

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

993692 ONTARIO INC. o/a R & L BUS LINES,
AL PARKHURST TRANSPORTATION LIMITED,
BEAUDRIE BUS LINES LIMITED, BOLDRICK BUS SERVICE LIMITED,
CATHERINE M. PALMER, COX BUS LINES LIMITED,
COUNTY BUS SERVICE LIMITED,
DUNHAM CONSTRUCTION AND TRANSPORTATION INC.,
HANTHORN MOTORS LIMITED,
J. E. MONTGOMERY SCHOOL TRANSIT LIMITED,
JOE FOLEY BUS LINES (MADOC) LIMITED,
LOYALIST BUS LINES LIMITED,
MARY STINSON o/a STINSON BUS SERVICE,
PAUL M. SOUDANT o/a SOUDANT BUSING and
RICHMOND'S SCHOOL COACH (BELLEVILLE) (1983) LIMITED

Plaintiffs

and

TRI-BOARD STUDENT TRANSPORTATION SERVICES INC.

Defendant

AFFIDAVIT

I, Karen Cameron, of the City of St. Catharines, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Executive Director of the Independent School Bus Operators Association (“ISBOA”), an association representing 100 independent school bus operators mostly from rural communities across Ontario and, as such, have knowledge of the matters referred to in this affidavit.

MY BACKGROUND AND QUALIFICATIONS

2. I have a degree in Regulatory Economics from the University of Toronto.

3. I have worked in the transportation industry for over 20 years, in the public, private, and not-for-profit sectors, with the transit, taxi, motor coach, and school bus industries. I have been a regulator at the municipal, provincial, and federal levels. My background includes exposure to transportation policy, operations and management and, as such, I have garnered a comprehensive understanding of the events and decisions that have led to the current crisis in student transportation in Ontario. Attached hereto as Exhibit “A” is a copy of my C.V.

4. I have been working with ISBOA since 2009 and became its Executive Director in September 2010. In my role as Executive Director of ISBOA, I have been actively involved in the execution of all aspects of ISBOA’s government, public and media relations efforts. For the last three years I have been focused on the ramifications of the Ministry of Education’s (the “Ministry”) implementation of a new procurement method of school transportation services in Ontario.

5. I verily believe that the request for proposal (“RFP”) process being implemented is fundamentally flawed and will result in the eradication of substantially all of the small and medium size bus operators and the creation of regional monopoly suppliers, to the detriment of the quality and affordability of student transportation long term.

ISBOA

6. ISBOA is a corporation without share capital established in 2008.

7. ISBOA was formed in 2008 by independent school bus operators, a large number of whom were operating in the Tri-Board area, including many of the Plaintiffs, as a result of concerns among small and medium sized operators across the province about the potential domination of the industry by large bus conglomerates as well due to changes to long standing procurement methods that harmed small and medium size operators.

OPERATORS PRACTICE AND SUPPORT COMPETITIVE PROCUREMENT

8. ISBOA and its members support competitive procurement in the school bus industry. As set out in the affidavits of Denis Chamberland, Vaughn Richmond and other school bus operators, contracts currently are and have always been procured on a competitive and cost efficient basis.

9. There is a rigorous review process in place which ensures that operators costs and profits are transparent to school boards and that their profit is capped below the rate of inflation.

10. No one has ever suggested that ISBOA members, the operators in Tri-Board that are subject to this RFP, or the Plaintiffs in this action are not providing excellent cost effective service to the students, parents, schools and boards of the Tri-Board community.

11. In fact, as explained by Vaughn Richmond, operators provide Tri-Board with financial transparency, are subject to regular audit and their rates have increased below the rate of inflation since the mid 1990s.

12. Consortia are subject to Efficiency and Effectiveness Reviews by the Ministry. Tri-Board currently has a 'high' rating by the Ministry. The operators in Tri-Board are highly efficient and no one has ever suggested otherwise.

13. Starting in 2006, the Ministry began to announce reforms to student transportation funding. A key part of these reforms was the creation of transportation consortia. These reforms were detailed in the 2006 SB13 memo¹ attached hereto as Exhibit "B"

14. Tri-Board had been operating as a transportation consortium since 2002 and was incorporated on September 12, 2006, in response to the 2006 SB13 memo reforms. Tri-Board manages the student transportation requirements of the Limestone District School Board, Hastings and Prince Edward District School Board and the Algonquin and Lakeshore Catholic District School Board. Tri-Board's directors are the Superintendents of Business from each of the three school boards. Tri-Board's Chief Executive Officer is Steve Wowk.

