

MOTION DECISION

**2018 NSUARB 10
M08467 and M08468**

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.**

- AND -

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF Motor Carrier License Nos. P00595 and P02714 issued to **STOCK TRANSPORTATION LTD.**

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

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

INTERVENORS: **HALIFAX REGIONAL SCHOOL BOARD**
ANNAPOLIS VALLEY REGIONAL SCHOOL BOARD
John MacPherson, Q.C.

BOARD COUNSEL S. Bruce Outhouse, Q.C.

DECISION DATE: **January 15, 2018**

DECISION: **Motion granted in part.**

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I INTRODUCTION

[1] This is the Board's Decision for Stock Transportation Limited's (Stock) Motion for Confidentiality of some of its information filed with the Board on November 30, 2017.

[2] The Board rendered its Decision of the Show Cause proceedings regarding Stock (M07432) on November 14, 2017 (2017 NSUARB 175 (CanLII)) (SC Decision). The Board found Stock had operated contrary to its Motor Carrier License No. P00595 (MC License 595), Extra-Provincial Operating License No. XP01078 (XP License), *Motor Carrier Act*, R.S.N.S. 1989, c. 292 (*MC Act*), *Motor Vehicle Transport Act*, R.S.C. 1985, c. 29 (3rd Supp.) (*MVT Act*), and various *Regulations* and Schedules thereunder. The Board decided all services under these Licenses, other than the school bus services, would be cancelled.

[3] The Board also decided it would hear from Stock and Board counsel before addressing any further potential remedies or aspects thereof. The Board retained jurisdiction to complete these. First, Stock was granted an opportunity to address all breaches and concerns set out in the Decision as they may relate to its current school bus services. Stock's plan and recommendations were to be provided to Board Counsel by November 30, 2017, for Board Counsel's comments, alternatives, or additional recommendations, which would be filed with the Board and subsequently addressed at a hearing. The Board would then determine what, if any, conditions should be added to Stock's school bus services. For ease of administration this outstanding potential remedy will advance as Matter No. M08468.

[4] Second, the Board would hear from counsel before deciding the termination dates and any interim terms or conditions for Stock's contract and charter services. For ease of administration these outstanding service issues will advance as Matter No. M08467.

[5] Stock filed its Submissions and supporting documentation on November 30, 2017, that addressed some of the Board's concerns. These also included some information relevant to the termination dates and potential interim conditions for its contract and charter services.

[6] On December 4, 2017, Stock requested confidentiality of certain documents.

[7] On the same day, the Board advised it would render its decision on the Motion for confidentiality at a later date and, in the interim, would allow the redacted information as requested by Stock. As the Confidentiality request applies to both outstanding matters, so does this decision.

[8] Stock also operates school bus services under Motor Carrier License No. P02714 (MC License 2714). A number of breaches outlined in the Board's SC Decision related to how Stock generally conducted its transportation services and, potentially, would apply to and be important for all services, including those school bus services under MC License 2714. Furthermore, during the proceedings, its Regional Manager, Troy Phinney, testified to using school buses to transport students from other school boards, for which Stock was not licensed (SC Decision paras. 581 to 584). To address these potential breaches of MC License 2714, the Board would have issued a new Show Cause proceeding for that License.

[9] By letter dated December 21, 2017, Stock agreed MC License 2714 be included for the remainder of these proceedings, such that any decision the Board may make in relation to the school bus services would apply to all school bus services operated by Stock. With this agreement, a further Show Cause proceeding for MC License 2714 was not necessary to ensure the quality of services for all school bus services.

[10] The Halifax Regional School Board's bus services are authorized under MC License 2714 and the Annapolis Valley Regional School Board are operated under MC License 595. Both requested intervenor standing for the proceedings relating to school bus services, by letters dated November 21, 2017, and November 24, 2017, respectively. Stock agreed and both were granted intervenor standing.

II ISSUE

[11] The issue in this Motion is whether the Board should grant confidentiality as requested.

III PRACTICE RULES

[12] Pursuant to s. 12 of the *Utility and Review Board Act*, S.N.S. 1992, c. 11, as amended (*UARB Act*), the Board has adopted Rules of Practice and Procedures for some regulatory proceedings including those under the *MC Act* (Practice Rules).

