

Ontario Highway Transport Board Annual Report 2021/22



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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 the fiscal year 2021/22.

Respectfully submitted,

David Bradley
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

David Bradley, Chair

Message from the Chair

The Ontario Highway Transport Board (OHTB), was established in 1956 as a quasi-judicial, arms-length agency of the Government of Ontario reporting to the Minister of Transportation. It administers both provincial legislation – the *Ontario Highway Transport Board Act* (OHTB Act) and the *Public Vehicles Act* (PVA) – and the federal *Motor Vehicle Transport Act*. Under this legislation, the OHTB's mandate is to license and enforce the economic regulatory regime for the transport of passengers for compensation in public vehicles within, to and from, Ontario. Its activities include market entry control, licensing and administration, enforcement and sanctioning activities.

Given the critical role intercommunity bus (ICB) operators play in Ontario's transportation system, and as the province safely re-opens following the COVID-19 pandemic, the Government of Ontario has taken action to introduce economic deregulation of the sector.

On December 8, 2020, the Ontario Legislature passed the *Better for People, Smarter for Business Act*, which includes provisions to deregulate the ICB sector and repeal the PVA and the OHTB Act. These legislative and regulatory changes will be proclaimed into force on July 1, 2021, and the OHTB will be dissolved.

Deregulation will contribute to the economic restart by making it easier for bus carriers to fill service gaps and provide better transportation options for the people of Ontario going forward.

Throughout its history, and consistent with its mandate, the OHTB provided timely, efficient and responsive service to its stakeholders and strove to ensure the travelling public was well-served. This was as true during the Board's shortened 2021-22 fiscal year where the regulatory system of licensing remained in force.

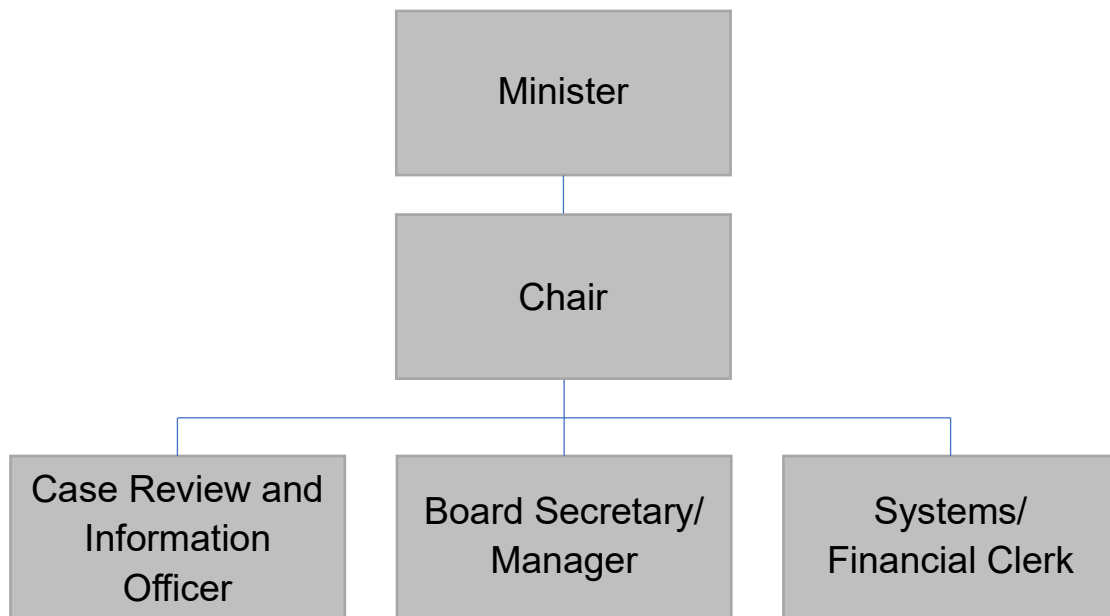
Since the passage of the *Better for People, Smarter for Business Act*, the OHTB staff engaged with the Ministry of Transportation on the post-dissolution management of OHTB records, office space, furniture and equipment, and other administrative wind-down activities.

I would like to express my thanks to the staff. They worked tirelessly to continue to provide excellent service during this period, while also assisting in the transition to the new regulatory regime. Particularly, I would like to recognize the dedication of Felix D'Mello, OHTB's Secretary/Manager, who is retiring after more than 47 years of exemplary service.

David Bradley
Chair

June 23, 2021

Organizational Chart



OHTB Dissolution Activities

After 65 years, the OHTB will end its operations on July 1, 2021. Regular agency operations included responding to public queries, reviewing licence applications, adjudicating hearings and issuing licences. Since January 2021, the OHTB worked collaboratively with the Ministry of Transportation (MTO) to dissolve the OHTB to ensure the agency maintained its accountability while delivering on its mandate.

The following key wind-down activities were performed:

Records Management

OHTB records identified for retention will be shipped to either the Ministry of Government and Consumer Service or Archives Ontario.

Office Space and Furniture

The OHTB's office space and furniture are managed by MTO and will be repurposed or disposed of by the ministry.

