

# **Overview of Carrier Fitness Assessments**

## **Background**

The Passenger Transportation Act was amended in the Summer, 2010 to provide the authority for the Registrar of Passenger Transportation (Registrar) to consider whether an applicant for a General Authorization licence is a “fit and proper” person to provide commercial passenger services. The Passenger Transportation Board (Board) already has this power for those applying for a Special Authorization licence. The legislative amendments also provide the authority for both the Board and the Registrar to consider licensee fitness at any time. As such, these changes allow the Board or the Registrar to initiate a fitness-type audit or review at any time, as well as to deny, suspend, or cancel a passenger transportation licence based on carrier fitness.

## **Why are These Powers Needed?**

These amendments will enhance public safety by giving the Board and the Registrar the tools needed to ensure that only individuals of suitable conduct and character provide commercial passenger transportation services. These changes will also make licensees more accountable for those operating under the authority of their licence.

Recently, both the Board and the Registrar have encountered situations where licensee fitness was a concern. However, neither organization had the authority to address these concerns. Examples of such concerns include:

- licensees who are convicted of a criminal offence
- companies' abilities to provide service
- shares transferred to a person of questionable capability.

## **What is Meant by “Fit and Proper”?**

The term “fit and proper” reflects the notion that a licensee has a responsibility to exercise the powers conferred by the granting of a licence with regard to proper standards of conduct. The term also appears in liquor licencing, gaming laws, broadcast acts and professional regulation statutes. For commercial passenger transportation matters, criteria used to determine licensee fitness could include, for example, considerations related to business practices, financial stability, and convictions related to situations such as motor vehicle operations, fraudulent activities, or crimes involving threats or violence.

Given the range of circumstances which could potentially affect whether an applicant or licensee is “fit and proper” to deliver passenger transportation services, it is necessary for the Board and the Registrar to have discretion in deciding the relevance of different factors/historical incidents.

### **Under What Circumstances Will the Registrar Conduct a “Fit and Proper” Assessment?**

The amendments allow the Registrar to conduct an investigation into whether any applicant, licensee or permit holder is a fit and proper person to provide the service. However, it is not anticipated that the Registrar will unilaterally initiate these reviews for either Special Authorization applicants or licensees, given the Board’s authority for these types of licences.

The Registrar will not conduct a “fit and proper” assessment as part of the General Authorization licence application process. Instead, those powers will be used to respond to information of concern which may come to light in association with licence applicants or General Authorization licensees. The following list outlines some circumstances that may trigger a fitness review of a General Authorization applicant/licensee:

- an applicant/licensee has been involved in unsavoury/illegal activities
- an applicant/licensee has provided false information to the Registrar
- an applicant/licensee has a serious criminal conviction that relates directly either to the operation of the transportation service or the management of the transportation service
- a licensee has continually disregarded its Conditions of Licence and other obligations under the Act and Regulation
- a licensee has transferred its licence without Registrar approval
- a licensee has no control/oversight of the business of the company, the drivers or other aspects of the business.

In those situations which warrant a fitness review, the nature and parameters of a particular investigation will be determined by the specific information which has been received, and could include:

- what were the circumstances of any charges, convictions or findings of guilt and any sentence imposed?
- how much time has passed between the charge, conviction or finding of guilt?
- does the behaviour for which the charges were laid or convictions or findings of guilt, indicate a pattern of poor conduct and character, lack of financial integrity or risk to either public safety or the integrity of the industry?

### **What are the Steps of a “Fit and Proper” Assessment?**

Each assessment may have unique components in response to the specific nature of the negative information which has come to light. However, these investigations will generally follow the following process:

- Registrar receives negative information relating to an applicant/licensee
- depending on the gravity of the information, the Registrar may decide that:
  - the information does not warrant further action
  - the applicant/licensee should be invited to comment on the information
  - a full scale fitness investigation and review is required
- as part of the investigation process, the licensee may be requested to provide specific information (eg. criminal record check or detailed driver(s) profiles)
- any investigation report would be shared with the applicant/licensee who would have an opportunity to comment
- after receiving the investigation report and the applicant's/licensee's response, the Registrar will provide a written decision/outcome.