

DECISION

2017 NSUARB 175  
M07432

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE MOTOR CARRIER ACT**

**- and -**

**IN THE MATTER OF THE MOTOR VEHICLE TRANSPORT ACT**

**- and -**

**IN THE MATTER OF** Motor Carrier License No. P00595 and Extra-Provincial Operating License No. XP01078 issued to **STOCK TRANSPORTATION LTD.**

**BEFORE:** Dawna J. Ring, Q.C., Member

**APPLICANT:** **STOCK TRANSPORTATION LIMITED**  
Michael P. Scott, LL.B  
Jeremy P. Smith, LL.B

**BOARD COUNSEL:** S. Bruce Outhouse, Q.C.  
Stacy O'Neill, LL.B

**HEARING DATE:** January 30 and February 1, 2017

**ORAL CLOSING  
SUBMISSIONS:** February 9, 2017

**UNDERTAKINGS** March 30, 2017

**DATE ADVISED  
SUBMISSIONS  
COMPLETE:** April 6, 2017

**DECISION DATE:** **November 14, 2017**

**DECISION:** **The Board will hear from the parties to decide what, if any, terms and conditions it may order for the current school bus services. The remainder of the Licenses are cancelled at dates and under interim terms to be decided. The Board retains jurisdiction to complete these.**

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## I SUMMARY

[1] A Notice of Show Cause Hearing dated December 2, 2016, was issued to Stock Transportation Limited (Stock); its Regional Manager, Troy Phinney; and Director of Charter Services, Tina Coldwell. They were directed to attend before the Board to show why Stock's Motor Carrier License No. P00595 (MC License 595) and Extra-Provincial Operating License No. XP01078 (XP License) and (collectively Licenses) should not be amended, suspended, or cancelled for failure to operate and furnish services in conformity with its Licenses, pursuant to the *Motor Carrier Act*, R.S.N.S. 1989, c. 292 (*MC Act*) and the *Motor Vehicle Transport Act*, R.S.C. 1985, c. 29 (3<sup>rd</sup> Supp.) (*MVT Act*).

[2] Stock was represented by counsel, Michael Scott and Jeremy Smith. The Show Cause proceedings were advanced by Board counsel, S. Bruce Outhouse, Q.C. and Stacy O'Neill. The hearing occurred in the Board's hearing room on January 30 and February 1, 2017. Oral arguments were provided on February 9, 2017. Undertakings were filed and counsel advised the Board on April 6, 2017, that no further submissions would be filed as a result.

[3] The Notice of Show Cause included all documents known to the Board at the time and begins as follows:

**TAKE NOTICE** Stock Transportation Ltd. ("Stock Transportation"), that Troy Phinney and Tina Coldwell are required to attend before the Nova Scotia Utility and Review Board ("Board") to show why Motor Carrier License No. P00595 and Extra-Provincial Operating License No. XP01078 ("Licenses") should not be amended, suspended or cancelled for failure to operate and furnish service in conformity with the Licenses, pursuant to the *Motor Carrier Act* ("MC Act"), R.S.N.S. 1989, c. 292, the *Motor Vehicle Transport Act*, R.S.C. 1985, c. 29 (3<sup>rd</sup> Supp.) ("*Motor Vehicle Transport Act*"), and all orders, rules, regulations and schedules made thereunder, including:

1. using its Highway Motor Coach ("HMC") to transport passengers from and/or to the Province of Nova Scotia contrary to section 4 of the *Motor Vehicle Transport Act*;

2. using its HMC to transport students from Newbridge Academy upon a highway within the Province of Nova Scotia, contrary to s. 7(1) of the *MC Act*,
3. using its HMC and its Vehicle Unit No. 25486 to transport students from Newbridge Academy free of charge, contrary to s. 22 of the *MC Act*;
4. failure to make the HMC available or use the HMC for the purposes set out in the Licenses;
5. resisting or willfully obstructing an inspector in the execution of his or her duty or his or her exercise of powers by not cooperating and providing all requested information to the Motor Carrier Division, Department of Transportation and Infrastructure Renewal, contrary to s. 35(2) of the *MC Act*,
6. failure to charge rates for charter services in conformity with its Licenses contrary to s. 22 & 23(1) of the *MC Act*;
7. leasing its HMC to Newbridge Academy for the transport of students, contrary to s. 7(1) & s. 22 of the *MC Act*, and,
8. any other breaches which become known to the Board in the proceedings.

[Notice of Show Cause Hearing, December 2, 2016, p. 2]

[4] The alleged breaches were also referred to as charges, therefore, either term is used.

[5] The Licenses at risk of being cancelled, suspended and/or amended are those Stock acquired from Perry Rand Transportation Group Limited (Perry Rand) in 2013. Each provides authority for Stock to operate various services. Under both Licenses, Stock is authorized to provide charter services to any organized group and had contract services which have expired. Under MC License 595, Stock is also authorized to provide school bus services for the Conseil Scolaire Acadien Provincial (CSAP) and Annapolis Valley Regional School Board. Stock operates approximately 500 vehicles.

[6] Stock also holds a Motor Carrier License No. P02714 (MC License 2714) under which it operates school bus services for CSAP and the Halifax Regional School Board (also HRSB). This License is not part of this Show Cause proceeding.

[7] The object of the legislation is to ensure there are safe, quality, sustainable motor carrier transportation services for those in and/or coming to Nova Scotia (the Industry). To achieve this, the Legislature regulates the Industry including safety, licensing, inspection, compliance and enforcement.

[8] Motor carriers operating public passenger vehicles on the highways are to do so in accordance with the *Acts*, orders, rules, regulations, schedules and their licenses (s. 22) (collectively also referred to as the "*Acts*"). The Board is given authority to accomplish, administer and enforce the objects of the *Act*. Inspectors of the Motor Carrier Division of the Department of Transportation and Infrastructure Renewal (MCD) are authorized to inspect the vehicles and investigate to ensure compliance. No one is to resist or willfully obstruct inspectors in the exercise of their duties (s. 35(2)).

[9] Safety is the primary concern. These are the largest passenger vehicles on the highways. An accident involving one of these vehicles can cause serious injury or death to the passengers on board and to others travelling on the highway.

[10] The two major components affecting safety are the driver and the vehicle. Comprehensive regulations set specific hours of work and rest to ensure drivers of these vehicles do not fall asleep at the wheel and/or are too tired to drive them safely. Drivers are required to keep daily logs of their hours. Motor carriers are prohibited from requesting their drivers to operate the vehicle beyond their permitted hours or to falsify their logs.

[11] The vehicles are subject to comprehensive inspections twice a year, in addition to any random or roadside inspections. Major deficiencies must be repaired and

the vehicle satisfactorily re-inspected before it may operate again. Minor repairs are generally provided a date for completion.

[12] Ultimately, safety is only achieved by motor carriers' compliance. With thousands of vehicle movements each year, it is impossible, and should be unnecessary, for the inspectors to monitor each vehicle movement, in particular considering the number of vehicle mechanical inspections required each year.

[13] Sustainability of these services in Nova Scotia is achieved by the Board regulating the licensing of the vehicles which mainly includes determining the terms of service and setting rates. The former sets the parameters for the services similar to a seller's territory. Rates must be sufficient to cover the costs of providing quality safe service and a small profit.

[14] Stock's representative at the Show Cause hearing was Mr. Phinney, who became Regional Manager in 2009 and in charge of its offices from Alberta to the Maritime Provinces. The Board also heard from the Director and Acting Manager of the MCD; three previous or current Stock drivers; the CEO of Newbridge Academy (Newbridge) and its Director of Varsity Hockey; and the Director of Sales for Ambassstours.

[15] After hearing from all witnesses and considering all evidence and arguments, the Board finds Stock has repeatedly operated its public passenger vehicles, including its school buses, as it wished and contrary to the Acts, rules, regulations, its Licenses, and orders; even drivers' safety regulations. It was cavalier about these. As Mr. Phinney stated about the first May trip, "we did it anyway".

[16] The Board also finds Stock repeatedly conducted itself in a manner to hide its delinquent operations from being detected. First, while knowing the information, Stock did not answer the questions of the Inspector and the Director of the MCD; provided misleading and/or incomplete information to them; and in one instance, gave false information to a customer to forward on to the MCD.

[17] Second, for movements of some of its vehicles, Stock did not generate, produce, or maintain any of Stock's normal business records including not inputting the movements into its computer programs or maintaining documentation including those required to be kept with drivers' daily logs to ensure compliance with those regulations.

[18] When Stock's delinquent conduct was detected and it was ticketed, Stock would attend before the court and pay a fine, if ordered.

[19] Much of the information became known to the Board through these proceedings and often only after most of the other witnesses had testified. However, the Board finds Stock provided false, misleading and/or incomplete information to the Board in this proceeding, including failing to provide full and accurate responses to Information Requests (IRs).

[20] The Board also finds Stock's behavior before the Show Case Notice, during the proceedings and at the hearing to be somewhat dismissive. As Board Counsel noted, knowing that these Licenses were in jeopardy of being cancelled, it was surprising how little information Mr. Phinney brought before the Board to address Stock's operations.

[21] Other than Ms. Blades, Mr. Phinney was the last witness to testify. When the preceding witnesses provided details of trips, itineraries, dates, groups (information Stock had failed to provide) he confirmed their evidence honestly. Otherwise, the Board

found his evidence to be at times evasive, incomplete, and/or appeared made up as the proceedings advanced.

[22] Furthermore, despite always being represented by legal counsel, Mr. Phinney alleged he did not know the various rules, regulations (even safety ones), the *Acts*, or Board Decisions (not even those relating to Stock), or he blamed others. In summary, the Board finds he lacked credibility. Where evidence of Mr. Phinney and any other witness conflicts, the Board accepts the evidence of the latter.

[23] The Board finds Stock failed to operate in accordance with the *Act*, order, rules, regulations and its Licenses as follows:

1. used its HMC to transport passengers from and/or to the Province of Nova Scotia contrary to section 4 of the *MVT Act*;
2. used its HMC to transport students from Newbridge upon a highway within the Province of Nova Scotia, contrary to s. 7(1) of the *MC Act*;
3. used its HMC and its school bus Vehicle Unit No. 25486 to transport students from Newbridge free of charge, contrary to s. 22 of the *MC Act*;
4. failed to make the HMC available or use the HMC for the purposes set out in the Licenses;
5. resisted and willfully obstructed inspectors in the execution of their duties and powers by not cooperating and providing all requested information to the Motor Carrier Division, contrary to s. 35(2) of the *MC Act*,
6. failed to charge rates for charter services in conformity with its Licenses contrary to s. 22 & 23(1) of the *MC Act*; and
7. leased its HMC with Newbridge for the transport of students, contrary to s. 7(1) & s. 22 of the *MC Act*,

[24] The Board found the following breaches became known during the proceedings:

- (a) used its school buses and/or operated school bus services contrary to s. 7(1) of the *MC Act*;

- (b) misled the Board including failing to provide full and accurate responses to Information Requests contrary to *Board Regulatory Rules 16(2)(a)*;
- (c) joined two licenses together without authority to do so contrary to s. 8(g) of the *Board Public Passenger Motor Carrier Act Regulations*
- (d) transported school officials from the Halifax Regional School Board;
- (e) demanded its drivers drive the HMC after they exceeded their permitted hours of being on duty contrary to s. 12(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*; and
- (f) requested its drivers falsify their Daily Driver's Logs contrary to s. 86(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*.

[25] The Board finds Stock's conduct in the operation of its vehicles in Nova Scotia, in particular its misleading conduct in relation to the MCD and the Board, to exhibit a lack of fitness and willingness to provide safe, quality and proper services in accordance with the *Act*, rules, regulations and orders, even the safety regulations.

[26] The totality of these breaches is a significant concern for the Board.

[27] In addition, Stock's repeated demands that its drivers drive after their regulated permitted 16 hours on duty is very disconcerting. It is contrary to the essential safety regulations for operating its vehicles. Furthermore, by terminating the employment of the two non-unionized employees who resisted these demands, the Board finds as the regulator that Stock sent a message to its other employees that they are to do as they are told or they could lose their job.

[28] The Board is most concerned with the safety of the public including school children.

[29] The Board gave careful consideration to the appropriate remedy and whether to cancel these licenses in their entirety, including the school bus services which represents 98% of Stock's operations.

[30] The Board asked counsel to specifically address this issue and the school bus services in their closing arguments.

[31] After considering all facts, arguments, the breaches, and s. 13 of the *MC Act*, the Board decided it will not cancel Stock's Licenses in their entirety, but will provide Stock with an opportunity to present recommendations to address all of the breaches and concerns set out in this Decision as they relate to its current school bus services. The Board will hear from both counsel before deciding what, if any, terms and conditions may be appropriate for Stock's current school bus services to protect the students. All other services on the Licenses are cancelled. The Board will also hear from counsel on the dates of termination and what, if any, interim terms and conditions should be ordered, other than for the overflow cruise ship services and use of the HMCs which are cancelled immediately, as the cruise ship season for 2017 is finished. The Board retains jurisdiction to complete these.

[32] After Issues and Witnesses, the Board will first provide an overview of the regulation of the Industry. This is done for two reasons; first, it is the basis for the alleged breaches; and second, one of Mr. Phinney's defences to the breaches and/or arguments for the appropriate Remedies is that he did not know the laws and rules applicable to Stock's operations.

## II ISSUES

[33] The general issues are:

- 1) Did Stock fail to operate and furnish motor carrier services in conformity with its Licenses, pursuant to the *MC Act*, *MVT Act*, and all orders, rules, regulations, and schedules made thereunder?
- 2) If there was a failure to operate in conformity with the above, should the Board amend, suspend, and/or cancel Stock's Licenses?

[34] Where the Board has not addressed facts or issues in this Decision, it is because it did not find them to be material to its findings.

[35] The parties have raised some legal issues in relation to the alleged breaches and remedies. These will be addressed under scope of the *MC Act* and/or specific charges.

## III WITNESSES

[36] The following witnesses were called by Board counsel. All testified under subpoena except those with the MCD.

[37] Natalie Aisthorpe was the Director of the MCD from June 3, 2009, to October 18, 2016.

[38] John Penney worked with the MCD for 21 years and was its Chief Inspector from 2009 until October 18, 2016, when he became the Acting Manager.

[39] Trevor MacEachern is the CEO of Newbridge Academy (Newbridge). It is a private sport school. At the relevant times to this proceeding, Newbridge rented space at the Sackville Sports Stadium (Sackville) for grades junior primary to grade five; and at

the East Hants Sportsplex (East Hants) for grades six to 12, as both had ice surfaces. Newbridge owned four 15-passenger vans and one 45-passenger bus.

[40] Patrick Flynn is the Director of the Varsity Hockey Programs at Newbridge.

[41] Sean Buckland is the Director of Sales for Ambassatours, and works with Murphy's on the Water, both related to Absolute Charters Inc. (Ambassatours or Absolute). He worked for Absolute for nine years and was in his current role for the last two. In this capacity, he charters public passenger vehicles to service cruise ships.

[42] Kelly Bishop was a spare driver with Stock commencing February 1, 2016. She had been a driver for three years in Saskatchewan and is trained on all vehicle types operated by Stock, including its mini-buses, buses for special needs children, all three school buses, and HMCs. As a spare driver with Stock, Ms. Bishop did not have a specific run, however, most weeks, she worked five days a week. At the time of the hearing, she was a part-time driver with Ambassatours and also operated her own courier company.

[43] Donald Andrew LePage worked as a spare driver with Stock beginning in November 2015. He mainly drove school buses, but also did work on the HMC. As a spare driver he would attend at Stock's office at 5 o'clock in the morning to be assigned a school run after which he could be asked to do a portion of another run. If covering for someone sick or on leave he could do the same school run for three or four weeks.

[44] Mr. Phinney has been in the transportation business his whole life and in the busing business since 2009.

[45] Stock called Carla Blades as its witness. Ms. Blades had worked for Stock as a school bus driver for five and one-half years. She has also done charter services.

Ms. Blades held other positions in the past, including doing vehicle inspections and part-time dispatcher.

#### **IV INDUSTRY**

[46] For more than 100 years, buses (now public passenger vehicles) have been regulated in Nova Scotia. When the trucking industry was deregulated in Nova Scotia in 1994 and the bus industry in other provinces, the Legislature did not do so for these vehicles.

[47] This overview relates to those that are in the business of carrying people on the highways and providing public passenger transportation, like Stock and the other licensed motor carriers in the Province. It does not address an individual who privately owns one of these vehicles and uses it as a trailer.

[48] In numerous decisions the Board has noted the importance of these services to the public. These include the line-run services (regular route) and tourism as noted below:

[16] The public's interest in the Industry includes the important line-run services used to transport people, many on limited incomes, to medical appointments, school, work, and to visit loved ones and friends. It also provides parcel express services, important to individuals, as well as rural businesses and health services. The public's interest in charter transportation services includes the tourism industry, which is significant to Nova Scotia's economy. The Ivany Report (*"The Report of the Nova Scotia Commission on Building Our New Economy, February 2014"*) stated at p.19, amongst other references, the following:

Geographic and economic realities dictate that Nova Scotia's rural communities, like rural areas everywhere, will continue to rely heavily on sectors like tourism, forestry, fisheries and agriculture, and on production from renewable and non-renewable natural resources.

[17] Consequently, on a macro level the services are important to everyone in the Province and, on a micro level, are important to those either utilizing the services personally, or those operating ancillary businesses serving tourists.

[*Motor Carrier Industry (Re)*, 2015 NSUARB 33]

[49] Nova Scotia has a relatively small population scattered throughout the Province, except in the Halifax and Sydney areas. Capital costs for the Industry are high. For example, a highway motor coach costs in excess of \$500,000 per vehicle. Unlike some other provinces, motor carriers investing in the Industry in Nova Scotia are not provided with grants, subsidies, and/or rebates to assist them in providing these services, except those operating under rural community transportation programs.

[50] To ensure there are safe, quality and sustainable motor carrier transportation services in the Province, the *MC Act* regulates most aspects of the Industry, in particular, safety, licensing, inspection of vehicles, compliance and enforcement.

[51] Under the Federal Government *Motor Vehicle Transport Act*, a person wanting to have authority to operate extra-provincial transportation services must receive a license under the same licensing regime that exists in the Province. Therefore, the *MC Act* also applies to licenses under the *MVT Act* ss. 5 and 6.

[52] No motor carrier is permitted to operate these vehicles without a license or to operate them not in accordance with the license. Section 7 of the *Act* reads:

**License and compliance required**

7 (1) Except as herein provided, no person, either as principal or by an agent or employee, shall operate a public passenger vehicle upon a highway within the Province

(a) without holding a license issued by the Board allowing the vehicle to be so operated; or

(b) in a manner, at a place or for a purpose that is not authorized by the terms of his license.

(2) No motor carrier shall operate a public passenger vehicle under the license issued to him other than a public passenger vehicle designated in such license.

[53] Section 4 of the *MVT Act* states the same:

**Operation without licence prohibited**

**4** Where in any province a licence is, by the law of the province, required for the operation of a local bus undertaking, no person shall operate an extra-provincial bus undertaking in that province except under and in accordance with a licence issued under the authority of this Act.

[54] A person must operate in accordance with the Acts, orders, rules, regulations, schedules, and its license; s.7 and 22. Failure to do so constitutes sufficient cause for remedies including cancellation. Section 22 reads:

**Failure to comply**

**22** A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, and the failure of a motor carrier so to conform shall, in addition to constituting an offence against this Act, be good and sufficient cause for the suspension or cancellation or both by the Board of the license issued to the motor carrier, or for the suspension or cancellation by the Board of part of the license or of any authorization issued to the motor carrier.

[55] This language is restated on the front page of every license and references the applicable statute. For the MC Licenses, it reads:

**Stock Transportation Ltd.**  
51 Frazee Ave  
Dartmouth, NS B3B 1Z4

All services shall be furnished in accordance with this License, the Motor Carrier Act and Regulations.

[Exhibit, S-1 to S-4]

[56] Immediately following the above, the Licenses reference the failure to operate accordingly:

Failure to operate in accordance with this license, the Act and Regulations shall be good and sufficient cause for the Board to amend, suspend or cancel this License in addition to any prosecution.

[Exhibit, S-1 to S-4]

[57] Safety is paramount. These are the largest passenger vehicles on the highway. The school bus may carry up to 76 students. A highway motor coach may carry 58 adults. Articulated coaches are larger. Generally, these vehicles do not have

seatbelts. An accident with one of them can cause serious injury or death to those travelling in them as well as any others it hits travelling on the highway, such as a family in a small car.

[58] In addition to drivers having the proper license to operate the vehicle, there are both federal and provincial comprehensive regulations setting the maximum number of hours drivers are permitted to be on duty, drive the vehicle, and minimum rest periods per day and per work cycles.

[59] Under the *MVT Act*, are the *Commercial Vehicle Drivers Hours of Service Regulations (Drivers Regulations)*. For transportation solely within the Province, the *Motor Vehicle Act* R.S., c. 293, s. 1., applies to the *MC Act* pursuant to s. 4. Under the *Motor Vehicle Act* are the *Commercial Vehicle Drivers' Hours of Service Regulations (Nova Scotia Regulations)*. Both of these *Regulations* are similar in nature, but not identical.

[60] It is the *Drivers Regulations* under the *MVT Act* that are applicable in this case and, therefore, the following is a general review. Drivers are not permitted to operate these vehicles after having been on duty for 14 hours (s. 12(2)), unless rotating with other drivers, which extends it to 16 hours.

[61] No one is permitted to request or allow a driver to operate one of the vehicles beyond that time period. *Drivers Regulation 12(2)* reads:

**Daily Driving and On-duty Time**

**12(2)** No motor carrier shall request, require or allow a driver to drive and no driver shall drive after the driver has accumulated 14 hours of on-duty time in a day.

[62] Drivers are required to keep daily logs noting each hour they are on duty, driving, or resting, regardless of the reason for the movement. No motor carrier can

request, require or allow any person to enter inaccurate information into the daily log or to falsify it (86(2)). The logs must be maintained by the motor carrier for six months, along with supporting documentation (85(3)(b)). The latter is defined as any document to assess compliance with the regulations. In the Nova Scotia *Regulations* supporting documents is defined as:

“supporting document” means a document or information that is recorded or stored by any means and that is required by the director or an inspector to assess compliance with these regulations, and includes fuel receipts, bills of lading, shipping documents and accommodation receipts.

[63] *Drivers Regulations* require the production of the daily log books, supporting documents and other relevant records requested by an Inspector (99(1)):

**99 (1)** A motor carrier shall, during business hours, at the request of an inspector, immediately make available for inspection at a place specified by the inspector daily logs, supporting documents and other relevant records as well as any permit a driver may be driving under or have been driving under during the period for which the inspector makes the request for the documents.

[64] The vehicles are thoroughly inspected twice a year. An Inspector can also require the vehicle for a random or roadside check.

[65] Pursuant to s. 34 of the *MC Act*, the Inspectors are authorized to enforce the provisions of the *Act* and the *Regulations* pertaining to the conduct of the motor carrier, take necessary measures to prevent the operation of a vehicle by the motor carrier not complying with the terms and conditions of the *Act*, and any other duties given by the Minister. A person may not resist or willfully obstruct an Inspector in the execution of their duties or the exercise of their powers under this *Act* or *Regulation* (s. 35(2)).

[66] To ensure there is safe, quality, sustainable motor transportation services in the Province, the *MC Act* directs the Board to license and administer the legislation to achieve those goals.

[67] In determining whether a person should receive and/or maintain their license, quality and safety are paramount. The Board is to consider whether the motor carrier has the fitness, willingness, and ability to provide quality permanent, and proper service (s. 13(c)).

[68] Sustainability is also an important component of the licensing provisions. This is accomplished by the Board determining the area, the size, type of vehicles, number of vehicles, and the type of service the motor carrier is permitted to do. Every license is restricted by certain terms and conditions (s. 16). The service component is like a seller's territory.

[69] If there are too many vehicles in an area there will not be sufficient revenue generated to sustain the services. Consequently, the *Act* requires the Board to determine whether licensing further vehicles in a particular area will cause an excess of equipment. The Board is also to take into consideration whether the Applicant has complied with its License, which also includes all *Acts* and *Regulations* (s. 13(a)).

[70] The Board can also take into consideration public interest and any other matter that is relevant. These are set out in s. 13, which reads as follows:

**Factors Considered**

**13** Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

[71] The Board must also set rates (s. 27(1)(c)) that are sufficient to cover the costs of providing the services and a small profit. Rates are generally the greater of the number of kilometers travelled or time. Kilometers include those with passengers (live) and those without (deadhead). The latter is from the company's equipment point, usually its place of business. The kilometers a vehicle travels to pick up a charter group may be a significant number. Time is usually by hour during a one day charter and daily for a multi-day trip. Charges that do not cover the costs of operating this service can be predatory and affect the carriers, the Industry, and ultimately impact or reduce the services to the public.

[72] If a carrier wishes to operate the vehicles for services not on its license, it can apply to the Board to amend its license to include them (s. 12), or apply for a trip permit or temporary authority under s. 9.

[73] To be given a license is a privilege and does not provide any perpetual rights, s. 10(1).

[74] The Board has been granted the power to do any act necessary and advisable for the effective exercise of its power in the administration of the *Act* and *Regulations* (s. 27(1)(e)) and powers to enforce compliance (s. 29).

[75] If a motor carrier fails to operate in accordance with the *Act*, it is considered good and sufficient cause for the cancellation, amendment and/or suspension of its Licenses (s. 22) as well as constituting an offence under the *Act* and liable to a penalty

on the first offence between \$250 and \$5,000 or any subsequent offence between \$500 and \$5,000 (s. 37).

## **V     FACTS**

[76]           As one of Stock's arguments is that it did not know the laws and regulations affecting its services and operations under the *Act*, the Board begins with Stock's knowledge and then reviews the facts from 2009 when Mr. Phinney became its Regional Manager. The Board reviews the facts to the Notice of Show Cause and those facts that became known during this proceeding. For the latter, some of the facts and events are reviewed in this section, but many are noted under the specific alleged breaches/charges in the Findings section. At the end of this section is a Timeline of the pertinent events.

### **1.     Stock and Knowledge**

[77]           Stock is the Canadian subsidiary of the National Express Company (NEC), which is one of the largest bus companies in the world. It has revenues in excess of one billion dollars per year. Mr. Phinney is the Regional Manager for Stock's offices for Alberta and Nova Scotia. Stock has approximately 1,600 employees and 1,300 vehicles in Canada, and in Nova Scotia approximately 600 employees and 500 vehicles. It is the largest motor carrier in Nova Scotia. Ninety-eight percent (98%) of its work is school bus services.

[78]           In closing arguments, Stock's counsel (also Stock) acknowledged Stock is a motor carrier in the business of transporting people in passenger vehicles for gain. Witnesses had testified this was their understanding of Stock's business, including Mr. MacEachern (Transcript, pp. 102-103).

[79] Although Mr. Phinney acknowledged Stock used legal counsel before the Board including for its Licenses, transfer of Perry Rand's Licenses, prior 2015 Amendment Application and this Show Cause hearing, he stated he lacked knowledge of the information pertinent to the operation of these vehicles and services as exhibited by his testimony below.

[80] Mr. Phinney "breezed over" the *Motor Carrier Act and Regulations*:

The Chair: And have you had occasion to read the *Motor Carrier Act and Regulations* when you first came here?

Mr. Phinney: I breezed over it, yes.

[Transcript, February 1, 2017, p. 637]

[81] Mr. Phinney stated he did not know drivers were on duty if not resting in a sleeper berth until the August 2016 trip.

[82] Mr. Phinney did not know about the "tagging" of licenses:

The Chair: Do you know anything about tagging?

Mr. Phinney: Pardon me?

The Chair: Tagging of licences?

Mr. Phinney: No.

[*ibid*, p. 646]

[83] Mr. Phinney testified he had never heard of a temporary license:

Mr. Scott: There was reference yesterday made by Ms. Aisthorpe that you could have gotten some sort of temporary licence or something to deal with the same issue that you were you trying to address with either the lease or doing it by free. Before yesterday, have you ever heard of that?

Mr. Phinney: No, I have not.

[*ibid*, p. 615]

[84] On re-examination, Board counsel introduced a Temporary Authority (TA) Application submitted by Stock in 2015 to use its four HMCs for cruise ship services

[Exhibit S-21]. It was signed by Dwight Keeping, who is Stock's Safety Manager in Stock's executive offices. Mr. Phinney testified he was not aware of the TA Application. A letter from the Board dated September 28, 2015, denied the TA. Mr. Phinney stated that was the first time he saw the letter.

[85] Mr. Phinney held the erroneous views that a motor carrier would be automatically granted authority on its license to service a contract awarded under a public tender (Tender or Request for Proposal (RFP)), without a public hearing, and the carrier could charge any amount of money, including zero. He was not told that by anyone from the Board nor did he read it in a decision of the Board.

Mr. Outhouse: Now, I just want to ask you again, to be clear, and I know that you have stated you felt that because this was a tender request, as it's called here, that you could bid to Newbridge whatever price you like; you could have bid zero, you could have bid \$10; you could have done whatever you like?

Mr. Phinney: That's -- yes.

[*ibid*, p. 560]

Mr. Outhouse: Sorry; if there was an RFP you wouldn't need a licence?

Mr. Phinney: That if it was an RFP licence, that our licence would be granted under the RFP. That's what we were told during that time.

...

Mr. Outhouse: But you were never told that by the Board?

Mr. Phinney: No, sir.

Mr. Outhouse: And that never appeared in any decision of the Board.

Mr. Phinney: Again, I don't even recall reading the decision by the Board, sir.

[*ibid*, pp. 632-633]

[86] Regarding the Notice of Hearing dated June 2, 2012, provided to the Industry for the Board's generic hearing regarding discounts, including contracts and Tenders/RFPs, Mr. Phinney stated he did not see this. He suspects no one else at Stock

saw it either. He was not aware of the proceedings, nor did he read the *Motor Carrier Industry (Re)*, 2015 NSUARB 33 (CanLII) (*Discount Decision*):

The Chair: Okay. Are you aware that the Board issued decisions in relation to discounts, and specifically contracts?

Mr. Phinney: I am not aware, no.

[*ibid*, p. 639]

[87] Stock alleged lacking knowledge about invoicing for the HMC charter services, Mr. Phinney stated:

Mr. Scott: Right. Was it your intention to charge for that?

Mr. Phinney: We didn't know -- that's just our -- in our infancy, we didn't know what we're doing so we just left it as no.

[*ibid*, p. 619]

Stock's Undertaking from its Amendment Application, Exhibit S-6 in this proceeding, showed numerous charter invoices. The Board notes invoicing does not differ by vehicle, only the rate varies.

[88] Mr. Phinney stated he did not know how much a HMC is worth:

Mr. Phinney: I have no idea; [\$]150,000.

[*ibid*, p. 577]

[89] Regarding the Inspectors, without knowing their actual education background, Mr. Phinney acknowledged they inspect the mechanical aspects of the buses.

[90] He does not regularly read the Board's Decisions:

The Chair: So do you regularly read any of the decisions of the Board on issues like this?

Mr. Phinney: I would be embarrassed to say that I do. No, I don't.

[*ibid*, p. 640]

[91] Mr. Phinney did not recall reading the Decision of its Amendment Application, *Stock Decision 2016 NSUARB 16*:

Mr. Outhouse: And with respect to that application, you said that you attended the hearing.

Mr. Phinney: Yes, I did.

Mr. Outhouse: And you read the decision?

Mr. Phinney: I may have breezed over it, yes.

Mr. Outhouse: But there was a settlement agreement that hearing, wasn't there, between you and the other carrier with respect to the use of the vehicles.

Mr. Phinney: I do believe -- you want to ---

Mr. Outhouse: I will.

...

Mr. Outhouse: I'm just going to read you a couple of passages from the decision and see ---

Mr. Phinney: Sure.

Mr. Outhouse: --- if you read them and are familiar with them.

This is about the settlement agreement, it says:

"The parties agreed to very strict use of the highway motor coaches. Without the agreement, the Board would not have granted any authorization for the use of these highway motor coaches." (As read)

Do you remember that statement?

Mr. Phinney: No, I don't.

...

Mr. Phinney: Again, I don't even recall reading the decision by the Board, sir.

Mr. Outhouse: Well, I'll take you to another passage from it. After laying out the restrictions on the licence in detail as we reviewed them earlier this morning ---

Mr. Phinney: Yeah.

Mr. Outhouse: --- the Board referred to the rates that you were proposing; that is, your company was proposing to charge for the service and it said this:

“After careful consideration, and with the limited evidence provided by Stock in this case, the Board finds its proposed rates in general are too low and potentially predatory.

Furthermore, the Board finds Stock failed to show the proposed rates were fair and reasonable for the services it was providing. The Board, therefore, sets the rates outlined in this decision.” (As read)

So your proposed rates the Board found that they were too low, perhaps even predatory, and set different rates; correct?

Mr. Phinney: I don't recall.

Mr. Outhouse: You don't recall that.

The Board said this in its decision:

“As there is no need for these HMC vehicles in an unrestricted charter market in Nova Scotia, and considering the negative impact they would have on the industry, an expansion of the HMC authority beyond the above restrictions would not be permitted.” (As read)

Do you recall that?

Mr. Phinney: No, sir. [Emphasis added]

[*ibid*, pp. 629-635]

[92] The Board's Order from the *Stock* Decision specifically referenced contracts Stock had on its Licenses that were to be removed and had to proceed through the public hearing process. These included contracts with Capital Health and Public Works. When asked about this Order, Mr. Phinney stated he did not understand it, but, once again, stated he 'breezed through it'.

