

DECISION

2019 NSUARB 74
M09211

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT



- and -

IN THE MATTER OF AN APPLICATION by **BRETON COMMERCIAL TRUCK TRAINING INC.** for a school bus license

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

APPLICANT: **BRETON COMMERCIAL TRUCK TRAINING INC.**
Allan MacPhee, President
Colleen Arbuckle, Office Manager

HEARING DATE: May 30, 2019

DECISION DATE: **June 5, 2019**

DECISION: **The Board grants a school bus license to the Applicant for training purposes only, subject to conditions.**

I INTRODUCTION

[1] Breton Commercial Truck Training Inc. (Breton) applied for a school bus license. The sole purpose of Breton's request is to enable it to provide a bus training course, with a school bus component, to prospective school bus drivers. Breton proposes to use a Thomas Built School Bus, VIN # 4UZAAXDC67CX12290 for this purpose.

[2] Breton cannot operate a fully equipped yellow school bus, with flashing lights and stop arms, on public roads, without a school bus license.

[3] The Nova Scotia Utility and Review Board (Board) has concluded that Breton qualifies for a school bus license for the limited purpose requested.

II ISSUES

[4] The main issue in this matter is whether Breton's proposal meets the definition of a school bus service pursuant to the *Motor Carrier Act*, R.S.N.S. 1989, c. 292, as amended, (*MCA*) and the applicable regulations.

III FACTS

[5] Allan MacPhee is the president, sole director, officer and shareholder of Breton. Colleen Arbuckle is Breton's office manager. They both testified before the Board.

[6] Breton has been in operation for approximately four years. It trains students to drive class 1 (tractor trailer) and class 3 (straight truck) vehicles. Approximately 200 students have undergone this type of training.

[7] Breton wishes to provide a course which will train bus drivers, including school bus drivers. A class 2b license is required to operate a school bus.

[8] Breton is certified as a private career college. It has conducted research in conjunction with an application for approval of its bus driver training program pursuant to the *Private Career College Act*, S.N.S. 1990, c. 23, (*PCCA*). This research has shown a need for bus drivers in Cape Breton.

[9] In Breton's discussions with the Cape Breton - Victoria Regional Centre for Education (Regional Centre), a need for trained school bus drivers has been identified. It appears many current school bus drivers have undertaken this job as a second career, and many are approaching retirement age. There are also many other education entities which might require school bus drivers.

[10] Currently, Breton advises that applicants can apply to the Regional Centre with a class 3 license and receive in-house training to allow them to qualify for a class 2b license. Breton's proposed course would broaden the potential pool of drivers.

[11] Breton filed its course outline with the Board. While the Regional Centre was not directly involved in the preparation of Breton's course syllabus, it participated in the industry review required in the approval process under the *PCCA*. Breton intends to seek ongoing input from the Regional Centre as to whether its course is meeting the Regional Centre's needs.

[12] Breton indicates the approval process under the *PCCA* is awaiting the outcome of the process before the Board.

[13] Breton cannot operate a fully equipped yellow school bus, with flashing lights and stop arms, without a school bus license. Breton advises it cannot lease school buses from the Regional Centre because of concerns over insurance issues.

[14] Breton indicates training school bus drivers without being able to operate a functional school bus on the highway would not be in accordance with best practice. It is also difficult to attract students to the course if the proper equipment is not used in training. It appears the proposed course will not be approved under the *PCCA* if it cannot operate a standard school bus for training purposes.

IV ANALYSIS AND FINDINGS

[15] Section 129 of the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293, as amended (*MVA*), prohibits the use of flashing lights, except in limited circumstances. The only applicable circumstance in this case is if the vehicle is a school bus.

[16] Under the *MVA*, the term “school bus” is defined as follows:

(b) “school bus” means a school bus as defined in the *Motor Carrier Act* and includes a school bus marked or designated as such as provided by regulation;

[17] Section 2(j) of the *MCA* defines a school bus as follows

(j) “school bus” includes a motor vehicle, operated by or under an arrangement with an education entity 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.

[18] A school bus is included in the definition of a public passenger vehicle under the *MCA*. Therefore, because of s. 7 of the *MCA*, a motor carrier license is required to operate a school bus on the highway.

[19] Section 3(2) of the *Board Public Passenger Regulations (Board Regs)* sets out the application requirements for obtaining a school bus license:

- (2) An application for a license to furnish a specialty school bus service only, shall contain
 - (a) the full name, description and address of the applicant;
 - (b) particulars of the school bus service the applicant proposes to operate;
 - (c) brief particulars of contracts or arrangements made with School Boards, School Trustees or other school authorities;
 - (d) the kind, year of manufacture, maker’s name and serial number of each vehicle proposed to be operated;

- (e) the maximum seating capacity, excluding the driver's seat, of each vehicle proposed to be operated;
- (f) a statement that the vehicles to be used as school buses meet the standards prescribed by these regulations.

