Citation: Haulage Network Driving Academy Inc. o/a Haulage Network Driving Academy v. Superintendent, *Private Career Colleges Act, 2005*, 2023 ON LAT PCCA 14960

Licence Appeal Tribunal File Number: 14960/PCCA

In the matter of an appeal from a Proposal to Refuse to Renew Registration and Immediate Suspension of Haulage Network Driving Academy Inc. o/a Haulage Network Driving Academy, issued by the Superintendent, *Private Career Colleges Act, 2005* pursuant to the provisions of the *Private Career Colleges Act, 2005*, S.O. 2005, c. 28, Sched. L. .

Between:

Haulage Network Driving Academy Inc. o/a Haulage Network Driving Academy

Appellant

and

Superintendent, *Private Career Colleges Act, 2005*

Respondent

DECISION

ADJUDICATOR: **Kevin Lundy**

APPEARANCES:

For the Appellant: Palwinder Gill, Representative
Gurshawn Gill, Representative
Justin Jakubiak, Counsel
Bree Pierce, Counsel

For the Respondent:	Terry Tretter, Representative Teresa-Anne Martin, Counsel Sarah Pottle, Counsel Sara Weinrib, Counsel
Court Reporters:	Charlotte St. Croix Chelsea Griffiths Chris Delic Taha Aqdas
Urdu and Panjabi Interpreter:	Nosheen Asim

HEARD: By Videoconference October 23, 24, 25, 26, 27, 30, 31, 2023

OVERVIEW

[1] Haulage Network Driving Academy Inc. o/a Haulage Network Driving Academy (the 'appellant') appeals the Notice of Proposal (the 'NOP') issued by the Superintendent, *Private Career Colleges Act, 2005* (the 'respondent' or the 'Superintendent') pursuant to the provisions of the *Private Career Colleges Act, 2005* (the 'Act') on May 25, 2023 to refuse to renew the appellant's registration to operate a private career college. The respondent also issued a Notice of Contravention and a Notice of Immediate Suspension to the appellant on the same date pursuant to subsections 39(1) and 20 of the Act respectively.

[2] The appellant filed its Notice of Appeal ('NOA') on May 25, 2023. Although the Licence Appeal Tribunal (the 'Tribunal') initially scheduled a hearing on July 26 and 27, 2023 to consider the Notice of Immediate Suspension, the parties subsequently agreed to address that notice via the present hearing.

PRELIMINARY ISSUES

[3] On October 20, 2023, the appellant brought a motion to be heard at the start of the hearing in which it requested the following relief:

1. Additional disclosure (information and documents) from the respondent;
2. Leave to call additional witnesses and to rely on additional disclosure; and
3. An adjournment of the present hearing.

[4] The respondent opposed all three requests contained in the motion. I denied the request for an adjournment and additional disclosure from the respondent but granted the appellant's request in part for leave to call additional witnesses and to rely on related disclosure but excluded four written statements related to complaints against the primary investigator in this matter, Christopher Gould.

Additional Disclosure

[5] With respect to the request for the order for additional production, the appellant stated that it had recently become aware of allegations against Investigator Gould, specifically that he may have a history of discrimination and unfair treatment against trucking colleges owned and operated by South Asian individuals. As a result of this alleged discrimination, the appellant suspected that Investigator Gould may have been temporarily reassigned to another department. The sources of such allegations are an industry consultant and a representative of the Ontario Commercial Truck Training Association ('OCTTA'). The appellant is in possession

of statements from four trucking colleges that reference these allegations and believes there are more in the possession of the Ministry of Colleges and Universities (the 'Ministry'). Due to the recent discovery of these allegations, the appellant requested additional disclosure from the Superintendent on October 19, 2023. While some additional disclosure was provided, the appellant requested full disclosure of all non-privileged evidence that would tend to support (or disprove) the allegations against Investigator Gould as well as any improper investigation practices by the Ministry generally.

[6] After learning of the allegations against Investigator Gould, the appellant had obtained additional disclosure upon which it now sought permission to rely at the hearing of this matter. That evidence includes the affidavit of Sartaj Singh, sworn October 20, 2023, related exhibits, including the above four letters from other operators alleging similar discriminatory conduct as well as a supporting affidavit and related exhibits. The appellant took the position that the additional disclosure will not prejudice the respondent as it has had this evidence in its possession or has had knowledge of the contents of much of the additional disclosure upon which the appellant sought to rely. The appellant intended to put the new disclosure that it had gathered to Investigator Gould during his examination, thereby allowing him the opportunity to explain or deny the allegations.

[7] The additional disclosure sought by the appellant may be divided into three categories:

a. Particulars regarding any relocation or reassignment of Investigator Gould;

b. Copies of any complaints made to the Ministry regarding either Investigator Gould or allegations of unfair practices targeting the trucking industry; and

c. Documentation regarding all enforcement actions taken by the respondent in 2022 and 2023 and more specifically all enforcement action taken by the respondent against individuals of South Asian or Indian heritage.

[8] The appellant relied upon caselaw in which the Tribunal held that the Crown disclosure obligations set out in the Supreme Court of Canada's decision in *R*. v. *Stinchcombe*, [1991] 3 SCR 326 ('***Stinchcombe***') apply to administrative law proceedings involving potential consequences to livelihood and personal reputation. Specifically, in *8499* v. *Registrar, Motor Vehicle Dealers Act, 2002*, 2014 CanLII 14987 (ON LAT), at paragraph 9 ('***8499***'), the Tribunal held that the *Stinchcombe* analysis applies in administrative law proceedings involving questions of livelihood and personal reputation and referenced the decision of the

Federal Court of Appeal in *Sheriff* v. *Canada (Attorney General)*, 2006 FCA 139, [2007] 1 FCR 3 ('*Sheriff*') in which the Court distinguished the earlier decision of the Supreme Court of Canada in *May* v. *Ferndale Institution*, 2005 SCC 82, [2005] 3 SCR 809 ('*May*'). *May* held that a purely administrative decision to move inmates from a minimum to a medium security institution did not attract *Stinchcombe* disclosure.

[9] The appellant took the position that *Stinchcombe* requires that the Crown, or in this case, the Superintendent, to disclose all non-privileged information and documents in its possession, particularly in administrative appeals involving the suspension or refusal to renew registration, such as the present case.

[10] In paragraph 11 of *8499*, the Tribunal agreed that the Registrar in that case was under an obligation to make greater disclosure than the limited disclosure obligations set out in then Rule 6.3 in appeals involving the suspension or revocation of registration. This obligation flows from the dire consequences of the outcome of the hearing to the appellant. However, the court in *Sheriff* set a limit on such disclosure, specifically that documents that are clearly irrelevant may be excluded. This limitation is also compatible with subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the 'SPPA'), which permits admission any evidence relevant to the subject matter of the proceeding.

[11] In response to the disclosure requested in the first category, counsel for the respondent had already advised counsel for the appellant repeatedly that there is no basis to these requests but had already disclosed documents in response to the first six headings in the appellant's motion for further disclosure and contested the relevance of the remaining items.

