

DECISION

**2017 NSUARB 92
M07960 & M07961**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

-and-



IN THE MATTER OF THE MOTOR CARRIER TRANSPORT ACT

-and-

IN THE MATTER OF THE APPLICATIONS of A WORLD CLASS LIMOUSINE COMPANY LTD. to amend Motor Carrier License No. P02677 and Extra-Provincial Operating License No. XP02364

BEFORE: Richard J. Melanson, LL.B., Member

APPLICANT: **A WORLD CLASS LIMOUSINE COMPANY LIMITED**
Joshua Chabinka

INTERVENORS: **MOLEGA TOURS LIMITED**
Marie Malloy
Scott Callaghan

THARIQ ALI o/a PRESTIGE LIMOUSINE
Thariq Ali

HEARING DATE: June 1, 2017

DECISION DATE: **June 14, 2017**

DECISION: The Applications are granted, as filed, with the exception that only two 14-passenger vehicles will be added to the equipment list of the Applicant's extra-provincial license.

I INTRODUCTION

[1] A World Class Limousine Company Limited (“Applicant”) filed an Application requesting to amend its Motor Carrier License No. P02677 (“MC License”) by amending the Company’s address, by deleting a reference to a 2006 Dodge Sprinter in its Schedule D Rate Schedule, and adding a specific reference to the Halifax Stanfield International Airport in Schedule F, which describes the Applicant’s Specialty Irregular Restricted Area Charter Service (“MC License Amendment Application”).

[2] The Applicant also filed an Application requesting to amend its Extra-Provincial Operating License No. XP02364 (“XP License”) by amending the Company’s address, adding three (3) 14-passenger vehicles to its Schedule E Equipment List, and adding a specific reference to the Halifax Stanfield International Airport to Schedule F (“XP Amendment Application”).

[3] The Applications were received by the Board on March 24, 2017.

[4] Under the Board’s direction, a combined Notice of Amendment Application for both Applications was published in the Royal Gazette on April 5, 2017; posted on the Board’s website; and forwarded to the licensed motor carriers by email, fax and/or letter.

[5] Objections to the Applications were received on April 10, 2017, from Molega Tours Limited (“Molega”) and Thariq Ali, o/a Prestige Limousine (“Prestige”).

[6] The Molega objection is based on the following points:

There is no proof that any further 14 passenger vehicles are required in the province, let alone three (3) such vehicles.

We have not been approached, to my knowledge, by Mr. Chabinka at any time with requests for our assistance for our 14 passenger van, due to him being unable to supply any clients with their requests for transport.

[Exhibit A-3]

[7] Prestige's objection stated:

Prestige limo also wishes to object to this application. We have two vehicles that can accommodate this size group and have never been approached as well...

[Exhibit A-6]

[8] A hearing was held in Halifax, Nova Scotia on June 1, 2017.

[9] The Applicant was represented by Joshua Chabinka, President. Molega was represented by Marie Malloy, President and Scott Callaghan, Charter Manager. Prestige was represented by its proprietor, Thariq Ali.

[10] The MC License Amendment Application is made pursuant to the *Motor Carrier Act*, R.S.N.S. 1989, c. 292, as amended ("*MC Act*"). The XP License Amendment Application is made under the *Motor Vehicle Transport Act*, R.S.C., 1985, c. 29 (3rd Sch.) ("*MVT Act*"), which is administered under the regime of the *MC Act*.

II ISSUES

[11] After considering the *MC Act*, and in particular the factors set out in s. 13, should the Board exercise its discretion and grant the requested amendments in whole, or in part, with or without restrictions?

III LAW

[12] In assessing whether to grant amendments to any operating authority, the Board may consider any relevant or material factors. Section 13 of the *MC Act* lists some of these:

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.

[13] By virtue of ss. 5 and 6 of the *MVT Act*, the regulatory regime established under the *MC Act* applies to extra-provincial amendment applications.

