

HIGHWAY TRAFFIC BOARD DECISION**File Number: B.17.08****DiCal Transport of Melville, Saskatchewan**

IN THE MATTER of an application for an Operating Authority Certificate filed by **DiCal Transport** of Melville, Saskatchewan.

Introduction

Diane Smith, of DiCal Transport made an application, in accordance with Section 77(1) of *The Traffic Safety Act* and Section 4 of "*The Operating Authority Regulations, 2011*", for an Operating Authority Certificate to provide "Scheduled Van Passenger Service".

In accordance with Section 4(4) of "*The Operating Authority Regulations, 2011*", a notice was published in The Saskatchewan Gazette on April 28, 2017.

Notice of Opposition to this application was filed with the Highway Traffic Board on or before May 19, 2017 from the following:

JoAnn Jaffe	Saskatoon, Saskatchewan
Douglas Racine	Saskatoon, Saskatchewan
James Fyshe	Edmonton, Alberta
Tim Quigley	Saskatoon, Saskatchewan
Larry Kowalchuk	Saskatoon, Saskatchewan
Mary E. Kube	Nipawin, Saskatchewan
Cindy Hanson	Saskatoon, Saskatchewan
Martin Wooldridge	Edenwold, Saskatchewan

The following exhibits were presented for the hearing:

Social media screen shot *Facebook page* SAVESTC and a screenshot of Brian Willms May 26, 2017 post; youtube video of Zonar tracking system; 2015/16 Annual STC report; Section 36 of the Constitutional Act; Section 7 from the Charter of Rights and Freedoms; handwritten proposal for a public inquiry; Q & A's on STC wind down; news article dated July 17, 2016; STC information, and handwritten submissions.

Debra Mutlow, Barb de la Sablonni  re and Dan Wiks formed the Panel of the Highway Traffic Board (Board) and a public hearing was held at the Travelodge on Albert Street South in Regina, Saskatchewan on Tuesday, June 6, 2017.

Legislation

DiCal Transport filed its application pursuant to section 77 of *The Traffic Safety Act* (hereinafter the Act). Section 77 of the Act sets out the requirements as follows:

- 77 (1) An application for an operating authority certificate or an amendment to an operating authority certificate must:
 - (a) be made to the Board in any form and manner that the Board may require; and
 - (b) be accompanied by any fees that are determined by the Board by regulation
- (2) When considering an application for an operating authority certificate or an amendment to an operating authority certificate, the Board may consider:
 - (a) whether public business will be promoted by the proposed undertaking;
 - (b) the fitness of the applicant; and
 - (c) any other matters that the Board considers relevant.
- (3) The Board may:
 - (a) approve the application in whole or in part; or
 - (b) deny the application
- (4) If an application:
 - (a) for an operating authority certificate is approved, the Board shall issue the certificate; or
 - (b) for an amendment to an operating authority certificate is approved, the Board shall:
 - (i) issue an amendment to the operating authority certificate; or
 - (ii) if the Board considers it to be appropriate, cancel the existing operating authority certificate and issue a new certificate
- (5) The Board may exempt any person or class of persons from the application of this section.

The sole issue before the Board

Should the Board grant DiCal Transport's application for a new passenger service in Saskatchewan?

Application Details

DiCal Transport was established in 2010 as a courier, transport, moving and delivery business. It currently employs seven full time employees and three part time employees. They have grown to a total of 16 fleet vehicles. During this time, DiCal Transport was subject to Saskatchewan Government Insurance (SGI) vehicle inspections and audits, and has been operating safely and according to regulation.

DiCal Transport is proposing the use of a 15 passenger van (includes driver), a Ford Transit.

DiCal Transport has been subject to the Administrator's (SGI) directive, in the past, regarding the keeping of books, logs, and required documents, as well as any and all inspections. DiCal Transport has not been subject to penalties in this regard and has been found compliant.

DiCal Transport's drivers are subject to criminal record checks, must submit a drivers abstract every three (3) months and have a Class 4 driver's license at a minimum, a Class 1 is preferred as per statements within the Application.

DiCal Transport has shown the Board they have been fully compliant with Section 102 of the Act and the Administrator (SGI) concerning inspections, safety measures and audits.

Legislation regarding Operating Authority Certificates

As per section 84 of the Act - Obligations of certificates:

- (1) In this section, "operating authority certificate for a bus" means an operating authority certificate for a bus used for the transportation of passengers on a specified route authorized pursuant to an operating authority certificate.
- (2) No holder of an operating authority certificate for a bus shall fail to ensure that any driver of the bus allows any person who attempts to Board at a regular stopping place or depot and tenders the fare or ticket to Board the bus, unless at the time:
 - (a) the seats of the bus are fully occupied; or
 - (b) the passenger is in an intoxicated condition or is conducting himself or herself in a disorderly manner
- (3) Every holder of an operating authority certificate who operates a public service vehicle over a specified route shall, insofar as road conditions permit, operate in accordance with the approved schedule of arrival at and departure from each point.
- (4) The Board may exempt any person or holder or class of persons or holders of an operating authority certificate from the application of this section.