[12] Regarding the other items in the appellant's motion for disclosure, the appellant relied on unsubstantiated allegations from third party sources. I agree that the respondent is in a better position to know whether this information actually exists. Terry Tretter is Investigator Gould's direct supervisor of and would therefore be in the best position to know whether Investigator Gould was ever relocated, reassigned or subject to any supervision order. In his affidavit, Mr. Tretter firmly denies that there is any basis to these allegations. I have no basis to dispute this statement and have not been advised that any documents actually exist to contest his statement on this issue.

[13] In response to the disclosure requested in the second category, counsel for the respondent denies that any evidence exists to warrant these production requests. The respondent denies that Investigator Gould was ever the subject of any complaint. At paragraph 7 of his affidavit, Mr. Tretter denied that the Private

Career Colleges Branch (the 'PCCB') has ever received any complaints regarding Investigator Gould. Additionally, I agree with the respondent that even if these complaints existed, they are irrelevant to the issues in dispute specifically whether the respondent should carry out the NOP and other notices. To include complaints with respect to unrelated matters would be beyond the scope of the issues in dispute in this appeal.

[14] Moreover, a complaint by its very nature is an untested, unproven statement made by one person or entity against another. While the respondent denies that the existence of complaints against Investigator Gould could be relevant to this hearing, if he had been subject to an investigation which found that he exhibited bias against South Asian or Indian trucking school operators, that could in theory be relevant. However, according to Mr. Tretter's affidavit, at no time has Investigator Gould ever been subject to any internal investigations or disciplinary proceedings.

[15] Additionally, the information that the appellant has requested is not relevant to this hearing as the appellant has not actually alleged discriminatory treatment during the course of the investigation. Had the appellant believed that racial bias played a role in this investigation, it could have and should have included that claim in the NOA. The appellant has not pled that it has been subject to discriminatory treatment by Investigator Gould and the respondent denies that it has acted in a biased or discriminatory manner against the appellant or any other trucking school. Significantly, the appellant did not request leave to amend its NOA to add this ground of appeal.

[16] I also find it dubious that despite the alleged prevalence of complaints against Investigator Gould, the existence of documents that would substantiate such claims came to light too recently to be captured by the deadlines in the agreed production schedule. If Investigator Gould had repeatedly conducted his investigations in an inappropriate and discriminatory manner as alleged, the appellant has failed to offer a persuasive explanation for its late discovery of this evidence. Ultimately, I find that the appellant's request relies upon little more than speculation that such documents exist and offers no cogent explanation for its failure to explore this avenue of appeal earlier in order to comply with the production timelines set out in the case conference report and order issued on June 26, 2023 (the 'CCRO'). The appellant fairly acknowledged that if these documents exist, it does not know their contents. As a result, I concur with the adjudicator's statement at paragraph 15 of *8499*, "to order the requested relief, the Tribunal would need to deal in more than conjecture."

[17] In response to the disclosure request made in the third category above, I find that the requested production is both irrelevant and beyond the scope of the issues in dispute. Enforcement action taken against other schools has no bearing on whether enforcement action should be taken against this school. What is at issue is whether the respondent can prove, on a balance of probabilities, that the contraventions identified in the NOP issued on May 25, 2023, occurred and that the Superintendent should be permitted to carry out the notices. To admit evidence from other enforcement actions would effectively transform this hearing into a hearing on those other matters and may result in potential prejudice to parties who have received no notice of the present proceeding.

[18] Moreover, the results of investigations in general are not secret. To the extent that the appellant has requested information about other enforcement actions taken by the Superintendent against trucking schools in 2022 and 2023, section 49 of the Act requires the Superintendent to publish on the Ministry website particulars of all suspensions, revocations and other listed enforcement actions the Superintendent has taken.

Additional Witnesses

[19] With respect to the additional witnesses that the appellant sought leave to call, its counsel uncovered an error it made in naming the principal of the school and the relationship between the various witnesses. The appellant sought to correct those errors in its Amended Witness List and to call the actual principal, Palwinder Gill to testify. The appellant was also only able to confirm only on October 19, 2023, that Navjot Singh and Gurpreet Singh were ready, willing and able to testify.

[20] I agree with the appellant that the anticipated evidence from these witnesses is highly relevant to the fair disposition of this hearing. As the principal of the appellant company, Palwinder Gill, would be able to offer relevant evidence regarding the management and organization at the various training locations. Muhammad Nasir and Navjot Singh were able to contest the evidence of Mohammad Ali Azimi and could speak directly to some of the alleged contraventions of the Act.

[21] The respondent would not be prejudiced by these additional witnesses and may benefit from the opportunity to question Palwinder Gill. As he is the principal of the corporate appellant, the respondent would reasonably expect the appellant to call him to testify. As well, the testimony of Mr. Nasir and Mr. Gurpreet Singh would provide direct evidence with respect to whether some of the alleged contraventions of the Act actually transpired as well as valuable firsthand experience regarding day to day operations of the company from the perspective of a student and an

instructor. These three proposed witnesses will assist the Tribunal in determining the validity and context of certain alleged contraventions at issue in this matter. As a result, the appellant may call all four as witnesses. Documentary evidence related to their testimony is also admissible.

Complaint Letters

[22] With respect to the four complaint letters from other private trucking schools, as stated above, admission of these documents as evidence in the present proceeding would necessitate issuing findings of fact with respect to investigations not before the Tribunal. The conduct and disposition of those investigations is not relevant to the issues before me. As a result, stripped of a context that could serve to prejudice these third parties, the limited probative value of this evidence is far outweighed by its prejudicial effect. Although the appellant relied on the Tribunal's decision to admit late evidence in *A.S*. v. *Aviva Insurance Canada*, 2020 CanLII 14464 (ON LAT) ('*A.S.*'), I find that that case is distinguishable on its facts as the late produced documents in that proceeding were directly relevant to the issues in dispute and would have assisted the Tribunal in its decision. The requesting party also did not request an adjournment to obtain the documents in question. Moreover, unlike the present situation, the respondent in *A.S.* did not provide any submissions or evidence on what prejudice it would suffer, if any, as a result of the late disclosure being admitted. Consequently, in light of all of the evidence, I declined to admit this evidence.

Adjournment Request

[23] As I denied the appellant's motion to admit evidence related to the issues set out in paragraph 7 above, there is no necessity for an adjournment for this purpose. As noted at paragraph 11 above, the respondent did disclose documents in response to the appellant's request for further production, two days before the deadline in the CCRO. As this disclosure was rather voluminous, counsel for the appellant sought an adjournment as his clients had not been able to review all of the documents prior to the start of the hearing. While I agree that lay litigants may not be able to review and consider a large amount of evidence only thirty-two days prior to an adjudicative event, they are represented by counsel who have a professional obligation to ensure that they are prepared for the hearing and therefore would have reviewed this material prior to the hearing.