[14] The Board's decision in *Ward Lucius Markie o/a Markie Bus Tours (Re)*, 2017 NSUARB 6 (CanLII) addresses, at paragraph [9], the interplay between various factors, as follows:

In each case, these various relevant factors and interests, may, at times, overlap and/or conflict. In the *Trius Inc.* 1993 Decision, the Board stated at page 9:

The Board has noted in previous decisions that the various considerations are not mutually exclusive. They tend to overlap and it is difficult at times to isolate one from another. The considerations will not be of equal importance in every application. The weight to be put on various considerations will depend on the facts of each application.

[15] In assessing the relevant factors, the overarching purpose of the *MC Act* is to provide for the regulation of motor carriers to ensure there is a quality, safe, sustainable motor carrier industry operating throughout the Province (see *Motor Carrier Industry (Re)*, 2015 NSUARB 33 (CanLII); and (Nova Scotia) *Motor Carrier Industry (Re)*, 2015 NSUARB 246 (CanLII)).

[16] Regulating the number, size and types of vehicles operating in the Province, along with rates, location and service areas, provides tools through which the Board attempts to achieve sustainability objectives.

[17] The Applicant has the burden of proving that, after taking all relevant factors into consideration, the Applications should be granted.

IV MC LICENSE AMENDMENT APPLICATION

1. Evidence and submissions

[18] Mr. Chabinka acquired the Applicant in 2016. After review, he wanted to update his operating authorities.

[19] The requested change of address, from PO Box 29013, Halifax, NS, B3L 4T8 to 1 Craigmere Drive, Unit 1106, Halifax, NS, B3N 0G8 is required to reflect the civic address of the Applicant, which is also its registered office, as filed with the Companies' Office.

[20] With respect to the amendment to Schedule D, Mr. Chabinka indicated he does not utilize the 2006 Dodge Sprinter, also described in the MC License as the "party bus", and wanted the MC License amended to reflect this fact. The Board notes the "party bus" is in fact no longer listed in the Schedule E authorized equipment under the MC License. This amendment would therefore also serve to remove an inconsistency in this license.

[21] In addressing the requested amendment to Schedule F, Mr. Chabinka explained it had been suggested to him by a representative at the Halifax Stanfield International Airport that it would be wise to have a specific reference to the airport in his motor carrier licenses. He pointed out that Schedule A of his XP License specifically referenced the Halifax International Airport.

[22] The Intervenors questioned whether the specific reference to the Halifax Stanfield International Airport in the MC License would provide the Applicant with parking privileges at the airport, similar to taxi cabs and limousines. Mr. Chabinka indicated it would not.

[23] Molega raised another issue related to the MC License Amendment Application. Mr. Callaghan was concerned with a rate specified in the D (1) Rates Schedule. In particular, he raised the issue of the Daily Group Rate after five hours, which was expressed at \$450.00 per hour.

[24] Mr. Callaghan indicated this was below industry standard and undercut carriers such as Molega. He indicated the standard rate was \$500.00 per hour after five hours.

[25] Mr. Chabinka said he was in the process of reviewing rates, which he said had not been changed for many years under previous ownership. He had no difficulty increasing this rate to \$500.00 per hour, and expressed the view the \$450.00 figure was a minimum rate.

[26] After hearing the evidence, the Intervenors did not object to the specific amendments sought to the MC License.

2. Findings

[27] The Board indicated at the conclusion of the hearing that the MC License Amendment Application would be granted.

[28] Amendments to change the Applicant's address, and remove a vehicle which is not in use, are update items. It is in the public interest that licenses be kept current and consistent with the services offered by the licensee.

[29] With respect to the wording related to the Halifax Stanfield International Airport, Schedule A (1) of the MC License indicates the Applicant can service routes on all highways in the Province. Schedule F (1) indicates the Applicant can transport "any organized group, including tours groups, from any point to any point within Nova Scotia." The Applicant is therefore authorized to do business at the Halifax Stanfield International Airport under the current MC License.

[30] This said, if the additional wording will be of assistance to the Applicant in the conduct of its business, and to clarify this aspect of its license, the Board finds it is in the public interest to do so.