[13] The confidentiality provisions are set out in s. 12 of the Practice Rules.

[14] Pursuant to ss. 12(1), all documents are to be placed on the public record, unless a request for confidentiality is sought (ss. 12(2)). These read:

12 (1) Subject to Rule 12(2), all documents filed in respect of an application shall be placed on the public record.

(2) A party may request that all or any part of the document be held in confidence by the Board, which request shall be placed on the public record.

[15] A cornerstone of our legal system is that matters are heard in open court and all evidence, including documents and exhibits, are public. This is even more important in a regulatory environment where some people are given the privilege of having a license to provide transportation services to the public, while others are denied.

[16] The person seeking confidentiality, in this case Stock, has the burden of proving the Board should not make the information open to the public (ss. 12(3)).

[17] In rendering its decision, the Board can consider any matter it deems appropriate, and it is directed to consider the following under ss. 12(10):

12(10) In ruling on a request for confidentiality the Board shall consider

- (a) whether the document may disclose matters involving public security;
- (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of adhering to the principle that documents be available to the public; or
- (c) such other matters as the Board deems appropriate.

As none of the requests affect public security, the main rule to be considered is ss. 12(10)(b).

IV REQUEST FOR CONFIDENTIALITY

[18] Stock requested confidentiality of the following documents:

1. Curricula Vitae of employees;
2. Email chain between Stock and Nova Scotia Health Authority staff;
3. NSHA Contract; and,
4. Booked Charters.

V BOARD'S DECISION

1. Curricula Vitae

[19] Stock's request for confidentiality reads:

Document Brochure Tabs 2, 3, 4, 7, 8, 9,10, 25, and 26 in their entirety, as they disclose personal information about third-party individuals. Removing these items would not impact any relevant public interest.

[20] All Tabs are curricula vitae (also CV), except one, Tab 25, which is mainly a job description and does not contain any confidential information of Mr. Brian Wilson. Therefore, the Board finds nothing is to be excluded from that document.

[21] For the reasons set out below, the Board rejects the request that the curricula vitae are to be confidential in their entirety, but will permit personal contact information to be redacted.

[22] The remaining documents listed in the request are CVs of Stock employees, current or recently hired. Stock has presented this evidence in an effort to show the Board it has changed its organizational structure and has people in place who will address the breaches and concerns outlined in the SC Decision.

[23] The main portion of these CVs lists these individuals' credentials, job history, education and experience.

[24] The Board disagrees with Stock that removing this information in its entirety does not impact any relevant public interest. To the contrary, the Board finds the credentials of these individuals is essential to the Board's confidence that these individuals can rectify the problems set out in the SC Decision, as Stock asserts. As it is in the public interest that the Board have confidence in those credentials, education and experience, it follows this information should also be available for public scrutiny.

[25] Furthermore, Stock has failed to show the interest of these employees would be negatively affected in any way, if the public knew their credentials. It also failed to show that any such impact would outweigh the principle of having their credentials available to the public.

[26] The Board, therefore, rejects that the curricula vitae are to be removed in their entirety.

[27] What is not relevant to the Board in this proceeding, however, is the personal contact information of these individuals to the extent it has been included in their CVs. Their business contact information is not to be removed, however, any personal addresses, emails, or telephone numbers may be redacted, subject to any subsequent request from the Intervenors and further decision of the Board.

[28] Due to the Board's Decision in relation to the request for confidentiality of these documents, the Board found it was unnecessary to hear from the Intervenors before rendering its Decision.

[29] However, this does not preclude the Intervenors from making a subsequent request for the personal contact information, if they find it to be necessary for the purposes of this proceeding and explain the reason why such access is necessary. If such a

request were granted, it would be provided under a confidentiality agreement where such information would only be used by the Intervenors for the proceedings and not disclosed to others.

2. Email

[30] Stock's request for confidentiality includes:

Document Brochure Tab 28 in its entirety, as it discloses personal information in the context of private communications, including NSHA staff. The substantive content of the communications are set out in the Submissions, the public interest is not prejudiced by withholding the names and email addresses of individuals engaged in private communication.

[31] For the reasons set out below, the Board finds Stock has not satisfied the Board these communications, in their entirety, should not be available to the public. The Board, however, does agree the names and email addresses of the individuals is not relevant or necessary for the Board's determination of the outstanding issues and may be redacted from Tab 28.