## 2. Before Notice of Show Cause

[93] When Mr. Phinney became Stock's Regional Manager in 2009, the economic downturn or the Great Recession, as described in the Ivany Report (The Report on the Nova Scotia Commission on Building Our New Economy, February 2014) had just begun in 2008. This affected the motor carrier Industry in Nova Scotia. As carriers

requested permission from the Board to grant larger discounts and their year-end financial statements showed little or no profit margins, the Board held a generic hearing on discounts. The Notice was published in the Royal Gazette on March 7, 2014. The Board engaged an economist, Michael Gardner, of Gardner Pinfold Consulting Inc., to address various issues, including the impact of discounting methods on the sustainability of the Industry, *Discount Decision* at paras. 30 to 33, 34, 38 to 39.

[94] When the initial hearing was adjourned, the Board issued an interim *Discount Decision*, 2013 NSUARB 21 CanLII, on January 2, 2013. The Board determined all contracts seeking to charge below the motor carrier's licensed rates, including those resulting from a Tender or RFP, had to advance through the *MC Act* public hearing application process and subject to an analysis under s. 13. In the interim, no one would be licensed to provide a discount of more than 20% below the rates set by the Board, subject to any case specific evidence the Board found would justify a variation.

[95] On December 3, 2013, the Board approved the transfer of Perry Rand Licenses to Stock. These are the two Licenses that are the subject of this Show Cause proceeding.

[96] The *Discount Review* hearings and submissions took place in 2014 with the Board issuing its Decision on February 24, 2015. The Board amongst other things set the following minimum rates for all HMCs:

	<b>Daily Rate</b>	<b>Hourly Rate</b>	<b>Kilometre Live</b>	<b>Deadhead</b>	<b>Layover Rate</b>
2015	\$1,150	\$115	\$2.60	\$2.35	\$700
2016	\$1,200	\$120	\$2.70	\$2.45	\$725
2017	\$1,250	\$125	\$2.85	\$2.55	\$750
Plus applicable taxes.					

[97] On April 10, 2015, Stock applied to the Board to amend these Licenses to, amongst other things, change various charter rates, add four highway motor coaches to its charter services and set HMC rates. The 2015 Applications were opposed by virtually all licensed motor carriers in the Province operating HMCs and by another operating vehicles with 36 seats or more.

[98] The Board's Decision of these Applications is *Stock 2016 NSUARB 16*. In this section it is generally referred to as the Decision, otherwise it is referenced as the *Stock Decision*.

[99] The background information included that Stock had approximately 600 employees in Nova Scotia, 3,200 in Canada and 42,000 worldwide. Ninety-eight percent (98%) of its services in Nova Scotia are school bus services. It operates approximately 500 school buses, 13 mini-coaches, semi-coaches and activity buses (paras. 16 and 17).

[100] Stock is one of many companies operating around the world under the ownership of the NEC. Stock's sister company in the United States is Durham Schools. An inter-company bulletin from NEC noted the four HMC vehicles were available. Mr. Phinney said they were already owned by NEC; therefore, they were essentially paid for. Consequently, Stock did not care if these HMCs made money (paras. 19-21).

[101] The Decision summarizes Mr. Phinney's testimony that, as part of Stock's responses to RFP, Stock did, and would in the future, include the HMCs as an added benefit for School Boards (para. 22).

[102] The Decision notes Mr. Phinney acknowledged Stock's HMC could have a significant negative impact on the other motor carriers (para. 31).

[103] At the close of Stock's evidence, the parties reached an Agreement regarding the use of the HMCs. Stock, therefore, requested its Applications be amended to adopt the Agreement which restricted the use of its HMCs to solely providing overflow cruise ship services under contract with a licensed motor carrier and as the last vehicles to be used for such services, with a seating capacity of more than 36 seats. They could not be used for any other services, including, but not limited to, schools, charters and tours (paras. 52-61).

[104] This meant the vehicles could only be used under the MC License 595 and only within the Province. Consequently, Stock was no longer requesting that portion of its XP License Amendment Application to authorize the use of the HMCs for extra-provincial transportation movements.

[105] As Stock's representatives were unsure whether it was properly charging its deadhead rates for charter services, it gave an Undertaking to provide a range of charter invoices (Charter Undertaking).

[106] Prior to Stock completing the Charter Undertakings, the Board issued its Decision regarding deadhead charges on November 24, 2015, (*Nova Scotia Motor Carrier Industry (Re)*, 2015 NSUARB 246 (Can LII) (*Deadhead Decision*)). The Board confirmed there would be no change to the requirement for motor carriers to charge their licensed deadhead rates for all kilometers their vehicles travelled without passengers from and to the carrier's equipment point, before and after the transportation services with its charter passengers.

[107] After Stock substantially completed the Charter Undertaking, the Board issued the Stock Decision on February 26, 2016. The Board amended many of Stock's

charter rates on both Licenses effective immediately, addressed its contract services, and decided its MC License 595 would not be amended to add the HMCs and overflow cruise ship services until there was full compliance with the Undertaking (paras. 8, 32, and 163).

[108] In the Decision, the Board permitted Stock's amendment requests and adopted the Agreement with modifications. The Board's reasons included some background information and an analysis of the evidence and Agreement. This included information about sustainability of motor carrier services for the public, some of the unique factors affecting it in Nova Scotia, and the *MC Act* achieving this through the Board's licensing of all aspects of the Industry including the motor carriers, the number and types/sizes of vehicles, location and areas of services, and rates (74-83). For the latter, it stated at para. 83 as follows:

[83] Rates need to be sufficient to recover the cost of providing the service with a profit and are essential for the repair and replacement of vehicles; important for safe, quality services; sustainability; and permanence of the service; as noted in s.13(c) of the *MC Act*. Insufficient rates can be predatory, result in an unhealthy Industry, a loss of carriers, and, ultimately, a loss of services for the public, *Deadhead Decision*.

[109] The Decision reviewed the Board's recent *Discount* and *Deadhead* Decisions. It also summarized the Board's adoption of the expert opinions of Mr. Gardner including that all forms of discounting are a zero-sum gain; that is, work attained by one carrier through discounts was merely taking work from another motor carrier; reduced the carriers' revenues; and in the long term, would impact the sustainability of the motor carriers and therefore, these transportation services to the public (paras. 84-95).

[110] The *Stock* Decision outlined the Board's review of all evidence and s. 13 considerations and found that, but for the Agreement, Stock would not have been granted the amendments to its Licenses to use these four HMCs for numerous reasons. One in

particular was that there would be an excess of equipment in the Province. The Board's comments included the following:

[102] At the time the Agreement was reached between the parties, Stock had presented all of its evidence to the Board and had closed its case. To fully appreciate this Decision, it is important to note, the Board finds Stock failed to prove the provisions of s.13 of the *MC Act* for its initial Applications seeking unrestricted use of these highway motor coaches for all charters. In particular, Stock had failed to prove there was a need for four (4) additional HMCs in the Province, and as such, these vehicles would result in an excess of equipment if its initial proposal of unrestricted amendments to the licenses were granted.

...

[108] The restrictions agreed to by the parties are very important for the sustainability of the licensed carriers in the Province and, therefore, are critical to the Board's approval of the use of these highway motor coaches for the reasons noted below.

[109] The sustainability of the existing licensed carriers who have already made the investment of funds, time and energy into vehicles currently servicing the cruise ship industry in the Province, is pivotal to this case. To achieve their sustainability, the Board will remain diligent in its regulation of the types and number of vehicles, and their rates, as the Industry moves forward from the prior poor economic years until their financial health improves. This will require, for example, seeing an increase in the utilization of the existing carrier's licensed fleets and/or approving license expansion requests, before the Board approves adding other vehicles into various market areas. This is particularly important for those existing licensed carriers who have experienced the most significant financial difficulties due to the negative effects of the various factors noted above, including discounts and not charging deadhead rates. Many are smaller carriers and/or in rural communities.

[110] May to November are the main months for the licensed carriers' short tourism season in Nova Scotia. As noted above, 30% of Coach's annual revenues are generated from September and October alone. This is when all carriers have to make their money or "get it done". Consequently, the licensed carriers require both the charter and cruise ship work during those months to be sustainable.

[111] The most critical components of these agreed restrictions are that they are designed not to impact this existing charter or cruise ship work which all licensed carriers rely on.

[112] Stock is prohibited from doing any charter work for anyone, including for its contracted School Boards, as they are currently using the existing licensed carriers for their HMC needs.

[113] Stock is also not permitted to do any cruise ship work if any of the licensed carriers have equipment available. Under this restriction, it includes vehicles beyond the HMC to those with a seating capacity of 36 passengers or more, to address the other vehicles of carriers, like Mac Tours, that are used by Absolute for cruise ship services.

[111] The Board emphasized how important strict adherence to these restrictions were to the success of this type of model:

[119] Strict adherence to the above by Stock, and other carrier's subcontracting its services, will be very important to the success of this model agreed to by the carriers.

[112] The Board noted the HMCs were not sustainable with the small amount of overflow cruise ship work. The Board, therefore, noted that if Stock determined it no longer wanted to provide the overflow cruise ship services with these restrictions, then Stock could request an abandonment of its authority to operate its HMCs:

[122] Stock knows these highway motor coaches are not sustainable with their authority in Nova Scotia alone, has agreed to these restrictive terms and, therefore, has assumed the risks of embarking on this venture. As noted above, Stock has also used these vehicles in New Brunswick.

[123] If Stock determines it no longer wants to provide the services with these restrictions, then Stock may request the abandonment of its authority to operate these highway motor coaches. As noted above, without these restrictions, s.13 of the *Act* is not met, there is an excess of equipment, and the sustainability of the Industry is impacted.

[113] Regarding Stock's requests to amend various charter rates for other vehicles, in general, the Board found the proposed rates were too low and could negatively impact the Industry:

[144] Rates are a very important component of the Board's regulation of the Industry. As also referenced above, for any agreement reached between the parties, the Board has to consider the broader implications on the Industry as a whole. The Board has given the rates very careful consideration. In summary, based on the very limited information from Stock, the Board finds its rates are too low and can negatively impact the Industry.

[114] The Board, therefore, set specific charter rates.

[115] A separate section was devoted to contracts where the Board referenced its Interim *Discount* Decision, eliminated Stock's open contract authority and its contracts that had expired. It further noted that all renewals or new contracts had to proceed through the *MC Act* public hearing process and were subject to a s. 13 analysis.

[116] As Board counsel noted in its closing submission, all of the above was summarized in the Conclusion to the Board's Decision which reads:

[181] Stock initially applied to amend its Licenses to operate four highway motor coaches for any type of charter, add HMC rates, and revise charter rates in its three other vehicle classifications.

[182] The parties agreed to very strict use of the highway motor coaches. Without the Agreement, the Board would not have granted any authorization for the use of these highway motor coaches. The Board finds that in relation to its initial Applications, Stock failed to prove the requirements of s.13, in particular, it failed to show there was an unrestricted need for these vehicles.

[183] The goal of the *MC Act* is to provide safe, quality transportation services throughout the Province. The Board finds that the Industry, coming from a recession and discounting methods, remains unhealthy and under-revenued. There is an excess of vehicles in the Province. Further unrestricted licensed vehicles for all charters would have a negative impact on the licensed carriers, which in turn encumbers achieving the objects of the *MC Act*.

[184] With the restrictions and modifications, the Board approves the addition of four highway motor coaches and the deletion of the two 20 passenger mini-coaches and two 39 passenger deluxe semi-coaches on its MC License and the deletion of the latter two vehicles and one 28 passenger mini-coach on its XP License. The highway motor coaches are restricted to:

- (a) Use for cruise ship services only and may not be used for any other service, including but not restricted to schools, charters and tours;
- (b) Between the months from May to November;
- (c) From any port in the Province;
- (d) Only under subcontract to another licensed carrier for the cruise ship work, such that Stock may not contact and/or contract with a cruise ship company; and
- (e) Used as a last resort, when there are no other vehicles available with a seating capacity of 36 seats or greater, after compliance with the Notification Chart below:

<b>Operator of Last Resort for Cruise Ship Services</b>		
<b>Charter Period</b>	<b>Notification Date</b>	<b>Subcontract Date</b>
May 1 – June 30	Apr. 1	Apr. 16
July 1 – Aug. 31	June 1	June 16
Sept. 1 – Oct. 31	Aug. 1	Aug. 16
Nov. 1	Oct 1	Oct. 16

- (f) Notification must be:
  - (i) Provided to all licensed carriers which operate vehicles with 36 seats or greater;

- (ii) The same dates must be provided to all applicable carriers; and
- (iii) A copy of the notification and responses are to be filed with the MCD.

[185] After careful consideration, and with the limited evidence provided by Stock in this case, the Board finds its proposed rates, in general, are too low and potentially predatory. Furthermore, the Board finds Stock failed to show the proposed rates were fair and reasonable for the services it was providing. The Board, therefore, set the rates as outlined in the Decision.

[186] With the various restrictions on the use of the HMCs, in particular to not operate charters other than for cruise ship services as the last carrier, and their rates as set by the Board, the Board finds s.13 is satisfied by enabling the servicing of cruise ship passengers without negatively impacting the Motor Carrier Industry.

[187] The Board also finds the amount of work available to these highway motor coaches in Nova Scotia alone, is not sufficient to sustain them. The Board notes Stock has also used these vehicles in New Brunswick. However, if Stock determines it does not wish to operate these vehicles under the terms set by this Decision, then Stock should seek to abandon their use. As there is no need for these HMC vehicles in an unrestricted charter market in Nova Scotia, and considering the negative impact they would have on the Industry, an expansion of the HMC authority beyond the above restrictions would not be permitted.

[188] The rates for Stock's activity buses, semi-coaches and mini-coaches are effective immediately. Upon Stock complying with its Undertaking and the Board's subsequent review, Stock's Schedule E(1) in its Licenses shall remove the requisite mini-coaches and semi-coaches and add four highway motor coaches pursuant to the service authorization and rates as outlined in this Decision. The Board retains jurisdiction to complete this and to correct and resolve the contract services in Stock's Licenses.

[117] On March 2, 2016, within four days of the *Stock* Decision and the Board adopting Stock's agreement and amendment requests to prohibit the use of its HMC for school bus services, Stock contacted Ms. Aisthorpe and asked her to add the HMCs to Stock's Licenses for its contract with the Halifax Regional School Board.

[118] Ms. Aisthorpe stated school bus services must be operated by school buses D250 (or specific passenger cars). The Board notes the former have numerous requirements such as being painted yellow, back door exit, "stop" arm. School buses are authorized to provide services to and from school and for extra-curricular activities sanctioned by the specific school board. Some school buses may also be licensed for charter services.

[119] A series of email communications between herself and Mr. Phinney ensued. On March 3, 2016, Ms. Aisthorpe emailed Mr. Phinney confirming his inquiry and stated Stock's HMCs could only be used for cruise ship services and not HRSB:

Good afternoon Troy-

In relation to your inquiry yesterday afternoon and subsequent to my reviewing the recent Board Decision in detail it would appear the [highway] motor coaches are restricted to "use for cruise ship services only and may not be used for any other service, including but not restricted to schools, charters and tours;". I note, additional restrictions also apply.

As such, the coaches cannot be operated for HRSB co or extra-curricular activities.

Please do not hesitate to contact me with related comments or questions; or, if additional information is desired.

Best regards,

[Exhibit S-5, Tab 3, p. 59]

[120] Ms. Aisthorpe confirmed she quoted from the *Stock* Decision. Regarding her comment "I note, additional restrictions also apply.", she was referencing the Board's further restrictions including that the HMCs could only provide backup cruise ship services and outlined a process for determining its vehicles would be the last used. Furthermore, these restrictions are noted in Stock's MC License 595 [Exhibit S-1, p. 22].

[121] The MC License 595 also requires notifications be filed with the MCD. Ms. Aisthorpe testified while she was with the MCD, no such notifications for cruise services were filed.

[122] Ms. Aisthorpe received a responding email from Mr. Phinney stating the use of the HMCs were part of Stock's contract with HRSB, which meant its contract was now void. It would also have an impact on Stock's new contract with HRSB.

[123] Ms. Aisthorpe responded to Mr. Phinney by email dated March 4, 2016, stating school services only permit the use of D250 school buses (or specific passenger cars). HMCs are not permitted to operate school bus services. Her email reads:

Troy-

Based on the Board Decision and restrictions indicated the coaches cannot be operated for HRSB co or extra curricular activities; the contract terms and conditions for the RFP submission should have been contingent upon receiving Board approval to operate.

The Decision explicitly states "Stock is prohibited from doing any charter work for anyone, including for its contracted School Boards, as they are currently using the existing licensed carriers for their HMC needs." (Board Decision, M06816 & M06817; p. 34, para [112])

The current license for HRSB contract school service (i.e. to & from; and, co or extra-curricular) would permit the use of authorized D250 school buses or any exempted vehicles under Board regulation 51A (e.g. passenger car when operated in the capacity of a school bus for the transportation of a pupil).

Please do not hesitate to contact me with related comments or questions; or, if additional information is required.

Best regards,  
Natalie

[*ibid*, p. 58]

[124] Mr. Phinney's responding email then requested the MCD add the HMCs to its school bus License for the Halifax Regional School Board (MC License 2714). Ms. Aisthorpe's next email informed Mr. Phinney that could not be done. Rather, it required an Amendment Application to Stock's License. While Ms. Aisthorpe was at the MCD, no subsequent Amendment Application was received.

[125] Mr. Phinney's emails constantly refer to RFPs and a carrier being able to charge what it wants and to have these added to its Licenses without going through the public hearing process. This was fully reviewed in the Board's *Interim Discount Decision* released January 21, 2013. All contracts including those under public tender or RFPs had to advance through the *MC Act's* public hearing process and are subject to s. 13. This was again outlined in the *Stock Decision* under a separate section entitled

“Contracts” and specifically addressed the contract services on Stock’s Licenses noting some were to be removed and others required applications to the Board for renewal. It quoted from the Interim Discount Review Order. Furthermore, the Order issued to Stock on March 23, 2016, stated its schedule of services required correction and completions. Ms. Aisthorpe then told Stock this again in the above email exchange.

[126] After Stock fully complied with the Charter Undertakings, authorization to use the HMCs was granted by Order of the Board dated April 29, 2016, and added to Schedule F on its MC License 595. The latter reads:

**F(4) SPECIALTY IRREGULAR PUBLIC PASSENGER CHARTER SERVICE**

The highway motor coaches are restricted to the transportation of cruise ship passengers under subcontract to another licensed carrier in the Province of Nova Scotia from any port between May to November as a last resort, when there are no other licensed vehicles available with a seating capacity of 36 seats or greater, after compliance with the notification chart below:

Charter Period	Notification Date	Subcontract Date
May 1 – June 30	Apr. 1	Apr. 16
July 1 – Aug. 31	June 1	June 16
Sept. 1 – Oct. 31	Aug. 1	Aug. 16
Nov. 1	Oct 1	Oct. 16

The highway motor coaches may not be used for any other services, including but not limited to, for schools, school children, charters, and tours; and are further subject to the terms and conditions of the License. [Emphasis added]

Effective this 29th day of April, 2016.

[Exhibit S-3, Schedule F]

[127] The Charter Undertaking referenced Stock’s computer program. The materials provided with this response from Ms. Coldwell included the Trip ID (client), Invoice, Trip Name, Customer, Date, Itinerary, Start Time, End time, Vehicle Unit No., Depot, Fee, and Kilometers travelled for each movement of each vehicle providing charter services for the specified period.

[128] Ms. Aisthorpe stated that of the four HMCs, only one was presented for inspection, stickered, and plated by the MCD. On May 18, 2016, the HMC was added to Schedule E(4) of the MC License 595 as:

E(4) Total Plates: 1

P01235	56	Motor Coach	2005 MCI	2M93JMPAX6W063250
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[*ibid*, Schedule E]

[129] Ms. Aisthorpe testified that within a short time after the HMC was added to Stock's License, the MCD received information Stock had used it to provide extra-provincial transportation services. She did not have any details of the movement. On June 7, 2016, Inspector Parker requested information about its movements. On June 10, 2016, Ms. Aisthorpe sent a follow-up email to Mr. Phinney requesting detailed information.

Her email reads:

Good afternoon Troy-

This email is sent in follow-up to Inspector Parker's request on June 7, 2016 for information in support of extra provincial transportation services provided by Stock Transportation Ltd.

The Inspectors request was prompted by comments indicating the highway motor coach (VIN# 2M93JMPAX6W063250) recently inspected/stickered travelled to Quebec; possibly on two different occasions.

Please provide corresponding documentation for each extra provincial transportation service provided.

Documentation should include, but is not limited to:

- Driver information (name, master#, contact phone#, etc.)
- Driver Hours of Service (HOS) Log Book (i.e. outside 160 kms of home base)
- Vehicle pre-trip sheets
- Trip itinerary & contact (or, general details outlining the nature of the transportation offered)
- Invoice issued (if applicable).

The information requested is intended to confirm vehicle use is in compliance with approved license terms and conditions; relevant Motor Carrier Act Section 22 included here for your reference:

**Failure to comply**

**22** A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, and the failure of a motor carrier so to conform shall, in addition to constituting

an offence against this Act, be good and sufficient cause for the suspension or cancellation or both by the Board of the license issued to the motor carrier, or for the suspension or cancellation by the Board of part of the license or of any authorization issued to the motor carrier.

Similar requests for supporting documentation are routinely made by the Inspectors; as accommodated by Motor Carrier Act Section 34(2). Excerpt included here for your reference:

**Inspector**

**34 (1)** The Minister may appoint a person or persons in the public service to act as inspector or inspectors under this Act.

**(2)** The inspector or inspectors shall enforce the provisions of this Act and the regulations that pertain to the conduct of motor carriers and shall take all necessary measures under this Act to prevent the operation of any motor carrier without such motor carrier having first complied with the terms and provisions of this Act and the regulations, and shall perform such other duties as the Minister may from time to time determine.

Please provide the requested information at latest by the end of the month, June 30, 2016.

Please do not hesitate to contact me with related comments or questions.

Best regards, [Emphasis added]

[Exhibit S-5, Tab 6, p. 71]

[130] On the due date of June 30, 2016, Mr. Phinney replied as follows and asked Ms. Aisthorpe for the specific dates of the trips as this might speed up the process:

Thank you for the email Natalie. I am still gather **[ing]** the information requested. I wish you could be more specific, do you have specific dates that you are looking for?

I assure you that any movement of our coach was provided at no charge to any customer. If I could ask for an extension to next week I will provide what information we have. In the meantime if there are specific dates? It might speed up the process.

I hope you can see to extend the time line.

Thanks again, [Emphasis added]

[*ibid*]

[131] On July 4, Ms. Aisthorpe responded, providing an extension to July 8, 2016, and further informed Mr. Phinney that "Details on any extra-provincial charter tours are requested".

[132] On July 8, Mr. Phinney sent an email apologizing for the delay and the information would be provided the following week due to personal circumstances.

[133] Ms. Aisthorpe never received any information from Mr. Phinney about these trips before she left the MCD on October 18, 2016.

[134] As to Mr. Phinney's comment in his June 30, 2016, email that the services are at no charge to any customer, Ms. Aisthorpe testified that Stock's HMCs are public passenger vehicles and, therefore, are subject to the terms and conditions of their Licenses, including rates:

Mr. Outhouse: Just turn to Mr. -- you don't have to turn. On page 71, you'll see Mr. Phinney's reply. And this is June 30th, the date he was to supply the information, tells you he's still gathering it and wishes you could be more specific what specific dates you were looking for.

And then he says this:

"I assure you that any movement of our coach was provided at no charge to any customer." (As read)

He then asks for an extension of a week to provide the information. In the meantime, he asks you if you've got any specific dates that might speed up the process.

First of all, what's your -- what was your reaction to the free of -- "Was provided at no charge to any customer"?

Ms. Aisthorpe: So in that context, the highway motor coach is a motor -- a public passenger vehicle. It's P plated; it's fully regulated, so it would be subject to the terms and approval of the licence that was granted.

So in this context, my email has been supportive and it requests by the inspector for further information, so typically, that's provided in routine course through industry inquiries as to operation of the vehicle.

Whether it was provided for free or not, the motor coach would be subject to the licence terms, which include rates.

[Transcript, January 30, 2017, pp. 186-187]

[135] Ms. Aisthorpe and Mr. Penney testified the MCD has permitted carriers once or twice a year to provide free services to legitimate charities, like the Canadian Wish Foundation, where the drivers have donated their time. There is nothing in writing. It is an enforcement practice. She noted some carriers obtain temporary authorities or trip permits for their charitable work. Ms. Aisthorpe testified she had discussions with Mr.

Phinney about this as well as having an Outlook appointment to discuss it by telephone further in July, which did not take place. She testified as follows:

Mr. Outhouse: Did you have any discussions with Mr. Phinney that you recall about performing these services for free, or services for free generally?

Ms. Aisthorpe: Yes, I do recall we had discussions about performing work for free, and the context of legitimate charitable work, so where carriers provide transportation and/or drivers for -- in support of legitimate charities.

[Transcript, January 30, 2017, p. 216]

[136] The MCD conducted a random inspection on Stock's HMC August 18, 2016. The impetus for the inspection was a complaint to the Clerk of the Board (Clerk) on August 16, 2016. Amongst the concerns were requests for drivers to exceed their hours and potential safety issues with the vehicle regarding brakes and tires. (This was later provided in an Incident Report prepared by Ms. Bishop and Mr. LePage dated August 22, 2016 and filed with the MCD.)

[137] Ms. Aisthorpe stated that during a random inspection, the MCD would typically look at the steering, suspension and/or brakes. Consistent with past practice, Ms. Aisthorpe contacted Mr. Phinney by telephone and confirming email requiring the vehicle to be presented for inspection [Exhibit S-5, Tab 8, p.80].

[138] In Mr. Phinney's responding email, he stated the HMC is needed the next day and it will be available for inspection on Friday. Ms. Aisthorpe testified that was not satisfactory for safety reasons. If the allegations were founded and there were actual imminent safety deficiencies, the risk of permitting its use could result in a failure of the vehicle and subsequent injury. Further emails were exchanged.

[139] The inspection was conducted at Parts for Trucks in Dartmouth on August 18, 2016, as it cannot be inspected at Stock's facility. The Report [Exhibit S-5, Tab 9, p. 83] noted there were 15 major items that had to be repaired before the vehicle would be

permitted to operate again. Three deficiencies related to the brake system. The emergency brake efficiency was at 48%, even though the air brake efficiency was at 87%. After a vehicle is repaired, a further inspection, including brake test is required. Less major items were to be repaired by September 15, 2016.

[140] On August 27, 2016, Ms. Aisthorpe received an email from Mary Dempster, COO of Ambassatours, regarding Stock providing its HMC for its licensed service for overflow cruise ship services, stating they keep calling Stock and do not get a reply. It reads:

Hi Natalie

The last hearing was about Stock helping out (with 4 buses) and [the Board] gave them OK as last call buses.....but we call and they don't answer the request. Is this bus on the road with Stock (its in their yard)?

[Exhibit S-5, Tab 10, p. 86]

The email attached an image of Stock's HMC.

[141] Ms. Aisthorpe testified she responded to Ms. Dempster's email indicating the status that one HMC had been inspected, plated, and was ready for use for overflow cruise ship services.

[142] On September 21, 2016, the MCD received a copy of Stock's Response to Newbridge's Tender for its transportation needs. The Response is dated August 25, 2016, and provides Stock's prices as well as its proposal to use two yellow school buses for transporting students between the two sportsplexes used by Newbridge and to use all four of its HMCs for the transportation of the school's hockey teams. The latter provides a schedule of each proposed hockey trip for the 2016/17 school year and Stock's charges. The relevant trips up to November 20, 2016, are:

<u>Dates</u>	<u>Pick Up</u>	<u>Destination</u>	<u>Pricing</u>
<b>2016</b>			
September 17-18	East Hants Sportsplex	Charlottetown/ Summerside, PE	2000
September 24	East Hants Sportsplex	Amherst, NS	1200
September 30- October 2	East Hants Sportsplex	Hingham, MA	4100
October 13-15	East Hants Sportsplex	Saint John, NB	3000
October 12-16	East Hants Sportsplex	Trois-Rivières, QC	6500
October 20-23	East Hants Sportsplex	Toronto, ON	4000
October 28-30	East Hants Sportsplex	Pictou Co., NS	2000
October 27-30	East Hants Sportsplex	Boston, MA	4000
November 3-5	East Hants Sportsplex	Burlington, ON	4000
November 10-13	East Hants Sportsplex	Fredericton, NB	3000
November 17-20	East Hants Sportsplex	Moncton, NB	3000

[143] The MCD also obtained a copy of the other Tender Response Newbridge received from a licensed motor carrier who had provided HMC services to Newbridge in the previous school year 2015/16.

[144] The HMC was repaired, re-inspected and permitted to operate again on September 22, 2016.

[145] Ms. Aisthorpe contacted Trevor MacEachern to obtain information about the coach transportation services Newbridge had received for its scheduled hockey trips on September 17 and 24, 2016. She confirmed her request in an email dated September 26, 2016, which reads:

Good afternoon Trevor-

Further to our recent discussion and by way of follow-up, please provide the Division details (e.g. carrier name, itinerary, invoice, etc.) on the coach transportation services required by the NewBridge Varsity Hockey team(s) on:

- September 17 - 18 from the East Hants Sportsplex to Charlottetown/Summerside, PE, and
- September 24 from East Hants Sportsplex to Amherst, NS.

Please do not hesitate to contact me with related comments or questions.

Best regards,

[Exhibit S-5, Tab 13, p. 95]

[146] On September 27, 2016, Mr. MacEachern stated Newbridge had used an “activity bus” supplied by Stock as follows:

Hey Natalie,

With respect to your questions, with the late award of the tender and the start of school we decided to cancel the weekend to PEI for September 17-18.

On September 24 and 25 Stock Transportation made available one of their activity buses, unit number 25593, to transport our team to Amherst for the games. After speaking with Stock this service was provided free of charge.

If you have any other questions, please do not hesitate to contact me.

Best regards, [Emphasis added]

[Exhibit S-5, Tab 13, p. 95]

[147] Also on September 27, 2016, Ms. Aisthorpe received an email from Inspector Adam Levings [Exhibit S-17] which noted the odometer readings for Stock’s HMC. Ms. Aisthorpe testified the handwritten note on the email are her calculations of the difference between the odometer readings of September 22 and 27, 2016, being 995.7 kilometers.

[148] The MCD subsequently obtained Newbridge’s Facebook page. It contained an entry dated September 23, 2016, which referred to the PeeWee team travelling to Saint John for the weekend after playing in Amherst. It included a picture of the team boarding and on Stock’s HMC; not an activity bus.

[149] Mr. Penney saw Stock’s Freightliner school bus Vehicle Unit No. 25486 at East Hants Sportsplex on September 27, 2016. He conducted a routine roadside

inspection where he checked the driver's documents and did a cursory walk around of the vehicle for any defects. Documents could include the type of service being provided, the customer, the number of passengers and general service questions. His Inspection Report is Exhibit S-5, Tab 16.

[150] The vehicle was plated SB-P00493 which is licensed to operate charter services. The driver advised he was providing backup services for Newbridge as its vehicle was out of service. Mr. Penney understood this meant Stock had been providing the services since the vehicle broke down. The driver also advised the services were being provided for free which Mr. Penney confirmed with Ms. Coldwell.

[151] Mr. Penney provided the above information and documentation to Ms. Aisthorpe and testified Stock was currently being investigated to determine what was happening. He did not have any further involvement with Stock in 2016.

[152] Upon receiving the documents, Ms. Aisthorpe reviewed the Report to make sure the vehicle was licensed to do the charter services, and that it had no major defects. She also reviewed the License and determined from the Licensed rates the charge for this service (being the greater of the kilometers or time) was \$601.80 per trip [Exhibit S-5, p.109].

[153] Due to the date stamp of September 21, 2016, on Stock's Tender Response, Ms. Aisthorpe believes the MCD may have received drafts of Stock's Applications to amend both of its Licenses to add contract services for the transportation of Newbridge students. The formal Applications were completed, signed and received by the MCD on September 26, 2016 [Exhibit S-15 and Exhibit S-16].

[154] When Ms. Aisthorpe sent the two Amendment Applications to the Clerk she attached a Memo, dated September 27, 2016 [Exhibit S-15, p. 1], that included the following:

- attaching Newbridge's Facebook page postings, it appeared Stock is, and has, provided services to Newbridge;
- based on inspection reports Stock's HMC has travelled 10,741 kilometers since its initial inspection in April;
- the MCD's request for Stock to provide details on HMC use remained outstanding; and
- Industry email inquiries include Stock's HMC is not in use for overflow cruise ship services.

[155] On October 19, 2016, the Clerk wrote a letter to Stock. It stated Board counsel would be reviewing information to assess whether Stock was not operating in accordance with these Licenses, the *MC Act* and/or *Regulations* which may lead to a Show Cause proceeding. Compliance is relevant to Stock's current Amendment Applications pursuant to s. 13(a) of the *MC Act*. Also, any Show Cause proceeding may render those Applications moot. After noting these, the letter stated the Amendment Applications would not proceed until the Board received further advice from its counsel and/or any Show Cause proceeding concluded. The letter further advised Stock that it was not authorized to use its HMC to transport students, including from Newbridge, and this was not alleviated by providing the transportation services for free. This section of the letter reads:

Until these matters are resolved, Stock Transportation Limited is not authorized to use its highway motor coaches for the transportation of Newbridge Academy, or any other schools pupils, teachers, volunteers or chaperones as noted in its Licenses. This restriction is not alleviated by providing the services free of charge.

