

HIGHWAY TRAFFIC BOARD DECISION**File Number: 7846-17****Carpe Diem Limousine Service of Lumsden, Saskatchewan**

IN THE MATTER of an application for an amendment to Operating Authority Certificate #7846 filed by **Carpe Diem Limousine Service** of Lumsden, Saskatchewan.

Introduction

Derrick Engen, of Carpe Diem Limousine Service made an application, in accordance with Section 77(1) of *The Traffic Safety Act* and Section 4 of "*The Operating Authority Regulations, 2013*", for an amendment to their Operating Authority Certificate to include operating their Limousine Service in various locations throughout the province.

In accordance with Section 4(4) of "*The Operating Authority Regulations, 2013*", 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:

Larry Kowalchuk	Saskatoon, Saskatchewan
Mary Kube	Saskatoon, Saskatchewan
Living Skies Limousine	Saskatoon, Saskatchewan

The following exhibits were presented for the hearing:

Understanding Section 36(1)(c) of *The Constitution Act, 1982*; *Public Services Essential Services Act*, written submission from Mary Kube, complaint from Living Skies Limousine.

Ray Erickson, Bill Missal and Irene Gaetz formed the Panel of the Highway Traffic Board (Board) and a public hearing was held at the Walter Scott Building in Regina, Saskatchewan on Wednesday, August 16, 2017.

Legislation

Carpe Diem Limousine Service 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 the amendment to the Operating Authority Certificate for Carpe Diem Limousine Service to be located and operate out of various locations in the Province of Saskatchewan?

Application Details

Carpe Diem Limousine Service is a transportation company based in Lumsden, Saskatchewan operating a chartered limousine service. Carpe Diem Limousine Service has had an Operating Authority Certificate since 2010.

Carpe Diem Limousine Service is currently utilizing vehicles that are up to 22 passenger type limousines and SUV limousines for their chartered limousine service.

Carpe Diem Limousine Service currently promotes safety and they do require drivers to submit a criminal record check and a driving abstract.

Carpe Diem Limousine Service does have a vehicle preventative maintenance program and complies with all vehicle inspection requirements.

Legislation regarding Operating Authority Certificates

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.

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 Carpe Diem Limousine Service's application for an amendment to their Intra/Extra-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) Inspections, safety checks, maintenance, hours, accident reporting
- c) That the company is operating like a taxi

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

Carpe Diem Limousine Service's requires drivers to a criminal record check and driving abstract.

(b) Inspections, safety checks, maintenance, hour of driving and accident reporting. Carpe Diem Limousine Service must follow rules set out by the Administrator concerning all safety inspections, maintenance, hours of driving and accident reporting.

(c) 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. Carpe Diem does not operate any vehicles with a taxi meter.

Other Legislative Requirements

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

Accident reporting is 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.

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

1. Public Inquiry

- a. The Board should hold a public inquiry prior to approving any Operating Authority Certificate applications to determine if the shutdown of the Saskatchewan Transportation Company (STC) was completed legally.

A recent Court of Queen's Bench decision confirms there was no legal infirmity to the closure of the STC. The requested public hearing is not relevant to the Board in making a disposition to the application for an amended Operating Authority Certificate submitted by Carpe Diem Limousine Service

2. Closure of STC

As section 81 of *The Traffic Safety Act* confirms Operating Authority Certificates provides no exclusive rights to a route. The closure of STC does not impede the Board from reviewing and granting/denying the application submitted by Carpe Diem Limousine Service

Board Conclusions

The Board received an application from Carpe Diem Limousine Service to amend their existing Operating Authority Certificate to include operating in various locations throughout 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. Prior to the Board making a decision on the application they must be satisfied that all 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 Board's knowledge of the process to operate this type of vehicle in Saskatchewan, the Board is satisfied that 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.

Decision

The Board grants Carpe Diem Limousine Service 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;
- (j) that alcohol cannot be consumed in the vehicles except in accordance with the appropriate permit issued by the Saskatchewan Liquor and Gaming Authority;
- (k) that if no washroom facilities are available in the vehicle, that the driver ensures patrons have adequate opportunity to utilize public washrooms.

Dated September 6, 2017