[32] Tab 28 is an email exchange between Stock and the Nova Scotia Health Authority (also NSHA) to extend its service contract which expired August 31, 2017. It was subsequently extended to January 31, 2018. The emails do not contain any financial or commercial content, and even if they did, the Board's comments under the next document would apply.

[33] The Board's SC Decision removed Stock's authority to do contract services and limited its Licenses to school bus services, depending upon the completion of the proceedings. The date when its contract authority should end is an outstanding issue before the Board.

[34] The Nova Scotia Health Authority is a public authority to serve the people of Nova Scotia. The NSHA is not a private company nor an individual; it is a public entity. Stock is providing a public service.

[35] The Board finds the email exchange is to be open to the public, with only the names and email addresses redacted.

3. NSHA Contract

[36] Stock's request for confidentiality includes:

Document Brochure Tab 29 in its entirety, as it discloses confidential information related to the business relationship between Stock and NSHA. Relevant details of the document are disclosed in Stock's submissions; the public interest is not prejudiced by withholding the document itself.

[37] Tab 29 is an Amending Agreement which extended the NSHA contract with Stock to January 31, 2018, on the same terms and conditions as in the original contract. There is absolutely no disclosure of any business sensitive financial or commercial information. By making this statement, the Board is not suggesting, that even if it had disclosed financial information that the Board would have granted confidentiality with a public authority.

[38] However, with the document being completely devoid of any sensitive information, the Board has none to take into consideration in this Motion. The Board finds Stock has failed to prove this document should not be in the public sphere.

4. Booked Charters Tables

[39] Stock requested confidentiality for the following reasons:

Pre-Hearing Brief pg. 25. Stock would submit that the table at issue should be redacted in its entirety. In the alternative, particular columns in the table should be redacted, as they disclose confidential or personal information about various bookings and customers.

The specific columns at issue are:

- "Trip Name"
- "Quote Plus Tax"
- "Customer Name"
- "Contact"
- "Phone"

[40] A chart provides the following information for each charter booked with Stock:

Trip ID	Start Date	End Date	Trip Name	Pick up Location	Drop Off Location	quote plus tax	Customer Name	Contact	Phone
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[41] The Board finds the individual Customer Name, Contact (person), and Phone information are not relevant to this proceeding. In other matters, it may be relevant, but it is not in this case.

[42] The Board finds the "Trip Name" does not disclose any sensitive business information as these merely state the type of function such as; "XMAS PARTY", "CASINO - HFX", "Airport", and "Annapolis". The Board does not find this passes the test under ss. 12(10) and, therefore, will not grant confidentiality in relation to removing that information.

[43] With respect to "Quote Plus Tax", Stock has rates that are regulated by this Board and those rates are public. Consequently, any quote it provides for transportation services should also be public. The public, including any other carrier, should be able to scrutinize whether Stock charges its Board approved rates. The Board finds Stock has not satisfied the Board that ss. 12(10) has been met and the issues raised do not outweigh public disclosure. The Board, therefore, denies confidentiality of that column.

VI CONCLUSION

[44] Stock is to refile its Submissions and Documents with the redaction of:

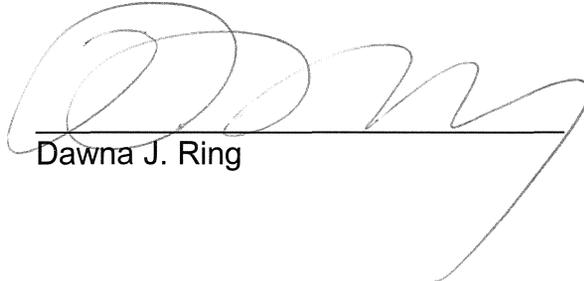
1. Any personal (not business) contact information, such as addresses, emails, and/or telephone numbers in Tabs 2, 3, 4, 7, 8, 9, 10, and 26;

2. Name and email addresses in Tab 28; and
3. The last three columns of the list of charters (Submission, p. 25), being the "Customer Name", "Contact", and "Phone".

[45] All other information in the Submissions and filed materials is open to the public.

[46] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 15th day of January, 2018.



Dawna J. Ring