Website

The OHTB's website was updated with information on deregulation of the intercommunity bus sector and dissolution of the OHTB. MTO will decommission the agency's website shortly after the agency is dissolved.

Financial Administration

OHTB staff ensured business accounts were settled and closed by the July 1, 2021 dissolution date.

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 and timely responses 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 responses 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

	2021/2022 ²	2020/2021
Revenues/Recoveries¹		
Filing Fees	\$300	\$11,585
Special Authorities	0	0
Costs Recovered for Hearings	1,000	500
U.S. Exchange	<u>0</u>	<u>102</u>
Total	<u>\$1,300</u>	<u>\$12,187</u>
Expenses		
Salaries and Benefits	\$56,540 ³	\$229,536 ⁴
Travel and Communication	606	3,311
Services ⁵	8,048	36,911
Equipment and Supplies	<u>0</u>	<u>3,450</u>
Total	<u>\$65,194</u>	<u>\$273,208</u>
Net Cost of Board's Operations	\$63,894	\$261,021

1. Revenues/Recoveries are deposited directly into the Consolidated Revenue Fund.
2. The 2021/22 fiscal year covers the period from April 1 to June 30, 2021, as the OHTB dissolved on July 1, 2021.
3. Due to payroll and invoice processing timelines, the OHTB's final pay run will be processed in July 2021 and may impact final expense figures. The overall impact to the figures reported above is expected to be minimal.
4. Due to organizational transformation within the Ministry of Transportation (MTO) during fiscal year 2020/21, OHTB staff salaries and benefits were temporarily captured under multiple departments within the ministry, totaling \$229,536.
5. The chair's remuneration is reported under services. In 2021/22 the chair's remuneration was \$7,968.

Applications 2021/22

Special Authorities Processed

Applicant's Home Base	Total
U.S.A.	0
Other Provinces	0
Total	0

Applications Received

Type/Class	PV	PVS	PVX	Total
Permanent	0	0	0	0
Temporary	0	0	1	1
Transfer	0	0	0	0
Total	0	0	1	1

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 - 1

Québec 1

Ontario Regional Boundaries - 0

Hearings Adjudicated

Type of Hearing	Total
Written	1
Oral	0
Total	1

Summary - Reason for Decision 2021/22

Summary of the operating licence application adjudicated by the OHTB in 2021/22.

File No.: 47459-B

Applicant: Gallexy Tours Limited (Gallexy), Toronto, ON

Application: Extra-provincial operation licence for the transportation of passengers on a scheduled service between Toronto, ON and New York, NY via the Gardiner Expressway, Queen Elizabeth Way, Highway 420, USA Highways 62, I-190, I-90, I-490, I-81, I-380, I-80, I-280, I-95 and 495 to/from the Ontario-USA border crossing at the Rainbow International Bridge.

Objectors: Adirondack Transit Lines, Inc. (ATLI); Greyhound Canada Transportation ULC (GCTU); Greyhound Lines Inc. (GLI)

Applicant's Case

Gallexy commenced business in 2011 and operates charter bus services and travel tours throughout Ontario, the rest of Canada and the United States. Its goal is to provide a safe, high quality, reliable and affordable travel service using 56-seat fully accessible coach buses, with power outlets, WIFI, and reasonable seating space.

It will commence service after travel restrictions are lifted at the Canada-USA border, operating one scheduled round trip each day, six days per week, serving several intermediate stops along the route.

It will operate the service under an agreement with FlixBus Inc. (FlixBus) where Gallexy will operate the service as a FlixBus-branded service. Gallexy will own all the buses which will be operated and maintained by their employees. FlixBus will handle ticket sales (through their smartphone app), traffic control, route scheduling, marketing, etc. Gallexy forecast revenues of \$2.295 million and a net profit in the first year of operation.

It will serve people and communities currently overlooked by existing carriers -- those who do not use buses, do not own a car, do not live close to central transportation hubs, are eco-conscious travellers, are tourists from Europe, and/or find existing inter-city bus options too infrequent or inconvenient. Fifteen (15) forms were filed in support of Gallexy's application.

The lack of competition in the inter-city bus market is currently resulting in higher ticket prices. There are currently only two companies providing a similar service to the one proposed by Gallexy so it can be argued the need for competition is not being met. Existing carriers did not offer adequate service to meet customer need even prior to COVID-19. They have not invested in sufficient marketing efforts, have failed to enhance the passenger experience and supply more convenient schedule options.

Gallexy's proposed service, will give the bus industry a new image, helping the existing bus companies to continue to operate.

Objectors' Case

ATLI: Has the authority to provide regularly scheduled line run services as applied for as a through service in an arrangement with GCTU and GLI. GCTU/GLI operates seven daily departures in each direction in the winter and ten in the summer – 365 days a year, seven days a week. Two of these daily trips in each direction are interlined with ATLI, while the rest are interlined with GLI. Due to COVID-19, ATLI and GCTU temporarily suspended all international services until the borders re-open.