As per section 81 of the Act - No operating authority certificate:

- (a) confers exclusive rights on the holder; or
- (b) precludes the Board in any way from issuing any other operating authority certificate that the Board considers appropriate

As per section 84(4)(above) - The Board has determined, by agreement and order at a May 29, 2017 meeting, to exempt holders of an Operating Authority and Class B certificate, from Board approval of scheduled routes. The Board determined it is no longer appropriate for routes to be approved by the Board in a competitive business environment.

As per section 85 of the Act, in reference to rates charged by holders of operating authority certificates

- (1) Holders of operating authority certificates shall charge the rates that:
 - (a) are determined by the Board; or
 - (b) are filed with and approved by the Board.
- (2) Except with the consent of the Board, no person shall alter any schedule of rates determined or approved by the Board.

- (3) Every passenger on a public service vehicle shall pay the rates that:
 - (a) are set by the Board by regulation; or
 - (b) are filed with and approved by the Board.
- (4) Subsections (1) and (3) do not apply to
 - (a) motor vehicles owned and operated by a city; or
 - (b) the operation of a taxi service.
- (5) the Board may exempt any person or class of persons from the application of subsection (1) or (3) on any terms that the Board considers appropriate.

As per section 85(5)(above) - The Board has determined, by agreement and order at a May 29, 2017 meeting, to exempt holders of an Operating Authority and Class B certificate, from Board approval or filing of rates. The Board determined it is no longer appropriate for rates that are set in a competitive business environment be approved by the Board.

As per section 88 of the Act in reference to bills of lading and tickets

- (1) Every holder of an operating authority certificate or safety fitness certificate authorizing the transportation of goods shall use bills of lading or other documents relating to the transportation of good in the form and manner determined by the Board by regulation
- (2) Every holder of an operating authority certificate authorizing the transportation of passengers and express over a specified route shall use tickets and express receipts in the form and manner required by the Board.
- (3) The Board may exempt any person or class of persons from the application of this section on any terms that the Board considers appropriate

As per section 88(3)(above) - The Board has determined, by agreement and order to exempt holders of an Operating Authority and Class B certificate, from Board approval of the form and manner of tickets being used for passengers. The Board has by agreement upheld the requirement to "ticket" in a manner best suited by the Holder to maintain logs and information regarding passenger manifests.

Opposition to the Application

According to legislation and the required advertising of Operating Authority Certificate Applications in the Gazette, opposition was received within the required timelines regarding DiCal Transport's application for an intra-Saskatchewan Operating Authority Certificate. If opposition is received, and a notice of opposition is filed then according to section 4 of *The Operating Authority Regulations 2013*:

- (4) On receipt of an application, the Board shall publish a notice in the Gazette describing the application and fixing a date, not less than 21 days from the date of the publication of the notice, within which a notice of opposition to the application may be filed with the Board
- (5) If, on or before the date fixed in accordance with subsection (4), a notice of opposition to the application has been filed with the Board, the Board shall hold a public hearing

- (6) The Board may dispense with the holding of a public hearing pursuant to subsection (5) if:
- (a) the applicant for a certificate withdraws or abandons the application;
 - (b) all persons who have filed a notice of opposition to the application withdraw those notices; or
 - (c) a notice of opposition has not been filed with the Board.
- (7) Every hearing held by the Board with respect to an application must be open to the public, and the Board shall hear all persons who have filed with the Board a notice of opposition.
- (8) the Board may exempt any applicant for a certificate or class of applicants for certificates from complying with this section if the Board considers it to be in the public interest to do so.

Opposition concerns pertaining to the application

1. Safety
 - (a) Training for drivers
 - (i) First Aid/CPR
 - (ii) De-escalation
 - (b) Ford Transit 15 passenger van
 - (c) Northern communities have busing needs
 - (d) Monitoring systems – internal/external
 - (e) Inspections, safety checks, maintenance, hours, accident reporting
2. Accessibility for disabled passengers
3. Washroom facilities
4. DiCal Transport's business plan was not provided to those that opposed

Board's Findings and Analysis in Regards to Opposition's Concerns Relevant to the Application

1. Safety
 - (a) Training for drivers:
 - (i) First Aid/CPR
 - (ii) De-escalation

DiCal Transport's application and further testimony presented during the hearing, referred to every driver having training in both of these categories, now and in the future. Training will be included in their hiring process.