2008 DIRECTIVES FROM MINISTRY

15. In 2008, the Ministry directed that transportation consortia, such as Tri-Board ensure that their procurement processes were competitive and facilitated safe, effective and efficient student transportation.

16. The Ministry stated a non-competitive approach to the procurement of student transportation in which a contract is awarded without competition is a possible alternative when an analysis of local market conditions reveals that a competitive process is not feasible, not cost

¹ The ministry communicates information that will affect the board's financial policies and its financial administration through 'B' and 'SB' memoranda. 'B' memoranda are issued to school boards to provide direction on funding policy and other financial matters. 'SB' memoranda are issued to school boards to provide administrative information and provide clarification on financial matters.

effective, or when the value is below an established policy threshold. Attached hereto as Exhibit “C” is a copy of the 2008 B15 memo wherein the Ministry outlined this policy.

17. From the inception of this mandate, the Ministry has made it clear that RFPs of the kind currently being imposed by Tri-Board are not required. This view is expressed in a letter from then Minister of Education, Kathleen Wynne, on December 31, 2008 to the President and CEO of the Canadian Federation of Independent Business that had expressed serious reservations about imposing an RFP process on small and medium sized bus operators. In her response, Minister Wynne said:

As part of the reforms, Effectiveness and Efficiency reviews are conducted on transportation consortia by external consultants, and have identified ways to improve the fairness, transparency and accountability in contracting. **The recommendations include the consideration of competitive procurement through methods such as a Request for Proposal (RFP).**

In general, **public sector procurement should be conducted through an open, objective and transparent competitive process** in order to optimize the spending of public funds. However, **there will be instances when local market conditions indicate that a competitive process is not feasible, nor cost-effective**, or when the value of the contract is below an established policy threshold. In those instances, contracts may continue to be awarded without competition.

...

As we work towards meeting those expected standards, **we realize the importance of ensuring that the process is fair for operators of all sizes**, and of providing comprehensive training to consortia and operators to ensure their familiarity with the process.

Attached hereto as Exhibit “D” is a copy of this letter from Ms. Wynne.

RFPs NOT REQUIRED BY MINISTRY

18. In 2009, the Ministry directed that an RFP based procurement approach be tested. The Ministry made it clear that a procurement approach in which a contract is awarded without an active competition, was an alternative for school boards to employ where market conditions revealed that an RFP process is not feasible, not cost effective, or when the value is below an established policy threshold.

19. The Ministry directed that alternatives to an RFP process were acceptable because it was aware of the risk of creating cost inefficient monopolies as a result of procuring student transportation contracts through an RFP-like, tendering process.

20. The concern about the creation of monopolies through the imposition of RFPs is a long standing one. In 1991 the Auditor General released a report identifying the creation of monopolies as one of the primary risks of imposing a conventional RFP procurement process on the student transportation industry.

21. I verily believe that the Auditor General did so in recognition of the unique nature of the industry and the fact that it had been structured such that operators are essentially captive to school boards. Attached hereto as Exhibit “E” is a copy of the section of the 1991 Auditor General’s report addressing this issue.

22. In 2006 and 2008 the Auditor General’s Annual Reports specifically excluded Student Transportation from the section dealing with School Board Procurement. Attached hereto as Exhibit “F” is a copy of the section of the 2006 and 2008 Auditor General’s reports addressing this issue.

“CASUALTIES” CAUSED BY IMPOSING RFPs ON THE SCHOOL BUS INDUSTRY

23. Between January 2009 and March 2011 a variety of pilot RFPs were conducted throughout the province. There were severe problems with these pilot RFPs and numerous operators lost their businesses as a result.

24. In the pilot RFP conducted by the North East Tri-Board Student Transportation consortium near Timmins, Ontario, over 10 companies were wiped out overnight.