[Exhibit S-7, Tab 28, pp. 16-17]

[156] Upon being advised of the Board's letter, Mr. MacEachern contacted Mr. Oxner, the Executive Director of the MCD and asked how Newbridge could secure a HMC for its hockey teams. Mr. MacEachern testified Mr. Oxner informed him Newbridge could either hire a local motor carrier or lease a vehicle.

[157] By email dated October 31, 2016, Mr. MacEachern informed Mr. Oxner that Newbridge would like to have the following added to Newbridge's License:

Thanks for your call this afternoon. Here is the information on the bus that we would like to add to our currently licence below:

2006 MCI – J4500  
VIN # 2M93JMPAX6W063250

[*ibid*, p. 14]

[158] Mr. Oxner forwarded the information to the Clerk. The above vehicle is Stock's HMC restricted to overflow cruise ship services and cannot be operated for schools.

[159] On November 3, 2016, the MCD received documentation from one of its Inspectors who saw Stock's HMC at a local arena transporting the students of Newbridge. The Inspector conducted a document review of the paperwork associated with the driver and the bus being used. The documentation received by the MCD included a lease agreement between Stock and Newbridge for the HMC, an insurance certificate expired on November 1, 2016, driver of the vehicle was Tina Power, and the business card of Mr. Flynn.

[160] The Notice of this Show Cause proceeding was dated December 2, 2016. With it Stock was provided with the documents the Board had at the time. These included the Charter Undertakings provided by Ms. Coldwell regarding Stock's 2015 invoices and deadhead charges.

### 3. Show Cause Proceeding

[161] The bulk of the information became known through this Show Cause proceeding.

#### (A) Information Requests

[162] On January 3, 2017, the Board issued Information Requests to Stock to be answered by January 16, 2017. The IRs were:

**Request IR-1:**

Regarding all movements of highway motor coaches from and/or to Nova Scotia from the first movements to the present, provide details of each movement including, but not limited to the following:

- a) Itinerary;
- b) Name of each group of passengers and the contact person for the group with all contact information;
- c) All quotes;
- d) All invoices;
- e) Vehicle dispatch information; and
- f) All trip inspection documents, drivers' logs, etc.

**Request IR-2:**

Ensure that the answer provided to question No. 1 includes all School Boards and/or school personnel transported in the highway motor coaches as well as all contact information.

**Request IR-3:**

Provide copies of all mechanical documents and repairs on the highway motor coaches.

**Request IR-4:**

Regarding the email response of Trevor McEachern, CEO of Newbridge Academy, (Disclosure Package Vol I, Tab 13, page 95) that, for the hockey events on September 24-25, 2016, Stock Transportation Ltd. provided an "activity bus, unit # 25593":

- a) Was this information provided by Stock Transportation?
- b) Provide copies of any communication between the parties regarding this movement.

**Request IR-5:**

Regarding the email from John Penny, Inspector at the Motor Carrier Division, to Tina Coldwell, dated September 28, 2016 (Disclosure Package Vol 1, page 108), provide details on all charter services provided to Newbridge Academy since May 2016 using vehicles other than the highway motor coaches, including, but not limited to:

- a) Itinerary;
- b) Quotes;
- c) Invoices;
- d) If there are no invoices, the reason for same; and
- e) Vehicle dispatch information.

**Request IR-6:**

Regarding requests of carriers to use Stock Transportation's highway motor coaches from cruise ship services, provide copies of all of Stock Transportation's responses for 2016.

**Request IR-7:**

Regarding the document photographed in the Disclosure Package, Vol I, Tab 18, at pages 127 to 133, provide a complete copy of this Lease and any other Leases between Stock Transportation and Newbridge Academy entered into on or after May 2016.

**Request IR-8:**

Regarding the documents in the Disclosure Package, Vol I, Tab 18, pages 125 and 134, confirm whether Tina Marie Power has worked for Stock Transportation. If yes, in what Capacity? Confirm whether Tina Marie Power was working for, or in relation to, Stock Transportation on November 3, 2016.

[163] Stock's Response to IR-1 reads:

**Request IR-1**

Regarding all movements of highway motor coaches from and/or to Nova Scotia from the first movements to the present, provide details of each movement including, but not limited to the following:

	<b>Request</b>	<b>Response</b>
a)	Itinerary	Provided in tab A
b)	Name of each group of passengers and the contact person for the group with all contact information	Provided in tab B
c)	All quotes	None
d)	All invoices	None
e)	Vehicle dispatch information	None
f)	All trip inspection documents, drivers' logs, etc.	Provided in tab C

[Exhibit S-11, p. 2]

[164] Tab A outlining the itineraries of each HMC movement reads:

List of movements of Motor Coach 20808 as recalled:

- May
  - Trip to Truro
  - Trip To Moncton
  - Trip to Montreal
  - Trip To Halifax

- July
  - Trip to Moncton
  - Trip to Ottawa
  - Trip to Murry Corner
  - Trip to Moncton
- August
  - Trip to Halifax
  - Trip to Haileybury
- September
  - Trip to Saint John
  - Trip to Boston
- October
  - Trip to Pier 21
  - Trip to Quebec
  - Trip to Ontario
- November
  - Trip to Ontario
  - Trip to Moncton [Emphasis added]

[*ibid*, p. 4]

[165] "Itinerary" is defined in Stock's Licenses as:

**Itinerary:** The route, start and end times and dates of the charter as provided by the customer. It shall also include the total hours each day the driver is to remain on service, and the approximate mileage for each day.

[166] Stock's Licenses also state itinerary changes will impact charges:

(5) Itinerary changes: Quoted rates are based on the Itinerary. It is the responsibility of the customer to provide the Company with an accurate route including the start and end dates of the Charter. The greater of the additional hours or kilometers over and above the original booking will be charged.

[167] For Tab B, "Stock Office" is the contact person for all movements, except those for Mr. Flynn. For example, May included:

- May
  - ...
  - Trip to Moncton, Deliver of bus to Moncton by stock employee.
    - Contact Stock office 902 481-8400
  - Trip to Montreal. Hockey group from Fredericton UNB red Devils to Montreal.
    - Contact is Paddy Flynn 902 789-4625
  - Trip To Halifax, Bring bus back to Halifax Office
    - Contact Stock Office 902 481-8400

[*ibid*, p. 5]

[168] Other than some trip Inspection reports, no other information or documents were provided including no drivers' daily logs or supporting documents.

[169] Stock's Response to IR-2 to include under question 1 all information regarding School Board and/or school personnel, was:

Response: See above response to IR 1 – B

[*ibid*, p. 2]

[170] Under IR1-B the only school personnel noted is Newbridge for movements starting in September.

[171] Stock's Response to IR-5 reads:

Regarding the email from John Penny, Inspector at the Motor Carrier Division, to Tina Coldwell, dated September 28, 2016 (Disclosure Package Vol 1, page 108), provide details on all charter services provided to Newbridge Academy since May 2016 using vehicles other than the highway motor coaches, including, but not limited to:

	<b>Request</b>	<b>Response</b>
a)	Itinerary	See tab E
b)	Quotes	None
c)	Invoices	None
d)	If there are no invoices; the reason for same	No fees were charged
e)	Vehicle dispatch information	None

[*ibid*, p. 3]

[172] Tab E states:

List of movements of Stock School buses as recalled:

- September
  - Trip to Amherst
- October
  - Trip to Saint John
  - Trip to PEI
  - Trip to Windsor
- November
  - Trip to Moncton

- There is a daily shuttle service that started on Oct 11 running from Sackville sports stadium to East Hants sports stadium. This operates on school days. 130 minute per day. [Emphasis added]

[*ibid*, p. 64]

**(B) May Montreal Trip**

[173] Stock does not have authority on its XP License to operate its HMC on any extra-provincial movements. Stock's vehicle was inspected and placed on its MC License 595 on May 18, 2016. Stock immediately used it for an extra-provincial trip.

[174] Mr. Flynn was identified as the contact person in the middle of the following three trips from Stock's IR Response for May 2016:

- May
  - ...
  - Trip to Moncton, Deliver of bus to Moncton by stock employee.
    - Contact Stock office 902 481-8400
  - Trip to Montreal. Hockey group from Fredericton UNB red Devils to Montreal.
    - Contact is Paddy Flynn 902 789-4625
  - Trip To Halifax, Bring bus back to Halifax Office
    - Contact Stock Office 902 481-8400 [Emphasis added]

[Exhibit S-11, Tab B, p. 5]

[175] Mr. Flynn testified he organized this five-day trip from Dartmouth to Montreal and return from May 18 to 22, 2016. It was one trip not three. He took a group of hockey players from Nova Scotia, New Brunswick and Prince Edward Island to Montreal.

[176] Mr. Flynn boarded the bus at Dartmouth Crossing along with some of the hockey players. Two of Mr. Phinney's sons were part of the group. At the time, Mr. Flynn was their coach. The group also consisted of approximately 15 to 20 players from Nova Scotia. Some boarded at Dartmouth Crossing and others were picked up along the way. Players were also picked up from NB and PEI.

[177] Mr. Flynn stated this was not a trip for Newbridge. Rather, he often does some work in the Spring with the UNB B Reds hockey program.

[178] Ms. Bishop provided her driver's daily log book entries for May 22 and 23, 2016. On May 22, she drove a Stock school bus to the Irving Big Stop in Salisbury, New Brunswick where she met the driver and Stock's HMC with hockey players returning from Montreal. She understood they included Mr. Phinney's sons. Ms. Bishop drove the HMC back into Nova Scotia. She made three different stops at Amherst, Truro and Sackville before terminating the trip at Dartmouth Crossing. She estimated four to five players exited at each stop, but the majority got off at Dartmouth Crossing.

[179] Referencing her Driver's Vehicle Inspection Reports [Exhibit S-11, Tab C] for May 22 and 26, 2016, she confirmed Bus No. 4, 8 and 33051 are the same vehicle.

[180] Mr. Phinney testified he completed the IR Responses.

[181] Mr. Phinney confirmed the evidence of Mr. Flynn and Ms. Bishop. Stock's HMC was used to take approximately 15-20 passengers from Nova Scotia to Montreal and return on a five-day extra-provincial trip. His two sons were on that trip. He went to Montreal as well, but not on the HMC. He further acknowledged this was one trip not three.

[182] Mr. Phinney also confirmed he never provided this known information about the trip to the MCD and did not provide it when requested by Inspector Parker or Ms. Aisthorpe. Mr. Phinney also testified that when he asked the MCD for the specific dates of the trip to help him find the requested information, he knew the dates and facts. He also knew there was not a second trip to Quebec. He testified:

Mr. Outhouse: Okay. You never did provide that information.

Mr. Phinney: No, I did not, sir.

Mr. Outhouse: Now, you knew one of those trips was to Montreal.

Mr. Phinney: Correct.

Mr. Outhouse: And you knew the date of that trip.

Mr. Phinney: Yes, I did.

Mr. Outhouse: Your son, or possibly two sons, were on that trip?

Mr. Phinney: Yes.

Mr. Outhouse: Did you go to Montreal?

Mr. Phinney: Yes, I did.

Mr. Outhouse: Did you go on the bus?

Mr. Phinney: No, I did not.

Mr. Outhouse: We understand – I understand from the evidence given by Mr. Flynn that he did go on the bus.

Mr. Phinney: I believe so, yes.

Mr. Outhouse: So you knew about that trip?

Mr. Phinney: I did, yes.

Mr. Outhouse: So why were you asking for dates?

Mr. Phinney: She asked for two possible trips to ---

Mr. Outhouse: Two possible trips, yes.

Mr. Phinney: Right. That's correct.

Mr. Outhouse: Did you think there were two trips to Quebec?

Mr. Phinney: No.

Mr. Outhouse: You knew there weren't.

Mr. Phinney: That's right.

Mr. Outhouse: You knew there was on[e] trip.

Mr. Phinney: Correct.

Mr. Outhouse: And you knew the date of it.

Mr. Phinney: I did know the date of that one trip, yes.

[*ibid*, pp. 492-494]

[183] Ms. Aisthorpe and Mr. Penney testified it had been the practice of the MCD to permit a carrier once or twice a year to provide free service to a charity where the driver

donates her/his time. This has been a long-standing enforcement practice of the MCD. There is no formal policy.

[184] Ms. Aisthorpe also said she had a discussion with Mr. Phinney concerning not charging for legitimate charities:

Mr. Outhouse: Did you have any discussions with Mr. Phinney that you recall about performing these services for free, or services for free generally?

Ms. Aisthorpe: Yes, I do recall we had discussions about performing work for free, and the context of legitimate charitable work, so where carriers provide transportation and/or drivers for -- in support of legitimate charities.

[Transcript, January 30, 2017, p. 216]

[185] A meeting had been set up to discuss charitable services, but it did not take place. She did not recall anything further being said about free services prior to her leaving the MCD. Mr. Phinney acknowledged they were to have a meeting in July.

[186] Mr. Phinney appeared to have known this policy as shown by the following statement about the May trip:

So we knew that we wanted to provide this as a free service to this program in order to get these kids to the -- I don't know whether they're -- I don't suspect the UNB [B] Reds are a charitable organization but we did it anyways. [Emphasis added]

[*ibid*, p. 521]

[187] Mr. Phinney, after referencing the definition, stated if you were providing a charter for free, you needed nothing:

Mr. Phinney: I guess, you know, it all comes down to the definition for -- in my time here since 2009, you know, dealing with the Motor Carrier, it's always been that if the charter was provided for free, we needed nothing.

[*ibid*, p. 521]

[188] This meant Stock could bring in a fleet of buses, use them for cruise ship services, and as long as it did not charge for them, Stock was not operating outside its licensed authority:

Mr. Outhouse: So you could, in theory, bring a fleet of buses in, offer them to the cruise lines for free, run the other guys out of business and carry on.

Mr. Phinney: Well, I -- again, that's the understanding, is that with the Motor Carrier that as long as we provide our service for free, we did not -- we weren't operating outside our authority.

[*ibid*, p. 522]

[189] Mr. Phinney testified he recalled a number of MCD inspectors, including Chief Inspector Penney, telling him, at Stock's shop at 51 Frazee, that as long as Stock was doing charters for free, it was fine.

[190] Mr. Penney was recalled to speak to Mr. Phinney's statements. Mr. Penney testified such services were once or twice a year for a charitable organization like the IWK. Regarding providing free services to a commercial operation, he stated he has never been involved with a company that could sustain it:

Mr. Outhouse: And I'm going to paraphrase what Mr. Phinney said; I don't have total recall. So my understanding of his evidence this morning in one respect was that with respect to free service providing a bus for free, not charging, that he had been told by a number of inspectors from Motor Carrier Division, including you, I think you were named twice, that this was fine; as long as they weren't charging, it wasn't a problem because it wasn't under Motor Carrier Act, it wasn't for gain.

What do you say about that?

Mr. Penney: That's correct. We have instructed carriers, various carriers, it's been past practice of the Division with regards to what the Division would consider charitable work, i.e., a single trip provided to the IWK or maybe Ronald McDonald House or the Truro Boys and Girls Club. When we -- if we're talking about free services, we are expressing that on behalf of charitable organizations or you're providing service and goodwill. And I have never experienced any carrier that would do that indefinitely or as a part of a contract service.

So any time I've expressed that, it's always been in the terms of, you know, a single trip or maybe a one-off, or it may happen twice a year; maybe you're providing service for the Legion or, you know, it's a charitable thing that you're doing.

Mr. Outhouse: In the context of a licensed carrier, providing free service on an ongoing basis to a commercial operation, have you ever seen that as a donation or a charitable -- or not covered by the *Motor Carrier Act*?

Mr. Penney: Never. I've never been involved with a company that could sustain that.

[Transcript, February 1, 2017, pp. 654-656]

[191] Regarding the itineraries for this and all other trips disclosed by Stock in its IR Responses, Mr. Phinney acknowledged they did not include the starting point for the coach, the pickup places, or the movements of the HMC (*ibid*, p. 498).

[192] Mr. Phinney appeared evasive answering Board counsel's questions regarding Stock's computer programs and the information they can provide for all movements of Stock's vehicles.

[193] Board counsel then drew Mr. Phinney's attention to one of Stock's Charter Undertaking responses in which Ms. Coldwell references Stock's computer program as follows:

As per Request IR-4: (a) HTS – is Home to School. "charter services done for HTS customers" This was a drop down menu in a computer program, that got selected incorrectly for charter customer.

[Exhibit S-6, Tab 20, page 3]

The materials provided with this response from Ms. Coldwell included the Trip ID (client), Invoice, Trip Name, Customer, Date, Itinerary, Start Time, End time, Vehicle Unit No., Depot, Fee, and Kilometers travelled for each movement of each vehicle providing charter services for a specified period.

[194] When confronted with the above information, Mr. Phinney then stated this is what Stock produces for a "legitimate booking". All of the information is placed into Stock's computer system. He stated, however, this was not done for any of the HMC movements. He further testified Stock has no documentation for any HMC movements in answers to Board counsel questions about his itinerary IR Responses at page 4:

Mr. Outhouse: ... So now I want to go back again to the page 4 and the, "As recalled," because as recalled means to me you're working from memory as opposed to checking logbooks and so on.

Mr. Phinney: Again, you know, with respect to the coach buses, we have no bookings. We have no documentation -- I want to use the right word but we have no bookings; we've never booked a charter or a trip on that bus. It was just as needed we used the bus.

So we didn't -- a typical fieldtrip would come in to our office where it would be booked, there would be itinerary provided, there would be a price associated with it. There would be a confirmation back out to the customer. But the coach bus, we've never done that with a coach bus because we haven't done anything with it yet. [Emphasis added]

[Transcript, February 1, 2017, pp. 506-507]

[195] The Board finds from the evidence before it in this proceeding, Stock also did not produce any documentation for any of its vehicle movements (HMC, school buses or activity vehicles) when operating outside of its Licenses.

[196] Furthermore, Stock did not follow the above and input the information into its computer system for its one "legitimate booking" for Stock's use of its HMC by Coach Atlantic for overflow cruise ship service (*ibid*, p. 517). Mr. Phinney gave various reasons for this including Stock had "very limited information" (*ibid*, p. 465) and as for invoicing as noted above he stated "we didn't know what we were doing so we just left it as a no" (*ibid*, p. 619)

[197] Stock's IR Responses for this May trip (and for all other vehicle movements requested) failed to provide any driver's logs or supporting documentation. When asked about this, Mr. Phinney began with "I'm unaware" and then acknowledged he did not recall looking for them:

Mr. Outhouse: And so is there a driver's log?

Mr. Phinney: I'm unaware. I'm not sure.

Mr. Outhouse: Did you look?

Mr. Phinney: I don't recall, no.

...

Mr. Outhouse: So do you have the drivers' logs?

Mr. Phinney: I would have to go back -- I would suspect so, yes. If we're required to have them, then our office would have them.

[*ibid*, pp. 499 & 501]

[198] For the Driver's Daily Logs for movements within 160 kilometers that Stock may not have to retain, he did not attempt to obtain these from the drivers.

[199] The Board accepts the evidence of Ms. Aisthorpe and Mr. Penney and not that of Mr. Phinney regarding free trips. The Board finds as a fact that the MCD only ever stated to Mr. Phinney that it would not enforce one or two trips per year for a charity like the IWK when the driver donated her/his time. This was an enforcement practice with no formal policy.

[200] The Board also finds Mr. Phinney's following comment is consistent with this message from the MCD when in May he doubted the UNB B Reds Hockey team was a charity, "but we did it anyways".

[201] The Board also does not believe Mr. Phinney's evidence on the various reasons espoused as to why Stock did not input this and other trips into its computer system or maintain other documents for those movements of its vehicles that were for free and/or otherwise contrary to the *MC Act*. Rather the Board finds that not producing these usual business documents had the effect of making the detection of these movements very difficult for the MCD or the Board. Without the evidence of Mr. Flynn, the full particulars of this trip would not have been discerned.

**(C) Murray Corner**

[202] Under IR-2 Stock was to identify all movements and contact information done for school board and/or school personnel. Stock's IR-1 Response for July includes the following trip itinerary to Murray Corner, New Brunswick:

- July
  - Trip to Murray Corner

[*ibid*, Tab A, p. 4]

[203] Stock IR Response for the group name and contact information reads:

- July
  - ...
  - Trip to Murray Corner, Staff function
    - Contact Stock office 902 481-8400 [Emphasis added]

[*ibid*, Tab B, p. 5]

[204] At the hearing, Mr. Phinney acknowledged he took officials of the Halifax Regional School Board and some of his staff to his cottage in Murray's Corner for a lobster dinner. Without the hearing, this information would not have been discerned from the IR response.

**(D) Newbridge Saint John Trip**

[205] As noted above, Ms. Aisthorpe's contacted Mr. MacEachern requesting details of Newbridge's transportation services and confirmed it in her email of September 26, 2016.

[206] On September 27, 2016, his response included:

... On September 24 and 25 Stock Transportation made available one of their activity buses, unit number 25593, to transport our team to Amherst for the games. After speaking with Stock this service was provided free of charge. [Emphasis added]

[Exhibit S-5, Tab 13, p. 95]

[207] Mr. MacEachern confirmed the documents (sent with Ms. Aisthorpe's September 27, 2016, Memo to the Board) were a copy of Newbridge's Facebook page [Exhibit S-5, Tab 12, p. 91]. For the entry on September 23, 2016, of the PeeWee team travelling to Saint John for the weekend, Mr. MacEachern confirmed the picture was of the team on Stock's HMC; not an activity bus.

[208] Mr. MacEachern did not travel on the vehicle and did not recall seeing it. The information in his above email to Ms. Aisthorpe was provided by Stock to either his assistant or Mr. Flynn. He testified he would not have known the unit number of the bus noted in his email:

Mr. MacEachern: I certainly wouldn't have known the unit number and I couldn't -- I didn't even recall this whole exact exchange when you were asking me earlier about it.

[Transcript, January 30, 2017, p. 44]

[209] Mr. MacEachern's email also does not reference that the team went to Saint John. He stated that although Saint John was not on the Tender schedule, it is his present recollection that one of the tournaments, such as the one in Charlottetown, may have been cancelled. He stated the transportation arrangements were made by Mr. Flynn.

[210] Stock confirmed it provided the vehicle information to Newbridge (IR-4(a)).

[211] With Mr. MacEachern's email response and the Tender schedule, Ms. Aisthorpe testified she would have had no way of knowing about Saint John or that the information about the activity bus was not correct:

Mr. Outhouse: Yes. Okay. And do -- you had the discussion about the tender that Newbridge had put out. And you did receive a copy of it.

Ms. Aisthorpe: Yes.

Mr. Outhouse: And we'll get to that. But on this occasion, you're writing to Mr. MacEachern and asking him to provide details with respect to the services which were provided prior to this, according to the schedule.

Ms. Aisthorpe: Yes.

Mr. Outhouse: I guess you had -- you obviously had the tender at this stage because you knew those dates.

Ms. Aisthorpe: Yes.

Mr. Outhouse: Sure. Okay. And he writes back to you the next day giving you the information, namely, that the Charlottetown trip was cancelled, and gives you the details with respect to the Amherst trip. You did not ask about the Saint John trip.

Ms. Aisthorpe: No.

Mr. Outhouse: And it wasn't on the schedule, I gather.

Ms. Aisthorpe: No.

Mr. Outhouse: No. And so he didn't provide you with any information with respect to that.

Ms. Aisthorpe: Correct.

Mr. Outhouse: And with respect to the information he did provide you, that Stock had made an activity bus available, Unit Number 25593, do you have any reason to know one way or the other whether that's correct?

Ms. Aisthorpe: No.

[Transcript, January 30, 2016, pp. 199-201]

[212] The Board notes it was very fortuitous the MCD subsequently obtained a copy of Newbridge's Facebook page which happened to have a posting specifically about this trip with a picture of the vehicle and the team boarding it and on it. Without it, this movement would have gone undetected.

**(E) August 12-15 Trip**

[213] Without having any authorization through a trip permit, temporary authority or adding the service to its Licenses, Stock used its HMC to travel to Northern Ontario and return with its drivers to Nova Scotia. Stock was moving school buses to Northern Ontario. Approximately 33 drivers were involved.

[214] Stock had been operating charter services with its other vehicles extra-provincially and within the Province since 2013. *Drivers Regulations* and *NS Regulations* for their permitted safety hours (on-duty, driving, and resting) and the completion of drivers' daily logs apply to all of Stock's vehicles, as they are constructed to seat more than 10 people. Stock is required to maintain the drivers' daily logs for all movements of more than 160 kilometers from Cambridge, Nova Scotia. It is not required to maintain them for the shorter trips provided Stock maintains other required information about drivers' hours.

[215] During this August trip Stock repeatedly made demands of its HMC drivers to drive beyond the permitted hours of operation which would include a requirement for the drivers to put inaccurate information in their logs.

[216] All driver witnesses stated there were drivers on this trip that did not know how to complete the drivers' logs.

[217] The facts are noted in more detail under Charges 8(E) and (F).

[218] Information about the HMC on this trip also led to the Random Inspection below.

**(F) Random Inspection**

[219] Ms. Bishop prepared a Bus Driver's Vehicle Inspection Report for August 14, 2016 [Exhibit S-5, Tab 9, p. 82]. For the defective items she checked off gauges and warning lights, left and right rear tires and wheels.

[220] Her remarks included the dual tires needed to be changed as they were measuring four millimeters or less. The right rear tag was being changed in Petawawa, Ontario. She further noted there were no out of province plates on the vehicle.

[221] The trip ended August 15, 2016.

[222] As noted above, Ms. Aisthorpe contacted Mr. Phinney to do a random inspection of the vehicle. He replied Stock needed it and, therefore, it would be available on Friday.

[223] Ms. Bishop testified on returning to Stock a few days after the completion of the August trip, the dual rear and tag tires had been changed and new ones placed on the vehicle.

[224] Regarding the MCD directive to produce the HMC for a vehicle inspection on August 17, 2016, Mr. Phinney testified Stock needed the vehicle. He stated he asked Stock's mechanics whether there were any imminent safety concerns and there were none:

Mr. Phinney: I requested information from my shop to have a look at the bus to see if there was any imminent safety concerns that they were aware of.

Mr. Outhouse: And what was the ---

Mr. Phinney: They reported none at the time.

[Transcript, February 1, 2017, p. 552]

[225] He acknowledged the request resulted from a safety complaint the MCD had received. The HMC was inspected the next day on August 18. The inspection showed there were 15 defects (including three for its brakes) that required repairs before the HMC could be operated again. If Mr. Phinney had been successful in resisting having the HMC inspected, it would have travelled on the highways with these defects.

### **(G) Newbridge Contract**

[226] Mr. MacEachern testified Newbridge utilized the services of a licensed motor carrier in the Province for its HMC needs during the 2015/16 school year. On April

14, 2015, Newbridge met the licensed motor carrier to discuss its HMC transportation needs for the school year. No contract was signed with that licensed motor carrier; nor was a Tender issued. Mr. MacEachern testified Newbridge used the HMC services of the licensed motor carrier on a trip-by-trip basis until its travel budget was depleted.

[227] For the 2016/17 school season, Mr. MacEachern stated Newbridge had increased the number of hockey teams to five. Newbridge's budget was prepared based on the prices Stock agreed to charge for its transportation services. Although hockey teams may usually take one or two trips a year, for the 2016/17 season Newbridge had gone significantly above that for its teams. It was Mr. MacEachern's opinion that if Newbridge had to charge more tuition, Newbridge would likely not have had as many students attending the school for 2016/17:

Mr. MacEachern: Yeah. Yeah. I mean, you know, when we expanded to five teams, you know, it -- the prices were going to be astronomical.

You know, often hockey teams will run a trip, but it's, you know, one or two a year where we're, you know, gone significantly so, you know, it would eat up a lot of our budget and we'd have to charge more, making it, you know, less likely we'd have as many students as we did. [Emphasis added]

[Transcript, January 30, 2017, pp. 68-69]

[228] Mr. MacEachern testified his assistant prepared a Tender for Newbridge's transportation services for the 2016/17 season which included:

1. Transfer of students from East Hants and Sackville each afternoon from September 12 to June 9; and
2. Transportation of students by HMC with washroom for specific listed hockey trips (which could change), all priced separately.

[229] The Tender was dated August 16, 2016, and closed on August 26, 2016. School was to start on September 12, 2016, and the first hockey trip was scheduled for September 17, 2016.

[230] Mr. Flynn testified Newbridge did not send the Tender document to all licensed motor carriers. It only posted the document on Newbridge's website. He stated he had nothing to do with the awarding of the Tender for the 2016/17 school year. He provided the Tender responses to the owner, Mr. MacEachern. Although they talked about the responses, he was not involved in the actual decision.

[231] Newbridge received two responses to the Tender; one from the licensed motor carrier Newbridge used for its 2015/16 school season and the other from Stock. Stock's included the following:

Prices are contingent on licensing approval from the Nova Scotia Utility and review board[.]

[Exhibit S-5, Tab 15, p. 100]

[232] Mr. MacEachern testified the contract was awarded to Stock shortly after the close of the tender or during the first week of September. The Board notes the latter would have been less than one week before the start of school and less than two weeks before the first hockey trip.

[233] Mr. MacEachern testified that when Newbridge awarded the contract to Stock, it was on the assumption Newbridge would be paying for the services:

Mr. Scott: --- to date?

Right. That you awarded a tender with the assumption that you would be paying Stock. Yes?

Mr. MacEachern: Yes.

[Transcript, January 30, 2017, p. 73]

[234] Furthermore, Mr. MacEachern knew Stock was in the business of providing bus services for which it charged a fee.

The Chair: Am I correct, though, when you went through this tendering process and you were seeing the prices that were provided by Stock and another carrier, you knew Stock was in the business of providing buses; that they would provide a service to people like you or others and charge for it?

Mr. MacEachern: Yes.

[*ibid*, pp. 102-103]

[235] After reviewing some of the price differences between the quotes offered by Stock and the licensed motor carrier Newbridge used the previous year, Mr. MacEachern testified price was a very significant factor in awarding the contract to Stock:

Mr. Outhouse: --- or the one to -- the first big trip to Massachusetts, the price that's being quoted by Stock is 4,100 and the price that's being quoted in the other quote is 6,575.

Mr. MacEachern: Okay.

Mr. Outhouse: Correct? And then if I go down to the first Toronto trip -- or sorry, (inaudible) significant trip, it's being quoted at 3,000 by Stock and by -- 6,650 by the other bidder?

Mr. MacEachern: Yes.

Mr. Outhouse: And then the Toronto trip is 4,000 by Stock ---

Mr. MacEachern: Yes.

Mr. Outhouse: --- and 10,390 by the competitor?

Mr. MacEachern: Right.

Mr. Outhouse: And you'll see that same thing is similar down below for a trip to Burlington, Ontario, 4,000 and 10,720. So ---

Mr. MacEachern: Yeah.

Mr. Outhouse: --- I just draw those to your attention, Mr. MacEachern. You'd agree with me, wouldn't you, that price was a very significant factor ---

Mr. MacEachern: Oh, yes.

Mr. Outhouse: --- in your choice of these bids?

Mr. MacEachern: Yeah.

[*ibid*, pp. 92-93]

[236] The Board also notes the Tender response from the licensed motor carrier lists the additional charges for changing drivers on the long trips; the change being required to meet the safety regulations limiting drivers' hours.

[237] For shuttle service of students between Newbridge's locations, Mr. Phinney testified he determined the price of \$26,100 by looking at Stock's price for another customer in the Province. He cut the charge in half as Stock was only doing service in one direction and not both. When asked about whether he looked at his Licensed tariff in determining this price, his response was he did not. As noted above, he thought with an RFP, Stock could charge anything it wanted (*ibid*, p. 557).

[238] Stock's Tender prices for Newbridge hockey trips are well below its Licensed rates and below the minimum rates set by the Board for HMCs. For example, there is a three-day trip from the East Hants Sportsplex to Pictou, Nova Scotia for which Stock would charge \$2,000. Stock's Licensed rates are the greater of the distance or the daily rate. The daily licensed rate for Stock's HMC is \$1,400. The base charge using the daily rate is \$4,200 and subject to HST and other charges on its License. The Board minimum daily rate for the HMC in 2016 is \$1,200 and the base charges for this trip would be \$3,600.

[239] Mr. Flynn also testified that during the previous school year 2015/16, Newbridge used a licensed carrier in the Province for its HMC needs. The costs were very expensive. Mr. Flynn, in general, testified he understands HMCs are expensive, and people investing in these need to charge rates that cover their costs. Mr. Flynn further

testified he was not recommending people charge rates that are not sustainable. Mr. Flynn was not aware the Board had set minimum rates for HMCs in the Province to ensure the sustainability of the licensed motor carriers.

[240] Mr. Flynn testified to Newbridge's use of Stock's public passenger vehicles for its students in the fall of 2016. In particular, Board counsel reviewed some of the trips on the schedule attached to Stock's Tender response, Exhibit S-5, Tab 15, pp. 99-100.

[241] Mr. Flynn testified the first trip was the above September 23-24, 2016, to Saint John. Saint John was not on Newbridge's Tender hockey trip list. He stated that although the schedule is fairly accurate, it will undergo some modifications. Some tournaments are cancelled, while others are added, such as Saint John. Once Newbridge received Stock's Tender prices for the various trips, Newbridge would expect any new trips to be a similar cost.

[242] Mr. Phinney stated he put on the Tender the statement about the prices being contingent on Board approval because he knew they would have to be added to Stock's Licenses. As above, he stated he did not think the inclusion on its Licenses needed to proceed through a public hearing process and Stock was able to charge Newbridge what it wanted, including nothing. He also testified he could withdraw from the contract at any time, as he did not have approval from the Board.

[243] With respect to this statement about Stock's prices dependent upon approval of the Board, Mr. MacEachern thought this was just a filing on Stock's Licenses.

