel	16
Simcoe	3
Toronto	15
York	16

Northern Region 6

Algoma	2
Nipissing	1
Parry Sound	2
Sudbury	1

Northwestern Region 2

Thunder Bay	2
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Eastern Region 8

Frontenac	1
Ottawa	5
Peterborough	1
Stormont, Dundas & Glengarry	1

Southwestern Region 13

Elgin	1
Essex	1
Grey	2
Huron	3
Middlesex	6

Hearings Adjudicated

Type of Hearing	Total
Written	2
Oral	0
Total	2

Summaries - Reasons for Decisions

The following summaries of applications for operating licences that were adjudicated by the Board in 2019-20 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.

Applicant: **Driverseat London** **File No.: 47851**
London, Ontario

Respondent: Robert Q's Airbus Inc. ("Robert Q's")

Application: Intra provincial application to transport passengers on chartered trips from points in the County of Middlesex and Lester B. Pearson Airport in the City of Mississauga in Class 'D' vehicles.

Applicant's Case: Driverseat is the fastest growing franchise and makes a difference to the communities they service i.e. integrity, respect and social responsibility and has seen an incredible response from the public. Canada has 54 franchises and 4 in the U.S.A.

They operate five core services:

Shuttle: Private, direct door-to-door for airport transportation, special events, corporate transportation, day trips, employees and student transportation etc.

Airport Chauffeur: A Coachman will drive the customer to the airport in the vehicle and returns the vehicle to the customer's house until the customer's return flight.

Assisted Transport: For those unable to drive their own vehicle, Driverseat supplies a Coachman to drive them to their destination (i.e. medical appointments, excursions transporting students to and from school and appointments etc.)

Vehicle Chauffeur: – For vehicle relocation, fleet management and care, they provide a Coachman to relocate vehicles when people move, need oil changes or large fleets need fleet maintenance.

Designated Driver: Coachmen work in teams of two. Customers who have consumed alcohol are driven home in their own vehicle by one of the drivers. The other driver follows behind in a “chase car” to pick up the first driver.

Driverseat is in the fourth year of operation and have achieved great success servicing various communities in London for their transportation needs (i.e. solutions that are convenient, accessible and affordable). Through the use of technology and telematics, they ensure continuous communication for their client’s and Coachmen.

Since their launch, they have received numerous requests to provide transportation to larger groups to locations outside London (i.e. airports, Toronto, Niagara etc.). There is a significant gap for this type of affordable service in London and surrounding communities such as larger vehicles (9 and 15 passenger vans) and full charter options for their clients. Charter reservations would include private bookings only for customer and their travel companions, direct routes and dropped off, door-to-door pick-ups at residence/business and all rides must be pre-booked. All charters would be a single fare for each ride regardless of the number of passengers.

Charters will be for specialty tours, weddings, corporate functions, special events as well as for the vulnerable sector (i.e., elderly, physical and cognitive disabilities, etc.).

They would also operate charters to Pearson, Detroit, Hamilton and other major airports. Initially they proposed to serve London and Middlesex County, which have grown at a rapid pace due to population growth, retirement facilities, new businesses etc. and are underserved with respect to the service they propose to offer. In the first year of operation they expect to generate \$87,600 net profit.

They summarized that:

- There is a demand for their service i.e. convenient, flexible, consistent and reliable.
- The customer base is large corporations, retirement homes, Western University, Fanshawe College, hotels, etc.
- Driverseat will have the means to provide the service if the application is granted.
- Seven forms to Support an Application were filed by different groups wanting the service.

Respondent's Case: Robert Q's Airbus operate a daily scheduled service between London and Toronto Lester B. Pearson Airport ("Pearson") and also provide Charter Services for dedicated groups.

Driverseat's application was vague and the level of competition was not clear. As a result of extensive additional services from Westjet and Air Canada Jazz, London International Airport was the benefactor of significant growth as there was a decrease in ridership to Pearson and an increase in group transportation in the County of Middlesex. They reduced their work force to avoid a negative economic impact. Driverseat did not define the frequency of their service, the size of vehicles, the schedule and their office location. They were uncertain if Driverseat wanted to compete with their safe, frequent and predictable service in the County of Middlesex. If the competitive landscape were to change, there may be significant job and financial losses.