[24] The basis for the present adjournment request is distinct from an earlier adjournment request submitted by the appellant on October 11, 2023 in relation to documents sought under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ('FIPPA') and denied by the Tribunal prior to the hearing.

[25] Although the appellant takes the position that it alone would be prejudiced by further delay to resolving the issues in the NOA as its licence remains suspended, I disagree. As the respondent was ready to proceed and secured the attendance of several witnesses, it would be prejudiced by the adjournment of this seven day proceeding as its length would likely preclude rescheduling before several months have passed. Additionally, if there are no documents related to improper conduct by Investigator Gould's during investigations as Mr. Tretter maintains in his affidavit, it is more likely than not that an adjournment to obtain such speculative evidence would not result in any substantive benefit for either party.

[26] In support of its request, the appellant also relied on the comparatively short period since the appellant filed the NOA and the lack of any prior adjournments. However, in consideration of all of the circumstances, I find that the appellant has not demonstrated the extraordinary circumstances necessary to warrant an adjournment. As a result, the matter proceeded without further delay.

ISSUES

[27] The issues in dispute are:

1. Whether the Tribunal should order the Superintendent to carry out the NOP;
2. Whether the Tribunal should confirm the Notice of Immediate Suspension; and
3. If the Tribunal finds that the Superintendent has proven at least one of the substantive allegations against the appellant that may warrant refusal of registration, whether the principles of public safety and consumer protection may be satisfied through the renewal of the appellant's registration but with conditions attached to such registration.

RESULT

[28] Pursuant to subsections 19(6) and 20(5) of the Act, I direct the Superintendent to lift the suspension and not to carry out the Notice of Proposal to refuse registration. I further direct the Superintendent to register the appellant with the following conditions effective immediately upon the issuance of this decision:

a. The appellant shall hire a compliance monitor appointed by the Ministry for a period of no less than six months following the date of this order to ensure adherence to the Act and Regulation.

b. The appellant shall immediately implement the following:

i. All receipts and related documentation will accurately reflect the program name, “AZ-Tractor Trailer (MELT)” in compliance with the Ministry's requirements.

ii. The appellant shall issue a separate document for each individual payment made by or on behalf of a student and maintain a separate file for each issued receipt in the respective student’s file.

iii. The appellant shall ensure that all receipts issued clearly display the issue date for the receipt and include a comprehensive and itemized breakdown of all fees associated with the program.

iv. The appellant shall ensure that all contracts include a detailed breakdown of fees, specific hours of instruction and potential changes, as well as a more structured payment schedule and contact information for students who need assistance with payment arrangements.

v. The appellant will ensure that admissions documentation will include a dedicated provision in its contract that explicitly outlines the requirements of Appendix A from Factsheet 11. This section shall allow each prospective student to select and sign for the document he or she has provided as proof of meeting the “OSSD or equivalent diploma” requirement. The appellant shall also include a copy of Appendix A from Factsheet 11 in its updated contract to provide further clarity and alignment with the regulatory standards.

vi. The appellant shall not accept or file documents that are not listed on appendix A Factsheet 11 as proof of meeting the “OSSD or equivalent diploma” requirement.

vii. The appellant shall no longer grant advanced standing to students enrolling in the program with prior completion or possession of the air brake endorsement.

viii. The appellant shall discontinue the use of the In-yard Sign-In Sheet and require instructors to maintain a single attendance record within the training yard and update these documents immediately following the relevant instruction or as soon as practical to ensure accurate records of student attendance and training hours.

ix. The appellant shall allocate a dedicated truck and trailer specifically for independent study, accompanied by a separate sign-in sheet to provide students with a supervised practice environment that does not count toward their AZ Tractor-Trailer (MELT) program completion hours.

x. The appellant shall continue to instruct students according to the parameters for S-back training as set out in the Standard.

PROCEDURAL ISSUES

Exclusion of Witness

[29] After the respondent had called all of its witnesses but before the appellant commenced its case, an unspecified element of Gurshawn Gill's anticipated testimony prompted the respondent to request that Investigator Gould remain in the hearing during Mr. Gill's testimony to instruct the respondent should it decide to recall him as a rebuttal witness to Mr. Gill's evidence. The appellant opposed this request on the basis that Investigator Gould should be excluded if the respondent intended to recall him at a subsequent stage of the proceeding. I agree with the appellant that if Investigator Gould were recalled having heard all of the evidence he had been called to refute, his evidence would be irreparably tainted and could be accorded little if any probative weight. Throughout the hearing to this point and thereafter, Mr. Tretter was present to instruct the respondent's counsel and I was not advised of any compelling procedural reason that he could not continue in this capacity or that he required assistance in this role from Investigator Gould or anyone else.

[30] As a result, Investigator Gould was excluded from the hearing room until the respondent subsequently undertook not to call him as a rebuttal witness. As his evidence had been completed during the first two days of the hearing, he was free to remain in the hearing room as an observer.

Interpreter Issues

[31] The appellant had retained a Punjabi interpreter for the testimony of two of its witnesses, Mohammed Nasir and Navjot Singh. Shortly after the appellant commenced direct examination of Mr. Nasir, the witness indicated that his first language was in fact Urdu, not Punjabi. Although the interpreter was fluent in Urdu, the witness and Gurshawn Gill subsequently disagreed with aspects of her translation. Mr. Nasir expressed a preference to continue his testimony in English.

After some discussion with the witness, I was satisfied that he was able to understand the English language sufficiently to continue in this manner.

[32] The subsequent witness, Navjot Singh, similarly preferred to offer his evidence in English as a matter of expediency and also demonstrated a sufficient proficiency and understanding to proceed in this manner. The interpreter remained in the videoconference throughout the testimony of both witnesses to assist with interpretation if required.

ANALYSIS

Background

[33] Palwinder Gill had operated his own transportation business in the gravel sector since 2002. He and his sons, Gurshawn Gill and Sahill Gill, started a trucking company that incorporated on September 18, 2018 with a registered office address in Milton, Ontario and Palwinder Gill as the sole director. Gurshawn Gill testified that they began to notice that many newer drivers appeared to lack a solid foundation in basic skills such as backing. This prompted the family to shift their focus to training and commence the approximately ten month application process to operate a private college for a truck driving school. They relied on materials and guidance from sector consultant, Ann Robinson, whose publications and document templates have assisted numerous trucking schools with the lengthy and rigorous application and approval process. The Superintendent registered the company as a private career college on February 14, 2020 and the appellant ultimately opened its first campus in Mississauga on the same day. A few months later, restrictions related to the COVID-19 pandemic forced them to shut down all operations. Nonetheless, the appellant opened two additional campuses and training yards in London and Hamilton on June 14, 2021 and September 8, 2022 respectively.

[34] The purpose of the Act is to protect students enrolled in vocational training programs through the key principles of student safety and consumer protection. Compliance with the Act, its regulations and all policy directives protects enrolled students as well as the general public as commercial truck driving is a high risk industry and Class A driver’s licences are required to drive large heavy vehicles on public roads. As a result, the Ministry has set strict minimum requirements for curriculum for students enrolled in these programs. In terms of safety, improperly trained drivers and those who do not meet these criteria present a risk to other users of public roads.