- (b) Ford Transit 15 passenger van

DiCal Transport has purchased a 15 passenger van to transport passengers. Concerns were raised about the safety of these vehicles. The National Safety Code has a series of guidelines and regulations for all transport and commercial vehicles. This vehicle(s) will be subject to on-going inspections and maintenance. 15 passenger vans are used by both Federal and Provincial government entities.

- (c) Northern communities have busing needs

DiCal Transport is not proposing any passenger service north of Yorkton at this time.

- (d) Monitoring systems – internal/external

DiCal Transport has an internal system to stay in contact with their drivers. There was no mention of any technical support such as Zonar, Mohawk, video cameras or other GPS/Communication system being installed in their vehicles.

- (e) Inspections, safety checks, maintenance, hours, accident reporting

Other Legislative Requirements

As per section 89 of the Act, in reference to books and records to be maintained and to be available for inspection

- (1) Every person required to use bills of lading or express receipts pursuant to section 88 shall retain a copy of each of those documents for at least one year from the date of its issue.
- (2) Every person is required by this Act to keep records, books, accounts, documents or other things shall retain the records, books, accounts, documents or other things for a period of at least one year from the date of the last entry in them.
- (3) All record, books, accounts, documents or other things required by this Act to be kept must be open at all times during business hours to inspection by the Board, its appointed representative or a peace officer.
- (4) No person shall refuse:
 - (a) To allow the Board, its appointed representative or a peace officer access to any records, books, accounts, documents or other things described in subsection (3); or
 - (b) To produce the records, books, accounts, documents or other things mentioned in clause (a) for inspection when requested to do so.

Safety directives and Section 102.1 of the Act

- (1) The administrator may at any time during the period in which a carrier, or a carrier that is a member of a class of carriers designated by the administrator, is a holder of a safety fitness certificate:
 - (a) Direct the carrier to do anything the administrator considers necessary to ensure the safe and proper operation of the carrier's commercial vehicles; and
 - (b) Determine the period within which the carrier must comply with the direction mentioned in clause (a).
- (2) Following an administrative inspection pursuant to part VIII, the administrator may:
 - (a) Direct the carrier that was the subject of the inspection to do anything the administrator considers necessary to ensure the safe and proper operation of the carrier's commercial vehicles; and
 - (b) Assess a penalty against the carrier calculated in accordance with the prescribed penalty schedule and based on the carrier's fleet size and the number of prescribed safety violations registered against the carrier or the carrier's drivers.

- (3) The administrator shall determine the period within which the carrier must comply with the direction mentioned in clause (2)(a).
- (4) The administrator shall serve a written copy of its direction pursuant to this section on the carrier after issuing the direction.

Suspension and penalty, in reference to 102.2 of the Act

- (1) If a carrier fails to comply with any direction pursuant to section 102.1, the administrator may:
 - (a) Suspend the carrier from operating a commercial vehicle until the carrier has complied with the direction; or
 - (b) Assess a penalty calculated in accordance with the prescribed penalty schedule against the carrier if it is not in the public interest to suspend the carrier from operating a commercial vehicle

All vehicles used by DiCal Transport are subject to a valid stage 2 inspection, ongoing inspections and audits conducted by SGI. Pre-trip inspections, regular performed inspections and maintenance, including repairs and preventative measure are also required within the requirements of the provincial and federal regulations. DiCal Transport has been compliant in the past and their application states "all copies of pre-trip inspections are to be put on my desk (Diane Smith) daily for review". It further states, "bi-weekly inspections are performed on all units and any maintenance and repairs are completed before the unit is put back into service". Regarding the Periodic Motor Vehicle Inspection program in Saskatchewan, DiCal further indicates, "each unit has a maintenance folder and the yearly inspections are scheduled in our yearly calendar".

SGI performs audits within 60 days on all new PB (public bus) registrants, informational visits, inspections of vehicles, logs (includes driver hours) and other requirements along with follow up audits. Holders of an NSC are required to keep records on drivers, hours of service, vehicle maintenance, accidents, and trip inspections reports. Records may be examined to ensure compliance with the law and to check if safety programs are in place. (Standard 15 of the NSC) Accident reporting is also a requirement within the Inspection and Audit process handled by SGI. As per the Act, SGI is responsible and will impose penalties as they see fit. These may include suspensions and/or fines or as SGI sees fit.

2. Accessibility

The Board heard the concerns raised by the opponents of this application concerning accessibility. According to the *InterCity Bus Code of Practice*, April 1, 2011, published by Transport Canada: "There are a number of different methods to ensure the availability of accessible scheduled intercity bus services. The application of these methods will vary **from region to region** and from **bus operator to bus operator**".

Furthermore, according to Transport Canada's website, the *InterCity Bus Code of Practice* "represents a **voluntary commitment** by intercity bus service operators to serve people with disabilities in a safe and dignified manner."

While it is not mandatory to provide accessible bus service, the Board will rely on DiCal Transport to determine the level of service they will provide in their region.