Granting the licence to Gallexy would have a significant economic impact on ATLI's operations. The licence Gallexy is seeking will almost certainly divert a portion of existing customers away from the ATLI/GCTU through service. ATLI calculates a minimum total annual loss of revenue to all existing carriers of \$2,199,600 CAD during the first year of operation and the loss to the ATLI/GCTU pool would be approximately of \$1,924,650 CAD. For some time after the resumption of operations along the corridor, ATLI projects the Toronto-New York service will operate at a loss and hardships will be greatly increased if one more competitor is added.

The corridor is currently served by ATLI/GCLU through service, and by Coach Canada/Coach USA's Megabus service, with one departure per day in both directions. Granting the licence to the Applicant would add only one departure in each direction six days per week. There would be no noticeable improvement to the service offering already in place and the addition of another competing service will eventually lead to the requirement to cut existing schedules and negatively affect the services currently offered to the travelling public. The distribution of responsibilities between FlixBus and Gallexy, gives rise to considerable safety concerns.

The application does not meet the test of serving public necessity and convenience. There is no genuine public need to license another carrier on the corridor.

Objectors are ready, willing and able to provide the service when the border re-opens and respond to any increase in public demand. The fifteen (15) statements of support for the application do not reveal great excitement.

GCTU/GLI: Are related companies that hold the required operating licences and can provide the service applied for. They operate seven direct daily departures in each direction in the winter and ten in the summer – 365 days a year, seven days a week. GCTU/GLI combine their fleets, drivers and services to provide a through service between Toronto and New York City. Due to COVID-19, the objectors have temporarily suspended all international services until the Canada-USA border re-opens and travel demand recovers.

Granting the licence to Gallexy would have a significant economic impact on GCTU/GLI's and their partner ATLI's operations. Based on their calculations, there could be a loss of income of \$1,539,720 for the first year of operation. (The loss of top-line revenue for all

incumbent carriers would be \$1,759,680). The economic consequences of the COVID-19 pandemic have been catastrophic -- revenues have been entirely eliminated or drastically reduced but with fixed and some variable costs continuing to be supported.

Before the travelling public resumes their travel patterns and frequencies at pre-pandemic levels, there will be a lengthy period of rebuilding public confidence and assurance in bus travel. The costs of supporting this period by the objectors will far outweigh the revenues. This is not the time to be issuing new licences offering competing service with no benefit for the public.

The application should be rejected as it has not met the minimum requirements for the issuance of a license. Gallexy is unable to say when it will commence operations. Coach Canada also offers an identical service on this Corridor with one departure per day in both directions, making three independent carriers already competing on the corridor. There would be no noticeable improvement to the public service if the application is granted. It would result in negatively impacting the current service offered to the public.

The application has not met the statutory test of serving public necessity and convenience. Objectors are ready, willing and able to provide the service.

The public support is meagre; a majority of the fifteen people who submitted public support forms on file are not aware of current service and/or offered no complaints about the services already provided.

Applicant's Reply to Objectors

Gallexy is fit, willing and able to make the proposed service as a success. Gallexy's detailed written application and 10-year record of providing safe bus service can all speak for themselves. That many of the members of the public who offered support for Gallexy's application have not used the objectors' services in the past should be considered an asset and a failure by the objectors to reach new potential customers.

FlixBus has been intimately involved in assisting with the application and Gallexy will continue to work in close coordination with FlixBus. However, Gallexy is the operator and will own and operate the buses.

Objectors have a reactionary way of doing business and have no plans to take advantage of massive population growth, grow the bus industry or win new customers. They fail to account for the market growth that would occur from Gallexy's new service beyond their customer segmentation.

Objectors claim that public necessity and convenience is currently being met is simply not credible at a time when the largest bus operator in the country does not offer any service whatsoever throughout Canada.

Gallexy has a satisfactory safety rating from the Ontario Ministry of Transportation, compared to a rating of Satisfactory-Unaudited for GCTU/GLI.

Decision

The Board considers the following factors to determine if the application meets the statutory test of public necessity and convenience:

- **Viability of the Proposed Service and the Applicant's Ability to Provide the Service:** Gallexy has been in business since 2011. The proposed service will operate under an agreement with FlixBus. FlixBus will handle ticket sales, traffic control, route scheduling, etc. Based on the evidence, it is the OHTB's opinion that Gallexy is ready, willing and able to provide the services applied for.
- **Impact on Existing Carriers if the Application is Granted:** The introduction of another operator to provide the service would add to the negative economic implications for ATLI and GCTU/GLI. Based on the evidence, it is the OHTB's opinion ATLI and GCTU/GLI will be economically impacted in a negative way if the application is granted.
- **Transportation Needs of the Public:** The public support on file in support of the application indicated a lack of awareness that other operators currently provide the service applied for and/or did not demonstrate the existing service is inadequate. Based on the evidence, it is the opinion of the OHTB that public demand for the proposed service is insufficient to meet the statutory test of public need and convenience.

After reviewing all the evidence, the OHTB is of the opinion that the application has not met the statutory test of public necessity and convenience and therefore the application is denied.