[35] With respect to consumer protection, the Superintendent is responsible for ensuring that students enrolled in these programs receive the training for which

they are paying. To that end, subsection 53(2) of the Act provides that the Superintendent's policy directives are binding on private career colleges and that every private career college operates in accordance with the policy directives. The Superintendent's Policy Directive for Truck Driver (Class A) training programs (the 'Policy Directive') requires "programs offered by private career colleges that are intended to prepare graduates for the Class A driver licensing examinations are required to adhere to the Commercial Truck Driver Training Standard (Class A) published by the Ministry of Transportation." The Commercial Truck Driver Training Standard (Class A) (the 'Standard'), published by the Ministry of Transportation, prescribes requirements for course format, instructor to student ratios, curriculum and lesson plan requirements and educational learning objectives for Class A programs. The Standard is often described by an older acronym, MELT, that stood for a previous version of the document, "Mandatory Entry Level Training."

[36] The Standard requires that a Class A program provides a core of instruction that is at least 103.5 hours in duration and further prescribes minimum class durations for learning objectives across three different learning environments with different modes of instruction. The appellant's Class A programs are each intended to prepare graduates for the Class A driver licensing examinations. Subsection 53(2) of the Act read together with the Policy Directive provide that the appellant is therefore required to provide its Class A programs in adherence with the Standard.

[37] The Standard outlines requirements for program delivery including requirements for three learning environments: in-class (classroom instruction), in-yard (around the vehicle) and in-cab (behind the wheel) and prescribes maximum instructor to student ratios for each learning environment. With each learning environment, the Standard prescribes how time spent in that environment is calculated based on the number of students present. The Standard provides:

a. For in-class, a maximum of fifteen students per one instructor is permitted. The time allotment is calculated at 1:1, meaning one hour of in-class time spent with up to fifteen students and one instructor counts as one hour for each student;

b. For in-yard, a maximum of four students per one instructor is permitted. The time allotment is calculated at 1:1, meaning one hour of in-yard time spent with up to four students and one instructor counts as one hour for each student; and

c. For in-cab, a maximum of four students per one instructor is permitted, however, only the time that a student spends actually behind the wheel.

> Observation time is not calculated towards completion of the mandatory training hours. In other words, if four students and one instructor spend one hour equally practicing backing maneuvers, each student is only credited with the time they have spent backing.

[38] Ultimately, the responsibility to comply with the Act, the regulations and the Standard lies with the private career college operator. The Superintendent bears the evidentiary burden to demonstrate on the balance of probabilities that it should be permitted to carry out the NOP and maintain the Notice of Immediate Suspension. The alleged infractions listed in the Notice of Contravention have already been addressed through a different venue.

The Investigations

[39] The PCCB conducted no facilities inspections of the campuses until June 29, 2022 as a result of pandemic restrictions. On that date, PCCB inspector, Antonette Montaque conducted a compliance inspection at the appellant's Mississauga campus. As a result, the only educational communication during this period were two directives delivered to the sector as a whole on June 14, 2021 and March 17, 2022.

[40] On November 2, 2022, David Nisanthan, an inspector for the PCCB, attended at the appellant's yard in London. As the appellant's case was Ms. Montaque's file, he had no prior dealings with the appellant before this date.

[41] On February 13, 2023, Christopher Gould, a PCCB investigator was assigned to assess the appellant for compliance with the Act and compliance with the Standard. Between February 15, 2023 and March 10, 2023, Investigator Gould conducted inquiries and examinations into the affairs of the appellant, including attendance at its campuses, speaking with its representatives and reviewing information provided.

[42] Although I agree that the inspectors and investigators sent by the respondent discovered a troubling lack of clarity in the appellant's administrative processes and documentation, none of these issues rise to a level of severity that warrants refusal to renew the appellant's registration. Moreover, the respondent's allegations of safety contraventions were founded upon multiple assumptions and substantial confirmation bias.

[43] Prior to issuance of the NOP and other notices on May 25, 2023, the appellant did not have a history of non-compliance, cautions or any other formal corrective action. Although the respondent described the appellant as refusing to

acknowledge the inspectors' concerns and generally resistant to change, the evidence indicates a school that is extremely responsive to the Superintendent's suggestions with a demonstrated record of resolving safety related issues and an ability to respond to and remedy administrative concerns. When the Superintendent identified issues, the appellant either resolved the problems or sought guidance for proposed solutions.

[44] However, I find that the Superintendent directed the investigation towards inevitable refusal to renew rather than communicate with the appellant regarding its proposals in response to Mr. Nisanthan's report of December 23, 2022. The Superintendent offered no commentary or assessment of the appellant's suggestions, choosing not to respond to the appellant's emails that described its attempts to bring the school into compliance. The PCCB also relied on confirmation biases that the appellant conducted training in breach of required ratios and wilfully obstructed its inquiries rather than thoroughly investigate the details of the appellant's operations in accordance with its own progressive enforcement model.

Safety Issues

Backing Instruction

[45] The appellant acknowledged that it failed to adhere to space requirements for instruction on backing lessons established by the Standard, specifically that the course designed and used to teach these manoeuvres was configured to the same parameters as the Ministry of Transportation ('MTO') test rather than that required by the Standard.

[46] Specifically, on February 15 and March 6, 2023, Investigator Gould observed that the appellant was providing instruction to students for offset backing, or 'S' back into a parking space that was less than the length of the tractor-trailer. On March 6, 2023, Investigator Gould asked the instructor in attendance how the appellant measured the space and was advised that the space for offset backing would be 40 feet by 12 feet (12.2 meters by 3.6 meters) and that the dimensions used were from "DriveTest" but did not mention the Standard or the dimensions used. Sahil Gill, who served as an instructor at the London campus, confirmed that the appellant had been unaware of the space requirements provided by the Standard. This practice was not identified as an issue until March 6, 2023 although the appellant ought to have known that its practices were inconsistent with the Standard as the proper parameters were set out in its own handbook. The appellant offered no cogent reason why it departed from the required measurements for the course.

[47] However, I find that the appellant resolved this issue the following date by redesigning its backing up instruction course and sent a comprehensive overview of the changes with diagrams to Investigator Gould by email. Investigator Gould did not respond to this communication to indicate whether the course was then in compliance with the Standard. I find that the appellant's actions on March 7, 2023 represented a reasonable and very timely response to the issue and indicate a demonstrated ability to respond to the Superintendent's concerns and remedy the contravention.

Instructor to Student Ratios

[48] In the NOP, the respondent alleged that the appellant contravened subsection 18 (2)(a) of the Act by failing to adhere to student to instructor ratios as required by the Standard, thereby failing to adhere to program standards and conditions put in place by subsection 23(4) of the Act and the Policy Directive.