They also alleged that Driverseat was currently operating illegally between the County of Middlesex and Pearson and the Board should hold an oral hearing to determine the matter.

Applicant's Reply to Respondent's Submissions.

Driverseat stated that:

- Robert Q's is mainly concerned with pick-up of customers at Pearson which will impact them financially. They are a reputable carrier serving the public need with respect to scheduled Airport Shuttle Services.
- Driverseat's proposed service will not operate a scheduled service at any time. They will only operate chartered trips as defined. They will not sell individual fares. They will transport groups in 10-15 passenger vehicles as there is a significant need for this service in the London area. They will not compete with Robert Q's business. Other licensed carriers in the London area have not objected to the application.

Decision:

Transportation needs of the public and impact on existing carriers.

The Driverseat franchise wants to make a difference to the communities they service i.e. providing a service with integrity, respect and social responsibility. Their five-core service i.e. Shuttle/Airport, Chauffeur/Assisted, Transport/Vehicle Chauffeur and Designated Driver has seen an incredible response to its service and business.

The application is to offer chartered trips in larger vehicles for customers and their companions i.e. direct routes, door-to-door

pick-ups etc. It would always be one fare regardless of the numbers of passengers. They would offer specialty tours, weddings, corporate functions, the vulnerable sector, etc. The application was supported by groups wanting this service. Driverseat's proposed service would meet the public need in London and Middlesex which have grown at a rapid pace i.e. population, commercial development, retirement facilities, etc.

Based on the evidence, Driverseat met the test of public necessity and convenience.

Robert Q's has established excellent scheduled services to and from airports. They stated that they operate Charter Services for dedicated groups. The Board questioned if these dedicated groups will use Driverseat's service which is totally different. Robert Q's presented no specific details of financial impact if the application was granted as required by an objector to an application (lost revenues). As none of the licensed carriers in the London areas opposed the application the Board concluded that the Driverseat application was not going to economically impact their operations. With respect to the allegation that Driverseat was currently operating illegally, the Board stated that Robert Q's should have filed an application under Section 11 of the Public Vehicles Act to adjudicate the matter.

Applicant's ability to provide the service.

Driverseat currently operates five successful core services to meet the needs and demand of the public. They are now venturing into the charter market to serve the public.

In the Board's opinion, Driverseat is ready, willing and able to provide the services. The application had met the statutory test of public need and convenience.

The application was granted as applied for.

<u>Applicant:</u>	Sharp Bus Lines Limited ("Sharp") Brantford, Ontario	<u>File No.: 21605-A39</u>
Respondent:	First Student Canada ULC ("First Student")	
Application:	Applies for an extension to public vehicle operating licence PV-5281 as follows: For the transportation of passengers on a scheduled service for employees of Gateway Casinos & Entertainment Limited between the City of Orillia and Casino Rama located in Rama, ON. PROVIDED THAT: 1. The licensee be restricted to the use of Class "D" public vehicles as defined in paragraph (a) (iv) of subsection 1 of Section 7 of	

- Regulation 982 under the Public Vehicles Act, R.S.O. 1990
Chapter P. 54,
2. Chartered trips are prohibited.

Applicant's Case: Sharp was the successful bidder in a procurement process and were awarded a contract by Gateway Casinos of Entertainment Limited ("Gateway") to provide the service applied for. The service would be 365 days a year, 24 hours per day. They currently operate 80 school buses, have a driver pool and have purchased a 24-passenger bus to provide an excellent service. Based on their projected revenues and expenses, they expect to generate a profit. They provided a copy of the contract with Gateway outlining their responsibilities.

Gateway stated that they currently use the services of First Student, but did not state anything with respect to their service i.e. if the services was not meeting the criteria stipulated in the contract etc.

Respondents' Case: First Student are duly licensed and were currently providing the scheduled service for employees of Casino Rama between the City of Orillia and Casino Rama in Rama. They were approached by Casino Rama in 2009 and commenced the service in 2010 and the contract was renewed yearly thereafter.