25. One company with over 60 years of service and over 50 bus routes was put out of business. There was never any suggestion or concern that any of these companies were not providing excellent and efficient service. There was never any suggestion that the school boards were not receiving value for money. On the contrary, all of the companies that were wiped out had always performed very well. Attached hereto as Exhibit “G” is a document prepared by ISBOA which outlines the casualties resulting from the pilot RFPs.

DESTRUCTION OF SMALL BUSINESS BY RFP: A MATTER OF PUBLIC INTEREST

26. The procurement process which Tri-Board and other consortia are imposing is a matter of significant concern in rural and smaller municipalities.

27. Support for the school bus operators is widespread throughout their communities. Members of Provincial Parliament, municipal councils and mayors as well as other stakeholders such as the Association of Municipalities of Ontario (“AMO”) and the Eastern Ontario Wardens Caucus have written to the government expressing their serious concern. Attached hereto as Exhibit “H” are letters from the Township of Central Frontenac, the City of Quinte West and the City of Belleville who passed resolutions which were forwarded to local MPPs and the Minister of

Education of the day as well as letters from Parent Councils, the Ontario Secondary School Teachers Federation District 27, Sydenham Public School, Sharbot Lake High School Council, the Heavy Duty Council of Canada, the Canadian Federation of Independent Business and Leonard Fuels Ltd.

28. By April 2011, dozens of operators who had previously provided safe service were ruined by the pilot RFPs.

29. On May 18, 2011, Elizabeth Witmer, then Progressive Conservative Party Education Critic, stood in the Ontario Legislature during Question Period to press the then Minister of Education, Leona Dombrowsky, to halt the RFP process. The following exchange occurred:

Mrs. Elizabeth Witmer: My question is for the Minister of Education. Minister, **I know that your Liberal rural caucus is meeting to discuss issues affecting rural Ontario.** One of the big issues is **your school transportation policy.** As you know, **it is destroying many family-owned rural businesses. I have the list of casualties here.**

When your government boasts about phantom green jobs that don't exist, I have here a letter from Hammond Transportation in which Mr. Hammond writes that, to date, your government has forced **15 independent bussing companies out of business. With them also go hundreds of jobs**—jobs that actually do exist.

Minister, will you commit to doing what we have said we would do: halt your small-business- and job-killing policy and review it?

Hon. Leona Dombrowsky: I'm happy to have this opportunity to update the House. I thank all the members in this assembly who have taken the time to bring this issue to my attention—many members of my caucus as well. As a result of their work, and because we are in regular contact with our stakeholders, **we have been working with the School Bus Operators' Association as well as the Independent School Bus Operators Association. I met with one group last week; I will be meeting with the other this week.**

I'm sure the honourable member would agree that we want to be sure that we are getting the best value for our dollar. **I believe it's important that we get both sides of this issue together and work on a solution. I believe that is where the solution is to be found, by working together—**

The Speaker (Hon. Steve Peters): Thank you. Supplementary? The member for Leeds–Grenville.

Mr. Steve Clark: Minister, the buck stops with you. This policy comes directly from your office. You and your government will ultimately be the ones to blame for the destruction of Ontario's independent busing industry. **In Leeds–Grenville, your policies are quickly pushing many independent bus operators to the brink of extinction. Recently, I've spoken to two companies—Brockville City Bus Lines and Healey Transportation—who are extremely concerned that you've recklessly pushed forward with this ill-conceived policy.**

Minister, what am I to tell the people of Leeds–Grenville, the local independent bus operators and their employees, when you and your government put them out of business?

Hon. Leona Dombrowsky: I'm surprised that when the honourable member was speaking with his constituents, they wouldn't have indicated to him that **they're actually meeting with me this week and that they've already spoken with the Premier about this. We have been listening very carefully. We are eager to get their input and we are eager to work with them to resolve this issue, because everyone in this assembly wants to be sure that, number one, our students arrive at school safely, and number two, we are getting the best value for our tax dollar.**

The folks on the other side sometimes talk about sole-sourced contracts, and I know they would recognize that some would even describe the way that we engage bus operators might be that. That's why we want to work with bus operators. We want to understand how we can ensure that we've got their excellent service in place for our students—

Attached hereto as Exhibit "I" is a copy of the Hansard transcript.

ISBOA ENGAGES HONOURABLE COULTER OSBORNE TO REVIEW RFP PROCESS

30. Throughout the winter and spring of 2011, ISBOA reached out to various stakeholders in an effort to educate them about the flawed RFP process and its impact on operators.