3. Washrooms

Many passenger vehicles do not provide washroom facilities. DiCal Transport's current schedule allows for stops every 30 – 45 minutes.

4. DiCal Transport's business plan was not provided to those that opposed.

The Board views this information as confidential and does not release it to those that opposed. A copy of the application was provided.

Board's Findings and Analysis to Opposition not Pertaining Directly to the Application

1. The Hearing Process

- a. Has the Board been reappointed and do they have jurisdiction?
- b. Is this a fair and unbiased process?

The Highway Traffic Board is duly appointed as per section 17 of the Act and is fully satisfied that it has performed its duties in a fair and unbiased manner.

2. Public Inquiry

- a. The Board should hold a public inquiry on the status of public transportation in Saskatchewan prior to approving any Operating Authority Certificate applications.

The requested public hearing is not relevant to the Board making a disposition to the application for an Operating Authority Certificate submitted by DiCal Transport. Also *The Public Inquires Act* states that the Lieutenant Governor in Council establishes a commission of inquiry to report on an issue of public interest.

3. *The Constitution Act, 1982*

- a. Question if the Board has authority to cancel/revoke the Operating Authority Certificate of the Saskatchewan Transportation Company (STC) as it is infringing on the public duty constitutionally guaranteed by Section 36 of *The Constitution Act, 1982*.

The Board has not cancelled or revoked the Operating Authority Certificate of STC. The Board believes any justiciable right, should they exist, are not within the mandate of the Board to make a determination. Furthermore, the Board also confirms that the granting of an Operating Authority Certificate to DiCal Transport is entirely consistent with section 36 of *The Constitution Act, 1982* as they have applied to provide a public service.

4. Closure of STC

As section 81 of *The Traffic Safety Act* confirms Operating Authority Certificates provide no exclusive rights to a route. Therefore, the existence and/or closure of STC does not impede the Board from reviewing and granting/denying the application submitted by DiCal Transport.

Board Conclusions

The Board received an application from DiCal Transport for an Operating Authority Certificate to provide passenger service in Saskatchewan. The Board's review and decision on this application must be based on the provisions of the Act and the fitness of the applicant.

Firstly, the Board has in the past and continues to focus on how to provide residents of Saskatchewan with safe passenger transportation services. A number of safety issues were raised by the Board and opponents of this application. Prior to the Board making a decision on the application they must be satisfied that these concerns are or will be addressed. These concerns are limited to the operation of the service that is the subject of the application. After a review of the application and the additional information provided at the public hearing the Board is satisfied that the safety concerns as related to this application will be addressed by the applicant. This applicant will be required to comply with all existing federal and provincial safety requirements for this type of vehicle.

Secondly, the closure of a company that previously provided passenger service in Saskatchewan does not impact the Board's decision for this application. The Act clearly states that the issuance of an Operating Authority Certificate does not provide the applicant with any type of exclusivity of the service they have been approved for. The Board reviewed this application on the merits of the service that the applicant is interested in providing to residents of Saskatchewan.

Finally, the Board is duly appointed under the provisions of the Act and are required to deal with any and all applications for an Operating Authority Certificate to transport passengers in Saskatchewan.

Decision

The Board grants DiCal Transport an Operating Authority Certificate to provide passenger service within Saskatchewan in compliance with the guidelines, standards and requirements of all Federal and Provincial statutes and regulations. This Operating Authority Certificate will be provided on the following conditions:

- (a) any vehicle used to provide the service must be the object of a valid stage 2 inspection certificate issued pursuant to section 4 of The Vehicle Inspection Regulations 2013;
- (b) any vehicle used to provide the service must not be equipped with a taxi meter or any equipment designed to calculate a passenger fare based on distance travelled;
- (c) the service provided to the passenger must be a pre-booked or chartered service and the passenger hiring the vehicle must be collected at a predetermined location;
- (d) the service provided to the passenger must not be obtained by the passenger hailing, signalling, or attracting the attention of the vehicle operator while the vehicle is being operated on any street, highway or road in Saskatchewan;
- (e) the service provided to the passenger must comply with any other conditions, limitations or restrictions imposed on the holder of the operating authority by the Board and/or Saskatchewan Government Insurance.
- (f) any vehicle used to provide the service must comply with all safety requirements in Saskatchewan as governed by Saskatchewan Government Insurance, including all provisions of the National Safety Code;
- (g) all drivers must have a completed criminal record check on file on an annual basis and are required to complete first aid, CPR, and de-escalation training or equivalent, within 12 months of being hired;
- (h) the owner must have all insurance in place as required by Saskatchewan Government Insurance;
- (i) all vehicles that provide this service must be equipped with a tracking/monitoring system, an on-board surveillance for passenger safety and have an emergency response plan.

Dated June 29, 2017