[244] Stock waited before applying to amend its Licenses to seek to have the Newbridge contract services added. At the time of receiving the applications, the MCD provided facts which suggested Stock may not be operating within its Licenses.

**(H) October 20-23 Trip**

[245] On October 19, 2016, the Clerk forwarded its letter to Stock which included information about Board counsel's review and stated that until matters were resolved Stock could not use its HMC for schools (including Newbridge) and that this was not alleviated by providing the services for free.

[246] Mr. Phinney acknowledged that regardless of what he may have thought about not charging its Licensed rates, it knew from this letter it could not provide services for free.

[247] Mr. Flynn testified that on October 20-23, 2016, Stock's HMC transported Newbridge's students on a four-day trip to Toronto, Ontario.

[248] Mr. Phinney and Mr. MacEachern said the trip was for free.

[249] Mr. Phinney testified Stock is not in the business of providing transportation services for free; and nor was it to be considered a long-term position of the company.

**(I) November 1-5 Trip**

[250] Stock continued to use its HMC to transport students for Newbridge under a document called "a lease" for the same contract services as above, other than providing the services for free.

[251] Mr. MacEachern testified that when he was informed of the Clerk's October 19, 2016, letter to Stock, he contacted Mr. Oxner. He stated Mr. Oxner said Newbridge could either hire a local motor carrier or enter into a lease agreement for a HMC. The latter was possible, provided the vehicle was inspected, the lease agreement and insurance were on the bus, and it was driven by a qualified driver.

[252] Mr. MacEachern testified he knew the cost of a HMC was between one half to one million dollars (Transcript, January 30, 2017, p. 58). He understood the concept of a lease for a HMC would be similar to leasing a car. He also understood the concept that licenses for these expensive vehicles are like a salesperson's territory and that a person would require approval from the Board before it could provide transportation in someone else's area of service.

[253] Mr. MacEachern testified he did not see the "lease" document before it was signed by Mr. Flynn on November 1, 2016, nor did anyone in Newbridge prepare it. He did not know that it did not contain any rental price for the HMC.

[254] Regarding the "lease", Mr. Flynn testified he knew Newbridge and Stock tried to put one together for this trip to Burlington, Ontario. Mr. Flynn stated he was aware the MCD recommended Newbridge could lease a vehicle. Mr. MacEachern was the person seeking information about Newbridge's options for obtaining HMC transportation. Mr. Flynn stated he had no involvement with the creation of the "lease" document.

[255] Mr. Flynn testified he was at the HMC ready to leave on this Burlington trip. The "lease" document was there. It was unsigned, so he signed it.

[256] Mr. Flynn did not notice that the document left the rent blank. He testified that when he signed the document he thought Newbridge would pay Stock for these trips at an amount close to Stock's Tender prices. Under cross-examination by Stock, Mr. Flynn stated he was not party to any discussions about Newbridge paying Stock for the services, but commented he would not be able to say Newbridge was not going to pay for the service either.

[257] Mr. Phinney testified he personally drafted the lease document between Stock and Newbridge [Exhibit S-11, Tab G]. He took clauses from other leases Stock had used at various times. He prepared the lease very quickly so the bus could leave on this trip. Mr. Flynn signed it as he entered the HMC.

[258] Mr. Phinney confirmed the lease was intended to be for six months. Stock would provide the driver, which was exclusively under Stock's control. Stock would do all the repairs for the vehicle. Stock would also provide gas and insurance. Mr. Phinney also stated that despite the expenses, such as for the driver, Stock was providing the service for free.

[259] He confirmed Stock was providing the same service under the lease as under the intended contract with Newbridge, except now Stock was providing it for free:

Mr. Outhouse: Okay. But my point is you are going to, in effect, put the lease in place with, in effect, no rent, and you're going to continue to provide the same service, same bus, same driver, same deal with respect to expenses and so on as you were doing before, only now you have a lease in place between the two of you.

Mr. Phinney: Yes.

[Transcript, February 1, 2017, p. 579]

**(J) November 17-20**

[260] In summary, when Newbridge was informed that it could no longer use Stock's HMC, Stock again used the HMC to transport Newbridge students by tagging its Licenses together. It transferred students on its school buses to Moncton and then used its HMC to shuttle the students between hotels and the rink.

[261] The facts are the Clerk informed Mr. MacEachern and Mr. Flynn, by email dated November 3, 2016, that for Newbridge to lease and operate Stock's HMC,

Newbridge needed to make an application to the Board which would advance through the public hearing process (as set out in the *MC Act*).

[262] Mr. Flynn testified that for the trip to Moncton on November 17-20, 2016, Stock provided a school bus to transport the Newbridge students to Moncton. In Moncton, Stock's HMC was used to shuttle the students between the hotel and the rink:

Mr. Outhouse: So if I understand your evidence correctly, what happened was your team or teams were transported by school bus provided by Stock to Moncton, and then the coach [HMC] was used to shuttle players from the hotel where they were staying to the various arenas ---

Mr. Flynn: Yes.

[Transcript, January 30, 2017, pp. 134-135]

[263] Mr. Phinney confirmed Mr. Flynn's evidence (Transcript, supra, p. 545).

[264] After the Moncton trip, Newbridge used a licensed motor carrier with authority to operate an HMC.

#### **(K) Other Movements**

[265] Stock used various vehicles (including school buses, activity buses, and HMC) on other trips not mentioned above, without authority to do so by trip permit, temporary or permanent authority, and/or without charging its Licensed rates set by the Board.

[266] Mr. MacEachern testified Newbridge had used Stock's school buses a couple of times in the previous school year of 2015/16, and on one occasion for a period of approximately six weeks when its bus broke down:

Mr. Outhouse: Okay. All right. Had you ever dealt with Stock Transportation prior to this -- awarding this tender?

Mr. MacEachern: Yes. They had helped us out a couple of times the previous year when our bus was broken down or being held up for inspection. I believe it was held up for about six weeks.

Mr. Outhouse: And this is the 46- passenger bus?

Mr. MacEachern: Yes.

Mr. Outhouse: And they helped you out, what; by providing what type of service?

Mr. MacEachern: A school bus.

[*ibid*, pp. 32-33]

[267] Under cross-examination by Stock, he stated Newbridge did not pay for that service either:

Mr. Scott: Okay. And do I understand, aside from sort of providing some advice on a couple of occasions, where you had a breakdown, Stock provided you with a replacement bus?

Mr. MacEachern: Oh, yes.

Mr. Scott: Right. And that was free of charge?

Mr. MacEachern: Yes.

[*ibid*, pp. 86-87]

[268] Mr. Flynn also testified Stock provided buses to Newbridge during the previous school year, of 2015/16.

[269] For the current school year, Stock provided activity and other school buses (in addition to Unit No. 25486) for Newbridge students as outlined in Stock's IR Response Exhibit S-11, Tab E, p. 59, (*ibid*, pp. 541-547).

[270] Mr. Phinney stated that on the very date he testified at this Show Cause hearing Stock was providing (and had provided in the past) free school buses to other public school boards (without authorization to do so either under trip permit, temporary authority or permanent license authority) (*ibid*, p. 581);

[271] As an example of a recent trip were Stock used its vehicles for free, Mr. Phinney testified Stock transported an employee's brother, and others from the same

facility, to a local event. This movement appeared to have been on the HMC (*ibid*, p. 649).

[272] Stock continued to operate its vehicles as it wished even after having been stopped, charged and at times fined for operating outside of its Licenses including having “the wrong students”, that is students Stock was not authorized to transport:

Mr. Scott: Has it ever [ ] come up as part of an inspection, I mean, a bus getting pulled over during, say, you know, moving some employees up to your cottage of something? Has that ever come up?

Mr. Phinney: It has in the past where they've pulled us over for having the wrong students or the wrong such and such on the bus, yes.

Mr. Scott: Right. And the issue of whether you're charging or not, has it come up?

Mr. Phinney: Yes.

Mr. Scott: Have you ever had a problem as a result?

Mr. Phinney: Yeah, we've been fined in the past.

Mr. Scott: For what?

Mr. Phinney: For operating outside our licence authority.

Mr. Scott: Right. And what was the result of those charges? [Emphasis added]

[*ibid*, pp. 593-595]

#### 4. Timeline

**2009** - Mr. Phinney becomes the Regional Manager for Stock in charge of its offices from Alberta to Nova Scotia.

#### 2013

January 21 - Interim *Discount* Decision: Board determined all contracts seeking to charge below their Licensed rates, including those that were public tendered, had to advance through the Board's regular application process and subject to s. 13.

December 3 - Stock given Board approval for transfers of Perry Rand's license giving Stock authority to provide charter services.  
- No HMC authorized on the Licenses.

## 2015

- February 24 - *Discount* Decision which includes limiting discounts and setting minimum rates for HMC.
- April 10 - Stock applied to amend its Licenses to amongst other things add four HMCs for full charter authority and set or increase various charter rates.
- April 13 - Newbridge contacts local licensed motor carrier to arrange for its HMC needs for the 2015/16 school year.
- July 27 - At its hearing, Stock requested to amend its Applications to incorporate the agreement reached with opposing parties to only use the HMCs for overflow cruise ship services and specifically, no charters or school services.
  - Stock's request to amend its Applications removed the request for an XP authority for the HMCs.
  - Stock undertook to provide charter invoices for May, June 2015 re whether charging its deadhead rates.
- September - Local licensed motor carrier provides HMC services to Newbridge's hockey teams for the 2015/16 school year.
- 2015/16 - Stock provided Newbridge with a school bus a couple of times during the school year including for a six week period (for free).
  - Stock has provided school buses to other public school boards for which it was not licensed (for free).
- November 4 - *Deadhead* Decision confirms carriers must charge rates for each deadhead kilometer.
- December 4 - Email from Ambassatours to Stock [S-11, Tab 5, pp.66-68] to book three HMCs for overflow cruise ship services for 2016:  
September 01, 05, 08, 11, 12, 15, 16, 19, 22, 23, 25, 26, 28, 29 & 30  
October 04, 05, 06, 07, 11, 13, 14, 20 & 28.

## 2016

- January 29 - Absolute/Ambassatours contacts Stock also requesting dates for three coaches on June 29<sup>th</sup>.

- February 26 - After Stock substantially completes the Charter Undertakings, Board renders *Stock* Decision incorporating the amendments to its Applications as requested by Stock with modifications.
- March 2-6 - Stock asked the HMCs be placed on its school bus services including for HRSB on MC License 2714.
- Series of emails between MCD and Stock- MCD informed Stock the HMCs may only be used for overflow cruise ship services, may not be used for schools, school buses with specific characteristics including safety may only be used for school services, and HMCs cannot be added to school bus services without applying to the Board.
- Date unknown - Ambassatours also calls Mr. Phinney regarding Stock's availability for overflow cruise ship services.
- May 18 - One HMC is satisfactorily inspected, plated and added to the MC License.
- May 18-22 - Stock used the HMC to transport between 15 and 20 hockey players from Nova Scotia (including two of Mr. Phinney's sons), as well as Mr. Flynn (the hockey coach), on a five-day trip from Dartmouth to Montreal and return.
- June 7 - Inspector Parker of the MCD requested information about extra-provincial transportation services provided with Stock's HMC. No information was provided.
- June 10 - Ms. Aisthorpe, Director of the MCD, sent a detailed email requesting the same information about the extra-provincial transportation with Stock's HMC to be answered by June 30<sup>th</sup>.
- June 30 - Mr. Phinney writes to the MCD requesting an extension, stated the services were provided at "no charge to any customer", and asked for specific dates:  
... I wish you could be more specific, do you have specific dates that you are looking for?  
  
... In the meantime if there are specific dates? It might speed up the process. [Emphasis added]
- July 4 - Extension is provided to July 8<sup>th</sup>.
- July - Stock took the HMC to New Brunswick carrying Halifax Regional School Board officials to Mr. Phinney's cottage.

- Three other extra-provincial trips to Moncton, Ottawa and Moncton.
- July 8 - Mr. Phinney emails advising information would be provided the following week due to personal circumstances.
- July - A meeting was set for Mr. Phinney and Ms. Aisthorpe to talk about charitable services (meeting did not occur).
- August 12-15 - Stock's HMC movement from Dartmouth to Northern Ontario and return with drivers to relocate school buses.
  - Stock demands drivers operate the HMC after they will exceed their permitted safety hours on duty.
  - Above congruently demands drivers record inaccurate information about their hours on duty and driving in their Drivers' Daily Logs.
- August 16 - Ms. Bishop and Mr. LePage, two non-unionized employees, do not receive any further work from Stock.
- August 17 - Ms. Aisthorpe contacts Mr. Phinney by telephone and email directing the HMC be provided for inspection.
  - Mr. Phinney says Stock needs the vehicle and it will be available Friday for the Inspection.
  - MCD repeats direction and Stock then requests a delay.
- August 18 - MCD inspects the HMC:
  - 15 defects (including three in relation to brakes) that must be completed before the vehicle is allowed to operate again.
  - Other defects must be completed by September 15, 2016.
- August 22 - Ms. Bishop and Mr. LePage prepare an Incident Report and file it with the MCD.
- August 27 - Ambassatours CEO, Mary Dempster, emails the MCD asking whether Stock is using its HMCs for overflow cruise ship work as they have repeatedly called and received no responses (attached picture of Stock's HMC).
- August 16 - Newbridge places a Tender on its website for its transportation needs for the 2016/17 school year: (a) school shuttle and (b) HMC for hockey teams.

- August 25 - Stock responds to Newbridge Tender as does the licensed motor carrier with HMC authority that serviced Newbridge in 2015/16 school year.
- August 26 - Newbridge Tender closes.
- Stock's prices well below the minimum rates for HMC set by the Board and Stock's licensed rates.
- Stock quoted prices for some trips are 50% to 60% below the local licensed motor carrier and below Board set minimum rates for HMC.
- Stock's response states 'prices are subject to NSUARB approval'. Contract services and prices are both subject to NSUARB approval.
- September - Newbridge advised Stock is the successful bidder (shortly after the Tender closed or within the first week of September). If the latter, school started within less than one week and first hockey trip less than two weeks.
- September 18 - Stock's HMC repaired, re-inspected, and licensed to operate.
- September 23-25- Stock's HMC took Newbridge students to Saint John, New Brunswick trip (not on the schedule of trips in its Tender).
- September 26 - Stock Amendment Application to service Newbridge is perfected (filed Sept. 21).
- Does not include Halifax Regional School Board.
- September 26 - Ms. Aisthorpe contacts Mr. MacEachern of Newbridge asking details about its September trips listed on the Tender schedule.
- September 27 - Mr. MacEachern responds that Stock provided one activity bus, Unit No. 22593, to Amherst.
- No reference is made of the Saint John trip for its students.
- September - Newbridge's Facebook page: posting dated September 23<sup>rd</sup> – shows a picture of Newbridge's hockey team on Stock's HMC referencing the team travelling to Saint John.
- September - Stock took Newbridge students to Boston. (No date provided in IR Response).

- September 27 - Ms. Aisthorpe's Memo to the Clerk with Stock's Amendment Application and provided the following facts:
- With the attached Newbridge's Facebook postings, it appeared Stock is, and has, provided services to Newbridge;
  - Based on inspection reports Stock's HMC has travelled 10,741 kilometers since its initial inspection in April;
  - The MCD's request for Stock to provide details on its HMC use remained outstanding;
  - Industry email inquiries include Stock HMC not in use for overflow cruise ship services.
- September 27 - Chief Inspector Penney inspects Stock's school bus, Unit #25486, at East Hants Sportsplex where the driver identifies he is transporting Newbridge students between its facilities (for free).
- September 28 - Chief Inspector Penney confirms in an email to Ms. Coldwell that Stock is providing the above shuttle services for free.
- October - Trips for Newbridge to Quebec. No date given in IR Response.
- October 19 - Clerk writes to Stock stating its Amendment Applications for the Newbridge contract are suspended until the Board counsel's review, Stock is not authorized to transport students of Newbridge, and this is not alleviated by providing the services for free.
- October 20-23 - Stock uses its HMC to transport Newbridge students to Ontario and return. (Stock states for free).
- October 21 [?] - Stock officially begins using a school bus to provide shuttle services between Newbridge's two school locations. (For free).
- October 31 - Mr. Oxner of the MCD informs Mr. MacEachern of Newbridge that it can either hire a local motor carrier or lease a vehicle. Newbridge advises the MCD by email that it will lease vehicle: 2006 MCI – J4500, VIN # 2M93JMPAX6W063250 and add the vehicle to Newbridge License. Vehicle is Stock's HMC.
- November 1 - Stock uses its HMC to take Newbridge students to Burlington, Ontario on a 3-5 day trip.
- Lease is virtually the identical contract Stock has with Newbridge. Mr. Flynn signs it as he enters the HMC.

- Mr. Phinney drafts document called "Lease," and uses its HMC to transport Newbridge students.
- Stock states for free. Mr. Flynn of Newbridge signed "lease" believing Newbridge would eventually pay if Stock is licensed.
- November 3 - MCD receives documents from an Inspector after a roadside inspection of Stock's HMC at a local rink. Driver Tina Power states transporting Newbridge students and provides a copy of the lease.
- November 3 - Clerk emails Mr. MacEachern and Mr. Flynn of Newbridge advising Newbridge must make an application to the Board to obtain approval to use Stock's HMC.
- November 17-20- Stock used its HMC for Newbridge's students in Moncton, New Brunswick by tagging Licenses. Stock transported Newbridge students to Moncton in a school bus (for free) and then used its HMC to shuttle students between the hotel and rink.
- December 2 - Date of the Notice of the Show Cause and disclosure documents.

## VI ARGUMENTS

[273] In this Section, the Board will review the general arguments raised by counsel. Their arguments relating to specific charges will be addressed under the charge.

### 1. Board Counsel

[274] Board counsel gave an overview of the law and cases applicable to these proceedings before discussing each of the charges separately.

[275] Board counsel began her submissions with a review of the Board's power and authorities. In particular, she emphasized the provisions of s. 27(1)(a) in granting the license, (c) fixing rates, and (e) doing such acts as are necessary for the effective administration. Under s. 29, the Board has power and authority to give effect to the *Rules, Regulations* and Decisions. Under s. 19(1) the Board may, at any time, amend, and

suspend or cancel a license for cause after a hearing; and (2) will take into consideration the provisions of s. 13.

[276] *World Class Limousine and Company*, 2014 NSUARB 172, noted there are no stated objects under the *MC Act*. However, in reviewing the legislation as a whole and giving it a broad and liberal interpretation, the Board found its objects are:

[30] As also noted in prior Board decisions, there are no stated objects in the *Motor Carrier Act*. In reviewing the legislation as a whole, and giving it a broad, liberal and purposive interpretation, the Board has found that the objects of the *Motor Carrier Act* are to ensure there are safe, quality and sustainable motor carrier public passenger services which best meet the interests of the traveling public within, to, and from Nova Scotia. To accomplish this, the *Motor Carrier Act* requires the Board to regulate virtually all aspects of the motor carrier industry: see *Absolute*, 2010 NSUARB 171 (CanLII), para. 42.

[277] In *Acadian InterCity Coaches LP*, 2010 NSUARB 22, the Board referenced its jurisdiction under the *Motor Vehicle Transport Act*. It stated the Federal Government appointed the Board to exercise the government's authority and jurisdiction over intra-provincial transportation. In this context, the Board is effectively a Federal Board. It has the authority to grant extra-provincial operating licenses for motor carriers taking people from Nova Scotia to other areas outside of its borders, and bringing people into the Province. The *MVT Act* directs the Board to exercise its jurisdiction using the same criteria outlined in the *MC Act*.

[278] Board counsel argued the following findings in the Board's *Discount Decision* are relevant to this proceeding and were summarized or included in the *Stock Decision*:

- Proceeding initiated by the Board to consider discounting practices and impact on the Industry;
- Two technical conferences with participants;
- Board ultimately adopting rate recommendations with modifications;
- Set minimum rates for HMCs;
- Board and its predecessors have regulated the Industry since 1911;
- Sustainability is one of the legislation's overriding directives (para. 14);

- Board reviews a number of unique factors affecting sustainability which were also addressed in the *Stock Decision*;
- Rates must be sufficient to cover costs, are essential for repairs and replacement of vehicles, which is important for safe quality services and sustainability (para. 25);
- Rates that do not cover costs of operation are considered predatory (para. 27);
- Evidence of economist. Mr. Gardner (also referenced in the *Stock Decision*) summarized:
  - Overall discounts are a zero-sum gain meaning any business attracted by one motor carrier using a discount takes work away from another (para. 39);
- The Board's review of the various discounting practices included cutting rates, quoting rates approved for a lower class, and cash sponsorship (para. 67);
- Whether considering regulated or unregulated discounts the effect is the same; it reduces the revenue generated by the motor carriers (para. 72);
- Mr. Gardner stated the Industry was not healthy, it was under-revenued; and all things being equal, discounts will result in the financial position of the Industry worsening;
- The Board accepted the evidence of Mr. Gardner that discounting will have a negative impact on individual motor carriers and the Industry as a whole (para. 85);
- The Board adopted the definition of HMC, set discount at 20%, but the discount charged cannot go below the minimum rates set by the Board (para. 104).

[279] The minimum HMC rates gradually increased annually until 2017, at which point the Board would set minimum rates for 2018 to 2020.

[280] Board counsel then reviewed the *Stock Decision* in detail, noting the Applications to amend its licenses were initially filed on April 10, 2015 (but not perfected), shortly after the *Discount Decision* was released.

[281] Stock was represented by Jason Cooke at the hearing.

[282] After reading the Board's *Discount Decision*, Stock removed its proposed amendment for a 20% discount for its HMC (para. 9).

[283] Stock had purchased the Licenses of Perry Rand in December of 2013, which had the authority to do general charter services (para. 18). In this Show Cause

proceeding Mr. Phinney acknowledged Perry Rand had abandoned its authority to operate HMCs.

[284] Stock did not care if the HMCs made money (para. 21). They were part of its RFP responses as an added benefit to school boards (para. 22).

[285] Mr. Phinney acknowledged Stock's HMCs could have a significant negative impact on the other motor carriers (para. 31).

[286] After referencing sustainability as one of the overriding objectives of the *MC Act*, Board counsel emphasized paragraphs 78 and 79 of the *Stock Decision*:

[78] Key components to achieving the objectives of the *MC Act*, including sustainability, are the Board's regulation of the number and types/sizes of vehicles operating in the Province, the location of the carriers, the areas in which the services are provided and the rates they charge. The interrelationship of these issues is briefly summarized below.

[79] Regulating the number of vehicles permitted to operate in the Province ensures the supply is not greater than the demand so that there is sufficient work available for licensed carriers to recover the costs of providing the transportation services, including their capital investment, and to make a profit. This is the first issue the Board is to consider under s.13(a) of the *MC Act*; that is, whether there would be an excess of equipment if the license is granted.

[287] The *Stock Decision* referenced the importance of the sufficiency of the rates for the sustainability of motor carrier services and how insufficient rates could be predatory (para. 83), before providing a lengthy review of the *Discount* and *Deadhead* Decisions.

[288] Regarding the licensing of the HMCs, Board counsel read into the record the following passages where the Board found that Stock had not met the criteria of s. 13 of the *MC Act*. Nor did Stock do so for the cruise ship services. Furthermore, as the motor carriers remained unhealthy and under-revenued, the Board would continue to monitor them to achieve sustainability for the services:

[102] ... To fully appreciate this Decision, it is important to note, the Board finds Stock failed to prove the provisions of s.13 of the *MC Act* for its initial Applications seeking unrestricted use of these highway motor coaches for all charters. ...

[103] Even in relation to the cruise ship services, the evidence did not support unrestricted approval, ...

[104] One of the most important facts in this case is, that after reviewing the most recent year-end financial statements of the carriers, the Board finds the Industry in Nova Scotia is very unhealthy and under-revenued. ...

[109] ...To achieve their sustainability, the Board will remain diligent in its regulation of the types and number of vehicles, and their rates, as the Industry moves forward from the prior poor economic years until their financial health improves. ...

[289] Under paragraph 112, the Board specifically stated Stock was prohibited from doing any charter work for anyone, including for its contracted school boards, as they are currently using the existing licensed motor carriers for their HMC needs. Board counsel emphasized Mr. Phinney was told this, again, in an email from Ms. Aisthorpe on March 3, 2016.

[290] Board counsel noted an agreement was reached between the motor carriers, which the Board granted, for the very restricted use of the HMCs for overflow cruise ship services. They could not be used for any other service, including but not restricted to, schools, charters, and tours (para. 118).

[291] At para. 122, Stock was advised by the Board the HMCs were not sustainable with this operating authority alone, but Stock had agreed to these terms. If Stock determined it no longer wanted to provide the services, it could apply to abandon the services.

[292] Board counsel emphasized the Board's Findings that Stock did not meet the criteria of s. 13. There is an excess of equipment. The sustainability of the Industry is impacted.

[293] Board counsel argued that, even if Mr. Phinney "breezed through" this entire Decision, all of these points are succinctly referenced in the Conclusion section of the *Stock Decision*.

[294] Board counsel argued the overarching issues in this Show Cause proceeding, under the *MC Act* and the *MVT Act*, are

1. Stock provided services with a licensed public passenger vehicle to groups it was not licensed to service; and
2. Stock provided the services for free.

[295] The remaining comments of Board counsel relate to the scope of the *MC Act* or facts and her arguments for various charges. The Board will address these separately.

## **2. Stock**

[296] Stock's main argument challenges the scope of the *MC Act* and the Board's jurisdiction, which is addressed below. Its other arguments relate to the specific charges. These will be addressed in the Findings section.

## **VII FINDINGS**

[297] The Board will decide the scope of the *MC Act* and Board's jurisdiction before addressing each charge.

### **1. Scope of *Motor Carrier Act***

**Issue: Does the *Motor Carrier Act* apply to a motor carrier if it uses its licensed vehicles to transport people for free?**

#### **(A) Statute**

[298] The main sections of the *MC Act* argued for this issue are:

(i) "public passenger vehicle" means a motor vehicle operated by or on behalf of a person carrying on upon any highway the business of a public carrier of passengers, or passengers and freight, for gain and includes a school bus;

**License and compliance required**

7 (1) Except as herein provided, no person, either as principal or by an agent or employee, shall operate a public passenger vehicle upon a highway within the Province

(a) without holding a license issued by the Board allowing the vehicle to be so operated; or

(b) in a manner, at a place or for a purpose that is not authorized by the terms of his license.

(2) No motor carrier shall operate a public passenger vehicle under the license issued to him other than a public passenger vehicle designated in such license.  
[Emphasis added]

[299] Under the *UARB Act*, the Board has jurisdiction to determine questions of law, s. 4 and 22(2).

**(B) Arguments**

[300] Board counsel understood Stock would raise, as a defense to the charges, the definition of "public passenger vehicle" in the *MC Act* and providing free transportation services. Board counsel emphasized it is "the business" of a public carrier of carrying passengers "for gain" that is central to the definition. When a vehicle is licensed by the Board, all of the vehicle's movements are regulated under the *MC Act*.

[301] Board counsel argued Stock is a business. It is one of the largest bus companies in the world. Stock acknowledged it is in the business of carrying passengers on the highways for gain. Stock has restricted Licenses. The vehicles at issue in this case have restricted license authority.

[302] Board counsel used, as one of the examples of free service in this case, those for Newbridge. Newbridge is also a business. Newbridge put out a Tender for its

transportation services. Stock answered and advised what money it proposed to receive for providing the services. They had a business relationship.

[303] Without licensed authority, Stock provided the same transportation services to Newbridge for free.

[304] Mr. Flynn had understood that even though Newbridge had received these initial trips for free, it was his understanding that if Stock received its licensed authority, Newbridge would pay for the services. Similarly, with respect to the lease, Board counsel argued Mr. Flynn's evidence was that, at some point, Newbridge would have to pay for the services. Board counsel argued Mr. Flynn is part of Newbridge.

[305] With respect to charitable purposes, past practice of the MCD was not to enforce licenses if a motor carrier provided free service to a charity once or twice per year. Board counsel argued both Ms. Aisthorpe and Mr. Penney had not encountered a situation like this where there were multiple trips for free.

[306] Board counsel argued one of the reasons why free service has not happened multiple times is because it is a form of discounting. Regardless of whether that is the intent, it is the result.

[307] In addressing the Board's question of whether the transportation of employees is exempt, Board counsel stated there is nothing in the *Acts* which exempts the need to be licensed when an employee is on the vehicle. Furthermore, she argued that under the *MVT Act*, there is nothing that references "for gain". Therefore, regardless of the Board's decision in relation to "for gain" and its meaning within the *MC Act*, under the *MVT Act* this vehicle had to be licensed to move out of Nova Scotia whether it carries employees or not.

[308] Board counsel emphasized the interpretation cannot cause a situation where a vehicle's movement one day is under its license and the next day it is not.

[309] Board counsel also argued this raises two main issues: sustainability and safety. Safety is impacted by frequency. If a motor carrier uses the vehicle endlessly for shuttling employees, further inspections may be necessary. For example, in the August 18, 2016, inspection, the HMC was found to have brake safety issues amongst other repairs that needed to be remedied and re-inspected before it would be authorized to operate again on the highway.

[310] Board counsel stated there are various ways motor carriers may request authorization to use their vehicles for other services beyond their licensed authority, including employees, such as trip permits and temporary authority under s. 9.

[311] Stock's counsel commented that, in preparation for this hearing, he read and reread the *MC Act* many times and has brought fresh eyes to the legislation and, therefore, a fresh interpretation.

[312] Stock's counsel (also Stock) acknowledged Stock is a motor carrier in the business of transporting people in passenger vehicles for gain.

[313] In summary, however, Stock argues, other than movements for which the HMC is licensed, everything else is outside of the *MC Act* and, therefore, not within the Board's jurisdiction. The word "gain" restricts the Board's jurisdiction to only those activities of the vehicle when it is being used for a commercial purpose. Consequently, when Stock is transporting the public in its vehicles for free, the Board has no authority over those movements. When Stock is transporting an employee with friends and family for free, the *MC Act* has no application. In other words, "gain" is connected to each

specific individual movement. Stock argues it is akin to a taxi. When the roof light is on, it is collecting money and is within the *MC Act*. Otherwise, the vehicle can do what it wants on the highways of Nova Scotia and across Canada and need not be licensed for any free movements.

[314] Specifically, Stock argued the *MC Act* allows the Board to regulate busing activities” for gain”. It is not regulating the vehicles, but rather the individual movements of them. Stock begins its argument as follows:

... But whatever the case what is very clear on a plain reading of the Act is that the activity to be regulated, the activity that is being governed under the Act is commercial bussing. Commercial bussing.

It's not the busses that are being regulated, it's their activity. And specifically commercial activity for gain. Nobody's disputing that Stock Transportation is in the business of bussing and that it meets the other requirements of operating public passenger vehicles under the Act.

[Transcript, February 9, 2017, pp. 120-121]

[315] Stock emphasized the critical component is whether the bus is being operated “for gain”. If not, then the activity is not within the scope of the *MC Act* and, therefore, is not regulated by the Board. Consequently, anything for free, for private, or for employees, is not within the *MC Act*.

[316] Stock argued Board counsel was incorrect when, in referencing ss. 7(1)(a), she stated no one is permitted to transport “people” on the highways of Nova Scotia. Stock argued a person does not need a license to transport people on the highways of Nova Scotia. Rather, Stock argued the wording of s. 7 is “cannot operate a public passenger vehicle”. Public passenger vehicle is defined and refers to the activities related to and is “for gain.”

[317] “Gain” is not defined in the *MC Act* and, therefore, would have the plain meaning of the word.

[318] Stock argued “gain” means for a commercial business use. The transportation movement is for a fee, for costs, for a fare. It argued the *MC Act* makes a distinction between commercial and non-commercial activities, similar to a taxi car:

... It is a commercial business use presumably for a fee, for cost, for fare. It is a public vehicle, it's not one that you're using to move your people around. That would be a gain in some context, in a broad context.

We need to move buses to Quebec and we have a motor coach [HMC] that we can use as a chase bus in a wildly broad sense of the term that would be a gain to the company because they don't have to hire another bus or it's more comfortable for their drivers or what-have-you.

What I am suggesting is it's not a gain for the purpose of the Act because that's clearly a much more substantive intention so as not to confuse non-commercial use with commercial use, the same way we'd make a distinction between the use of a taxi and the use of a private car, notwithstanding that that may be the same vehicle.

[*ibid*, pp. 135-136]

[319] Stock also argued the Board could adopt the Ontario Court's interpretation of “compensation” used in the Ontario legislation as the meaning of “for gain” under the *MC Act* of Nova Scotia.

[320] Stock referenced the following definition from the *Oxford Dictionary*:

Noun, something gained, achieved, etc., an increase of possessions, etc., a profit, advance or improvement, the acquisition of wealth.

[*ibid*, p. 147]

[321] When asked about the above *Oxford* definition, Stock discouraged the Board from adopting it, stating words like “advance” are too broad. If adopted, most things would be considered “for gain”. Furthermore, this would stretch the definition to include donations or outreach to the community, which it stated are not “for gain”. Its argument continued:

... It's not intended to capture non-commercial activity. If we stretch the definition of gain for the purpose of reaching a result, then you know we end up on a very slippery slope where we could argue things like well if Stock Transportation is donating a bus for an IWK parade which everybody appears to agree is perfectly reasonable, well in some way is that not a gain?

Is it marketing, is it some sort of goodwill outreach to the community? Does it have to be altruistic or are they benefiting from it in some way? I mean that would fall under a broader definition of gain.

Most things would be gain. But I would expect that it would be common ground that the use of the word "gain" in the Act is chosen specifically to connect to commercial activity.