31. ISBOA wanted its members as well as the government and school boards to have the benefit of a review of the procurement process so that all stakeholders could understand whether the RFP process that is being imposed is in fact fair and competitive and transparent.

32. ISBOA retained the Honourable Coulter Osborne, former Associate Chief Justice of Ontario and former Integrity Commissioner for the Province of Ontario, to review the RFP process and the fairness of the manner in which these RFPs were being imposed. ISBOA met with Mr. Osborne through the spring of 2011 and provided him with the background information to the procurement issue.

MORATORIUM ON RFPs IMPOSED AND TASK FORCE ANNOUNCED

33. In response to the significant harm caused by RFPs and rallies which operators were holding across the province, on June 23, 2011, the Minister of Education (the “Minister”):

- (a) imposed a further six month moratorium on compliance with the BPS Directive regarding the procurement of student transportation contracts; and
- (b) committed that a task force would be convened to report on the serious problems that had occurred with RFPs to date paying specific attention to their fairness, transparency, accountability and whether taxpayers’ receive value for money (“Task Force”).

34. Attached hereto as Exhibit “J” is the Minister’s letter announcing the moratorium and the Task Force.

35. Despite her commitment, the Minister took no action to convene the Task Force. On August 4, 2011, operators held a rally in Mount Forest to further educate the public about RFPs. At the same time ISBOA issued a press release announcing that Mr. Osborne was to release an interim report on these issues in September 2011, identifying concerns about the imposition of the RFP process on the school bus industry, the disparate impact on small, rural operators, the significant risk of creating monopolies and the need to undertake a proper study of alternative procurement.

36. Following this rally and the press release, the Minister approached ISBOA and asked if it would release Mr. Osborne from his engagement so that he could act as chair of the Task Force. The Ministry also asked operators to stop holding rallies during the election.

37. ISBOA agreed to release Mr. Osborne so that he could chair the Task Force on the basis that the government and school boards would participate in and abide by the recommendations of the Task Force.

38. The operators also agreed to stop holding rallies relying on the Task Force process to conduct a fair examination of the RFP process. The Minister also promised ISBOA that it would be reimbursed for expenses it had incurred in working with Mr. Osborne from the time of his engagement to his appointment to the Task Force. Attached as Exhibit “K” are correspondence between the Minister and ISBOA in this regard.

CREATION OF TASK FORCE CHAIRED BY HONOURABLE COULTER OSBORNE

39. The mandate of the Task Force was to review the serious problems that had occurred with RFPs to date and to review RFPs as a competitive procurement process paying specific attention to their fairness, transparency, accountability and whether taxpayers' receive value for money.

40. The Terms of Reference state that the Task Force was created "in response to **operator and community concerns** with the move to competitive procurement and ensure that this process remains fair, open, transparent, accountable and provides value for money...The task force will allow time to consider the issues that have been raised as a result of the pilot processes."

41. The Task Force was "formed expressly to **review the competitive processes used to procure student home to school transportation, paying specific attention to their openness, fairness, accountability, and value for money** and report to the Minister of Education in December 2011".

42. The Task Force was mandated to:

- (a) Review the existing processes for their openness, fairness, accountability, and value for money;
- (b) Review the processes used in the competitive procurement Request for Proposal (RFP) pilot project;
- (c) Review the processes used in the competitive procurement two-stage pilot project (VOR/RFP model);

- (d) Review the competitive procurement policies and practices required of the Broader Public Sector (BPS Accountability Act and the BPS Procurement Directive) as they relate to student transportation services; and
- (e) Recommend strategies and best practices to improve the procurement of student transportation services within existing laws, policies, and best practices while ensuring they remain open, fair, accountable, and provide value for money.

Attached hereto as Exhibit “L” is a copy of the Terms of Reference: Student Transportation Competitive Procurement Task Force.

43. The Task Force is the first and only in-depth study of the fairness and appropriateness of RFPs for the student transportation industry.

44. The Task Force had representatives from school boards, the Ministry, ISBOA, the Ontario School Bus Association and transportation consortia. It also had its own procurement advisor. Attached as Exhibit “M” is a letter listing the Task Force’s members.