[20] The word "includes" in the school bus definition indicates the definition is not exhaustive. That said, under ordinary principles of statutory interpretation, there must be a sufficient nexus between a proposed service and the statutory definition to enable the Board to come to the conclusion it qualifies as a school bus service.

[21] The analysis involves the application of the modern rule of statutory interpretation, which was recently summarized in *Sparks v. Holland*, 2019 NSCA 3:

[27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that "[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at ¶21).

[28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.

[29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slaunwhite*, 2012 NSCA 20 (CanLII), and more recently, in *Tibbetts*. In summary, the Sullivan questions are:

1. What is the meaning of the legislative text?
2. What did the Legislature intend?
3. What are the consequences of adopting a proposed interpretation?

[22] In this case, there is no contract with an education entity. However, the purpose of the proposed service is to fill a need which has been expressed by an education entity. The education entity has played some role in the approval process for the course. As well, Breton has based its candidate eligibility on the same criteria with respect to background and background checks as required by the Regional Centre.

[23] Breton would not be involved in transporting teachers and pupils to and from school activities. However, it would be training persons to accomplish this task safely.

[24] The Board, in the unique circumstances of this case, finds there is a sufficient link between the proposed service for which the school bus license is sought, and the non-exhaustive definition of a school bus under the *MCA*. The definition of a “school bus” is broad enough to include a vehicle used to train school bus drivers who will be responsible for the tasks specifically listed in the statutory definition.

[25] This interpretation is consistent with the modern rule because:

- Reading the *MCA* as a whole, and the school bus provisions in particular, the intent of the Legislature is to regulate the use of school buses to promote safety;
- The proposed interpretation only expands upon the listed items in the statutory definition to promote the overall scheme and objects of the *MCA*, as it relates to school buses, which is the safe transportation of school children and teachers. The interpretation assists in providing training for this purpose;
- It is consistent with the non-exhaustive definition in the legislative text;
- Adopting the proposed interpretation allows for a more realistic driver training experience, which also promotes the safety objectives of the *MCA*.

[26] Mr. MacPhee and Ms. Arbuckle have extensive experience in providing training. Ms. Arbuckle has over 20 years experience in the operation of school buses. The Board is further satisfied with the manner in which instructors are hired. As well, Breton has extensive experience in offering driver training programs. In addition, it has been certified as a private career college and the proposed course will have to be approved under the *PCCA* before it is offered to the public. Finally, instructors must meet the qualifications set out in the *Private Career College Operational Regulations* before being accepted for registration under the *PCCA*.

[27] The Board is satisfied that Breton has the requisite background and experience to provide the service.

[28] Section 23(1) of the *Driver Training Schools Regulations* specifies that warning signage is required on any vehicle used on public roads when the vehicle is used for training purposes. Mr. MacPhee and Ms. Arbuckle are aware of this requirement.

V CONCLUSION

[29] The Board finds that the proposed service meets the definition and requirements of a specialty school bus service under the *MCA* and *Board Regs.* The Board finds Breton has the qualifications needed for the specified license.

[30] The Board therefore grants a restricted speciality school bus license to Breton. The license is granted for training purposes only for school bus drivers. The license does not authorize the pick-up and drop-off of students. The operating authority for the license is set out in Appendix "A" subject to the following terms and conditions:

- i) Completion of the requirements of the Motor Carrier Division, *Motor Carrier Act, Motor Vehicle Transport Act and Regulations*, including satisfactory proof of insurance;
- ii) Breton must ensure the licensed vehicle has all the warning signage required by legislation related to the fact that it is used for training purposes;
- iii) The license will not be activated unless and until the proposed bus driving course, including the school bus components, is approved pursuant to the *PCCA*. Breton is to provide proof to the Board of such approval;

iv) Breton must commence operating the service within 60 days of the license being issued or the license may be rescinded unless the Applicant has requested and received an extension of time from the Board.

[31] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 5th day of June, 2019.



Richard J. Melanson

Appendix "A"

Breton Commercial Truck Training Inc.

MOTOR CARRIER LICENSE

SCHEDULE F AUTHORITY:

F(1) SPECIALTY SCHOOL BUS SERVICE

Restricted for training purposes only for school bus drivers. Not to be used for pick-up and drop-off of actual students.

SCHEDULE E(1) VEHICLES:

One (1) Thomas Built School Bus

VIN# 4UZAAXDC67CX12290