[49] On February 15 and March 6, 2023, Investigator Gould observed that students were completing in-cab (behind the wheel) training, specifically backing practice at the training yard in London, Ontario. On both dates, he noted that an instructor was on site, but was not actively instructing the students present and appeared to be engaged in other activities unrelated from the students training, for example instructing a student on operating a city bus. During his inspection on November 2, 2022, David Nisanthan also noted that the ratios appeared to be incorrect.

[50] However, I find that both Mr. Nisanthan and Mr. Gould relied on an unverified presumption that the out of ratio instruction that they observed on these dates was being improperly credited towards the students' 103.5 MELT hours. There is no dispute that instruction not in compliance with the ratios would represent a contravention if those hours were credited towards the MELT hours. Gurshawn Gill testified that the school schedules training that will be credited towards the required hours in advance of the date of training largely based upon a given student's availability. Lists of these students and the hours scheduled for training are then provided to instructors. All of those hours are then credited towards the necessary hours once completed.

[51] However, students often attended at the training yards for additional practice, particularly with respect to more difficult maneuvers such as backing, coupling and uncoupling. This extra practice time is not scheduled in advance on the yard sheets for the day. As students learn at their own rate to gain more familiarity with these complex actions, there is no restriction on additional practice a student may wish to accumulate in order to better achieve a positive result on the eventual MTO test. While a student may accumulate an unlimited number of hours through

independent learning to better challenge the MTO test, this additional time is not credited towards the scheduled minimum 103.5 hours.

[52] As a result, it is entirely possible that on any given date, a mixture of students may be present in any of the three training yards, engaged in either scheduled credited hours within the ratios or training independently outside the ratio. The distinction may not be readily apparent at first sight and without further inquiry. The problem is that the documents used to record who was doing what were far from clear. When Investigator Gould attended at the facility on February 15 and March 6, 2023, he was aware of the concerns raised by Mr. Nisanthan in his report. When he saw students seemingly engaged in out of ratio learning, he asked them what they were doing. A number of students answered with the rather generic response that they were learning the MELT program. However, this was the extent of Investigator Gould's inquiry. He did not inquire whether the specific actions observed on either date were being credited toward the 103.5 hours and in fairness to him, the instructors and principals present on either date did not volunteer to him that some of the students were engaged in independent learning and therefore not subject to the ratios. At the time, Investigator Gould was simply informed that the second instructor assigned to conduct instruction was on a break, attending to a family emergency. This explanation would not provide a valid defence to the contravention of teaching out of the required instructor to student ratios.

[53] The independent learning explanation was never offered to Mr. Nisanthan or either of the investigators who later attended at the training yards. This does not necessarily indicate that the appellant manufactured its independent learning defence only after the explanation that an instructor was on break was rejected. While I agree that the appellant's failure to advance this explanation is suspicious and to some extent deprived Investigator Gould a reasonable opportunity to confirm or refute it, ultimately, the respondent simply failed to demonstrate that any of the out of ratio activities observed at the training yard by any of the Superintendent's designates was credited towards the 103.5 hour minimum. No student testified that training hours instructed out of the required ratio were credited toward his or her minimum MELT hours and no other evidence was presented to prove this alleged contravention on the balance of probabilities. While students advised to Investigator Gould that they were learning MELT, this a rather broad statement on the general theme of the day's instruction that required further inquiry and clarification, which was not done in this case. To that end, I disagree with the Superintendent's assertion that "reasonable assumptions" are an adequate basis for the allegation that the appellant was in fact instructing students out of the required ratios, particular as the investigators had an opportunity to

confirm this theory through detailed interviews with current and graduated students and a thorough assessment of hours actually credited. While students may be observed practicing a maneuver to improve skill that will eventually be tested as part of the Standard generally, this does not equate to a finding that a specific learning event if undertaken outside of those minimum hours contravenes the Standard.

[54] The evidence as a whole suggests that this is one of several examples of a serious disconnect between the appellant's actual processes and the documentation and administrative policies required not only to ensure compliance with the legislation but to demonstrate that the appellant was providing instruction as required. The appellant's method for recording and scheduling student training does not clarify whether a given student on a given date was engaged in credited hours and therefore subject to the ratios. I find that while the respondent discovered a problem with the yard sheets and time sheets used to document training, it failed to demonstrate that the problem lay in improper instruction out of ratio but rather a failure to document either learning process accurately. Between the lack of contemporaneous recording and general ambiguity in the sheets as a whole, the appellant failed to properly document its instruction in a manner that would demonstrate that it was instructing students according to the required ratios.

[55] The Superintendent takes the position that no student should be permitted to operate a tractor trailer in the yard in the absence of an instructor even in the context of independent learning as a matter of safety. However, such a restriction does not appear in the legislation and was not raised as a contravention in any of the three notices served on the appellant. As a result, it cannot form the basis for refusal or any other corrective action.

[56] In response to the issues raised regarding its in-yard and other attendance documentation, the appellant proposes to consolidate its tracking form to a single unambiguous document as detailed in its Action Plan. Specifically, the appellant proposes to discontinue the use of the In-Yard Sign-In Sheet altogether and streamline its documentation process by retaining the original timesheets within the training yard. Instructors will be responsible for maintaining and updating these timesheets concurrently, ensuring accurate records of student attendance and training hours. By eliminating the redundant sign-in sheet, the appellant aims to simplify its record-keeping procedures and bring them in line with the requirements outlined in the Act and the Regulation. I find that this proposal represents a reasonable solution to the administrative problem.

[57] Although the respondent failed to prove that the appellant was crediting hours out of ratio, the appellant nonetheless opted to implement changes in response to the PCCB's concerns and to account for program completion hours accurately while maintaining the correct student to instructor ratios. The appellant also plans to allocate a dedicated truck and trailer specifically for independent study, accompanied by a separate sign-in sheet. This dedicated resource will provide students with a supervised practice environment that does not count toward their AZ Tractor-Trailer (MELT) program completion hours.

The MTO Stop

[58] Chad Fowlie is a transportation enforcement officer employed by the Ministry of Transportation. On February 3, 2023, he stopped one of the appellant's transport trucks as it was travelling westbound on the Queen Elizabeth Way. Specifically, he noticed that there were three occupants in the day cab of the tractor unit and stopped the vehicle as he was aware that this particular model of Volvo tractor is not manufactured with three seats standard in the cab. The student passenger in the middle seat was occupying a seat without a back and only a lap belt.

[59] He stated in his report that the vehicle was not designed to carry more than one passenger. He acknowledged under cross-examination that since he conducted only a minimally intrusive "level 3 stop," he did not ask the occupants to exit the vehicle and did not actually view the middle seat. As a result, I find that references in disclosed communications to the middle passenger having been seated on a milk crate were not supported by the evidence. However, Mr. Fowlie offered uncontested evidence that all three occupants of the vehicle acknowledged to him that the middle passenger was not properly seatbelted.