45. Mr. Wowk from Tri-Board was one of two consortia representatives. I was one of two ISBOA representatives.

46. Through the fall of 2011, the Task Force held five meetings and reviewed volumes of documents as summarized in Mr. Osborne’s final report. During these meetings, the Task Force heard evidence about the following problems with RFPs conducted to date:

- (a) they were not straightforward or easily comprehensible;
- (b) there was little control of the processes, practices, accountability and transparency;

- (c) evaluation was arbitrary, inconsistent and discriminatory;
- (d) costs savings were not achieved;
- (e) small and medium size operators and those with significant rural routes disproportionately suffered;
- (f) there was a real concern about the creation of monopolies;
- (g) safety programs were not specified in a comprehensive, understandable way; and
- (h) there was a loss of valuable collaboration benefits and coordination amongst operators.

TASK FORCE CONSENSUS ON CORE FAIRNESS PRINCIPLE

47. Although consensus was not reached overall by the Task Force, there was consensus on a number of very important issues. Consensus on these issues was supported by the Task Force's own procurement advisor. As summarized by Mr. Osborne in his final report:

- a) There was general agreement that the RFP process can and should be improved;
- b) RFPs need to be clearly written documents and it should be clear from the start what a potential proponent is obliged to do if successful;
- c) RFP must provide clear, understandable information or advice on what a proponent is required to be or have to be compliant and how proponents will be evaluated;
- d) there must be flexibility and consulting on route bundling;

- e) there must be pre-RFP consultations on route bundling;
- f) there must be a clearly stated link between bundles and awards; and
- g) there must be clear identification of routes in bundles.

EXPERT INFORMATION GATHERED BY TASK FORCE

48. The Task Force heard expert evidence from:

- (a) Dr. James Cooper, a Professor of Transport Economics and Senior Fellow at the Transport Research Institute at Edinburgh Napier University. Dr. Cooper reviewed extensive failures of RFPs in other jurisdictions. He gave evidence that while competition is highly desirable, RFPs have resulted in reducing the level of competition and have created barriers to entry in what is an artificial market. He warned that RFPs have lowered service standards, created monopolies and have increased costs in the long term. A copy of Dr. Cooper's research paper on these issues was presented. It is attached hereto as Exhibit "N"; and
- (b) Denis Chamberland, a commercial lawyer and procurement expert. Mr. Chamberland gave evidence about alternative methods of procurement which would alleviate the problems encountered with RFPs. The alternative methods Mr. Chamberland described were RFPs with Multiple Awards, Supply Arrangements, Benchmarking to Market and the Subcontractor model.

49. Michael Trebilcock, a Professor of Law and Economics at the University of Toronto Faculty of Law, reviewed the report by Dr. Cooper and was "persuaded by his critiques of

conventional RFP processes for transport services, including school busing, and by his case for a more nuanced contracting process that considers a broader range of criteria beyond price per service.” Attached hereto as Exhibit “O” is a copy of Professor Trebilcock’s email dated December 8, 2011.

SCHOOL BOARDS CONTINUE TO IMPOSE RFPS

50. In January 2012, ignoring the Minister’s advice that they await the Task Force’s Report before proceeding to RFPs, five transportation consortia announced RFPs.

51. On January 10, 2012, Christina Blizzard of the Toronto Sun wrote an article stating the province was putting school bus operators out of business. This article quoted a spokesman for the Minister that “transportation is a local issue” and that “the ministry has no involvement in these kinds of local decisions.” Attached hereto as Exhibit “P” is a copy of Ms. Blizzard’s article.

52. By letter dated January 11, 2012, Lisa MacLeod, the Ontario Progressive Conservative Education Critic, expressed concern about the disastrous effects the RFP process was having on communities and small companies. Attached hereto as Exhibit “Q” is a copy of Ms. MacLeod’s letter.

TASK FORCE REPORT RELEASED

53. On January 25, 2012, Mr. Osborne presented the Task Force Report to the Minister. The Task Force Report concluded that:

- (a) information received on specific elements of the student transportation system brings into question whether a “one size fits all” procurement approach works or whether there is another way with fewer casualties and fewer downstream risks;
- (b) as a result of these problems there have been significant “casualties” caused by the RFP process especially amongst small rural operators;
- (c) the principal risk of the process is the creation of monopolies, contrary to the public interest, which will cause costs of student transportation to inevitably rise (the risk of monopolies was previously identified by the Auditor General);
- (d) value for money is an important, but certainly not the only, consideration in student transportation procurement, and RFPs have not established that they can provide this to taxpayers; and
- (e) additional study of the industry and alternatives are required to limit, or eliminate, unfairness particularly as related to mainly smaller, rural operators.