[*ibid*, pp. 123-124]

... What I would counsel against is stretching that definition out so that effectively we can -- it has no meaning so that we can say you know well if they're involved with charity work that's marketing and you know maybe it advances the company because it increases morale.

[*ibid*, p. 135]

[322] Stock argued the reason why the MCD allows a company to, once or twice a year, use its vehicles for charitable work without charging a fee, and why they will allow employees to be moved, is because the underlying thread of the legislation is that it is outside of the *MC Act* and, therefore, outside the jurisdiction of the Board.

[323] Although Stock argued, generally, for an interpretation of the word "gain" in a commercial context, it did not provide a commercial definition. Stock further stated it did not want to be pinned down to a specific definition of "gain".

[324] In seeking to understand the parameters of what movements would be within the *MC Act* and which ones would not, Stock, without naming the case, referenced the 1960 Decision of the United States Supreme Court regarding free speech and pornography. The Court stated they could not codify what pornography was, but 'they would know it when they see it'. Stock argued the same should apply to the Board in its approach to services "for gain", so that the Board does not completely close off any use of the public passenger vehicles for free.

[325] In addressing some of the factual scenarios in this case, Stock argued that even though Stock had a commercial contract arrangement with Newbridge for which it

did not have a license, it could then offer the same services for free. By providing them for free, Stock's use of its HMC brought it outside of the *MC Act*. He stated:

Chair: And so the fact that they had a signed contract and were providing absolutely exactly the same service[,] but without any compensation[, movement] one is in and one is out of my jurisdiction and one is in and one is out of the license.

Mr. Scott: Not always but in that -- in the case that we're talking about yes I would.

[*ibid*, pp. 215-216]

[326] Stock then argued it is not within the *MC Act* because it "... isn't obviously of any benefit to Stock...". The Board noted Stock had taken this work away from a licensed motor carrier that had provided the HMC services for Newbridge during the previous school year. Stock would benefit financially, if the HMCs were licensed to do Newbridge's requirements.

[327] When the Board asked, what happens if Stock is not granted the license, is it permitted to operate the services for free for the fall? He replied:

Chair: -- that they're late, somehow they're going to be able to operate free service for the fall.

Mr. Scott: No and I wouldn't say that that's necessarily true. ...

[*ibid*, p. 221]

[328] When asked how it differed from any other discount, such as giving a customer two free weeks of service, once again, Stock was unable to provide the Board with the clear distinction of what would be within and what would be outside of the *MC Act* and its jurisdiction. Once again, Stock resisted any defined parameters.

[329] Stock also argued that when Mr. Phinney puts his son's hockey team on the bus, he wonders if anyone seriously considers it, in any meaningful sense, as being "for gain" or "a commercial purpose." However, if Mr. Phinney was to do this for 50 hockey trips a year, then it would come under the jurisdiction of the *MC Act*.

[330] Stock resisted setting a defined number of trips, but argued the Board should assign weight to the aggregate number in determining whether the movement is for a commercial gain.

[331] If Stock brought a number of vehicles into the Province and offered them all for free, in an effort to compete against licensed motor carriers for cruise ship services, in his opinion, that would be for a commercial purpose and for gain (Transcript, January 30, 2017, p. 155).

[332] The Board noted with Stock's 1,600 employees, if each one was permitted to transport a relative and friends, all four HMCs could be used 365 days of the year for free. When the Board asked how it achieves the object of sustainability under those factual circumstances, Stock stated it does not matter because either the transportation movement is within the *MC Act* or it is not.

[333] When the Board asked about the 85,000 registered charities in Canada and how the Board could possibly regulate the Industry with that number of potential free services each year, the same answer applied.

[334] On oral reply submissions, Board counsel re-emphasized the definition of a "public passenger vehicle" does not have commas such that it is limited to when the vehicle is being operated "for gain". Rather, the key is whether it is operated by or on behalf of a person carrying on "the business" of transporting passengers "for gain". Stock is in the business of carrying passengers for gain. Consequently, in Board counsel's submissions its vehicle must be licensed by the Board for all movements and cannot be done for free.

**(C) Board Finding**

**1) Summary**

[335] For the reasons set out below, the Board concurs with the submissions of Board counsel. The proper interpretation of the *MC Act* is that a public passenger vehicle is one that is operated by a person carrying on the business of a public carrier of passengers on the highway for gain. The focus is on the person's business operation and does not vary by the nature of each individual movement of the vehicle. All movements of a licensed vehicle operating on the highways of Nova Scotia, and into other provinces extra-provincially, must be done in accordance with the *MC Act, Regulations, Rules, Orders and Licenses*, trip permits, or temporary authorities.

[336] As Stock carries on the business of transporting people on the highway for gain, all movements of its licensed vehicles are under the scope of the *MC Act* and are regulated by the Board.

[337] Specifically, the Board finds it is not the individual activity of a bus that determines the scope of the *MC Act* and when its movements are regulated. The Board rejects Stock's arguments that a motor carrier may transport anyone it wants on the highways, completely outside of the *MC Act*, by providing the service for free.

[338] Stock argued the Board should adopt, as the meaning of "for gain" in the *MC Act*, the Ontario Courts' interpretation of the word "compensation" under its legislation. As noted by Justice Dickson of the Supreme Court of Canada, as he then was, in *British Columbia Development Corporation v. Friedmann (Ombudsman)*, [1984] 2 SCR 447, p. 468, the interpretation of a word using different legislation for a different purpose, does not assist the Court in interpreting the legislation before it. The Board finds

this is particularly the case when it is a completely different word. The Board rejected this argument outright.

[339] Without naming it, Stock also encouraged the Board to adopt the test used in a 1960 United States Supreme Court case dealing with free speech and when pornography becomes obscene. Rather than codify it, the Court said 'We will know it when we see it.' The Board rejects this argument as well.

[340] Every license issued under the *Acts* is restricted. The terms and conditions vary. A company seeking authority to provide services in an area where there are licensed motor carriers, if granted a license, may be more restricted than those currently licensed to operate in the area.

[341] Stock argued the Board should adopt a narrow definition of gain that is flexible, arguing the merits of the nature of the free services, such as for charities. No one disputes the merits of providing services for charities or community services. These may be licensed under trip permits, temporary authorities, or permanent license authority after considering all relevant factors under s. 13. Restrictions are required considering there are more than 85,000 registered charities in Canada. However, the merits of the type of vehicle movement, themselves, are not determinative of the interpretation or scope of the *MC Act* or the Board's jurisdiction. The question is: "When does a motor carrier need authority from the Board to operate its vehicles on the highways?" On a full reading of the *MC Act*, to ensure quality, safe transportation services in the Province, the Board finds that licensed authority from the Board is required for all movements of the vehicles of the motor carrier.

[342] The fact that the MCD may not enforce one or two free trips a year for a charity like the IWK or transporting employees also does not determine the scope of when the *MC Act* applies or the Board's jurisdiction.

[343] The Board finds Stock's interpretation is not in keeping with the plain language of the *MC Act* or its objects. The consequences of this interpretation include safety, negatively affecting transportation services, impossibility to administer, which, in effect, would render the *MC Act* useless.

## 2) Analysis

### (a) *Interpretation Act*

[344] When the Board is interpreting the *MC Act*, the directions in the *Nova Scotia Interpretation Act*, R.S.N.S., 1989, c.23 as amended, apply and include:

9 (1) The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.

...  
(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters

- (a) the occasion and necessity for the enactment;
- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;
- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and
- (g) the history of legislation on the subject.

[345] Under s. 6(2), judicial principles of interpretation may be taken into consideration, provided they are not inconsistent with the *Interpretation Act*:

**6** (1) Except where a contrary intention appears, every provision of this Act applies to this Act and to every enactment made at the time, before or after this Act comes into force.

(2) Nothing in this Act excludes a judicial rule of construction that is applicable to an enactment and not inconsistent with this Act.

[346] The Supreme Court of Canada's interpretation principle of reading the legislation as a whole and giving it a broad, liberal and purposive interpretation to ensure its object is met, is consistent with the provisions of s. 9 above and applies in Nova Scotia.

### **(b) Plain Reading of Definition**

[347] The Board concurs with Board counsel that there are no commas in the definition of "public passenger vehicle" which isolates the vehicle and "for gain" from the person's business of carrying people on the highway. Consequently, to say the vehicle, when it is being operated to transport people for free, is not covered by the legislation is not consistent with the plain reading of this definition.

### **(c) Overview of *MC Act***

[348] In reading the *MC Act* as a whole, an overview of the legislation includes that no one is permitted to operate a public passenger vehicle on a highway without a license issued by the Board allowing it to be so operated (s. 7(1)(a)). The vehicle cannot be operated in a manner, at a place or for a purpose that is not authorized by the license (s. 7(1)(b)) and the motor carrier shall only operate the vehicles designated in its license (s. 7(2)).

[349] In any licensing proceeding, the Board may consider any issue relevant or material to the matter. The *MC Act* lists some of these, such as public interest, the sustainability of the Industry, including whether there is a need for additional equipment

in the geographical area, and the general effect on other transportation services. "Need" is referenced by asking whether there would be an "excess of requirements" in the area, if the license were granted. Some of these issues are outlined in s. 13.

[350] No one has the right to be issued a license. It is considered a privilege (ss. 14 & 16). If a license is granted, it provides no perpetual or exclusive right (s. 10(1)).

[351] The Board has the authority to refuse to grant an application, in whole or in part (s. 14); to attach terms or conditions (s. 16); to specify routes or geographical areas for the services (s. 27(1)(a)); and to set rates, fares, or charges, or minimum and/or maximum charges (s. 27(1)(c)). Pursuant to s.30 of the *MC Act*, the Board has the same powers to set rates as it has under the *Public Utilities Act*, R.S.N.S. 1989, c.380 (*PUA*). The Board does not use the *PUA* provisions for rate base or return on rate base, but does take into consideration other sections, in particular, those requiring just, non-predatory, or discriminatory rates, *Kings Transit Authority*, 2008 NSUARB 125, paras. 24 to 32.

[352] If a person is granted a license, it is only permitted to operate in accordance with all of the terms and specifications of its license (s. 7(1)(b) and (2), and s. 22). The latter reads:

**Failure to comply**

**22** A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, and the failure of a motor carrier so to conform shall, in addition to constituting an offence against this Act, be good and sufficient cause for the suspension or cancellation or both by the Board of the license issued to the motor carrier, or for the suspension or cancellation by the Board of part of the license or of any authorization issued to the motor carrier.

[353] A motor carrier must charge its rates as fixed and approved by the Board (s. 23(1)).

[354] If a motor carrier wants to operate the vehicle for a purpose that is not within its license, it can apply to the Board to seek that authority as a permanent additional service to its license under s. 13. It can also seek authority by applying for a trip permit of which six are permitted each year (s. 9). Finally, a motor carrier can apply to receive a temporary authority for 90 days and, with Board approval, an extension of a further 90 days (s. 9). Under any of these applications, a motor carrier must meet the tests of the applicable provisions and the Board may set terms and conditions, including restrictions on the number of movements; rates, if any, to be charged; number and types of vehicles; and areas of service, etc.

[355] If a motor carrier does not provide service in accordance with its license, the Board has the power to amend, suspend and/or cancel the license in its entirety. The latter after a hearing (s. 19):

**Variation or suspension or cancellation of license**

**19 (1)** The Board may, at any time or from time to time, amend or suspend any license or may, for cause, and after a hearing upon such notice as the Board may direct, cancel any licence.

[356] The Board has general power to give effect to the *Rules and Regulations* and Decisions (s. 29):

**Enforcement powers of Board**

**29** The Board shall have power and authority by general order or otherwise to give effect to the rules, regulations or decisions respecting motor carriers, public passenger vehicles and passenger vehicles other than public passenger vehicles.

[357] The Board also has the authority, amongst others, to do any acts or things necessary or advisable for the effective exercise of its powers (s. 27(1)(e)).

[358] The *MC Act* and *Regulations* provide numerous powers to the MCD inspectors to ensure vehicles are safe for both passengers and the public.

[359] The *MC Act* does not include any exemptions for a licensed vehicle to be operated for free or to operate outside of its License if an employee is on board.

**(d) Object**

[360] In reviewing the provisions of s. 9(5)(d) of the *Interpretation Act*, the Board finds the *MC Act* does not state a specific object. The Board finds, as noted in previous Decisions, the object and intent of the *MC Act* is to ensure there is safe, quality, sustainable motor carrier services available for people in Nova Scotia.

[361] The Board further finds the legislation is unambiguous and clear. It encompasses all aspects of a motor carrier's operation of buses transporting people on the highways. In giving the legislation a broad, liberal and purposive interpretation, the Board finds when a person is in the business of carrying passengers on the highway for gain, it is not allowed to operate its vehicle on the highway transporting people except as authorized by its license.

[362] The Board finds Stock's arguments, in effect, isolate the definition of public passenger vehicle from the remainder of the *MC Act*. Both the *Interpretation Act* and the Supreme Court of Canada require the interpretation of a provision of the legislation to be read in the context of the whole *Act* and not by itself. Furthermore, in this case, the isolation is of a mere definition which has no context outside of the provisions of the legislation. Therefore, the Board finds Stock's argument on the interpretation to be given to public passenger vehicle is not consistent with the objects, purpose, structure and scheme of the *MC Act*.

**(e) History**

[363] Considering the history of the *MC Act* under s. 9(5)(a) of the *Interpretation Act*, its predecessor was first enacted in 1911. Buses and motor carriers have been regulated for more than 100 years. When the commercial trucking portion of the *MC Act* was de-regulated in 1994, the Legislature did not de-regulate buses carrying people on the highways.

**(f) Occasion and Necessity**

[364] The Board finds the occasion and necessity for the legislation as it evolved was to ensure there was safe, quality motor carrier services in Nova Scotia.

[365] The Board has repeatedly found the sustainability of the Industry is a significant component of the *MC Act*. There are factors affecting sustainability in Nova Scotia, including that it has a small population dispersed over the Province except for concentrations in the Halifax and Sydney areas and, to a lesser extent, places like Truro and Yarmouth. The vehicles are expensive. For example, a new HMC costs in excess of half a million dollars. In order for people to invest in the Industry, the Board is authorized under the *MC Act* to regulate virtually every aspect, including the number and types of vehicles, the terms and conditions of the license, the areas in which the vehicles operate, rates, and any other terms and conditions the Board thinks are necessary in order to achieve the object of the *MC Act*.

[366] The Board has described the licensing parameters for each vehicle as being akin to a seller's district or territory. The population and type of vehicle will influence the number of vehicles licensed in a particular area. As noted above, every license is restricted. The terms and conditions vary. A company wanting to operate in the area of

another licensed motor carrier, if granted a license, may be very restricted. Every licensed motor carrier, even those with broad authority and 50 or more vehicles, must apply to add one more vehicle to its license, and must meet the tests under the *MC Act* for all of the reasons stated in this Decision.

[367] Sustainability is noted as the first factor under s. 13(a). The Board is to consider whether the granting of the license would result in an excess of equipment. If there is an excess of equipment, the amount of work and revenue available to licensed motor carriers is reduced. This will likely similarly reduce the motor carriers' ability to continue providing services and/or impact the quality of those services and, in particular, safety.

#### **(g) Consequences**

[368] Another consideration is the consequences of a particular interpretation (s. 9(5)(f)). The Board will discuss the consequences of Stock's interpretation under the following three main headings:

1. Safety;
2. Negative impact on transportation services; and
3. Administration.

[369] Before discussing these, the facts of this case help to illustrate the consequences that can flow from the interpretation Stock encourages the Board to adopt.

[370] Stock's parent company is the largest bus company in the world. Stock is the largest bus company in Nova Scotia. Stock operates more vehicles in the Province than all the other licensed motor carriers combined.

[371] Stock has the ability to bring to Nova Scotia as many vehicles as it wants. As Mr. Phinney stated, offering services for free could include Stock providing vehicles to service all cruise ships' transportation requirements for free.

[372] Furthermore, Stock has the ability to offer a large volume of vehicles for free. Once again, as Mr. Phinney testified, 'he did not care if the HMCs made money'; *Stock Decision*, para. 21.

[373] Consequently, Stock has the capacity to provide a very large volume of transportation services for free.

[374] As noted above, a motor carrier can apply under the *MC Act* for each of the types of movements Stock recommends are capable of being done for free. Depending upon the facts and circumstances of each type of application, a motor carrier may receive authority through a permanent amendment, trip permits, or temporary authorities, with or without specific terms, conditions or restrictions, after considering s. 13. For example, the *MC Act* allows a motor carrier to request six trip permits per year. These may be used, for example, for one or two charity movements as well as staff movements when reallocating school buses. Tri-Star has on its MC License authority to transport the Junior A Midget hockey team it owns for free. Its License reads:

D(1) RATES

No fees will be charged for the transportation of the Yarmouth Jr. "A" Mariners Hockey Club.

## 1. Safety

[375] The consequence of Stock's interpretation would mean that a vehicle solely designated for free trips and outside the scope of the *MC Act*, would never be inspected under the *Act*; not the semi-annual inspections, spot checks or random inspections.

[376] For example, with more than 85,000 registered charities in Canada, Stock would be capable of doing thousands of movements on the highways outside the scope of the *MC Act*. Similarly, if the presence of an employee is on board, with 1,600 employees, Stock, once again, could do thousands of movements of these vehicles on the highways outside of the scope of the *MC Act* and any inspections under the *MC Act*.

[377] Safety is also impacted when a licensed vehicle is within the *MC Act* for some movements and outside of the *MC Act* when the movement is operated for free. These safety risks are illustrated by an incident which occurred in this case. In August 2016, the MCD contacted Stock to do a random inspection of its HMC because of a complaint. Stock was going to operate the vehicle transporting people on the highway, that under its interpretation would be outside of the scope of the *MC Act*. Under Stock's interpretation Stock would have been permitted to use the vehicle for that service and delay the inspection by the MCD.

[378] The inspection showed 15 defects, three relating to the airbrakes, that had to be fixed before the vehicle was permitted to be operated on the highway again. It was not repaired, re-inspected and placed back on the License for almost one month.

[379] As the Director of the MCD stated, she would not permit the vehicle inspection to be delayed for safety reasons. If there were found to be any defects, the vehicle may not have been safe to drive.

[380] Unsafe HMCs can cause injury and harm to those riding on the vehicle. They are massive vehicles and can cause serious harm or death to others travelling on the highway.

[381] The Board finds the consequence of Stock's interpretation impacts safety; failing to meet one of the main objectives of the *MC Act*.

## **2. Negative Impact on Transportation Services**

[382] This relates to the sustainability of the licensed motor carriers and the loss of business and revenue, if services that are provided for free are outside of the scope of the *MC Act*.

[383] Once again, the specific facts of this case are illustrative of the significant consequences of Stock's interpretation.

[384] As Mr. Phinney testified to in Stock's amendment hearing, its customers are the same as those of the existing licensed motor carriers in the Province. This is best illustrated by the school bus services. The Halifax Regional School Board and Newbridge have been customers of other licensed motor carriers for their HMC services.

[385] School bus services must be provided by school buses. These vehicles must be painted yellow and have specific safety features, like a back door exit. They are permitted to take children to and from school and to school board sponsored extra-curricular activities. When school boards want HMC transportation, they use the licensed motor carriers authorized by the Board to operate those vehicles. Licensed motor carriers rely on this work from the school boards. It is essential revenue, outside of the tourism season, when they must continue to make payments on these costly vehicles.

[386] As noted above, Mr. Phinney stated he did not care if Stock's HMC made any money. Without first seeking a license from the Board, Stock offered these four HMCs to service the Halifax Regional School Board as a bonus added within its school contract. Mr. Phinney also testified the HMC services were a significant reason why Stock was awarded the HRSB school bus contract.

[387] This took work away from the licensed motor carriers who had done HRSB HMC services in the past.

[388] The Board notes that under any definition, *Oxford Dictionary* or commercial, Stock has received a significant gain of the award of a large school bus contract, by offering HMC services virtually for free.

[389] The Board concurs with Board counsel that providing services for free is a form of discount.

[390] As noted above, licensed motor carriers were affected by the 2008 recession from which they are seeking to emerge. As economist Michael Gardner opined in the *Discount Decision*, any form of discount is a zero-sum gain. This means anyone achieving work through a discount is taking revenue and work away from another motor carrier. In the school bus contract example above, Stock's gain was also a detriment to the licensed motor carriers that previously provided these services to the school board.

[391] The Board finds the consequence of Stock's interpretation of the scope of the *MC Act* and what services are in and out, and which may be provided for free, will have all the same negative effects on motor carriers and the transportation services they provide as noted by the Board in the *Discount Decision*. All forms of discounting

negatively affect individual motor carriers and the Industry as a whole. It is why the Board rendered a specific decision in relation to discounts and eliminated or restricted them.

### **3. Administration**

[392] Stock encourages the Board to adopt a definition of gain that restricts the scope of the *MC Act* to exclude all services that are provided for free unless the circumstances or aggregate of the number of trips used in this manner would be considered, in the commercial context, for gain. No commercial definition was advanced nor does Stock advocate specific parameters, but rather states the Board should adopt the test “the Board will know it when it sees it.”

[393] The consequence of Stock’s interpretation is a lack of clarity and uncertainty such that motor carriers would not know when they were operating within their licenses and when they were not.

[394] Furthermore, it would require an analysis of each individual trip movement of every vehicle operating on the highways in the Province. For each movement, there would need to be an analysis of whether it fits a vague definition of commercial gain. The sheer volume of analysis would make it impossible to administer.

[395] Once again, the facts of this case provide a good illustration of the consequence of Stock’s interpretation. Stock, for free, took the officials of the Halifax Regional School Board to Mr. Phinney’s cottage for a lobster party. Mr. Phinney did not care if the four HMCs generated any money for Stock on the HRSB contract. The inclusion of those vehicles within its RFP response helped it secure its contract. Stock claims the free trip to Mr. Phinney’s cottage is outside of the scope of the *MC Act*, even though, once again, this was clearly for a commercial gain for Stock.

[396] For all of the above reasons, the Board finds the consequences, if Stock's interpretation were adopted, is that the *MC Act* is not capable of being administered. Furthermore, the Board finds an *Act* to regulate services that cannot be administered is useless. Stock's interpretation would render the *MC Act* useless.

### 3) Conclusion

[397] In conclusion, after reading the legislation as a whole and giving it a broad, liberal and purposive interpretation, the Board finds the language of the *MC Act* is unambiguous and clear. The Board finds the scope of the *MC Act* applies to businesses that are carrying passengers on the highway for gain. Each vehicle operated by the motor carrier must do so in accordance with its license and only with the vehicles designated on its license. Even though Stock brought fresh eyes and a fresh interpretation in January of 2017, to the 100-year regulation of public passenger vehicles, the Board finds Stock's interpretation is not consistent with the plain language of the legislation. After considering the consequences of its interpretation, as well as the other provisions of s. 9, the Board finds, most importantly, that Stock's interpretation will not achieve the objects of the *MC Act* of safe, quality motor carrier services in Nova Scotia.

[398] The Board finds every movement of a licensed vehicle on the highways falls within the scope of the *MC Act* and the Board's jurisdiction.

[399] Stock acknowledges it is in the business of carrying passengers on the highway "for gain". As a consequence of the Board finding that "gain" relates to the business, it is not necessary for the Board to determine a specific definition of "for gain". If the Board were required to make a determination, gain as an undefined term is to be given its ordinary meaning which the Board finds would be in accordance with the

definition of the *Oxford Dictionary*. The Board concurs with Stock that this definition would include every movement of a motor carrier's licensed vehicle. Consequently, using the *Oxford Dictionary* definition of gain, the Board would come to the same conclusion; that is, all movements of the vehicles carrying passengers on the highway, including those for free, are within the scope of the *MC Act* and the Board jurisdiction.

**2. Charge 1. Stock using its HMC to transport passengers from and/or to the Province of Nova Scotia contrary to section 4 of the *Motor Vehicle Transport Act***

[400] The alleged breaches 1, 2 and 3 overlap.

[401] Section 4 of the *MVT Act* reads as follows:

**Operation without licence prohibited**

**4** Where in any province a licence is, by the law of the province, required for the operation of a local bus undertaking, no person shall operate an extra-provincial bus undertaking in that province except under and in accordance with a licence issued under the authority of this Act.

[402] Under the *MVT Act*, a motor carrier may obtain a license under the same regime that exists in Nova Scotia and be subject to the same terms and conditions:

**Issue of licence**

**5** The provincial authority in each province may, in its discretion, issue a licence to a person to operate an extra-provincial bus undertaking in the province on the like terms and conditions and in the like manner as if the extra-provincial bus undertaking were a local bus undertaking. [Emphasis added]

[403] Pursuant to the *MC Act*, no one is permitted to operate a public passenger vehicle on the highways without holding a license from this Board and may only operate those vehicles designated in the license (s. 7(2)) which reads:

**7 (2)** No motor carrier shall operate a public passenger vehicle under the license issued to him other than a public passenger vehicle designated in such license. [Emphasis added]

[404] In combination with the Federal *MVT Act*, no one is permitted to operate a public passenger vehicle on the highways extending from Nova Scotia and into other provinces or the reverse without being licensed to do so.

[405] During Stock's Amendment hearing, it requested to amend its Applications to only use its HMC for overflow cruise ship services in Nova Scotia. Stock withdrew its application for the HMC to be designated on its XP License. Consequently, Stock had no authority under s. 4 of the *MVT Act* to transport any passengers to any other province from Nova Scotia or the reverse using its HMC.

[406] In the *Stock Decision*, the Board informed Stock that it must operate within its Licenses. The vehicle was not licensed to do extra-provincial movements. Without the restrictions, the vehicle would not be licensed for any charters. It was very important that Stock strictly adhere to the restrictions for the use of the HMCs.

[407] On May 18, 2016, Stock had one of its HMCs inspected, plated and added to its MC License 595.

[408] Stock immediately used the HMC to take 15 to 20 passengers from Nova Scotia on a five-day trip to Montreal and return.

[409] Stock also operated its HMC on the highways to transport people extra-provincially from Nova Scotia on numerous occasions from May to November, 2016.

[410] Board counsel argued there is clear evidence the HMC did transport people across the borders of Nova Scotia when it did not have an extra-provincial authority to do so. These trips included:

1. Taking a hockey team from Dartmouth to Montreal and return;

2. Taking staff and school board officials from the Halifax Regional School Board to New Brunswick; and
3. Transporting students of Newbridge Academy to Saint John, Boston, Quebec, and Ontario.

Specifically, in relation to the latter, there were multiple trips done for Newbridge out of Province.

[411] Board counsel noted no trip permits or temporary authorities were requested for any of these trips.

[412] Stock agreed that Stock holds no other license for its HMCs except the very restricted MC License 595 to be used for overflow cruise ship services. It does not contest that the extra-provincial movements were made with the HMC. Stock's argument relates to the scope of the *MC Act* and, therefore, also the scope of the *MVT Act* as outlined above.

[413] The Board, having rejected Stock's arguments, finds Stock used its HMC to transport passengers from and/or to the Province of Nova Scotia contrary to s. 4 of the *MVT Act*.

[414] The Board also finds Stock operating contrary to its XP License results in breaches of all other related laws, *Rules* and *Regulations* such as failing to display an XP plate on the vehicle, contrary to *Regulation 14(2)*.

**3. Charge 2. Stock using its HMC to transport students from Newbridge Academy upon a highway within the Province of Nova Scotia, contrary to s. 7(1) of the MC Act**

[415] Section 7.1 reads:

**License and compliance required**

7 (1) Except as herein provided, no person, either as principal or by an agent or employee, shall operate a public passenger vehicle upon a highway within the Province

(a) without holding a license issued by the Board allowing the vehicle to be so operated; or

(b) in a manner, at a place or for a purpose that is not authorized by the terms of his license. [Emphasis added]

[416] The Board finds s. 7(1) of the *MC Act* is very specific: No one is permitted to operate a public passenger vehicle on the highways of Nova Scotia except as provided in its License. Stock's Licenses and the *MC Act* both require the motor carrier to operate in conformance with its License, the *Acts, Regulations, Orders, Rules* and Schedules.

[417] When Stock requested to amend its Applications to restrict the use of its HMCs to overflow cruise ship work only, Stock specifically stated it would not use the HMCs for servicing schools. In Show Cause proceeding, Mr. Phinney confirmed his testimony:

The Chair: My last question, Mr. Phinney, you knew at the time of your -- the hearing of your applications back in July of 2015, that you would agree that these highway motor coaches would not be used for school -- extracurricular school work. You knew that; correct?

Mr. Phinney: Correct.

[Transcript, February 1, 2017, pp. 652-653]

[418] Stock's License under Schedule F(4), specifically, restricts the HMC from transporting students:

... The highway motor coaches may not be used for any other services, including but not limited to, for schools, school children, charters, and tours; and are further subject to the terms and conditions of the License. [Emphasis added]

[Exhibit S-30, p. 17]

[419] In the *Stock Decision*, the Board informed Stock it was specifically prohibited from doing any charter work for anyone, outside of the overflow cruise ship service, including for schools, as they were currently using the existing licensed motor carriers for their HMC needs.

[420] Immediately following the issuance of the *Stock Decision*, Mr. Phinney, in a series of emails with Ms. Aisthorpe, wanted to place the HMCs on Stock's school bus licenses. Ms. Aisthorpe, quoting the Decision, informed Mr. Phinney that Stock could not use the HMCs to transport students.

[421] Stock transported students for Newbridge in its HMC from September to approximately mid-November, 2016.

[422] Board counsel argued the above is very clear evidence the HMC was used by Stock to transport students from Newbridge when it did not have a license to do so. Counsel also noted Stock did not seek to obtain trip permits or a temporary authority under s. 9 of the *MC Act*.

[423] Stock did not contest that the Company had used its HMC to transport students from Newbridge upon a highway within the Province of Nova Scotia. Stock's argument against this charge, as the one above, was that this service was "not for gain" and, therefore, outside of the jurisdiction of the Board. The other arguments raised by Stock go to the remedy the Board determines is appropriate for the breaches which will be discussed later in this Decision.

[424] Having rejected Stock's interpretation of the *MC Act*, the Board finds Stock used the HMC to transport students from Newbridge Academy on the highways within the Province of Nova Scotia contrary to s. 7(1) of the *MC Act*.

[425] Stock also used other school and activity buses to transport students of Newbridge and other schools outside of its Licenses, which will be addressed under other breaches in Charge 8.

**4. Charge 3. Stock using its HMC and its [school bus] Vehicle Unit No. 25486 to transport students from Newbridge Academy free of charge, contrary to s. 22 of the *MC Act***

[426] Section 22 reads as follows:

**Failure to comply**

**22** A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, and the failure of a motor carrier so to conform shall, in addition to constituting an offence against this Act, be good and sufficient cause for the suspension or cancellation or both by the Board of the license issued to the motor carrier, or for the suspension or cancellation by the Board of part of the license or of any authorization issued to the motor carrier.

[427] Board counsel states that under this charge Stock not only used its HMC for a service it was not authorized to provide, but it also acted contrary to s. 22 of the *MC Act* by failing to charge its rates outlined in its License by operating the services for free. Operating for free extended to Stock's use of its school bus Vehicle Unit No. 25486 to transport Newbridge students between its two facilities contrary to its MC License 595.

[428] The facts of this breach are not in dispute. As noted above, there is overlap between charges 1, 2 and 3. Stock used its HMC to transport students from Newbridge when its License prohibited the transportation of students and was solely restricted to be used for overflow cruise ship service. Furthermore, the services were provided for free. The latter issue will be discussed in Charge 6.

[429] In the *Stock Decision*, the Board informed Stock that it is required to charge the rates set by the Board. The Board found some of Stock's proposed rates to be low and potentially predatory. The Board then set specific rates for its charter vehicles. For

the reasons set out in Charge 6, the Board finds that the free services operated by Stock were contrary to the rates set by the Board in Stock's Licenses. Furthermore, the Board agrees with Board counsel that providing services for free is a form of discount and has the same negative impacts on the Industry as other discounts.

[430] With respect to the use of the school bus Vehicle Unit No. 25486, the facts show that Senior Inspector Penney prepared a Roadside Inspection Report dated September 27, 2016. He noted the vehicle, owned by Stock, was being used to shuttle students of Newbridge between its two locations, from East Hants to Sackville. On September 28, 2016, he confirmed their conversation in an email to Ms. Coldwell in which she stated the trips were provided for free. Once again, both of those services were originally a business contract between companies, Stock and Newbridge, the former for gain.

[431] Stock's argument was the same as for the first two charges; that is, as the services were not provided "for gain" they were outside the scope of the *MC Act*, and, therefore, also outside of the *MVT Act* and the Board's jurisdiction. As these movements did not require licensing authority, therefore, Stock was not in breach of its License.

[432] Providing charter services for Newbridge's hockey teams with the HMC and a school bus for its shuttle services for free, the Board finds Stock has used its HMC and school bus Vehicle Unit No. 25486 to transport students from Newbridge free of charge, contrary to s. 22 of the *MC Act*.

**5. Charge 4. Stock's failure to make the HMC available or use the HMC for the purposes set out in the Licenses**

[433] Stock's License reads:

F(4) SPECIALTY IRREGULAR PUBLIC PASSENGER CHARTER SERVICE

The highway motor coaches are restricted to the transportation of cruise ship passengers under subcontract to another licensed carrier in the Province of Nova Scotia from any port between May to November as a last resort, when there are no other licensed vehicles available with a seating capacity of 36 seats or greater, after compliance with the notification chart below:

Charter Period	Notification Date	Subcontract Date
May 1 – June 30	Apr. 1	Apr. 16
July 1 – Aug. 31	June 1	June 16
Sept. 1 – Oct. 31	Aug. 1	Aug. 16
Nov. 1	Oct 1	Oct. 16

The highway motor coaches may not be used for any other services, including but not limited to, for schools, school children, charters, and tours; and are further subject to the terms and conditions of the License.