[31] Finally, Mr. Chabinka indicated he would have no issue increasing the Applicant's Daily Group Rate after five hours, as set out in Schedule D (1), from \$450.00 to \$500.00 per hour. A rate increase was not advertised as part of this Application. The written objections responding to the Board's Notice did not raise this issue. This said, as the Applicant is in the process of reviewing rates, the Board would invite the Applicant to file revised rates for approval as soon as possible.

[32] The Board grants the MC License Amendment Application, as filed. An Order will issue accordingly.

V XP LICENSE AMENDMENTS

1. Evidence and Submissions

[33] The Applicant requested the same amendments to the XP License, to change its registered address, and to include a specific reference to the Halifax Stanfield International Airport, addressed above in relation to the MC License. The Board's assessment and findings in the MC License Amendment Application are equally applicable to these aspects of the XP License Amendment Application.

[34] The focus of the Intervenors' objections related to the request to add three (3) 14-passenger vehicles to the XP License.

[35] Mr. Chabinka indicated the primary reason for the requested amendment was to enable the Applicant to have more flexibility in the dispatch of its vehicles.

[36] The Applicant currently has four (4) 14-passenger vehicles authorized pursuant to its MC License; only one of these vehicles, a 2012 Ford, is authorized under the XP License.

[37] Mr. Chabinka explained he has one particular out-of-province client who sometimes has a need for extra-provincial transportation on short notice. If the 2012 Ford were engaged under the MC License, or otherwise not available, the Applicant would have no vehicle to service this client. Having the additional vehicles available under the XP License would allow his dispatcher and operations manager to better plan vehicle usage.

[38] Mr. Chabinka acknowledged that to date he has not had a situation arise where he has not been able to accommodate the client's needs. He further indicated extra-provincial work accounts for approximately 5% to 10% of his business. He said

increasing demand was not the reason for his amendment request, but hoped to grow his extra-provincial business in the future.

[39] Mr. Chabinka further indicated that while he would not necessarily need to add all these vehicles to accomplish his goal, he would like to have all three of them included under his XP License.

[40] Molega has both a provincial and an extra-provincial operating authority. All six of Molega's vehicles are included in the equipment list under both of these licenses. Molega owns and operates one 14-passenger vehicle.

[41] Molega has experience with different types of vehicles. Along with the 14-passenger vehicle, it has motor coaches with a seating capacity of 56 passengers and 36 passengers, and cutaway coaches with a seating capacity of 29 and 25 passengers. It also has an 11-passenger vehicle. The larger motor coaches appear to be the preferred vehicles for extra-provincial charters.

[42] Mr. Callaghan and Ms. Malloy explained that extra-provincial business accounted for perhaps 5 to 10% of Molega's use of the 11-passenger and 14-passenger vehicles. The principal extra-provincial use of these types of vehicles is to transport drivers to scheduled points, so they can replace other drivers on long extra-provincial trips. This ensures drivers are fresh, as well as in compliance with maximum driving hour regulations.

[43] Molega provided evidence to show that their 14-passenger and 11-passenger vehicles combined were used for all purposes, both provincially and extra-provincially, between 40 to 86 working days annually between 2012 and 2016.

[44] Mr. Callaghan confirmed that having all six of Molega's vehicles licensed under both the provincial and extra-provincial licenses was very beneficial, and provided flexibility in meeting Molega's operational needs.

[45] Finally, it was established that during Mr. Chabinka's ownership of the Applicant, only one request for Molega's assistance was made. This related to a trip within the Province.

[46] Molega submitted the Applicant had not established there was a need in the industry for any additional 14-passenger vehicles, and the granting of this Application would have a negative impact on its ability to fully utilize its fleet.

[47] Mr. Ali provided no evidence at the hearing. His position was that the Applicant had not shown a need for the additional vehicles requested, given the industry's underutilization of similar vehicles.

2. Findings

[48] Unlike past amendment applications brought by the previous owner of the Applicant [see, for example, *A World Class Limousine Company Limited (Re)*, 2014 NSUARB 172 (CanLII)], no issues with respect to the Applicant's fitness, or the quality of service provided by the Applicant, were raised. As well, there was no evidence the suggested amendment would impact on regular route service. Therefore, the impact on capacity, and corresponding sustainability issues, are the primary factors to consider in the Application.