[60] He also discovered that while the trailer displayed the name of the school, the tractor did not display the company name, though both components were found to be registered to the appellant. He also found that the CVOR was invalid and that no CVOR certificate or lease agreements were on file with respect to this vehicle. He also noted that the inspection sticker on the trailer and issued a ticket for failing to display proof of inspection, contrary to the *Highway Traffic Act*, R.S.O. 1990, c. H. 8 (the 'HTA'). He also determined that the mileage recorded on the trip document was incorrect and lacked the driver's signature. He also noted in his report that the registration for the tractor section indicated that it was brown in colour not blue as observed during the stop. He explained that an accurate record of the vehicle's colour is important for identification purposes.

[61] The respondent did not submit evidence to confirm that the backless seat installed in the truck by the appellant actually contravened the HTA. However, on February

4, 2023, the day immediately following the stop, the appellant purchased and installed a proper seat in the cab of the truck and sent a copy of the receipt for this installation to the respondent. There was no evidence submitted to suggest that the new seat was not in compliance with the HTA. Although the appellant acknowledged the potential safety issues involved in operating the vehicle without a proper seat belt, its timely response and resolution again suggests a readiness to comply with the relevant legislation.

Administrative Issues

[62] The appellant did not substantially contest the majority of the administrative contraventions cited by the respondent, but had either resolved these issues or proposed a reasonable resolution in its Action Plan. Moreover, although the respondent is not required to demonstrate actual harm as a result of the infractions, it is significant that no students either past or present testified or otherwise offered any statement that they did not receive the services for which they paid.

Issues with the Advanced Standing Program

[63] The respondent demonstrated that the appellant made a substantial change to its approved programs by granting advanced standing outside the terms of its approved policy, thereby contravening subsection 23(6) of the Act, as read together with subsection 13(1) of Ontario Regulation 415/06 (the 'Regulation').

[64] Subsection 13(1) of the Regulation lists a number of "substantial changes" that a private career college may make to a vocational program only with prior approval of the Superintendent. Paragraph 7 in that subsection is "a change in the private career college's policies and procedures for granting advanced standing." Advanced standing awards a student credit upon admission for some prior learning or expertise. As a result, I agree that any change to the appellant's policy would be substantial within the meaning of subsection 13(1) of the Regulation and therefore requires the respondent's prior approval to any change. If the appellant does not follow the advanced standing policy as approved, then students may receive credit for a competency they have not obtained or they may miss an essential part of their program. Either way, the appellant was required to follow its policy as approved to avoid contravening subsection 23(6) of the Act.

[65] The appellant was only permitted to grant advanced standing to students who already possessed an air brakes endorsement. According to the appellant's approved policy, all requests for advanced standing were required to be made in

writing accompanied by proof of the air brakes endorsement before the student starts the program.

[66] With respect to a number of the student files, the appellant failed to follow its own policy. In one instance, a student obtained the required competency after the appellant granted him a certificate for advanced standing and he had started the program. The appellant also equated the more general phrase “prior learning” with the specific term “advanced standing” in other documents, suggesting an unduly lax perspective on deviation from the approved program. In another instance, the appellant did not take sufficient steps to confirm that a student who had stated that he had the required documentation before it granted advanced standing. Whether or not this was simply a clerical error as stated by Gurshawn Gill, it indicates a failure to ensure that the policy is strictly followed. I also agree with the respondent that these two examples were not isolated events as Investigator Gould found that the appellant had granted advanced standing in fifteen out of eighty-two student files in a manner inconsistent with its approved policy.

[67] Gurshawn Gill testified that Antonette Montaque had advised that the appellant could use a prior learning assessment if a student demonstrated practical knowledge of how air brakes work in order to grant advanced standing. However, Ms. Montaque’s report dated September 14, 2022 does not support this interpretation since although it does directly address advanced standing, she did not indicate that the appellant was free to deviate from its approved program in this manner, effectively issuing inaccurate transcripts in relation to students’ prior qualifications. Consequently, on the balance of probabilities, I do not find that Ms. Montaque authorized any such substantial change to the appellant’s approved program.

[68] As well, Mr. Nisanthan stated in his report that the appellant’s advanced standing practices amounted to a substantial change. The appellant’s initial response to this finding was less than inspiring in terms of a demonstrated commitment to resolve the issue. However, in its subsequent Action Plan, the appellant proposes to remove the air brake component from its program, thereby entirely eliminating the advanced standing option. Gurshawn Gill reiterated his commitment to this proposal in his testimony at the hearing. I find that this solution would fully eliminate the potential for future contraventions in this area and the problems inherent with respect to whom and under what conditions advanced standing could be granted.

Transcript Content

[69] In a related issue, the appellant failed to include a description of advanced standing provided in student transcripts, thereby contravening paragraph 4 of subsection 35(1) of the Regulation. As students should be able to rely on the appellant including an accurate record of all learning completed, the appellant's failure to do so consistently, as evident in several student files reviewed by Investigator Gould, represents a contravention of this provision and an issue of student consumer protection.

[70] As noted above, the appellant has agreed, likely to its own competitive disadvantage, to eliminate advanced standing from its program by longer offering air brake instruction.

Receipts

[71] The appellant failed to include in its receipts all terms required by the Regulation, thereby contravening subsection 44(7). Specifically, the appellant failed to include the correct name of the vocational program, an itemized list of all fees paid and the date that the receipt was issued. With respect to the first issue, the receipts simply referred to the program as the MELT program, an outdated title, but one that remains commonly used in the industry vernacular, even throughout the present hearing. There was no evidence submitted that any student was actually confused or mislead by the use of this name. Nonetheless, the appellant agreed to include the correct name of the name of the program "AZ-Tractor Trailer (MELT)" on its receipts and had already done so by the date of the hearing.

[72] With respect to the issue of the appellant's failure to provide detailed and itemized receipts, I agree that this omission engages the issue of consumer protection. It is difficult for a student to determine the services for which he or she is paying without an itemized list. Receipts issued by the appellant were frequently undated and listed only a lump sum labelled "tuition" under the wrong program name.

[73] The appellant also failed to maintain copies of each receipt issued to student in each of its student files, contrary to the mandatory language of subsection 45(1) of the Regulation. Subparagraph 6 of subsection 45(1) provides that "a private career college shall maintain a file containing … a copy of all receipts issued to the student for the payment of fees as required under subsection 44(7)."

[74] Again, as a matter of consumer protection, this provision ensures that in the event of a requested refund or other disputes over fees paid, students are not limited in their recourses available. The appellant offered no explanation for the absence of the required itemized receipts in all student files and instead relied upon a single running total of payments made. Although Gurshawn Gill testified that copies had

been provided to students, the minimal record keeping in the student files does not support this assertion. As the respondent called no students to contest Mr. Gill's evidence on this point, I cannot find that the Superintendent has proven that the appellant failed to issue receipts to students as alleged.