Effective this 29th day of April, 2016.

[434] In the *Stock* Decision, the Board informed Stock that the HMC was only licensed to do overflow cruise ship services. It also provided a schedule of notification to determine its HMCs would be the last used; subcontracting with other motor carriers and set specific rates for cruise ship services.

[435] There are very few companies that provide services to cruise ship operators. Absolute/Ambassatours is one.

[436] Mr. Buckland testified he provided to Stock the initial dates Ambassatours required additional vehicles. The following are the requested dates after Stock's HMC was inspected and added to the License on May 18, 2016:

June 29<sup>th</sup>

September 01, 05, 08, 11, 12, 15, 16, 19, 22, 23, 25, 26, 28, 29 & 30

October 04, 05, 06, 07, 11, 13, 14, 20 & 28

[Exhibit S-11, Tab F, p. 68]

[437] Ms. Dempster emailed Ms. Aisthorpe stating they had contacted Stock on numerous occasions for overflow cruise ship services and had not received responses.

[438] From the time of receiving the requests to the end of the cruise ship season in 2016, Mr. Phinney testified Stock never informed Ambassatours of any dates its HMC was available for cruise ship services.

[439] Furthermore, Mr. Phinney testified that, at no time, did Stock provide a HMC to Absolute in 2016.

[440] Mr. Buckland testified it could have used Stock's HMCs during the 2016 cruise ship season.

[441] During part of September, 2016, Stock's HMC required repairs before it could operate again. This resulted from an inspection on August 18, 2016, which included three deficits in its brake system. The vehicle was not repaired, re-inspected or available for service until September 18, 2016. There are numerous dates before and after this when Stock's HMC was needed for overflow cruise ship services. Furthermore, on some dates it was used instead for unlicensed extra-provincial movements.

[442] On October 19, 2016, the Board sent a letter to Stock informing its Applications would be suspended until hearing from Board counsel as Stock may not have operated in accordance with its Licenses.

[443] Mr. Phinney stated he received a call from Coach Atlantic sometime in October to do a cruise ship service. He stated Stock attended at the dock and did one cruise ship service for Coach Atlantic. Stock did not issue an invoice.

[444] In addition to reviewing the above facts, Board counsel emphasized the tremendous lack of evidence on this one movement for cruise ship service for Coach

Atlantic. In particular, in its IR Response, Stock puts itself as the contact person rather than anyone from Coach Atlantic. No date is provided either. Furthermore, Board counsel argued that considering this was a Show Cause hearing in which Stock may lose its License, and this is the only movement within its authority, one would have expected Mr. Phinney would have checked for this information before appearing before the Board.

[445] The Board concurs. Mr. Phinney provided no evidence to support his statements. There was no record of a telephone conversation, no itinerary, no dispatch documentation and no invoice. There were no drivers' pre-trip inspection reports or the drivers' daily log books provided. Mr. Phinney came to this Show Cause hearing without knowing the date, stating he would have to check. Stock also did not call a witness from Coach Atlantic. The daily log books provided after the hearing, pursuant to Stock's Undertaking, also do not show any movement with the HMC for a cruise ship service in October, 2016.

[446] Stock has a computerized system. Itineraries for all movements of its vehicles are inputted into its computer program. Mr. Phinney testified he did not do this for any movements of Stock's HMC. In fact, Mr. Phinney was evasive about Stock's computerized system, until Board counsel drew his attention to Stock's Charter Undertaking, in which it referenced Stock's computer program.

[447] Mr. Phinney's reason for not putting any of the HMC information into its computer program was because they were not "legitimate bookings". This alleged cruise ship service for Coach Atlantic was the only HMC service within Stock's licensed authority. This movement was a "legitimate booking" and, therefore, should have followed Stock's protocol and processed in Stock's computer system.

[448] Stock argued that not providing services or responding to Absolute should not be seen as Stock not providing services for which it was licensed. Rather, he argued that as Stock provided its vehicle for one day for overflow cruise ship services, Stock has made its vehicle available for the services for which it was licensed.

[449] Although this will be explained in more detail under the next charge, the Board finds Mr. Phinney, deliberately, did not follow Stock's regular processes for movements of the HMC, including inserting the itineraries or vehicle dispatch information into its computer system. The Board finds this eliminated information about the HMCs. This made it more difficult for the MCD, Board counsel, and the Board to know the movements of this vehicle. For example, but for Newbridge's Facebook page, the use of the HMC for Newbridge in September to Saint John would not have been known.

[450] As noted above, the Board found Mr. Phinney lacked credibility. On the evidence before the Board in this proceeding, without any corroborating evidence, the Board does not believe Mr. Phinney's testimony that Stock did this one cruise ship movement for Coach Atlantic.

[451] Even if the Coach Atlantic movement occurred, the Board finds Stock did not make its vehicle available for overflow cruise ship services for the dates in which it could have been used by Ambassatours during the busiest part of Nova Scotia's tourism season for the days it was operational from June through to October, 2016.

[452] Stock argued the *MC Act* does not provide any positive obligation on a motor carrier to provide the services for which it is licensed. He stated the only section referencing providing services is s. 18(a) which reads:

**Cancellation of license**

**18** Notwithstanding Sections 19 and 24, the Board without public hearing may

(a) cancel any license authorizing the operation of a public passenger vehicle if the Board is satisfied that the licensee has not, within sixty days of the issue of the license, provided the service authorized by the license to be provided by him;

[453] In this case, he argued, Stock only provides cruise ship service on an overflow basis; therefore, the 60 days does not apply to Stock's restricted License. If the 60 days does not apply to Stock, he argued, the remainder of the provision does not apply either. He concluded, it would be too wide an interpretation of the legislation to assume from this section that a motor carrier has a positive obligation to operate the licensed services.

[454] The Board finds, once again, it is very important to read the *Act* as a whole, when seeking to interpret individual provisions such as s. 18(a). Section 22 begins with:

**Failure to comply**

**22** A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, ... [Emphasis added]

[455] Under ss. 24(1), a motor carrier is not permitted to discontinue or abandon any service without an order of the Board:

**Abandonment of service or cancellation of license**

**24 (1)** No motor carrier shall abandon or discontinue any service provided for in his license for the operation of a public passenger vehicle without an order of the Board which shall be granted only after a hearing upon such notice as the Board may direct. [Emphasis added]

[456] The Board finds that in reading the *MC Act* as a whole, and giving it a broad, liberal and purposive interpretation, that it places a positive obligation on a motor carrier to operate and furnish the services for which it has been licensed. Any abandonment or discontinuance of that service requires an Order of the Board.

[457] The Board further rejects Stock's argument that as the 60 days does not apply to Stock, s. 18(a) does not apply to the company. The Board has provided longer

time periods for motor carriers to commence their services, and in Stock's case more than 60 days would have been reasonable.

[458]           However, the motor carrier is still to furnish the services within its License. In the *Stock* Decision, the Board stated there would not be much work for the HMCs, and if Stock decided it did not wish to provide the overflow cruise ship service, it could apply to abandon the service. This was not done.

[459]           The Board also finds an interpretation that a motor carrier does not have a positive obligation to provide the services for which they have been licensed, does not meet the objects and intent of the *MC Act* of ensuring safe, quality, sustainable motor carrier services in the Province. Considering a license is similar to a sellers' district, the system does not work if one of the sellers will not sell its services to the people in its licensed area. The consequence of this interpretation is that the entire system does not work. As an illustration, the Board restricts the number and types of vehicles and services to ensure there is not an excess of equipment, s. 13(a). The Board could not analyze the number and types of vehicles which should be licensed, if those that are given authority do not need to provide the services.

[460]           Furthermore, if a motor carrier wants to restrict its license to only operate its services at its discretion and pleasure, it must request that in its application. For example, this has been done by motor carriers in seeking authority to offer discounts. Stock did not seek that type of provision when requesting to restrict its license to use its HMCs for overflow cruise ship services.

[461]           If such a request were made, it would be considered in the same way as any other request; that is, pursuant to the relevant provisions of s. 13 of the *MC Act*.

[462] The Board finds Stock failed to make its HMC available for the purposes set out in its License. Stated another way, Stock failed to operate and furnish service with its HMC for overflow cruise ship services in conformity with its License.

**6. Charge 5. Stock resisting or willfully obstructing an inspector in the execution of his or her duty or his or her exercise of powers by not cooperating and providing all requested information to the Motor Carrier Division, Department of Transportation and Infrastructure Renewal, contrary to s. 35(2) of the *MC Act***

**Power to stop vehicle and require inspection**

**35 (2)** A person who resists or wilfully obstructs an inspector in the execution of his duty or the exercise of his powers under this Act or the regulations is guilty of an offence against this Act and liable to the penalties prescribed by Section 37.

[463] The inspectors are able to enforce the provisions of the *MC Act* and *Regulations*, inclusive of operating motor coaches within the terms and conditions of its license under s. 7(1) as outlined in s. 34, which reads as follows:

**Inspector**

**34 (1)** The Minister may appoint a person or persons in the public service to act as inspector or inspectors under this Act.

**(2)** The inspector or inspectors shall enforce the provisions of this Act and the regulations that pertain to the conduct of motor carriers and shall take all necessary measures under this Act to prevent the operation of any motor carrier without such motor carrier having first complied with the terms and provisions of this Act and the regulations, and shall perform such other duties as the Minister may from time to time determine.

[464] The Board finds this charge can be exemplified by the following two incidents: (a) Montreal Trip; and (b) Saint John Trip.

**(A) Montreal Trip**

[465] The Board finds the facts of this charge are that Stock's HMC received its satisfactory inspection on May 18, 2016, and was placed on the MC License 595 to do the service for which it was authorized.

[466] Stock immediately used the HMC on a five-day extra-provincial trip starting in Dartmouth, Nova Scotia. Mr. Phinney's two sons were transported on that vehicle, along with approximately 15 to 20 other hockey players from Nova Scotia and their hockey coach, Mr. Flynn. They were picked up at three different locations in Nova Scotia. Mr. Phinney also went to Montreal for this five-day trip, but was not on the HMC.

[467] On June 7, 2016, Inspector Parker of the MCD requested information about the extra-provincial transportation using Stock's HMC. Stock did not provide the information to Inspector Parker.

[468] On June 10<sup>th</sup>, Ms. Aisthorpe sent a detailed email to Mr. Phinney requesting information on 'movements on their recently inspected HMC that travelled to Quebec on possibly two occasions'. Specifically, she asked he include documentation for this service in his response:

Please provide corresponding documentation for each extra provincial transportation service provided.

Documentation should include, but is not limited to:

- Driver information (name, master#, contact phone#, etc.)
- Driver Hours of Service (HOS) Log Book (i.e. outside 160 kms of home base)
- Vehicle pre-trip sheets
- Trip itinerary & contact (or, general details outlining the nature of the transportation offered)
- Invoice issued (if applicable).

[Exhibit S-5, Tab 6, p. 71]

[469] Ms. Aisthorpe's request was to determine compliance with its License pursuant to s. 22 and s. 34 of the *MC Act*, which she quoted in the email. The information was to be provided by no later than June 30.

[470] By June 30, no information was provided. Rather, Mr. Phinney wrote to her stating he was gathering the information, requested a one week extension, and asked for specific dates twice. His email includes:

... I wish you could be more specific, do you have specific dates that you are looking for?

... In the meantime if there are specific dates? It might speed up the process. [Emphasis added]

[Exhibit S-5, Tab 6, p. 71]

[471] Mr. Phinney testified:

Mr. Outhouse: Okay. You never did provide that information.

Mr. Phinney: No, I did not, sir.

Mr. Outhouse: Now, you knew one of those trips was to Montreal.

Mr. Phinney: Correct.

Mr. Outhouse: And you knew the date of that trip.

Mr. Phinney: Yes, I did.

Mr. Outhouse: Your son, or possibly two sons, were on that trip?

Mr. Phinney: Yes.

Mr. Outhouse: Did you go to Montreal?

Mr. Phinney: Yes, I did.

Mr. Outhouse: Did you go on the bus?

Mr. Phinney: No, I did not.

Mr. Outhouse: We understand – I understand from the evidence given by Mr. Flynn that he did go on the bus.

Mr. Phinney: I believe so, yes.

Mr. Outhouse: So you knew about that trip?

Mr. Phinney: I did, yes.

Mr. Outhouse: So why were you asking for dates?

Mr. Phinney: She asked for two possible trips to ---

Mr. Outhouse: Two possible trips, yes.

Mr. Phinney: Right. That's correct.

Mr. Outhouse: Did you think there were two trips to Quebec?

Mr. Phinney: No.

Mr. Outhouse: You knew there weren't.

Mr. Phinney: That's right.

Mr. Outhouse: You knew there was on trip.

Mr. Phinney: Correct.

Mr. Outhouse: And you knew the date of it.

Mr. Phinney: I did know the date of that one trip, yes.

[Transcript, February 1, 2017, pp. 492-494]

[472] Board counsel reviewed the evidence of Ms. Aisthorpe's requests, emphasizing it came after the information had been requested by the Inspector. Mr. Phinney's sons were on the hockey trip. He knew about the trip. Board counsel argued Mr. Phinney knew the date of this trip when he requested the same of Ms. Aisthorpe. Board counsel also argued that despite the circumstances that followed after those first two initial requests, including personal circumstances and it slipping Mr. Phinney's mind, the point is he never provided the information.

[473] The Board finds that Mr. Phinney and, therefore, Stock, could have informed Inspector Parker on the date of his request (July 7, 2016) of the details of the trip, the vehicle, including itinerary, and passengers being transported.

[474] The Board further finds in relation to Ms. Aisthorpe's request, once again, Mr. Phinney had the information of the details of the trip. A lengthy time was provided by the MCD. The known information was not provided by June 30.

[475] The Board finds, from the facts of this case, that Stock's failure to provide the requested information to Inspector Parker by June 7, 2016, and to Ms. Aisthorpe by

June 30, 2016, was resisting an inspector in the execution of his/her duty and his/her exercise of power contrary to s. 35(2) of the *MC Act*.

[476] The Board further finds that Mr. Phinney's request for specific dates on June 30, 2016, constituted willfully obstructing an Inspector contrary to s. 35(2) of the *MC Act*.

[477] The Board finds that from the evidence before it in this proceeding that Mr. Phinney did nothing to collect the information noted on Ms. Aisthorpe's list including, for example, the drivers log books or the pre-trip inspection reports. This, as well, the Board finds constitutes resistance contrary to s. 35(2).

[478] On July 8, 2016, Mr. Phinney stated personal circumstances prevented him from responding. Ultimately, Stock never provided the information to the MCD. Stock argued the MCD did not make a further request. The Board finds it is not up to the MCD to continue to request the information being sought. The Board further finds never providing the information is resistance contrary to s. 35(2).

[479] These incidents prove a breach of this charge. However, Stock also provided false information to a customer to be provided to the MCD as outlined in the Saint John trip below.

**(B) Saint John Trip**

[480] On September 24, 2016, Stock provided transportation services to Newbridge using its HMC.

[481] The MCD had Stock's response to Newbridge's Tender which included a schedule of its hockey trips. The schedule showed a September 17-18, 2016, from East Hants to Charlottetown/Summerside, PEI. On September 24, 2016, a trip from East Hants to Amherst, Nova Scotia.

[482] On September 26, 2016, Ms. Aisthorpe contacted Mr. MacEachern by phone and then confirmed by email asking for details about these two trips:

Good afternoon Trevor-

Further to our recent discussion and by way of follow-up, please provide the Division details (e.g. carrier name, itinerary, invoice, etc.) on the coach transportation services required by the NewBridge Varsity Hockey team(s) on:

- September 17 - 18 from the East Hants Sportsplex to Charlottetown/Summerside, PE, and

- September 24 from East Hants Sportsplex to Amherst, NS.

Please do not hesitate to contact me with related comments or questions.

Best regards,

[Exhibit S-5, Tab 13, p. 95]

[483] Mr. MacEachern's response the following day advised that the PEI trip was cancelled. In relation to the second trip, his response reads:

On September 24 and 25 Stock Transportation made available one of their activity buses, unit number 25593, to transport our team to Amherst for the games. After speaking with Stock this service was provided free of charge. [Emphasis added]

[*ibid*]

[484] Newbridge's Facebook page included an entry dated September 23, 2016, referring to its Pee Wee Team on their way to Saint John, New Brunswick. Mr. MacEachern testified the picture included on this post was Stock's HMC; not an activity bus as he had disclosed in his email to the MCD.

[485] Stock gave the bus information to Newbridge.

[486] Ms. Aisthorpe testified that as Newbridge's Tender list did not show the Saint John trip, she had no way to determine the vehicle Stock provided for this trip and would not know that the information provided by Mr. MacEachern was incorrect.

[487] The Board finds Stock provided its HMC to transport Newbridge's hockey team to Saint John, New Brunswick. The Board also finds Stock deliberately gave false

information to Newbridge to respond to the request of the Director of the MCD. The Board finds by this conduct that Stock willfully obstructed an Inspector in the execution of her duties and in the exercise of her powers contrary to s. 35(2) of the *MC Act*.

**7. Charge 6. Stock's failure to charge rates for charter services in conformity with its Licenses contrary to s. 22 & 23(1) of the *MC Act***

[488] Sections 22 and 23(1) read as follows:

**Failure to comply**

**22** A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, and the failure of a motor carrier so to conform shall, in addition to constituting an offence against this Act, be good and sufficient cause for the suspension or cancellation or both by the Board of the license issued to the motor carrier, or for the suspension or cancellation by the Board of part of the license or of any authorization issued to the motor carrier.

**Passenger or baggage charge**

**23 (1)** All charges made by a motor carrier for any service rendered or to be rendered in the transportation of passengers or baggage or in connection therewith, shall be in accordance with the schedules fixed and approved by the Board to be charged by such motor carrier and any charge not made in accordance with the schedules is prohibited and declared to be unlawful. [Emphasis added]

[489] Board counsel advised they were not pursuing discrepancies in Stock's charges for charter services rendered for 2015, which was the bulk of Exhibit S-6. This did not, however, exclude Stock's failure to charge its Licensed rates in 2016.

[490] Under s. 23(1) of the *MC Act* all motor carriers must charge the rate fixed and approved by the Board for the transportation services it provides.

[491] The Board set minimum rates that must be charged by all motor carriers operating HMCs, without further Board approval. In 2016, the minimum daily rate was \$1,200.

[492] At its HMC Amendment proceeding, Stock also applied to have the discretion of giving its customers up to a 20% discount. Its proposed HMC rates were,

however, identical to the HMC minimum rates set by the Board. The further 20% discount proposed would bring its rates below the HMC minimum rates. Consequently, at the hearing, Stock withdrew its request to offer this discount.

[493] In the *Stock* Decision, the Board informed Stock of the overview of the *MC Act*, including that a motor carrier had to comply with all of the terms and conditions of its license. It provided a review of the *Discount* and *Deadhead* Decisions. It summarized the important information of Mr. Gardner, and the impacts of a motor carrier not charging their licensed rates on the sustainability of the individual motor carrier and the Industry as a whole. Consequently, the Board set some rates for Stock's vehicles higher than it had proposed, including for the HMC and activity buses, because the Board found Stock's proposed rates were too low, potentially predatory, and could affect the sustainability of the Industry.

[494] In general, depending upon the duration of the charter trip, Stock must charge the greater of its hourly/daily rates or its rates per kilometer – live and deadhead. Other rates, such as a minimum charge also apply. The rates set by the Board for the HMC include a Daily \$1,400, Hourly \$150, and Minimum charge of 4 hours. For the Activity Bus they include a Daily \$650, Hourly \$80, and Minimum charge of \$480.

[495] The fact that Stock has provided services for free is not in dispute. In addition to the free services referenced in the above charges, Stock provided free services to various people including school boards, Newbridge and employee family members without authority to transport them. Stock provided free transportation services using various vehicles including its HMC, activity, and school buses. Stock did not charge the rates set by the Board for these charter movements.

[496] The Board concurs with Board counsel that these services for free are a form of discounting that has all of the negative impacts on motor carriers and these services to the public as noted in the *Discount* and *Stock* Decisions.

[497] Stock's main argument was the scope of the *MC Act* which the Board has rejected.

[498] The Board, therefore, finds Stock failed to charge its Licensed rates contrary to s. 22 and 23(1) of the *MC Act*.

**8. Charge 7. Stock leasing its HMC to Newbridge Academy for the transport of students, contrary to s. 7(1) & s. 22 of the *MC Act***

[499] Section 7(1) and 22 read as follows:

7 (1) Except as herein provided, no person, either as principal or by an agent or employee, shall operate a public passenger vehicle upon a highway within the Province

(a) without holding a license issued by the Board allowing the vehicle to be so operated; or

(b) in a manner, at a place or for a purpose that is not authorized by the terms of his license.

**Failure to Comply**

22 A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, and the failure of a motor carrier so to conform shall, in addition to constituting an offence against this Act, be good and sufficient cause for the suspension or cancellation or both by the Board of the license issued to the motor carrier, or for the suspension or cancellation by the Board of part of the license or of any authorization issued to the motor carrier.

[500] Stock's License prohibits Stock from using its HMC for students:

... The highway motor coaches may not be used for any other services, including but not limited to, for schools, school children, charters, and tours; and are further subject to the terms and conditions of the License. [Emphasis added]

[Exhibit S-30, p. 17]

[501] In the *Stock* Decision, the Board informed Stock about contracts under a separate section entitled "Contracts", in addition to reviewing the *Discount* Decision. The

Board removed from Stock's Licenses its open contract service. It informed Stock that upon completion of the specific contract on its License, it would be removed. The Board quoted from its interim Order in the *Discount Decision* where it noted that for any renewals or new contracts a carrier had to apply to the Board in accordance with the *MC Act* and *Regulations*. Consequently, all contracts had to proceed through the Board's public hearing application process and in the same way as any other application before the Board; that is, it had to meet the requirements of s. 13 of the *MC Act*.

[502] In her Memo to the Clerk, when forwarding Stock's Amendment Applications for the Newbridge contracts, Ms. Aisthorpe stated the following facts:

- From the attached social media posting, it appears Stock is, and has, provided services to Newbridge;
- Based on inspection reports, Stock's HMC has travelled 10,741 kilometers since its initial inspection in April;
- The MCD's requests for Stock to provide details of the HMC use remain outstanding; and
- Industry email inquiries include that Stock's HMC is not in use for overflow cruise ship services. [Exhibit S-15, p. 97]

[503] On October 19, 2016, the Clerk wrote a letter to Stock. He stated Board counsel would be reviewing information to assess whether Stock was not operating in accordance with this License, the *MC Act* and/or *Regulations* which may lead to a Show Cause proceeding. Compliance is relevant to Stock's Amendment Applications pursuant to s. 13(a) of the *MC Act*. Any Show Cause proceedings may render the Applications moot. After noting these, the letter stated the Amendment Applications would not proceed

until the Board received further advice from its counsel and/or any Show Cause proceeding was concluded. The letter further advised Stock that it was not authorized to use its HMC to transport students, including from Newbridge, and this was not alleviated by providing the transportation services for free. This section of the letter reads:

Until these matters are resolved, Stock Transportation Limited is not authorized to use its highway motor coaches for the transportation of Newbridge Academy, or any other schools pupils, teachers, volunteers or chaperones as noted in its Licenses. This restriction is not alleviated by providing the services free of charge.

[Exhibit S-7, Tab 28, pp. 16-17]

[504] On October 20, 2016, Stock, without a license, used its HMC to take Newbridge students to Ontario between October 20-23 [Exhibit S-5, Tab 15, p. 99; testimony of Mr. Flynn, p. 131; Exhibit S-11, Tab B, p. 5; and Transcript, p. 540].

[505] Upon being advised of the Board's letter, Mr. MacEachern contacted Mr. Oxner, asking how Newbridge could secure a HMC for its hockey teams. Mr. MacEachern testified that Mr. Oxner informed him Newbridge could either hire a local motor carrier or lease a vehicle. Mr. MacEachern stated that as these buses cost half a million dollars, he initially did not think it was feasible for Newbridge to lease a vehicle.

[506] Mr. MacEachern informed Mr. Oxner by email dated October 31, 2016, that Newbridge decided it would lease a vehicle. He provided a description of the vehicle for the MCD to add to Newbridge's License which reads:

Thanks for your call this afternoon. Here is the information on the bus that we would like to add to our currently licence below:

2006 MCI – J4500  
VIN # 2M93JMPAX6W063250

[*ibid*, p. 14]

[507] This vehicle is Stock's HMC designated on its MC License 595 and restricted to not operating for school and students.

[508] This information was provided by Mr. Oxner to the Clerk who immediately advised that Stock was not authorized to use its HMC for students and Newbridge. If Newbridge wished to lease this vehicle, it would need to apply to the Board.

[509] Mr. Phinney drafted a document which he called a "Lease". Mr. Flynn signed it on November 1, 2016, as the HMC left on a five-day trip to Burlington, Ontario.

[510] The document, in fact, is virtually identical to Stock's contract with Newbridge. As acknowledged by Stock, it does not function as a proper lease as the vehicle is not being operated by Newbridge. Rather it is being operated by Stock which retained control over the vehicle and supplied, amongst other expenses, the driver, insurance, gas, maintenance (Closing Argument, Transcript, pp. 193-194).

[511] Mr. Flynn stated that when he signed this lease, it was his understanding Newbridge would ultimately pay for the services provided by Stock, if its Licenses were amended to permit Stock to operate the service. Mr. Flynn, under cross-examination by Stock's counsel, while acknowledging he was not privy to any of the financial discussions which may have occurred between Mr. MacEachern and Mr. Phinney, could not say Newbridge would not be paying for the service. Mr. MacEachern had not seen the lease before it was signed and did not know the terms of the contract.

[512] On November 3, 2016, the Clerk sent an email to both Mr. MacEachern and Mr. Flynn advising Newbridge could not use Stock's HMC without making an application to the Board [Exhibit S-5, Tab 17, p. 119].

[513] In January, 2017, after Stock was served with the Notice of these Show Cause proceedings, and shortly before the hearing of the matter, Mr. Flynn contacted Mr. Penney and asked what was necessary to lease a vehicle. On January 9, 2017, Mr.

Penney advised in an email that the MCD would be ensuring it was operated by a qualified driver, proper insurance, and a copy of the lease were kept on the vehicle, necessary safety equipment, and the vehicle would be inspected by the MCD on a semi-annual basis.

[514] Board counsel argued the lease was, in effect, the fulfillment of the Tender contract. It was a business relationship between Stock and Newbridge. It was signed for the purposes of transporting Newbridge's hockey team in November, after the Board had, specifically, stated this vehicle could not transport Newbridge students and Stock could not avoid its License by providing services for free.

[515] In support of its argument, Board counsel emphasized the above evidence including that this document was not merely the lease of an asset similar to what Newbridge would enter into with a vehicle manufacturer. Rather, it was for providing every aspect of the public passenger transportation services, including the driver, gas, repairs, maintenance and insurance.

[516] Board counsel argued the service under this lease was not licensed in Stock's License and was contrary to the legislation. Under the *MC Act*, a motor carrier cannot lease its license without approval of the Board.

[517] The Board concurs that under the *MC Act* a motor carrier must apply to the Board to lease the HMC portion of its license. Section 11 notes that an application for the lease of the license is to be made to the Board and the Board is to take into consideration the various factors under s. 13 when deciding whether to approve the lease of a motor carrier's license.

[518] The main argument of Stock is that the Board has no jurisdiction over a lease agreement. A lease relates to the asset of the bus and not to its operation. Not being within the Board's jurisdiction, this lease is not, therefore, covered by Stock's License. Consequently, Stock argued it cannot be found to have acted contrary to its License.

[519] Stock's counsel agreed that merely because this document was named a "lease", does not mean that it was a lease in the above context. Ultimately, Stock's counsel agreed it was not a lease of an asset only. Stock's HMC was not being operated by Newbridge. The operation of the vehicle was maintained by Stock. Stock was paying for all aspects of the vehicle including the driver, maintenance, insurance, etc.

[520] The Board finds the agreement named "lease" was a contract between Newbridge and Stock whereby Stock was using the HMC to provide services to Newbridge and its students, which it specifically was not licensed to perform.

[521] Consequently, Stock has operated the vehicle for Newbridge under this contract contrary to ss. 7 and 22 of the *MC Act*.

[522] Stock's other main argument is as above; the service was done for free and, therefore, is outside the scope of the *MC Act* and the Board's jurisdiction. For the same reasons as noted above, the Board rejects that argument.

[523] However, the Board, finds that under the facts of this case the leased services were not being provided for free. Mr. Flynn, as the representative of Newbridge, signed the "lease" on November 1, 2016. He did so with the understanding that Stock would eventually be paid for these services, if Stock were granted a license. Mr. MacEachern never saw this document before it was signed by Mr. Flynn.

[524] There were some other arguments raised by Stock that appeared to have been abandoned. However, to be very clear and specific, the Board rejects those arguments as well and will summarize some of these below.

[525] At one point, Stock seemed to suggest there was an official inducement that caused Stock to enter into this “lease” with Newbridge. Furthermore, Stock argued there appeared to be an inconsistency between the information provided by the MCD and the Clerk.

[526] First, the Board finds there was no inconsistency in the information provided by the MCD and the Clerk. Anyone is able to lease a HMC, or as Mr. Smith described it, an asset lease. Newbridge could have contacted one of the manufacturers, such as Prevost, and entered into a lease for an HMC.

[527] However, when Newbridge informed the MCD and Clerk of the vehicle description, it was Stock’s HMC. When a vehicle is only permitted on the highways of Nova Scotia under a very restricted license, any person seeking to lease that same vehicle must apply to the Board for approval to use that restricted vehicle for another purpose. It enables the Board, for example, to review the document and assess it in accordance with the s. 13 consideration under the *MC Act*. It also ensures that it is not a lease of the services or contract agreement under another name, as it turned out to be in this case.

[528] Regarding an official inducement, there are two time periods: late October, 2016 by the then Director, Mr. Oxner, and by Chief Inspector Penney in January, 2017. This argument fails because (1) the information was correct; (2) the information was

provided to Newbridge and not Stock; and (3) the information from Chief Inspector Penney came after the events and service of the Notice of Show Cause.

[529] The information provided by Mr. Oxner and Chief Inspector Penney was correct. As Mr. Oxner stated, there were two choices; Newbridge could either hire a local motor carrier, or enter into a lease for a HMC. Chief Inspector Penney set out what the MCD would look for, which included that the vehicle be driven by a qualified driver, lease agreement and proper insurance be in the vehicle, and the vehicle be inspected twice annually.

[530] Second, the information provided by both of these individuals was to Newbridge not to Stock. Stock cannot seek to rely on official statements when no information was provided by the MCD to Stock.

[531] In relation to Chief Inspector Penney, not only was this information provided to Newbridge, but it was done so in January, 2017. This was after Stock had been served with the Notice of Show Cause and disclosure documents, and shortly before the hearing of these proceedings. Most importantly, it was after Stock drafted, signed and operated under this contract agreement called "lease". One cannot claim official inducement for its conduct after the fact.

[532] Stock then suggested the problem with Chief Inspector Penney's information was that he did not provide information on what terms were necessary to be included in a lease agreement. In addition to the information being provided to Newbridge and not Stock, it is not the job of the MCD inspectors to be providing legal advice on the terms necessary for a lease. Chief Inspector Penney did not give legal advice. Stock, like any other motor carrier in the Province, is welcome to seek legal advice from its legal

counsel. Stock acknowledged it used legal counsel before the Board including for its Licenses, Amendments, Transfer of Perry Rand's licenses and this Show Cause hearing.

[533] Stock then argued that although this "lease" was poorly drafted, the Board should find that Stock was seeking to do the right thing for the right purposes, negating any malfeasance. This breach, of operating contrary to its License under s. 7(1) of the *MC Act*, does not require the Board to find malfeasance.

[534] The third main argument was that Stock was merely doing what "we", the Board and the public, would collectively want Stock to do under the circumstances.

[535] Stock argued once the motor carrier has put the public in this situation of being caught without transportation, that providing a lease and/or services for free is exactly what "we", the Board and public, want a motor carrier to do: find solutions; help out the public.

[536] This is exactly the opposite of what is wanted. People wanting a license have held themselves out to the public as being authorized to operate a service and/or commit to prices. They then apply to the Board at the last minute, in an effort to secure the authority saying that otherwise the customer would not be served. The provisions of s. 13, and other aspects of the *MC Act*, are not eliminated because a motor carrier has held itself out as having a license it does not have, or applying to the Board late. Stock and other motor carriers that hold themselves out as being able to be licensed when they do not have one, do a disservice to the public. The Board has repeatedly addressed this in its Decisions. Although the following reference is in relation to a temporary authority application after being denied a license, the comments are equally applicable:

[12] In this case, the reason for the request was because Party Bus has, once again, acted contrary to the Act by taking deposits without having a license, failing to tell the public

it did not and may not have a license to operate on the dates of their events, and therefore, held itself out to the public as being able to offer the services.

[13] The Board finds that any other company could do the same and avoid the Act. Anyone wanting a license in the province could mislead the public, take deposits, hold themselves out as being able to offer the services, and then come to the Board and say 'You have to give me a temporary authority to do these functions because it would not be fair to the public'.

[14] The Board finds the above is contrary to the purposes of the Act and would render it useless. The Board is required to regulate the industry in accordance with the Act and cannot permit companies to thwart the legislation.