[49] The Board has, on many occasions, commented on the precarious state of the motor carrier industry in Nova Scotia. While licensees carry high capital costs, and

must service such costs throughout the year, the tourism season is short, generally lasting between May and October. The peak season is even shorter, occurring during the months of September and October.

[50] The drive to service the peak demand means there is over capacity in the industry during much of the year. For this reason, the Board has often not approved amendment requests which would tend to exacerbate the problem.

[51] This said, the number of vehicles, and the passenger seating capacity for individual carriers, has not been maintained at completely static levels. The Board notes, for example, that Prestige received approval, in an unopposed application, on January 26, 2017, to remove one (1) 18-passenger Limousine Bus from its equipment list, and replace it with one (1) 23 to 30-passenger Limousine Bus. If Prestige follows through, this would also add capacity to its license.

[52] The Board has no evidence with respect to Prestige's extra-provincial usage of its vehicles. As no other carriers participated in the hearing, there is no evidence of any negative impact on the industry as a whole.

[53] The Board accepts Molega's 14-passenger and 11-passenger vehicles are underutilized, and in this sense, granting additional extra-provincial capacity to the Applicant could have some impact on Molega. It is also clear, however, that neither Molega, nor the Applicant, have an extensive extra-provincial clientele requiring these types of vehicles. Furthermore, the three vehicles in question are already being used by the Applicant in the Province. As well, the Applicant has reduced its provincial capacity with the elimination of the "party bus" from the MC License.

[54] The Applicant appears to be operating in a relatively niche market with a limited number of vehicles. The sustainability of these types of smaller operators is important, given industry consolidation highlighted in *Motor Carrier Industry (Re)*, 2015 NSUARB 33 (CanLII). Having a number of smaller operators helps diversify consumer product availability.

[55] The viability of the Applicant can be increased if it can make better use of its existing equipment, in which it has already made a capital investment, in a more flexible and efficient manner, just as Molega's viability is enhanced by having all six of its vehicles available for provincial and extra-provincial work.

[56] This is a case where there is a potential overlap and conflict between considerations relating to excess capacity in the motor carrier industry, and the public interest in having a diverse motor carrier industry, which can be addressed by safeguarding the ability of small carriers to remain viable and grow.

[57] That the Applicant has been able to service his clients to date does not detract from the fact that having only one vehicle under its XP License puts the Applicant in a precarious position. Short notice requests for assistance from other carriers for extra-provincial trips is not a particularly attractive solution.

[58] The Applicant acknowledged he did not have an immediate need to add three vehicles to his XP License. In the circumstances of this case, the Board finds that the balance between competing factors can be found by allowing the Applicant to add only two of the 14-passenger vehicles to its XP License. In this way, the Applicant will be provided with more flexibility and the opportunity for growth, while the impact on the motor carrier industry as a whole, and the intervenors in particular, will be limited.

[59] The Board therefore authorizes the following vehicles to be added to the XP License:

- 1) 14-passenger Full size 2012 Ford, VIN # 1FBSS3BL9CDA76815
- 2) 14-passenger Full size 2017 Ford, VIN # 1FBVU4XVXHKA58947

VI CONCLUSION

[60] Upon consideration of all factors it considers relevant pursuant to the *MC Act*, the Board approves the MC License Amendment Application to change the Applicant's address, remove reference to the "party bus" from Schedule D, and add wording specifically referencing the Halifax Stanfield International Airport in Schedule F (1).

[61] The Board grants the XP License Amendment Application, in part. The Board approves the change of address and the wording specifically referencing the Halifax Stanfield International Airport in Schedule F (1).

[62] The Board does not grant the approval to add three (3) 14-passenger vehicles to the Applicant's XP License. Instead, the Board allows the Applicant to add two (2) 14-passenger vehicles, currently authorized pursuant to its MC License, to its XP License.

[63] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 14th day of June, 2017.



Richard J. Melanson