[75] However, the real problem lies in the sparse information contained in the receipts and the process used to record payments. The running total method implemented in the student files violates the strict and mandatory wording of subsection 45(1) of the Regulation as this practice does not indicate specific payments made on specific dates. As well, because the receipts that were kept in the files were open to editing at any time (apparently to reflect the running total of payments), student were left vulnerable to invalid alterations.

[76] In response to both issues, the appellant explained that it was using a template provided by the Ministry. However, as the respondent rightly noted, a template is only useful if it is used correctly. Because the appellant's practice failed to include the required information required by the Regulation and did not ensure retention of a copy of the receipt in all student files, I find that the appellant contravened subsection 45(1) of the Regulation with respect to the issuance and retention of receipts in student files.

[77] In its Action Plan, the appellant proposes to amend its receipt practice to comply with the Regulation, specifically providing the correct name of the program and issuing receipts for all payments, including an explicit issue date for all such receipts and an itemized fee list for all charges imposed. They will issue a separate PDF document for each individual payment and store a separate file for each issued receipt in the respective student's file, rather than keeping a singular electronic PDF that is updated as each payment is made.

Contract Terms

[78] The appellant failed to include in its vocational contracts each term required by the Regulation, thereby contravening subsection 20(1) of the Regulation. Subsection 20(1) identifies eighteen specific items that are required to be included in every vocational contract to ensure student consumer protection. This list includes the fees payable by the student and a schedule indicating the time and amount of each payment. Inclusion of all of the listed terms allow a prospective student to make an informed decision on whether or not to enter into the program.

[79] Four files reviewed by Investigator Gould lacked an itemized list of fees and in two others, there were handwritten additions next to the fee line with no additional breakdown for these added fees. There was also no detailed schedule for the time

and amount of each payment and only an initial amount due with a notice that the balance would be due forty-eight hours before the first road test without any indication regarding when that event would occur, thereby resulting in a conditional due date for payment that would likely vary between students depending on when each took the test. The class schedules provided to Investigator Gould also did not specify particular days of the week for instruction and were based upon an individual student's own availability, not necessarily when they were actually scheduled to attend class, thereby in violation of paragraph 3 of subsection 20(1) of the Regulation.

[80] The appellant ought to have known that its practice in this area contravened the Regulation as the issue was specifically listed in Ms. Montaque's inspection report dated September 14, 2022 and did not include any indication that she was satisfied with the appellant's practice of linking fee payment deadlines to the date of the prospective road test as the appellant claimed. The appellant was free to call Ms. Montaque as a witness to support its submission that she provided contradictory information during her inspection but chose not to do so. As a result, I cannot find that the appellant established that it received any recommendation from this inspector apart from that included in her report. Furthermore, this position also undermines the appellant's claim to Mr. Nisanthan that it had adjusted its practices pursuant to Ms. Montaque's suggestions when he raised the same concerns in December 2022.

[81] In any event, in its Action Plan, the appellant proposes to correct its policy to articulate updated contract terms and include a breakdown of fees and specific hours of instruction in its contracts going forward. It also proposes a more structured payment schedule. I find that this proposal offers a reasonable solution to this administrative issue and suggests a receptive attitude towards change.

Admission Requirements

[82] The appellant admitted students into the program without ensuring that the students first met the admission requirements of the program, thereby contravening subsection 19(1) of the Regulation and breaching a condition of registration. Subsection 19(1) of the Regulation provides that "it is a condition of registration of an operator of a private career college that no student be admitted to a vocational program at the college unless the student meets the admission requirements for the program established by the college and those set out in subsection (3)."

[83] The appellant's admission requirements required each student to possess an Ontario Secondary School Diploma (OSSD) or an equivalent credential. In eight

instances, Investigator Gould discovered that the appellant had accepted credentials that were not equivalent to the required diploma as listed in Fact Sheet 11, as mandated by the Superintendent. For example, the appellant relied upon letters of admission issued by various academic programs. Such communications, unlike a record of completion, may necessarily be conditional on the fulfillment of some other criteria and only indicate a preliminary acceptance into a given program, the requirements of which may vary substantially between institutions. Furthermore, an admissions letter does not state upon what basis a student was admitted, let alone whether he or she continued to meet such requirements to the date of completion or actually attended the program following receipt of the letter. Alone, such letters fail to satisfy the requirements of the Regulation or fall under any of the equivalents listed in Fact Sheet 11.

[84] Again, although the appellant suggested that it had relied upon advice from Ms. Montaque, this submission is not supported by the text of her inspection report.

[85] In its Action Plan, the appellant intends to amend its contract to include a dedicated statement that lists the equivalent documents as outlined in Fact Sheet 11 and will only accept documents from that list. To add further clarity, the appellant also proposes to append a copy of Appendix A from Fact Sheet 11 to any future vocational contracts. I do not find that this proposal shifts any burden onto the student as the respondent submits since it effectively serves to clarify to both parties the mandatory threshold for admission and the documents that students must provide to satisfy the appellant's admissions requirements under the Regulation.

Obstruction

[86] The respondent alleged that the appellant provided student timesheet documents that are false or misleading to a designate of the Superintendent conducting inquiries into its affairs, contrary to subsection 38(10) of the Act. Subsection 38(6) of the Act requires all private career colleges have a duty to cooperate with the Superintendent's investigations, including answering questions and producing documents. As a result, providing information that a person knows to be false represents obstruction under the Act. As explained below, the knowledge requirement in subsection 38(10) is pertinent.

[87] In the present case, the respondent took the position that the time sheets provided by the appellant and the records of attendance kept in the student files are misleading. This allegation is grounded on the theory that a reasonable person reviewing these documents would assume that the student hours were recorded on the same date that the instruction or attendance occurred. As Gurshawn Gill

acknowledged, these documents were in fact signed at a later date in the office at regular intervals, in some cases three months later at the conclusion of a student's training.

[88] I agree that a reasonable person would indeed make the common sense inference that the sheets were signed as soon as possible as this would be far more efficient and less prone to memory errors. However, to paraphrase Hanlon's Razor, one should never attribute to malice that which is adequately explained by incompetence, or in this case, more accurately simple disorganization and a poorly designed method of record-keeping. While the appellant's practice of delayed signatures and authentication invites mistakes due to instructors' and students' fading memory between the dates of instruction and signing, there is no evidence to suggest that this practice was undertaken out of an intent to deceive. As a result, I find that the respondent has failed to demonstrate that the appellant's submission of these late dated documents was an act of obstruction.

[89] The respondent also submitted two recorded incidents of instructors signing time sheets in advance of instruction as proposed evidence of the appellant fabricating documents for the purpose of obstruction. Specifically, former London yard instructor Mohammed Azimi recorded two videos of other instructors signing blank sheets in advance of the lesson, apparently at the request of the yard manager. The yard sheets were the time sheets that instructors used to record instruction and attendance during in yard and in cab training. These videos would appear offer persuasive evidence of an attempt to fabricate documents to mislead anyone later examining it to believe that the signatures and substantive content were applied contemporaneously.