54. Mr. Osborne recommended that:

- (a) the use of RFPs for the procurement of student transportation contracts be delayed;
- (b) an independent, third party expert be retained by the Ministry to review the RFP process, examine the issues and provide specific advice to the Ministry, school boards and transportation consortia, to ensure that the process is fair, transparent, accountable and whether taxpayers’ receive value for money; and
- (c) the review must be independent and comprehensive.

Attached hereto as Exhibit “**R**” is a copy of the Task Force Report.

DELAYED RELEASE OF TASK FORCE REPORT TO PUBLIC

55. The Task Force Report was released to the government and Task Force participants in January 2012. However, the Ministry delayed its release to the public.

56. On February 8, 2012, I wrote to the Minister and requested that she immediately release the Task Force Report. I received no reply. Attached hereto as Exhibit “**S**” is a copy of this letter.

57. During the delay period, numerous MPPs called for the release of the Task Force Report.

58. On February 21, 2012, Lisa MacLeod brought attention to the issue during Question Period in the Legislature, asking the Minister to release the Task Force Report. When pressed by MacLeod to release the Task Force Report, Minister Broten replied:

It’s incumbent upon me, as the minister, to take that advice [from Mr. Osborne] and examine it in the context of how do we ensure that public education, that starts when you put your kids on the bus, is safe and efficient and accountable as well.

That’s what we are doing: We’re taking a look at the report. And unlike the members opposite, we won’t move aggressively and immediately without examining the facts and the circumstances and taking that advice and reflecting upon it.

Attached hereto as Exhibit “**T**” is a copy of the Hansard transcript.

59. Randy Pettapiece, the MPP for Perth-Wellington, delivered a statement in the Ontario Legislature, on February 27, 2012, wherein he recognized that the RFP policy threatened the livelihoods of school bus operators across Ontario.

60. He stated that school bus operators had negotiated in “good faith” for many years for contracts with school board. He said that the RFP process “ignores independent operators’ many years of cost-effective service, and it ignores what’s most important: their long history of transporting children safely.” Attached hereto as Exhibit “U” is a copy of the press release detailing Mr. Pettapiece’s address in the Legislature.

61. On February 27, 2012, ISBOA held a rally at Queen’s Park to bring attention to the fact that the Ministry was continuing to refuse to release the Task Force Report.

62. The Minister finally released the Task Force Report on March 26, 2012, two months after its release to the Ministry.

GOVERNMENT RESPONSE TO TASK FORCE: RFP NOT REQUIRED

63. On March 29, 2012, the Minister released her response to the Task Force Report. She instructed school boards to comply with the BPS Directive. She refused to have an independent third party expert be retained to further study the RFP process. The Minister also reneged on her agreement to reimburse ISBOA for its expenses associated with work done prior to and during the Task Force.

64. Although the Task Force Report’s primary recommendations were ignored, the Ministry did send a directive setting out best practices that school boards and transportation consortia are expected to follow when modifying procurement processes including:

- (d) school boards and transportation consortia **are not required to procure student transportation contracts through an RFP process and that alternative methods are acceptable;**

- (e) a requirement that Boards have a comprehensive understanding of local market conditions and awareness of risks and opportunities before selecting a procurement process;
- (f) selection of the most appropriate procurement option must be an informed decision;
- (g) advanced notice be provided to operators of procurement activities; and
- (h) the procurement process chosen should be well-managed and ensure that operators have sufficient time to learn and participate.

Attached hereto as Exhibit “V” is a copy of the 2012: B8 Memo and attachment.

65. In an effort to advance the knowledge of other procurement options, ISBOA continued its campaign to educate school boards, their trustees, transportation consortia and the public of the dangers associated with RFPs and about the alternative procurement methods that were advocated by the Task Force.