In 2018, Casino Rama advised them of a new Casino operator i.e. Gateway, who terminated all existing agreements. Gateway then entered into a service agreement with First Student to provide the service to November 30, 2018. Gateway then advised First Student that the contract had been awarded to Sharp. First Student then met with Gateway to indicate displeasure with the award and its regret to lay off valued staff who had provided an excellent service. They also advised Gateway that Sharp did not have the authority to provide the service and this would be in direct contravention of the conditions of the contract i.e. "Contractors, including all sub-contractors, chosen shall be appropriately licensed by the Ontario College of Trades or equivalent, to perform service and labour in relation to the services being rendered."

Gateway then extended the contract to March 31, 2019. Since 2010, they have provided the daily service in a 45-passenger school bus, 24 hours a day, 365 days a year. They employ three full time and five part time drivers. Their service has been stellar with no major accidents/incidents. All minor issues are dealt with promptly.

If Sharp is granted the operating licence, they would sustain a significant economic impact i.e. loss of revenue, employee lay-offs, etc.

Sharp had failed to meet the statutory test of public necessity and convenience. . The Board has ruled on previous occasions, that awarding a contract to a non-licensed carrier does not meet the statutory test of public need and convenience i.e. Autocar Maheux/February 10, 2015.

In the interest of natural justice, they requested an oral hearing to determine the matter.

Applicant's Reply to Objector.

Sharp stated that for reasons stated hereunder the application should be granted without an oral hearing.

1. The allegation that Sharp had to be currently the holder of an operating licence to provide the service is wrong. They should have the licence when it starts providing the service and on the basis of this application, they will meet the requirements.
2. First Student has alleged that they provide an adequate service and Casino Rama should continue using them regardless of other considerations i.e. the cost of doing so. Businesses should be entitled to use alternative services if offered at a lower rate. First Student's allegation that they provide an adequate service was not relevant to determine if Sharp's application should be granted.
3. First Student will not sustain any economic impact if the application is granted as their losses are primarily due to public school business. The public vehicle system is not to protect licenced carriers from legitimate competition but to protect the public's access to public vehicle service. The Board's role is not to protect carriers from fair competition, i.e. applicant offering a less expensive service on the basis of inadequate maintenance practices or by syphoning off revenue which is necessary to provide an important public service. First Student failed to allege any of these circumstances. The Board's role is to protect the public interest in the public service and not the private interest of any private carrier. The Board should approach the school bus licensing system when making the decision i.e. they award the contract to a different carrier and the Board accepts it.

They proposed not to hold an oral hearing and grant the application.

Decision:

The Board has stated many times that the statutory test of public necessity and convenience is incapable of a precise definition because it is a discretionary matter. In the final analysis, it gives consideration to the public needs for transportation, adequacy of existing service, competition level, choice of modes of transportation, public convenience, uniqueness of the service, viability of proposed service, applicant's fitness and impact on existing carriers.

Transportation needs required.

The service is to transport employees of Gateway between Orillia and Rama. The service is 24 hours a day all year long. First Student has been providing this service since 2010. Through a Request for Quote process Gateway awarded the contract to Sharp. The Board did not question the process by which Sharp was awarded the contract. The Board however asked:

1. Is the existing service inadequate?
 2. Are there any delays, failures in the existing service?
 3. Is there a demand for a special service?
 4. Are rates/costs of operation the underlying factor?
-
1. First Student has provided the service since 2010. Nowhere in the application does it state that the current service does not meet the needs of Gateway.
 2. There was no evidence to express delays and failures in the existing service.
 3. There was no demand for a special service that First Student could not provide.
 4. The cost of operation was the primary factor for awarding the contract to Sharp. For Sharp to propose that the Board deal with the application like the process to obtain a public vehicle (school bus) operation had no merit as it was two different processes (i.e. if you are awarded a school contract you automatically get the operating licence. Any other awards, contracts must meet the statutory test of public need and convenience.

Sharp did have the opportunity to hold an oral hearing to enable them to provide all the essential facts but decided against it.

In the Board's opinion, the transportation needs applied for are being met by First Student and they will sustain a definite negative impact on their operation if the application was granted.

The Board ruled that Sharp had not met the statutory test of public necessity and convenience, and the application was denied.