[15] Party Bus did not have a license to operate in this province. Party Bus, by its conduct, has done a terrible disservice to the public. It is fully responsible for the disappointment of people it took deposits from. To provide a temporary authority in this case would be to reward a company for misleading the public and operating contrary to the Act.

[16] Party Bus has not met the requirements of the Act and its temporary authority application is denied.

[17] People affected by the conduct of Party Bus may contact the Motor Carrier Division for a list of those licensed in the province to provide luxury transportation services using vehicles of various seating capacities and styles.

[Party Bus Atlantic Inc., 2010 NSUARB 169]

[537] Providing unlicensed services for free is not a solution. Transportation must always be done by licensed motor carriers. Never does the Board expect an unlicensed motor carrier to then offer its services for free.

[538] In this case, Stock is responsible for any harm done to Newbridge for both holding itself out as having authority, and for the very low rates it proposed without having approval of the Board, except to the extent that Newbridge may have participated in the lateness of the application to the Board.

[539] The agreement between Stock and Newbridge named "lease agreement" was in fact a contract between the two parties for Stock to operate its HMC in the same way as under its intended Tender contract. That is, the operation and control of the HMC remained with Stock who provided the driver, the vehicle, maintenance, insurance, etc.

This was nothing more than the same contract the parties sought to enter into but using a different name (lease).

[540] The Board finds Stock leased its HMC services and on November 1, 2016, Stock operated its HMC to take Newbridge students from Dartmouth to Ontario and return contrary to its License and ss. 7(1) and 22 of the *MC Act*.

**9. Charge 8. Any other breaches which become known to the Board in the proceedings**

[541] The Board finds the following breaches by Stock became known to the Board in these proceedings:

- (a) misled the Board;
- (b) joined two licenses together without authority to do so contrary to s. 8(g) of the *Board Public Passenger Motor Carrier Act Regulations*;
- (c) transported school officials from the Halifax Regional School Board contrary to its Licenses;
- (d) in addition to the above breaches, used various vehicles including its school and activity buses and HMC, and/or operated school bus services, contrary to s. 7(1) of the *MC Act*;
- (e) demanded its drivers drive the HMC after they exceeded their permitted hours of being on duty contrary to s. 12(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*; and
- (f) requested its drivers falsify their Daily Log contrary to s. 86(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*.

**(A) Stock Misled the Board**

[542] For the reasons set out below, the Board finds Stock intentionally misled the Board in this Show Cause proceeding by:

1. Providing incomplete, inaccurate and/or misleading answers to IRs and, in some cases not providing any answers;
2. Failing to process and maintain the information about the movements of the HMC in the same manner as Stock does for all other vehicles; and
3. Attending before the Board without the answers to the IRs and, in most cases, without looking for the answers.

**1) IR Responses**

[543] There are a number of misleading, incomplete, and/or inaccurate responses to the Board IRs. The Board will only review a few.

[544] Under the *Board's Regulatory Rules* applicable to the *MC Act (Board Rules)*, is a requirement for people to provide full and accurate answers to IRs as follows:

**16 (2)** A Response to Information Request shall be in accordance with Form B and shall

- (a) provide a full and adequate response to each question;

[545] The Board issued IRs. An example of Stock's response is illustrated by its answers of providing details of all movements of the HMCs. The main response is on the right-hand side of the chart noted below:

**Request IR-1**

Regarding all movements of highway motor coaches from and/or to Nova Scotia from the first movements to the present, provide details of each movement including, but not limited to the following:

	<b>Request</b>	<b>Response</b>
a)	Itinerary	Provided in tab A
b)	Name of each group of passengers and the contact person for the group with all contact information	Provided in tab B
c)	All quotes	None
d)	All invoices	None
e)	Vehicle dispatch information	None
f)	All trip inspection documents, drivers' logs, etc.	Provided in tab C

[Exhibit S-11, p. 2]

[546] The Following is the complete Tab A outlining the itineraries of each movement of the HMC:

List of movements of Motor Coach 20808 as recalled:

- May
  - Trip to Truro
  - Trip To Moncton
  - Trip to Montreal
  - Trip To Halifax
  
- July
  - Trip to Moncton
  - Trip to Ottawa
  - Trip to Murry Corner
  - Trip to Moncton
  
- August
  - Trip to Halifax
  - Trip to Haileybury
  
- September
  - Trip to Saint John
  - Trip to Boston
  
- October
  - Trip to Pier 21
  - Trip to Quebec
  - Trip to Ontario
  
- November
  - Trip to Ontario
  - Trip to Moncton

[547] "Itinerary" is defined in Stock's Licenses as:

**Itinerary:** The route, start and end times and dates of the charter as provided by the customer. It shall also include the total hours each day the driver is to remain on service, and the approximate mileage for each day.

[548] This is not a full and accurate response and is contrary to *Board Rules* 16(2).

[549] For Tab B, Mr. Phinney included Stock as the contact person for all movements except some for Mr. Flynn. A few of these are shown below. In Tab B, Stock failed to provide full and accurate responses contrary to *Board Rules* 16(2).

[550] The Board will review two movements as examples of deliberately misleading the Board. For the first example, part of Stock's itineraries for HMC movements in May reads:

- May
  - ...
  - Trip to Moncton
  - Trip to Montreal
  - Trip to Halifax

[551] The answer under Tab B included the following for the month of May:

- May
  - ...
  - Trip to Moncton, Deliver of bus to Moncton by stock employee.
    - Contact Stock office 902 481-8400
  - Trip to Montreal. Hockey group from Fredericton UNB red Devils to Montreal.
    - Contact is Paddy Flynn 902 789-4625
  - Trip To Halifax, Bring bus back to Halifax Office
    - Contact Stock Office 902 481-8400

[*ibid*, Tab B, p. 5]

[552] Without the testimony of Mr. Flynn at the hearing, the Board would not know this was not three separate trips. Rather it was one hockey trip that Mr. Phinney's two sons travelled on the HMC to Montreal. This trip was described in detail by Mr. Flynn. The same details were known to Mr. Phinney. Those details included that the HMC left from Dartmouth on an approximate five-day trip to Montreal and return. Approximately 15-20 hockey players were picked up in Nova Scotia at three separate locations. As this full trip was organized by Mr. Flynn, he should have been disclosed as the contact person throughout.

[553] The Second example of deliberately misleading the Board is in response to IR-2. It stated all information regarding School Board personnel was to be included under question 1:

**Request IR-2**

Ensure that the answer provided to question No. 1 includes all School Boards and/or school personnel transported in the highway motor coaches as well as all contact information.

Response: See above response to IR 1 – B

[*ibid*, p. 2]

[554] Stock's response in July included under Tab A the following itinerary:

- July
  - Trip to Murray Corner

[Exhibit S-11, Tab A, p. 4]

Stock's IR Response for the group name and contact information reads:

- July
  - ...
    - Trip to Murray Corner, Staff function
      - Contact Stock office 902 481-8400 [Emphasis added]

[*ibid*, Tab B, p. 5]

[555] In fact, Mr. Phinney took officials of the Halifax Regional School Board to his cottage. This was not disclosed. Nor were the names and contact information of the School Board officials with whom Mr. Phinney made the arrangements.

[556] For drivers' log books under IR-1(f), none were provided in Stock's response. This is contrary to *Board Rules 16(2)*. In response to Board counsel's questions as to why this was not answered, Mr. Phinney's initial response, once again, began with he was unaware and unsure. As the questions continued, he did not recall looking for them, queried whether Stock still had them although suspected it would, but he would have to go back to the office and check. He stated Stock does not have to retain them, if the vehicle operated within 160 kilometers of its base.

[557] Maintaining drivers' log books are important for the safe operation of these motor carrier vehicles. As most of the HMC movements were extra-provincial, the Board will reference the *Drivers Regulations*. A driver's log book applies to every single movement of the vehicle regardless of the purpose of its movement or the group that is being carried. Consequently, whether the movement is a "legitimate movement" for free, carries an employee with friends/family, or is shuttling Stock's buses, a driver must accurately record when they started on duty, drove and rested. Stock must maintain those records. The driver's logs show compliance with the required rest periods so drivers can safely operate the vehicles.

[558] A driver is required to provide a copy of their daily log books to Stock within 20 days of its completion (85(2)). Stock is required to keep the log books and supporting documents in chronological order for each driver in its principal place of business within 30 days and maintain those logs for at least six months. *Drivers Regulation 85(3)* reads:

**85 (3)** The motor carrier shall

- (a) deposit the daily logs and supporting documents at its principal place of business within 30 days after receiving them; and
- (b) keep the daily logs and supporting documents in chronological order for each driver for a period of at least 6 months.

[559] Supporting documents are everything that shows compliance with the *Regulations*:

**supporting document** means a document or information recorded or stored by any means required by a director or inspector to assess compliance with these Regulations.

[560] Further insight on the types of information to be kept as supporting documents is noted in the exclusion for the carrier to maintain daily logs for movements of less than 160 kilometers. A motor carrier must, however, otherwise maintain accurate records of the driver's duty status as outlined below:

**81 (2)** This section does not apply if

- (a) the driver operates or is instructed by the motor carrier to operate a commercial vehicle within a radius of 160 km of the home terminal;
- (b) the driver returns to the home terminal each day to begin a minimum of 8 consecutive hours of off-duty time;
- (c) the motor carrier maintains accurate and legible records showing, for each day, the driver's duty status and elected cycle, the hour at which each duty status begins and ends and the total number of hours spent in each status and keeps those records for a minimum period of 6 months after the day on which they were recorded; and
- (d) the driver is not driving under a permit issued under these Regulations.

[561] *Driver's Regulations* require the production of the daily log books, supporting documents and other relevant records, if requested by an Inspector as follows:

**99 (1)** A motor carrier shall, during business hours, at the request of an inspector, immediately make available for inspection at a place specified by the inspector daily logs, supporting documents and other relevant records as well as any permit a driver may be driving under or have been driving under during the period for which the inspector makes the request for the documents.

[562] The above section highlights some of the major components of this comprehensive *Regulation* for ensuring drivers' hours of work and the importance of the compliance log books.

[563] Dispatch information of each HMC movement was asked for under IR-1(e). None were provided in Stock's response contrary to *Board Rules* 16(2). The dispatch information includes the instructions to the drivers, similar to the information Mr. Taggart provided for the August 2016 trip. Before the drivers arrived at Stock on the day of the trip, they needed to know the duration of the trip, whether it was to be for one day or five so they could pack clothes. Drivers need to know where they are driving to; where they must stop to pick up the other passengers; when they will be on duty throughout the duration of the trip; and the movements they are to make at each location.

**2) Not processing HMC movements like all others**

[564] Stock operates approximately 500 vehicles in Nova Scotia.

[565] Stock has computer programs into which the details of all movements of all of its other vehicles are placed. In Stock's Amendment proceedings, Ms. Coldwell provided to the Board, details of the individual vehicle charter movements including Trip ID (client), Invoice, Trip Name, Customer, Date, Itinerary, Start Time, End time, Vehicle Unit No., Depot, Fee, and Kilometers travelled (and were included in this Show Cause proceeding).

[566] Companies will also keep all other related documentation, either electronically or by paper, including conversations, directions such as dispatch information, hotel and meal charges for the drivers.

[567] The Board finds Mr. Phinney was the sole person within Stock directing the HMC movements. The Board finds Stock did not treat its HMC in the same manner as it does all of its other vehicle movements. It did not input the itinerary into its computer system. It did not maintain copies of any documents, transactions, conversations or invoices. As Mr. Phinney stated, Stock has no documents (Transcript, February 1, 2017, p. 506).

[568] The Board finds the lack of supporting documentation and information regarding the HMC movements was done deliberately to mislead the Board and make it more difficult for the Board to detect Stock was operating outside of its Licenses. Examples include the above Montreal hockey trip, trip with HRSB officials and the Saint John trip for Newbridge.

### 3) Board Hearing

[569] Board counsel argued, considering Mr. Phinney attended the Show Cause hearing knowing Stock's Licenses could be cancelled, it was surprising how little evidence was provided. The Board concurs.

[570] Even in relation to the one alleged "legitimate movement for Coach Atlantic", Mr. Phinney had absolutely no information or supporting documentation, not even a date.

[571] In attending before the Board, he brought no evidence including the outstanding documents not included with Stock's IR Responses such as the drivers' logs. In fact, he had not looked for them. An Undertaking at the hearing was necessary to obtain these.

[572] Throughout the hearing, Mr. Phinney often responded to questions stating he would have to check. As noted above at times he was evasive and his evidence appeared made up as he went along.

[573] Once again, the Board finds that the lack of evidence and information brought before the Board at the Show Cause hearing was deliberate and done in an effort to mislead the Board on Stock's operations with its vehicles licensed by this Board.

**(B) Stock joined two licenses together without authority to do so contrary to s. 8(g) of the Board Public Passenger Motor Carrier Act Regulations**

[574] Under s. 8(g) of the *Board Public Passenger Motor Carrier Act Regulations* no motor carrier is allowed to join licenses together unless authorized to do so by the Board. This joining of licenses is called "tagging" or "tacking". *Regulation 8(a)* reads:

**Service conditions and obligations**

8 The following service conditions and obligations shall apply:

...

- (g) no motor carrier shall join or cause to be joined a specialty charter or contract route or area public passenger authorization contained in the license of the motor carrier with another specialty charter or contract route or area public passenger authorization contained in the license or any other license of the motor carrier or of any other motor carrier unless the authority to join is specifically included in the license of the motor carrier.

[575] What this means is that if passengers are picked up in Nova Scotia, a motor carrier must have full authority to transport the passengers for their entire trip until it concludes. This is necessary for the regulation of the Industry and safety of the passengers. It prevents, for example, a motor carrier that is denied an extra-provincial license from using one license to take the public to the Nova Scotia border and then use a different license to transport them extra-provincially. It prevents doing through the back door what you are not granted to do through the front door. Furthermore, people could completely circumvent the *MVT Act* and *MC Acts: PEI Select Tours Inc.*, 2011 NSUARB 126; *Molega Tours*, 2012 NSUARB 57; and *Molega Tours*, 2014 NSUARB 153.

[576] Stock has done this. One example, is Stock's last trip to Moncton for Newbridge in November, 2016. After repeatedly being told its HMC was not licensed to transport students, Stock used its licensed school bus to take the Newbridge students to Moncton. The students were transported between the hotel and the rink using Stock's HMC. The students were then returned to Halifax in Stock's school bus. Mr. Flynn testified:

Mr. Outhouse: So if I understand your evidence correctly, what happened was your team or teams were transported by school bus provided by Stock to Moncton, and then the coach [HMC] was used to shuttle players from the hotel where they were staying to the various arenas ---

Mr. Flynn: Yes.

[Transcript, January 30, 2017, pp. 134-135]

This is tagging/tacking.

[577] Stock used its licensed school bus in combination with its HMC in New Brunswick, when it had no authority to use its HMC for extra-provincial movements from and to Nova Scotia under the *MVT Act*.

[578] The Board finds Stock has operated its vehicles, by tagging licenses together contrary to the *Regulations* of the *MC Act* and, therefore, is also in breach of the *MVT Act*.

**(C) Stock transported school officials from the Halifax Regional School Board contrary to its Licenses**

[579] Stock's MC License 595 specifically restricts it from providing any HMC services for schools. In the *Stock Decision*, the Board specifically reviewed the evidence of Stock's RFP response for the HRSB and Stock wanting to use the highway motor coaches for that service. The Board noted the HRSB contract service on its License terminated in 2016. The Board specifically informed Stock that it was not permitted to use the highway motor coaches for any charters, including its contracted school boards.

[580] Its MC License 595 does not permit it to use its HMC for any purpose except overflow cruise ship services. The transportation of officials from the Halifax Regional School Board to Mr. Phinney's cottage is contrary to both of Stock's Licenses and s. 7 of the *MC Act* and s. 4 of the *MVT Act*.

**(D) In addition to the above breaches, Stock also used various vehicles including its school and activity buses and HMC, and/or operated school bus services, contrary to s. 7(1) of the *MC Act***

[581] During the Show Cause proceeding evidence was received by the Board that showed Stock, in addition to the breaches noted above, used its school and activity

buses and HMC to provide transportation services, including school bus services, when it did not have the authorization to do so either under trip permit, temporary authority or permanent authority on its License. These are outlined in detail under the section in Facts entitled Other Movements.

[582] These include:

- on the very date Mr. Phinney testified at this Show Cause hearing he stated Stock was providing (and had provided in the past) free school buses to other public school boards (without authorization to do so either under trip permit, temporary authority or permanent license authority) (*ibid*, p. 581);
- used its vehicles for other transportation services for which it had been stopped by Inspectors, charged and at times fined for operating outside of its Licenses including having “the wrong students or the wrong such and such on the bus”, that is, providing transportation Stock was not authorized to perform;
- in addition to the school bus Vehicle No. 25486 referenced in Charge 3, Stock used other school buses for Newbridge services for the school year of 2016/17;
- Stock also provided school buses and transported Newbridge’s students a couple of times in the previous school year of 2015/16, one lasting for approximately six weeks; and
- used its HMC to transport an employee’s brother, and others from the same facility, to a local event.

[583] Although the following comment relates to offering free services on the May 2016 hockey trip, the attitude of “we did it anyways” is in the Board’s opinion, consistent with Stock’s use of its vehicles as it wished outside of the *Acts* and its Licenses:

So we knew that we wanted to provide this as a free service to this program in order to get these kids to the -- I don’t know whether they’re – I don’t suspect the UNB [B] Reds are a charitable organization but we did it anyways. [Emphasis added]

[Transcript, February 1, 2017, p. 521]

[584] The Board finds Stock used its vehicles (school buses, activity buses and the HMC) contrary to s. 7(1) of the *MC Act*.

(E) **Stock demanded its drivers drive the HMC after they exceeded their permitted hours of being on duty contrary to s. 12(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act***

[585] The *Drivers Regulations* are comprehensive and detailed. The most pertinent sections include:

**Daily Driving and On-duty Time**

**12(2)** No motor carrier shall request, require or allow a driver to drive and no driver shall drive after the driver has accumulated 14 hours of on-duty time in a day.

**Daily Off-duty Time**

**14 (1)** A motor carrier shall ensure that a driver takes and the driver shall take at least 10 hours of off-duty time in a day.

**commercial vehicle** means a vehicle that

(a) is operated by a motor carrier and propelled otherwise than by muscular power; and

(b) is a truck, tractor, trailer or any combination of them that has a gross vehicle weight in excess of 4 500 kg or a bus that is designed and constructed to have a designated seating capacity of more than 10 persons, including the driver. [Emphasis added]

As the drivers on Stock's August 12-15 trip were rotating, the prohibition under *Regulation* 12(2) is 16 hours on duty for this movement.

[586] Without having any authorization to perform this trip by trip permit, temporary authority or permanently added as a service on its Licenses, Stock used its HMC to travel to Northern Ontario and return with its drivers to Nova Scotia. Stock was moving school buses to Moncton and Northern Ontario. Approximately 33 drivers were involved. Three drivers were licensed to operate the HMC; being Ms. Bishop, Mr. LePage and Mr. MacDougall (the HMC drivers).

[587] The instructions for this trip were received the morning of August 12, 2016, from one of Stock's dispatchers, Andrew Taggart. Ms. Blades was the main contact person to communicate the instructions from Mr. Taggart to the drivers, which prevented

33 different phone calls with him. Ms. Power was also a contact person. In this capacity, they are “Stock’s representatives on the trip,” (Transcript, February 1, 2017, p. 664).

[588] The group took five new school buses from Dartmouth to Moncton. Ms. Bishop was responsible for the HMC from Moncton. Each of the other drivers drove a school bus to Northern Ontario. The trip went as scheduled to Northern Ontario and the group stopped overnight at a pre-arranged hotel in Drummondville, Quebec.

[589] On the return trip from North Bay on August 14, 2016, all of Stock’s drivers were on the HMC. Ms. Bishop, Mr. LePage and Mr. MacDougall alternated driving the HMC.

[590] The HMC was in the area of Brossard, Quebec. At that time, all HMC drivers had been on duty for 13 hours and only had three more hours they were able to be on duty. After the 16<sup>th</sup> hour, none were permitted to drive the HMC.

[591] While on the HMC and driving through Southern Quebec, Ms. Blades told the HMC drivers they were to drive straight through to Dartmouth. Continuing to Dartmouth would far exceed three hours. Ms. Bishop described this demand as follows:

Ms. Bishop: Brassard was a fuel stop. Driver changeover as well.

Ms. O'Neill: What were your instructions for the rest of the evening around that time?

Ms. Bishop: The instructions we knew, from what we gathered, was to -- and this came straight from Carla. She came up from the back end of the bus right to the front end to me and Andrew, and she said to the two of us that we were to be back in Dartmouth that night, so straight through; non-stop. They weren't intending on stopping again. There was no other point of it. It was just going to be a straight-through trip, change over drivers when needed.

Ms. O'Neill: And Carla gave you those instructions?

Ms. Bishop: Yes.

[Transcript, January 30, 2017, p. 324]

[592] Ms. Blades confirmed she made the above demand.

[593] Ms. Bishop and Mr. LePage informed Ms. Blades they could not legally drive straight through to Dartmouth as they were not permitted to drive after their 16 hours had expired and they only had three hours remaining. The response from Ms. Blades and Ms. Power was, "Well, that's what's expected." Ms. Bishop and Mr. LePage also informed Ms. Blades and Ms. Power that resting on a seat in the back of the bus was not a separate sleeper berth which is required for a rest period under the *Regulations*. The demand to continue driving remained the instruction.

[594] Ms. Blades testified that her understanding, at the time of the trip, was if you were not driving and were sitting in the back of the bus, you were not on duty. She based this on her experience with truck driving. Her experience was gained from living with a couple of long-haul truck drivers and knowing their rules from her conversations with them. She has no similar experience with buses, and noted there are a few different rules.

[595] Ms. Blades also acknowledged the only experienced HMC drivers on the trip were Mr. MacDougall, Mr. LePage, and Ms. Bishop and they were telling her the rules that applied to them:

Mr. Outhouse: And they were telling you they knew what the rules were and the rules were that in the circumstances you were in, you were on a coach, the drivers; that is, the three drivers of the bus, weren't getting into some sleeping [berth] that was separated from the cab of the vehicle; correct?

Ms. Blades: Yes.

Mr. Outhouse: And that in those circumstances, the maximum hours applied to, in effect, all three of them.

Ms. Blades: Yes.

Mr. Outhouse: And they could not continue beyond the maximum hours.

Ms. Blades: Yes.

[Transcript, February 1, 2017, pp. 677-678]

[596] Although she expected the HMC drivers to know the rules, she said she does not take anybody's word for anything and had to look it up herself. Ms. Blades contacted Mr. Taggart and told him what the HMC drivers were telling her about the rules of their permitted hours on duty.

Mr. Outhouse: Did you tell Andy Taggart that?

Ms. Blades: Yes, I did.

Mr. Outhouse: Yes. And Andy Taggart's instructions to you were that wasn't his understanding and they were to carry on and bring the bus back to Halifax that night; correct?

Ms. Blades: That was ---

Mr. Outhouse: That was his initial instructions.

Ms. Blades: That was his initial, yes.

...

Mr. Outhouse: So he just -- his instructions at that stage were just, "Tell them to bring the bus back tonight."

Ms. Blades: Yes.

[*ibid*, pp. 678-679]

[597] Mr. Phinney stated he was contacted throughout the day. When he was told the bus drivers were running out of hours, he stated: "How is that; there's 33 drivers on that bus." (Transcript, p. 607).

[598] He stated he understood it is 1,700 kilometers from North Bay back to Halifax on Google Maps. If averaging 100 kilometers an hour it would take 17 hours. He acknowledged this did not take into consideration the required stops such as for meals. Mr. Phinney also stated the vehicle can average more than 100 kilometers an hour.

[599] Mr. Phinney testified he expected the drivers to understand their own laws and regulations. If they were close to running out of time, the drivers had to book off and get a hotel:

Mr. Outhouse: We can. But what I'm saying to you, he [Andrew Taggart] was in charge of that trip, at least from back here, right?

Mr. Phinney: He was providing the details of where they were -- the buses, what assets they were picking up, you know, where they were headed the final destination. You know, who would be kind of liaisons on the trip to speak to if they're having issues.

Other than that, they were set out -- you know, moving 29 buses plus a chase bus across the country, you know, there is -- we expect people to understand their own laws, their own regulations and when they get close to wherever they have to be, then they have to book off and get into a hotel. [Emphasis added]

[Transcript, February 1, 2017, p. 535]

[600] In accordance with Mr. Taggart's instructions, Ms. Blades, once again, communicated to the HMC drivers that the instructions were for them to continue to drive through to Dartmouth. This debate continued and the demand remained the same.

[601] Ms. Bishop testified Mr. Taggart also contacted her directly on her cell phone while she was on the bus and told her to "stop winding people up because of the legalities of what I was looking at, at the trip" (Transcript, p. 314). This communication is consistent with Ms. Blades' testimony that Mr. Taggart told her the trip was to continue.

[602] The Board finds Ms. Bishop and Mr. LePage understood from the various demands that they would lose their jobs if they did not meet them.

[603] Ms. Bishop explained the impact of these demands:

Ms. O'Neil: What would have happened had you carried out the instructions from Carla to drive straight to Dartmouth?

Ms. Bishop: Taking a very, very, very big chance, okay? I would have gone against my own integrity, my own rules, my own morals. I would have been in trouble with my current employer, with Ambassatours, when they ended up seeing the log sheets. Potential, hey, UARB stops you, ha, that's my fine. That's a potential stoppage and hours of service.

It's just -- it's not a risk I was willing to take and never will take for anybody.

It would have meant 17 straight hours on top of the hours I was already on duty not driving or on duty driving.

So when that call was put in at 6:30 -- or 6:00 p.m., add another 13 hours -- sorry, 17 hours or so on top of that to the current timeframe it would have taken, and you have about 30 hours on duty driving and not driving combined. Way, way over the specified hours.

[*ibid*, pp. 331-332]

[604] Ms. Bishop stated when the group stopped for supper in Saint-Hyacinthe, she was upset. She stated if she had enough money in her bank account she would have flown home instead of remaining on the bus.

[605] Mr. LePage testified:

Ms. O'Neill: And what happened after that?

Mr. Lepage: They went in and took their lunchbreak, the whole group that was on the bus. I immediately -- I was very upset, emotionally. I actually -- there was a point in -- well, the whole -- I want to explain it out. Kelly, the emotion she went through, it wasn't yelling and screaming. She wasn't yelling and screaming. She was crying. Because when she got the "Or else" she got the message. She felt the same way I felt; we're losing our jobs. This is our world. This meant the world to me. I really enjoyed this field, that's why I took the time to specialize at this.

So she got very emotional and, yes, she was talking to other drivers. There was a group of drivers that didn't go into the restaurant to eat, and you know, they were trying to [console] her, to make her feel better.

I left the whole pack myself because I couldn't believe what was unfolding in front of me. I had to leave from everybody. I went over to the Burger King by myself and stayed there because I actually broke into tears.

This is my dream to do my next 20 years of my career. This is where I see myself finishing my career. So you're going to tell me that I'm doing the right thing and I stand for -- I'm not going to break the law. It's just -- sorry, there's right and there's wrong. I'm not going to take a fine. Mind you, I didn't know exactly what the costs were of the fine. I knew it was hefty. I don't know if UARB actually had a right to take a licence but I knew there were possibilities. I didn't like any of the thoughts that were going through my head if I broke the law.

[*ibid*, pp. 400-402]

[606] Ms. Bishop and Mr. LePage spoke with Mr. MacDougall, who was the only unionized driver of the three of them. He made a call to the Vice-President of his Union

who said the trip had to stop. Mr. MacDougall also gave his phone to Ms. Bishop. Mr. Bishop testified the Vice-President informed her the trip would stop and said she may “not be able to protect her [Ms. Bishop’s] job”.

[607] Ms. Blades stated in Saint-Hyacinthe, she, Ms. Power and a couple of the other drivers went for supper and discussed the issue. She checked the internet and confirmed Ms. Bishop and Mr. LePage were correct.

[608] Ms. Blades stated she contacted Mr. Taggart. He said Mr. Phinney already knew but she had to get his okay:

Mr. Outhouse: And so then the message when you conveyed that to Andy, that changed his mind, or he told you to speak to Mr. Phinney?

Ms. Blades: No. When I told him I had looked it up and this was actually the rules, he’s like, “Okay, then I guess you guys are stopped.” And he’s like, “Troy knows but you have to get his okay because he is the one in charge of the finances.”

[*ibid*, p. 680]

[609] The trip stopped. The HMC drivers drove a further hour to Drummondville and stayed the night. No prior hotel arrangements had been made by Stock for its drivers that evening. Mr. MacDougall had to call hotel(s) to locate accommodations for the group.

[610] Mr. Phinney also testified the Union never brought any information to his attention. The Union would not deal with Mr. Taggart. They would only deal with the management office: which was himself, Amber Glavin, Catherine Moreau, or Dwight Keeping. Ms. Coldwell is in a separate office, and again, the Union would not contact her.

[611] Ms. Bishop and Mr. LePage prepared an Incident Report dated August 22, 2016, which they filed with the MCD (Transcript, p. 333). It included this issue as well as vehicle concerns which led to the MCD Random Inspection outlined under Facts.

[612] Ms. Bishop and Mr. LePage testified in detail to their attendance at Stock's September meeting for school bus drivers for the 2016/17 school year. Everyone received a package and watched a video. Mr. LePage went over to the wall to see what work he had, and his name was not there. Several drivers hired after him had school runs, but he did not.

[613] Mr. LePage and Ms. Bishop have not received any work from Stock since the August 12-15, 2016 trip to Northern Ontario.

[614] Mr. LePage and Ms. Bishop also worked for Ambassatours during the summer as Stock had little work for them. As Ms. Bishop stated, she needed to pay her bills.

[615] Mr. LePage testified he understood from the Human Resources representative for Stock that it was possible for spare drivers to also work part time for other companies, like Ambassatours. Other Stock drivers have worked for Ambassatours during the summer and into the fall for the tourism season. Permanent drivers who operate specific runs are not permitted to do so.

[616] Mr. LePage received a Record of Employment (ROE) from Stock dated November 24, 2016, stating his employment had been terminated because there was not enough work. Mr. LePage was served with the subpoena to appear before the Board around January 20, 2017. He received another ROE from Stock dated January 24, 2017, stating he had quit. Mr. LePage testified he did not quit. If he had, he would have provided a letter of resignation.

[617] Mr. Phinney testified that it was his understanding that both Mr. LePage and Ms. Bishop did not attend the full meeting in September. In order for them to be rehired

they have to follow through Stock's hiring process which had been communicated to them. He stated the reason they are not working for Stock had nothing to do with the August trip (*ibid*, pp. 611-612).

[618] There was no dispute that the demands made by Stock's representatives on the trip (Ms. Blades and/or Ms. Power), or its dispatcher (Mr. Taggart) were demands made by Stock.

[619] Stock argued the trip was stopped before the drivers' hours were exceeded and, therefore, there could be no breach of *Drivers Regulation* 12(2). Board counsel stated whether the HMC drivers exceeded their hours is irrelevant. A mere request satisfies a breach of this provision.

[620] The Board concurs with Board counsel that the intent of this comprehensive *Drivers Regulation*, when read in its entirety, is to ensure the safe operation of these vehicles. As noted above, a tired driver runs the risk of causing an accident, which can result in the injury or death for passengers on the HMC and others travelling on the highway. The Board finds that in seeking to achieve the safe operation of these vehicles, the *Drivers Regulations* are to prevent a motor carrier from requesting its drivers to drive after they exceed their permitted hours on duty.

[621] In this case, the Board finds Stock went beyond a mere request; rather, it made demands. The Board finds Stock made numerous demands of its HMC drivers to drive after they exceeded the safety hours on duty contrary to s. 12(2) of the *Drivers Regulations*.

[622] The first demand was made by Stock's representatives on the trip around Brossard, Quebec while the drivers were travelling through Southern Quebec. The Board finds this demand alone constitutes a breach of the *Drivers Regulations* 12(2).

[623] The demands, however, continued throughout the trip until they reached St. Hyacinthe, Quebec, including after contacting Stock's dispatcher, Mr. Taggart, who was in contact with Mr. Phinney throughout the day.

[624] The Board also finds that Mr. Taggart's call to Ms. Bishop while on the bus between Brossard and St. Hyacinthe constituted a further demand upon her to drive beyond her permitted hours on duty.

[625] Each of the demands constitutes a breach of *Drivers Regulations* 12(2).

[626] The Board further finds it was Mr. Phinney who was in charge of this movement and gave the directions. Mr. Phinney testified to being contacted throughout the day. The Board finds this is consistent with all other movements of the HMC. It is also consistent with Ms. Blades' testimony, that when she contacted Mr. Taggart, she was to call Mr. Phinney. Furthermore, it is also consistent with the fact that it was communicated to her that the reason why she had to call Mr. Phinney was because he was responsible for the finances of the trip. This would include whether hotel rooms and the additional food would be funded for the 33 drivers. The Board finds Mr. Phinney was responsible for the directions and demands given to the HMC drivers.

[627] The significance of this breach is the fact that Stock has been operating for years, in particular, extra-provincial and intra-provincial charters since 2013. These hours for driving, rest and on duty apply to all vehicles designed to seat more than 10 people under both the *Drivers Regulations* and the *Nova Scotia Regulations*. Everyone in

Stock's organization, in particular, its Regional Manager, dispatchers, representatives on its trips, and all drivers should know these rules and regulations fully which should be adhered to at all times and implemented appropriately. This is discussed in more detail under the Remedies section.

[628] In St. Hyacinthe, when Ms. Blades made her first call to Mr. Taggart to tell him that Ms. Bishop and Mr. LePage are correct, she is told "Troy knows". The Board finds either Mr. Phinney knew the *Regulations* all along or he had been informed the Union was stopping the trip.