66. ISBOA produced a brochure entitled “Student Transportation Procurement: Myths and Realities”. In April 2012, copies of the brochure were sent to all school boards, transportation consortium, including Tri-Board and its member school boards. Attached hereto as Exhibit “W” is a copy of this brochure.

67. The Ministry responded with a ‘Myths and Facts’ document of its own. In that document the Ministry stated:

- a) The Ministry has always understood that **RFPs are one of several approved competitive procurement methods available to all BPS organizations. The responsibility for determining the appropriate procurement method resides with school boards;** and
- b) The *BPS Procurement Directive* and supporting resources provide a **menu of competitive procurement methods** including, RFT (Request for Tender), RFQ (Request for Quotation), RFP (Request for Proposal), and RFSQ (Request for Supplier Qualifications). Though these are the most commonly used competitive procurement methods, should any BPS organization wish to explore other competitive procurement options, they would need to seek legal counsel to ensure that they met the requirements of the *BPS Procurement Directive*.

Attached hereto as Exhibit “X” is a copy of this document.

PROCUREMENT IN SCHOOL BUS INDUSTRY IN THE PUBLIC INTEREST

68. In May 2012, the Ontario Chamber of Commerce passed a province-wide resolution entitled “Government Procurement Policy Threatens School Bus Sector”. The recommendations mirror the Task Force recommendations, calling for a better transition, more analysis, and a wider range of appropriate procurement options. Attached hereto as Exhibit “Y” is a copy of this report.

69. On May 17, 2012, the mayor of Ottawa, Jim Watson, wrote a letter to the MPP for Ottawa-Orléans, Phil McNeely, wherein he emphasized the irreversible damage that the RFP process will have on small operators and encouraged Mr. McNeely to raise the matter with the Minister.

70. Mr. Watson also asked Mr. McNeely to encourage the Minister to implement Mr. Osborne's recommendations, specifically the delay in implementing an RFP process and review by a third party. Attached hereto as Exhibit "Z" is a copy of Mayor Watson's letter.

71. On June 12, 2012, the Ontario School Bus Association ("OSBA") wrote a letter to Minister Broten and the Minister of Finance, Dwight Duncan. The OSBA outlined their concerns with the RFP process to Minister Broten and requested action on Mr. Osborne's opinion stated in the Task Force report to retain an independent third party to examine this process with direct contributions from the Ontario school bus industry.

72. The OSBA emphasized the flaws in the current procurement directive and requested Minister Duncan meet with them to discuss any and all options for an improved procurement process to promote a sustainable and viable transportation industry for the students of Ontario. Attached hereto as Exhibit "AA" is a copy of this letter and Minister Broten's response.

ISBOA EFFORTS TO EDUCATE BOARDS

73. On June 13, 2012, Tri-Board had a meeting with its operators where it announced that it was proceeding with an RFP. In response to questions from operators regarding whether it would consider alternative approaches, Mr. Wowk indicated that he would meet with ISBOA.

74. On June 14, 2012, members of ISBOA, including myself, met with Mr. Wowk and the Tri-Board superintendents of business, Roger Richard, Bob Koubsky and Dave Rutherford (the "Superintendents"). I gave a presentation on alternative methods of procurements in an attempt to educate the members of Tri-Board. Attached hereto as Exhibit "BB" is a copy of my presentation.

75. Mr. Wowk and the Superintendents refused to commit to examine any of the alternative approaches to RFPs that were presented.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario on October 15,
2012

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Commissioner for Taking Affidavits
(or as may be)

KAREN CAMERON

993692 ONTARIO INC. o/a R & L BUS LINES et al.
Plaintiffs

-and- TRI-BOARD STUDENT TRANSPORTATION SERVICES INC.
Defendant

Court File No. CV-12-0300-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BELLEVILLE

AFFIDAVIT OF KAREN CAMERON

LAX O'SULLIVAN SCOTT LISUS LLP

Counsel

Suite 2750, 145 King Street West

Toronto, Ontario M5H 1J8

Jonathan C. Lisus LSUC#: 32952H

jlisus@counsel-toronto.com

Tel: (416) 598-7873

Daniel A. Schwartz LSUC#: 52381V

Tel: (416) 598-5756

Virginia Greer LSUC#: 58587U

Tel: (416) 598-5365

Fax: (416) 598-3730

Lawyers for the Plaintiffs