[629] The Board finds that the only relevant distance between locations on Google Map, if any were actually done during this trip, is the one between Brossard, Quebec and Dartmouth at the time the first demand was made.

[630] The most significant component of these demands is Stock's ultimate reaction to its HMC drivers. As noted above, safety is the Board's number one concern. In addition to all other authority, under s. 27(1) and 29 of the *MC Act*, the Board has the authority and power to give effect to *Rules, Regulations*, etc. The Board's findings on this issue relate to the Board's regulation and licensing of motor carriers and their operation of these vehicles in accordance with the laws and regulations. Furthermore, its findings are completely separate and apart from, and have no impact on, any proceeding before, or findings by, the Labour Standards Board.

[631] There is a dispute as to whether the words "or else" were included with the demands after the representatives contacted Mr. Taggart. First, the Board finds Stock's actions speak louder than words. Ms. Bishop and Mr. LePage never worked for Stock again.

[632] The Board finds the employment of these two non-unionized employees was terminated by Stock because they would not drive after they exceeded their safety hours on duty as Stock had demanded of them. Some of the facts relevant to the Board's findings are Mr. LePage's first ROE of November 24, 2016, said his employment with Stock was terminated because there was not enough work. Mr. LePage and Ms. Bishop were spare drivers and well qualified; Ms. Bishop having licenses to drive all of Stock's vehicles, including the HMC. As spare drivers, they did not have a designated or specific route. Other spare drivers had worked for Ambassatours during the tourism season in September and October, and would be permitted to return as a spare drivers. Both attended Stock's September school bus drivers meeting. After Mr. LePage received his subpoena to appear before the Board in this proceeding, he received a second ROE in which the stated reason for termination coincides with Stock's defence. The Board finds the first ROE to be most relevant.

[633] From a regulator's perspective, the Board finds this action sent a clear and profound message to Stock's 600 employees in Nova Scotia, if not all 1,600 across Canada, being: you are to do as you are told, even if you are directed to act contrary to the safety regulations, or you could lose your job.

[634] Second, the Board accepts the evidence of Ms. Bishop and Mr. LePage that, from the words communicated to them, they understood that if they did not drive the HMC back to Dartmouth, they would lose their jobs; and they did lose their jobs. Stock argued the Board should not find Ms. Bishop to be honest as a result of her querying that Stock adjusted her trip inspection reports regarding the tires. The originals were produced and showed the inspection reports were not altered. Ms. Bishop testified any

alteration allegation was an assumption on her part. The Board found the drivers to be honest. Although Ms. Bishop and Mr. LePage were at times excited or emotional, it is what they said, as opposed to how they said it, that the Board accepts.

[635] As noted above, the Board finds Stock made demands of its HMC drivers to drive after their permitted accumulated hours on duty contrary to *Drivers Regulations* 12(2).

**(F) Stock requested its drivers falsify their Daily Log contrary to s. 86(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act***

[636] *Drivers Regulation* 86(2) reads:

**86 (2)** No motor carrier shall request, require or allow any person to enter and no person shall enter inaccurate information in a daily log, whether it is handwritten or produced using an electronic recording device, or falsify, mutilate or deface a daily log or supporting documents.

[637] The *Drivers Regulations* are very comprehensive in ensuring tired drivers are not operating these large vehicles on the highway.

[638] Drivers' logs are their records of the hours they are on duty, driving, and rest periods.

[639] Ms. Bishop stated if she drives the HMC after her permitted hours on duty and records it in her log, it may result in a fine and her losing her license to drive the vehicles. There is no suggestion Stock wanted its three HMC drivers to lose their licenses.

[640] Consequently, Ms. Bishop testified that the demand for her to drive after her permitted hours on duty was also a demand for her to falsify her log books:

Mr. Smith: Nobody told you to falsify your logbooks.

- Ms. Bishop: If we had of drove straight through, yes, we would have.  
Mr. Smith: You're relying on an inference, aren't you?  
Ms. Bishop: Okay. If we're driving straight through, how do you not go over your log hours? [Emphasis added]

[*ibid*, p. 364]

[641] The Board concurs. The Board finds Stock's demand that its HMC drivers drive, after they had exceeded their permitted hours on duty congruently was a demand to falsify their driver's logs contrary to *Drivers Regulation 86(2)*.

### VIII REMEDIES

[642] The Board found Stock failed to operate and furnish services in conformity with the *Motor Carrier Act* and *Motor Vehicle Transport Act*, regulations, rules, Orders, schedules and its Licenses as it:

1. used its HMC to transport passengers from and/or to the Province of Nova Scotia contrary to section 4 of the *MVT Act*;
2. used its HMC to transport students from Newbridge upon a highway within the Province of Nova Scotia, contrary to s. 7(1) of the *MC Act*;
3. used its HMC and its school bus Vehicle Unit No. 25486 to transport students from Newbridge free of charge, contrary to s. 22 of the *MC Act*;
4. failed to make the HMC available or use the HMC for the purposes set out in the Licenses;
5. resisted and willfully obstructed inspectors in the execution of their duties and powers by not cooperating and providing all requested information to the Motor Carrier Division, contrary to s. 35(2) of the *MC Act*,
6. failed to charge rates for charter services in conformity with its Licenses contrary to s. 22 & 23(1) of the *MC Act*;
7. leased its HMC with Newbridge for the transport of students, contrary to s. 7(1) & s. 22 of the *MC Act*, and,

8. the following breaches which became known to the Board in the proceedings:

- (a) misled the Board;
- (b) joined two licenses together without authority to do so contrary to s. 8(g) of the *Board Public Passenger Motor Carrier Act Regulations*;
- (c) transported school officials from the Halifax Regional School Board contrary to its Licenses;
- (d) in addition to the above breaches, used various vehicles including its school and activity buses and HMC, and/or operated school bus services, contrary to s. 7(1) of the *MC Act*;
- (e) demanded its drivers drive the HMC after they exceeded their permitted hours of being on duty contrary to s. 12(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*; and
- (f) requested its drivers falsify their Daily Log contrary to s. 86(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*.

[643] Pursuant to s. 22, these failures are good and sufficient cause for the cancellation, suspension and/or amendment of the Licenses. For ease of reference it reads:

**Failure to Comply**

**22** A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, and the failure of a motor carrier so to conform shall, in addition to constituting an offence against this Act, be good and sufficient cause for the suspension or cancellation or both by the Board of the license issued to the motor carrier, or for the suspension or cancellation by the Board of part of the license or of any authorization issued to the motor carrier. [Emphasis added]

[644] When deciding to amend, suspend and/or cancel a license, under s. 19(2), the Board is to take into consideration the factors enumerated in s. 13 which states:

**Factors considered**

**13** Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

[645] The language of s. 13 is designed for an application before the Board. Considering these in a Show Cause proceeding, the language is adapted for that purpose. As noted in the *Re Trius Inc.* Decision (dated September 22, 1993), these various factors may overlap and conflict, and the weight to be given to each will differ, depending upon the facts of each case.

[646] Both ss. 13(a) and 22 consider whether a licensee has not complied with a license issued to it. The above breaches constitute significant non-compliance.

[647] The Board finds Stock used its vehicles, including its school buses, as it wished, in disregard to the *Acts, Regulations, orders, rules, schedules* and its Licenses.

[648] The Board also finds Stock was dishonest and/or misleading to the inspectors, the Director of the MCD, and the Board. Furthermore, it went to great lengths to eliminate or shield evidence of the use of this HMC. This included:

- deliberately, provided false information to a customer, Mr. MacEachern, of Newbridge, to pass along to the MCD.
- asked for dates from the MCD, when Mr. Phinney knew the dates;

- failed to provide known information when requested by Inspector Parker and Ms. Aisthorpe;
- deliberately provided false and/or misleading information in some of its responses to Board IRs;
- failed to provide any information to some of the Board IRs including dates and drivers' logs;
- failed to produce and/or maintain any documents, emails, telephone calls, notes, or supporting documentation;
- failed to follow the Company's processes for tracking its vehicles movements including failing to input the information into Stock's computer system; and
- attended before the Board without information about the vehicles movements.

[649] These are significant for the Board in its administration of the *MC Act*, a relevant consideration under s. 13(d). Dishonesty, misleading, and resisting conduct also does not illustrate a fitness, willingness and ability to provide quality services under s. 13(c). It is not in the public interest either (s. 13(b)).

[650] A motor carrier that has been deceitful is difficult to regulate. This is exemplified by the Saint John trip Stock provided for Newbridge. But for a posting on Newbridge's Facebook page with a picture of Stock's HMC, the movement would not have been detected by the MCD or the Board.

[651] A motor carrier which has not followed its Licenses, the *Acts*, *Rules* and *Regulations*, including safety *Regulations* of drivers' hours on duty and has not honestly answered questions of inspectors of the MCD and the Board, would not receive a license in the first instance under s. 13 of the *MC Act*. If it would not receive a license, should it retain its current Licenses?

[652] The Board finds one of the most critical breaches is Stock's demand that the drivers operate the HMC after they exceeded their permitted hours of being on duty as set by the *Drivers Regulations* of the *MVT Act*. The Board also found the demand to work beyond their safety hours on duty was congruently also a demand for them to falsify their drivers' logs. Furthermore, by terminating the employment of the two unprotected non-unionized employees, the Board finds Stock gave a clear message to its 1,600 employees across Canada and, particularly to the 600 employees in the Province, that you either do as you are told by Stock, even going beyond the safety regulations, or you will lose your job.

[653] Safety is essential. It is the Board's number one concern. Safety breaches affect all services operated by Stock under these Licenses.

[654] Public passenger vehicles, in particular HMCs, are very large and most do not have seatbelts. A tired driver may cause an accident resulting in serious injury or death to the passengers on board and others travelling on the highway. There is no contest between one of these vehicles crossing out of its lane and people travelling in a car.

[655] This affects public interests under s. 13(b). The public is interested in having motor carriers and their vehicles meet the objects of the *Motor Carrier Act* of providing safe, quality, transportation services. The public is interested in motor carriers ensuring all passengers travelling in these vehicles are safe, as well as the other people travelling on the highways in Nova Scotia and Canada. The public's interest also includes not only having access to these transportation services for themselves, but having these safe transportation services available for tourists coming to Nova Scotia. The latter is

important to the Province's economy (*Discount Decision*, para. 16 quoting the Ivany Report).

[656] Demanding staff drive beyond the safety hours on duty also does not constitute "quality" service under s. 13(c).

[657] The Board finds Stock's representative drivers for the Northern Ontario trip did not know the *Drivers Regulations* which are essential to the safe operation of public passenger vehicles. The Board finds Stock's failure to ensure its representatives knew these safety provisions lessens its "fitness or willingness" to provide safe public passenger services, under s. 13(c).

[658] This lack of fitness and willingness is taken to a lower level, if one is to believe Mr. Phinney that he was also unaware of these *Drivers Regulations*. Stock is deemed to know the law. A casual familiarity with the *Acts* and *Regulations* is insufficient. It is completely unacceptable for Stock's Regional Manager to just breeze through the *Acts* and the safety regulations. Mr. Phinney has an obligation to be completely informed. If Stock wants to operate public passenger vehicles, which can potentially cause injury or death to the public, it needs to fully abide by the *Acts* and *Regulations*, which means knowing them, implementing them, and ensuring everyone within the organization abides by them.

[659] The Board, however, does not believe Mr. Phinney about his lack of knowledge. For almost every breach, Mr. Phinney pleaded ignorance of the *Acts*, *Regulations* and *Orders*, as an excuse. As stated above, the Board found he lacked credibility. However, if he were truly that ill-informed, it, alone, demonstrates a deficiency

in Stock's fitness and willingness to provide quality services and to operate in accordance with the *Acts, Rules, Regulations* and its Licenses.

[660] The Board further finds the message, to do as you are told or you will lose your job, may impact any of Stock's employees such as mechanics, and dispatchers, as well as the drivers. If mechanics are to ignore mechanical problems with these large vehicles or lose their employment, the same s. 13 factors are in issue. As an example, when the MCD contacted Stock for a random inspection of its HMC on August 17, 2017, Mr. Phinney testified he needed the HMC and that Stock's mechanics found no imminent safety issues. The MCD inspection the following day, found 15 issues, three relating to the brakes, that had to be repaired before the HMC was allowed to operate again.

[661] Under s. 13(a) the Board also considers whether there is an excess of requirements, including an excess of vehicles. As noted in the *Stock Decision*, the Board stated Stock's HMCs were not needed in the Province and, if licensed, would result in an excess of vehicles. Stock did not meet the test of s. 13, and without the very restrictive amendments requested by Stock to only use them for overflow cruise ship services, the HMCs would not be licensed for any service.

[662] Subsection 13(b) considers the general effect on the transportation services. Being a division of the largest bus company in the world and the largest bus company in Nova Scotia, Stock can hinder, if not destroy, achieving the objects of the *MC Act* in providing safe, quality public passenger transportation services for Nova Scotia. With over 500 public passenger vehicles in the Province, Stock could continue to operate outside its Licenses and/or charge little or nothing, undercutting all licensed motor carriers until none remain in business. This would, in turn, affect services in rural areas.

[663] The Board is most concerned with the safety of the public including school children.

[664] The Board asked counsel to specifically address the issue of the cancellation of the school bus services on the MC License 595 in their closing arguments.

[665] Stock's counsel emphasized the Company has been operating school bus services for over 20 years.

[666] Stock also argued the Company is more than Mr. Phinney. Although the Board appreciates the latter, from the evidence before the Board, the Board finds Stock failed to properly monitor the activities of Mr. Phinney and the conduct of other employees involved with these breaches and instructions they were given. Furthermore, there is no evidence before the Board that Stock has safety policies or educational programs in place.

[667] For the school bus services on its MC License 595, the Board is conflicted. Safety of school children is very important. On the one hand, it is persuaded by the arguments of Stock's counsel that Stock has operated these services for 20 years and they constitute 98% of Stock's transportation services. From the evidence before the Board, it would appear that on most days the drivers may not be on duty for extended hours.

[668] On the other hand, the Board finds Stock to be misleading (at times deceitful) and has operated its vehicles, including its school buses, in disregard for the *Acts*, regulations, rules orders, schedules and its restricted Licenses.

[669] After considering all facts, arguments, breaches, and s. 13 of the *MC Act*, the Board has decided that while it will not cancel Stock's Licenses in their entirety, it will

cancel all services under the Licenses, other than the school bus services, which for these Licenses are under MC License 595.

[670] The following are some of the key issues to be addressed for all services, including any interim terms for cancelled services between now and their termination dates:

1. The message to do as you are told (when it would breach the Acts, regulations (in particular safety), rules, orders, schedules, and/or Stock's Licenses (the Acts) or lose your job is eliminated;
2. Staff are aware of the Acts, in particular, all safety provisions;
3. Everyone follows the Acts, in particular, all safety provisions; and
4. Stock provides means of assurance of future compliance.

[671] The Board has been considering dates and interim terms outlined below to address some of these issues for the services to be cancelled. The Board seeks from Stock or its counsel (Stock), and Board counsel, their comments and/or alternative or additional recommendations the Board should consider, as well as addressing the other issues, such as interim assurance of Stock's compliance. The Board will hold an oral hearing, as soon as possible, at a date agreed to by counsel or set by the Board, to hear from Stock and Board counsel to set termination dates and determine what, if any, interim amendments, terms, conditions and/or orders should be made to the cancelled services between now and their termination dates.

[672] The 2017 cruise ship season has concluded. Therefore, the Cruise ship services under Schedule F(4) of the MC License 595 and HMC designation under Schedule E(4) are cancelled immediately.

[673] Charter services under Schedules F(1) of both Licenses cancelled on January 15, 2018. In the interim:

- Stock would only operate single day charters where the driver is on duty for 16 hours or less and driving 12 hours or less;
- For all vehicle movements, Stock will generate and maintain all documents and records including supporting documents for drivers' hours;
- Until January 15, 2018, Stock drivers executing the shorter charters have completed a safety educational program as noted below; and
- Stock may need to subcontract with a licensed motor carrier for the operation of longer charters.

[674] The above interim terms would also apply to contract services and counsel can speak to appropriate dates for their cancellation, if any are presently being operated by Stock. If any contract services are being operated, Stock would be doing so without Board approval as all contracts on its Licenses have expired, although not removed from its Licenses upon the completion dates.

[675] The Board will provide Stock with an opportunity to present recommendations to address all breaches and concerns set out in this Decision, including the key issues noted above, as they may relate to its current school bus services.

[676] Stock's school bus services under MC License 595 are for Annapolis Valley Regional School Board Schedule F(3) which expired July 31, 2017; and for the CSAP under Schedule F(2) which ends June 30, 2018. Specifically, the Board requests comments from Stock and Board counsel about safety for school bus services, including any issues regarding drivers' hours and the retention of any appropriate documents.

[677] Amongst other terms and conditions to address the various issues in this Decision, the Board has been considering some general requirements. These include:

- Stock filing with the Board an educational program addressing the *Acts*, in particular, safety issues, including drivers' hours and documents;
- A date to be set for the filing of that program;
- Another date set for Stock to report to the Board that all staff have received this educational training; and
- New drivers to successfully complete the education training before operating Stock's vehicles.

[678] Issues 1 and 4 above are more challenging. The Board looks forward to the recommendations of Stock and Board counsel to address these.

[679] Stock's plans and/or recommendations shall be provided to Board counsel by November 30, 2017, for his/her comments and/or alternative or additional recommendations the Board should consider. The Board will hold an oral hearing after the filing of recommendations, at dates agreed to by counsel or set by the Board, to hear from Stock and Board counsel and determine what, if any, amendments, terms, conditions and/or orders should be made to the school bus services to address all breaches and concerns and to ensure the safety of the students.

[680] The Board will retain jurisdiction to complete the above.

## **IX CONCLUSION**

[681] By a Notice of Show Cause Hearing Stock and two staff were directed to attend before the Board to show why its MC License 595 and XP License should not be cancelled, amended, and/or suspended for failure to operate and furnish services in conformity with its Licenses, including the *MC Act*, *MVT Act* and their regulations.

[682] After hearing from all witnesses and considering all evidence and arguments, the Board finds Stock has repeatedly operated its public passenger vehicles, including its school buses, as it wished. As Mr. Phinney stated about the first May trip, "we did it anyway". Stock acted contrary to the *Act*, rules, regulations, its Licenses, and orders; even drivers' safety regulations. It was cavalier about these.

[683] The Board also finds Stock repeatedly conducted itself in a manner to hide its delinquent operations from being detected. First, while knowing the information, Stock did not answer the questions of the Inspector and the Director of the MCD; provided misleading and/or incomplete information to them; and in one instance, gave false information to a customer to forward onto the MCD. Second, for some operations it did not generate its normal business records including not inputting the movements into its computer programs or maintaining any documentation including those required to be kept with drivers' daily logs to ensure compliance with those regulations.

[684] When its delinquent operations were detected and it was ticketed, Stock would attend before the court and pay a fine, if ordered.

[685] Much of the information became known to the Board through these proceedings and often only after most of the other witnesses had testified. However, the Board finds Stock also provided false, misleading and/or incomplete information to the Board in this proceeding, including failing to provide full and accurate responses to Information Requests (IRs). Its evidence at times was evasive, incomplete, and/or appeared made up as the proceedings advanced. As Board Counsel noted, knowing that these Licenses were in jeopardy of being cancelled, it was surprising how little information Mr. Phinney brought before the Board to address some of these issues.

[686] The Board finds Stock failed to operate in accordance with the *Act*, order, rules, regulations and its Licenses as follows:

1. used its HMC to transport passengers from and/or to the Province of Nova Scotia contrary to section 4 of the *MVT Act*;
2. used its HMC to transport students from Newbridge upon a highway within the Province of Nova Scotia, contrary to s. 7(1) of the *MC Act*;
3. used its HMC and its school bus Vehicle Unit No. 25486 to transport students from Newbridge free of charge, contrary to s. 22 of the *MC Act*;
4. failed to make the HMC available or use the HMC for the purposes set out in the Licenses;
5. resisted and willfully obstructed inspectors in the execution of their duties and powers by not cooperating and providing all requested information to the Motor Carrier Division, contrary to s. 35(2) of the *MC Act*;
6. failed to charge rates for charter services in conformity with its Licenses contrary to s. 22 & 23(1) of the *MC Act*;
7. leased its HMC with Newbridge for the transport of students, contrary to s. 7(1) & s. 22 of the *MC Act*; and
8. the following breaches which became known to the Board in the proceedings:
  - (a) misled the Board;
  - (b) joined two licenses together without authority to do so contrary to s. 8(g) of the *Board Public Passenger Motor Carrier Act Regulations*;
  - (c) transported school officials from the Halifax Regional School Board contrary to its Licenses;
  - (d) in addition to the above breaches, used various vehicles including its school and activity buses and HMC, and/or operated school bus services, contrary to s. 7(1) of the *MC Act*;
  - (e) demanded its drivers drive the HMC after they exceeded their permitted hours of being on duty contrary to s. 12(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*; and

- (f) requested its drivers falsify their Daily Log contrary to s. 86(2) of the *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act*.

[687] The Board finds Stock's conduct in the operation of its vehicles in Nova Scotia, including conduct (at times deceitful) to mislead the MCD and the Board exhibits a deficiency in its fitness and willingness to provide safe quality and proper services in accordance with the *Act*, rules, regulations and orders, even the safety regulations. Furthermore, Stock failed to demonstrate a commitment to implementing the *Act*, rules, regulations and orders, even the essential safety regulations.

[688] The totality of these breaches is a significant concern for the Board.

[689] In addition, Stock's repeated demands that its drivers drive after their regulated permitted 16 hours on duty is very disconcerting. It is contrary to the essential safe operation of these vehicles. An accident involving one of these large vehicles can cause serious injury or death to the passengers on board as well as to others travelling on the highway, in particular, those is cars.

[690] By terminating the employment of the two non-unionized employees who resisted these demands, the Board finds, as the regulator, that Stock sent a message to its other employees that they are to do as they are told or they could lose their job.

[691] The Board is most concerned with the safety of the public including school children. The Board asked counsel to specifically address the issue of the cancellation of the school bus services in their closing arguments.

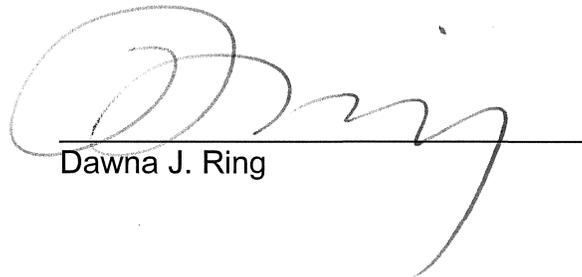
[692] After considering all facts, arguments, breaches, and s. 13 of the *MC Act*, as outlined in the Remedies section above, the Board decided it will not cancel Stock's Licenses in their entirety, but will provide Stock with an opportunity to present

recommendations to address all breaches and concerns set out in this Decision as they relate to its current school bus services. The Board will hear from Stock and Board counsel before deciding what, if any, terms, conditions and/or orders may be appropriate for Stock's current school bus services to address these and in particular to ensure the safety of students. All other services on the Licenses are cancelled. The Board will also hear from Stock and Board counsel as soon as possible about the dates of termination and what, if any, interim terms and conditions should be ordered; other than for the overflow cruise ship services and use of the HMCs which are cancelled immediately, as the cruise ship season for 2017 is finished.

[693] The Board retains jurisdiction to complete the above.

[694] An Order will be issued accordingly.

**DATED** at Halifax, Nova Scotia, this 14<sup>th</sup> day of November, 2017.



Dawna J. Ring

## SCHEDULE "A"

### LEGISLATION

[695] The relevant sections of the *MVT Act* are:

#### **Operation without licence prohibited**

4 Where in any province a licence is, by the law of the province, required for the operation of a local bus undertaking, no person shall operate an extra-provincial bus undertaking in that province except under and in accordance with a licence issued under the authority of this Act.

#### **Issue of licence**

5 The provincial authority in each province may, in its discretion, issue a licence to a person to operate an extra-provincial bus undertaking in the province on the like terms and conditions and in the like manner as if the extra-provincial bus undertaking were a local bus undertaking.

#### **Tariffs and tolls**

6 Where in any province tariffs and tolls for local bus transport are determined or regulated by the provincial authority, the authority may, in its discretion, determine or regulate the tariffs and tolls for extra-provincial bus transport on the like terms and conditions and in the like manner as if the extra-provincial bus transport were local bus transport.

[696] The *Commercial Vehicle Drivers Hours of Service Regulations* under the *MVT Act* include:

**commercial vehicle** means a vehicle that

(a) is operated by a motor carrier and propelled otherwise than by muscular power; and

(b) is a truck, tractor, trailer or any combination of them that has a gross vehicle weight in excess of 4 500 kg or a bus that is designed and constructed to have a designated seating capacity of more than 10 persons, including the driver.

#### **Daily Driving and On-duty Time**

12 (2) No motor carrier shall request, require or allow a driver to drive and no driver shall drive after the driver has accumulated 14 hours of on-duty time in a day.

#### **Daily Off-duty Time**

14 (1) A motor carrier shall ensure that a driver takes and the driver shall take at least 10 hours of off-duty time in a day.

86 (2) No motor carrier shall request, require or allow any person to enter and no person shall enter inaccurate information in a daily log, whether it is handwritten or produced using an electronic recording device, or falsify, mutilate or deface a daily log or supporting documents.

[697] The relevant sections of the *MC Act* for this proceeding include:

**Interpretation**

**2** In this Act,

...  
(f) “motor carrier” means a person operating, either by himself or another, a motor vehicle with or without trailer attached, as a public passenger vehicle;

(i) “public passenger vehicle” means a motor vehicle operated by or on behalf of a person carrying on upon any highway the business of a public carrier of passengers, or passengers and freight, for gain and includes a school bus;

(j) “school bus” includes a motor vehicle, operated by or under an arrangement with a school board as defined in the Education Act, for transporting pupils and teachers to and from school or for any school purposes, including the transportation of pupils and teachers to and from school social, dramatic, musical or athletic functions or competitions, teachers’ institutes and similar activities;

**License and compliance required**

**7 (1)** Except as herein provided, no person, either as principal or by an agent or employee, shall operate a public passenger vehicle upon a highway within the Province

(a) without holding a license issued by the Board allowing the vehicle to be so operated; or

(b) in a manner, at a place or for a purpose that is not authorized by the terms of his license.

**(2)** No motor carrier shall operate a public passenger vehicle under the license issued to him other than a public passenger vehicle designated in such license.

**Temporary authority**

**9 (1)** Notwithstanding any other provision of this Act or the regulations, when it is made to appear to the Board that there is an immediate or special need for the provision of a service in the transporting of passengers the Board, in the discretion of the Board, and without advertisement, public hearing or other proceedings, may grant a temporary authority or trip permit to a person to provide the service on such terms and conditions as the Board prescribes.

**(2)** A temporary authority granted under this Section authorizes the person to whom it is granted to provide the service specified in the authority for or within the time specified in the authority, not exceeding ninety days, but shall create no presumption that a corresponding permanent authority or license will be granted thereafter.

**(2A)** A temporary authority granted pursuant to this Section may be extended by the Board for a period not exceeding ninety days beyond the time specified in the authority.

**(2B)** A trip permit shall specify the trip and vehicle to which it applies.

**(2C)** No more than six trip permits may be issued to one person within any twelve-month period.

(3) A violation of or failure to conform to a term or condition of a temporary authority or trip permit granted under this Section constitutes a violation of this Act.

**Effect of license**

10 (1) No license shall be deemed to confer any perpetual or exclusive right.

**Factors considered**

13 Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

- (a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;
- (b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;
- (c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;
- (ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;
- (d) any other matter that, in the opinion of the Board, is relevant or material to the application.

**Determination by Board**

14 After public hearing or without public hearing, as the case may be, the Board shall issue the license applied for or grant the approval sought, or refuse to issue or grant the same, or issue a license for the partial exercise only of the privilege applied for.

**Terms and conditions of license**

16 The Board may attach to the exercise of the privileges granted by a license for the operation of a public passenger vehicle such terms and conditions as in the judgment of the Board public convenience and necessity require.

**Cancellation of license**

18 Notwithstanding Sections 19 and 24, the Board without public hearing may

- (a) cancel any license authorizing the operation of a public passenger vehicle if the Board is satisfied that the licensee has not, within sixty days of the issue of the license, provided the service authorized by the license to be provided by him;
- (b) cancel any license authorizing the operation of a school bus, if the Board is satisfied that the service authorized by the license is not being provided.

**Variation or suspension or cancellation of license**

19 (1) The Board may, at any time or from time to time, amend or suspend any license or may, for cause, and after a hearing upon such notice as the Board may direct, cancel any licence.

(2) When deciding whether to amend, suspend or cancel a license pursuant to subsection (1), the Board shall take into consideration the factors enumerated in Section 13.

**Failure to Comply**

**22** A motor carrier shall operate and furnish service in conformity with the license issued to him and in conformity with this Act and all orders, rules, regulations and schedules made hereunder, and the failure of a motor carrier so to conform shall, in addition to constituting an offence against this Act, be good and sufficient cause for the suspension or cancellation or both by the Board of the license issued to the motor carrier, or for the suspension or cancellation by the Board of part of the license or of any authorization issued to the motor carrier.

**Passenger or baggage charge**

**23 (1)** All charges made by a motor carrier for any service rendered or to be rendered in the transportation of passengers or baggage or in connection therewith, shall be in accordance with the schedules fixed and approved by the Board to be charged by such motor carrier and any charge not made in accordance with the schedules is prohibited and declared to be unlawful.

**Abandonment of service or cancellation of license**

**24 (1)** No motor carrier shall abandon or discontinue any service provided for in his license for the operation of a public passenger vehicle without an order of the Board which shall be granted only after a hearing upon such notice as the Board may direct.

**Power and authority of Board**

**27 (1)** The Board has power and authority to

(a) grant to any person a license to operate or cause to be operated a public passenger vehicle over specified routes or in respect of specified points or geographic areas or generally throughout the Province, either as a regular or an irregular service;

...  
(c) fix the rates, fares or charges or the maximum and minimum or maximum or minimum rates, fares or charges that a motor carrier is authorized to charge for the transportation of passengers, baggage and parcel express and the schedules and service that a motor carrier must observe and provide;

...  
(e) do such other acts and things as are necessary or advisable for the more effective exercise of its powers and the more effective administration of this Act and the regulations.

**Public hearing**

**27A** The Board may, on its own motion, and shall, when requested by the Governor in Council, hold a public hearing on any matter respecting public passenger vehicles which, in the opinion of the Board or the Governor in Council, as the case may be, is necessary to better carry out the intent and purpose of this Act.

**Enforcement powers of Board**

**29** The Board shall have power and authority by general order or otherwise to give effect to the rules, regulations or decisions respecting motor carriers, public passenger vehicles and passenger vehicles other than public passenger vehicles.

### **Public Utilities Act**

**30** Except where inconsistent with this Act or the regulations, the provisions of the Public Utilities Act relating to the constitution, powers, procedures and practices of the Board shall apply to and in respect of the Board when acting under this Act.

### **Inspector**

**34 (1)** The Minister may appoint a person or persons in the public service to act as inspector or inspectors under this Act.

**(2)** The inspector or inspectors shall enforce the provisions of this Act and the regulations that pertain to the conduct of motor carriers and shall take all necessary measures under this Act to prevent the operation of any motor carrier without such motor carrier having first complied with the terms and provisions of this Act and the regulations, and shall perform such other duties as the Minister may from time to time determine.

### **Power to stop vehicle and require inspection**

**35 (2)** A person who resists or wilfully obstructs an inspector in the execution of his duty or the exercise of his powers under this Act or the regulations is guilty of an offence against this Act and liable to the penalties prescribed by Section 37.

### **Offence and penalty**

**37** Any motor carrier who violates or fails to observe any provision of this Act or any order, rule or regulation made under this Act, or who demands, collects or receives any compensation for any service performed by him other than that set out and contained in the schedule of rates, tolls, fares or charges fixed and approved pursuant to this Act, or filed with the Board, as the case may be, for services performed by such motor carrier, or who fails to observe or to comply with a term or condition of his license shall be guilty of an offence and shall be liable for the first offence to a penalty of not less than two hundred and fifty dollars nor more than five thousand dollars, and for any subsequent offence to a penalty of not less than five hundred dollars nor more than five thousand dollars, and in default of payment to imprisonment not exceeding sixty days or to both penalty and imprisonment.

[698] The most pertinent sections of the *Utility and Review Board Act*, S.N.S. 1992, c. 11, as amended (*UARB Act*) are:

### **Functions, powers and duties**

**4 (1)** The Board has those functions, powers and duties that are, from time to time, conferred or imposed on it by

(a) this Act, the Assessment Act, the Expropriation Act, the Gasoline and Diesel Oil Tax Act, the Health Services Tax Act, the Heritage Property Act, the Insurance Act, the Motor Carrier Act, the Municipal Government Act[,], the Public Utilities Act, the School Boards Act, the Shopping Centre Development Act, the Tobacco Tax Act or any enactment; and

### **Rules of practice and procedure**

**12** The Board may make rules respecting practice and procedure in relation to matters coming before it.

### **Jurisdiction**

**22 (1)** The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it.

(2) The Board, as to all matters within its jurisdiction pursuant to this Act, may hear and determine all questions of law and of fact. [Emphasis added]

[699] The *Board's Regulatory Rules* made under the *UARB Act* applicable to the

*MC Act* include:

**16 (2)** A Response to Information Request shall be in accordance with Form B and shall

(a) provide a full and adequate response to each question;