[90] However, the evidence of who had initiated this attempt to deceive and for what purpose was less clear. Both of the instructors shown signing the blank yard sheets in the videos offered an alternative explanation for their actions, consistent with each other but contrary to that of Mr. Azimi. Mohammed Nasir agreed that while he was indeed depicted in one of these videos signing blank yard sheets, he testified that he did so at the request of Mr. Azimi who had advised that he had misplaced the originals and did not want to get in trouble with management. Navjot Singh also testified that Mr. Azimi advised him that he had lost the binder that contained the original sheets. As Mr. Singh had a good working relationship with Mr. Azimi, he agreed to sign the replacement sheets to help prevent his colleague from being disciplined by the appellant. While Mr. Azimi denied losing the appellant's documents or asking either of the other instructors to fill out the sheets on his own initiative, his evidence was no more persuasive that that of Mr. Nasir or Mr. Singh, neither of whom were substantially challenged with respect to

these incidents under cross-examination. Both also candidly agreed that they were not privy to any conversation between Mr. Azimi and London yard manager, Amrinder Gill, with respect to the latter instructing the former to collect the signatures as Mr. Azimi alleged.

[91] As a result, in light of all of the evidence on this issue, I find that the respondent failed to demonstrate on the balance of probabilities that the appellant asked either instructor to fabricate the yard sheets or was even aware of these events prior to Mr. Azimi's disclosure to Investigator Gould, let alone that it instigated the creation of these documents to obstruct the Superintendent's investigation.

Lesson Plans

[92] The respondent alleged that the appellant does not possess or use lesson plans to account for the full duration of its approved vocational Class A programs as required by the Standard, thereby failing to adhere to program standards and conditions put in place by subsection 23(4) of the Act and through the Policy Directive of the Superintendent.

[93] On February 17 and March 6, 2023, Investigator Gould asked the appellant about the lesson plans used in the delivery of the school's programs. While the appellant provides instructors in-class with lesson plans, the respondent alleges that no lesson plans were provided to in-yard or in-cab instructors, with the instructors relying on a rather a nebulous "understanding" of requirements for the on-road and in-yard training, apparently supplemented by an onboarding training conducted by the appellant.

[94] Both Mr. Azimi and Gurshawn Gill confirmed that instructors relied upon their expertise without direct reference to a lesson plan in the yard. However, this is a different situation than the broader allegation advanced by the respondent that no lesson plans exist at all for in-yard or in-cab instruction. Instructor Gurpreet Singh confirmed that review of the appellant's lesson plan comprised a portion of his own training as an instructor at the school. The respondent called no evidence to contradict Mr. Singh's testimony on this point or any students to testify with respect to the use of lesson plans.

[95] The appellant submitted this same lesson plan which includes all of the elements required by the Standard, including references to different instructional methods and environments, assessments, measurable objectives, step by step examples and direct references to the requirements within the Standard itself with relevant timeframes.

[96] The lesson plan was prepared by the industry consultant Ann Robinson, was approved by the Ministry and is used by other trucking schools. Although in his interview with investigators, Mr. Azimi disparaged the textbook upon which the plan is based as applicable to the American trucking industry, the book had been modified to apply to all of North America, an update not considered by Investigator Gould in his apparent haste to embrace Mr. Azimi's rather dramatic exposé on the appellant's business practices.

[97] It is also worth noting that there is no statutory requirement that instructors carry lesson plans on their person or directly read from a lesson plan during classes in the yard, only that the school use them, which I find that the appellant does in accordance with the Regulation. The binders containing the appellant's lesson plan are kept in the cabs of all of the appellant's trucks. The decision to maintain a consistent storage location for these plans is also reasonable and prevents loss and misplacement in the event that an instructor requires them for reference. It is also reasonable for instructors to rely upon their expertise while teaching students without necessarily consulting the lesson plan throughout the class, a practice that may not be practical outside a classroom, provided that they follow the approved lesson plan. Other than the issue with backing instruction as described below, I find that the respondent failed to establish that the appellant lacked a lesson plan or failed to follow it.

[98] As a result, I find that the respondent failed to meet its evidentiary burden to demonstrate a contravention of the Act or the Regulation with respect to this issue.

[99] In a related issue, with respect to the qualifications of instructor Rajdeep Grewal, both the Ministry and the appellant relied on her representations that she was qualified to act as an instructor. The issue was that the address on her reference letter was the same address as on her driver's licence. Gurshawn Gill acknowledged that the appellant simply did not notice this issue. In its Action Plan, the appellant proposes to review thoroughly all reference letters to ensure no recurrence of this issue.

Should the Superintendent Carry out the Notices?

[100] The appellant relies upon the PCCB's own progressive enforcement model that provides for an ascending progression of corrective actions in response to contraventions from education at the initial stage through other more serious actions to revocation of a registrant's licence as a final response to non-compliance. The respondent notes that this model does not serve as a checklist or sets a binding process upon the PCCB. Rather, it is intended to serve as a guideline to various actions available to the respondent based upon the severity of

a contravention and the history of compliance and non-compliance. As Investigator Gould emphasized, all investigations are unique and must be approached on a case-by-case basis. As a result, the respondent is not required by this guideline to exhaust all lesser actions before moving to more severe penalties.

[101] That having been said, as the respondent failed to demonstrate the more serious safety issues related to out of ratio instruction and obstruction and the appellant immediately resolved the issues related to the MTO stop and backing instruction, I find that those remaining administrative contraventions that the respondent *did* prove do not warrant refusal of the appellant's registration and are more properly addressed through the less severe actions available through this model, particularly given the reasonable proposals set out in its Action Plan.

Conditions

[102] For the reasons set out above, I am satisfied that the appellant should be registered as a private career college; however, pursuant to subsection 19(6) of the Act, I attach conditions including those commensurate with the appellant's Action Plan.

[103] To address the issues and concerns identified by the Superintendent, the appellant is willing to hire a compliance monitor appointed by the Ministry for six months to ensure adherence to the Act and Regulation. This monitor would serve as a crucial quality control measure, identifying any missing documents or errors in our records promptly. This proactive approach would ensure that the appellant receives the necessary guidance and expertise to rectify any compliance issues immediately. Furthermore, a compliance monitor has the authority to directly communicate with the appellant's assigned PCCB inspector, expediting the reporting process and ensuring transparency in its efforts to meet regulatory standards. In light of all of the evidence and the appellant's efforts to bring the school into compliance, I find that this proposal is reasonable in all of the circumstances.

Immediate Suspension Order

[104] Pursuant to subsection 20(5), I lift the immediate suspension because, as outlined in my reasons above, that the bases for the immediate suspension no longer exist.

[105] In addition, I find that the proposals set out in the appellant's Action Plan represent reasonable and effective solutions to the contraventions proven by the respondent.

ORDER

[106] Pursuant to subsections 19(6) and 20(5) of the Act, I direct the Superintendent to lift the suspension and not to carry out the Notice of Proposal to refuse registration. I further direct the Superintendent to register the appellant with the following conditions effective immediately upon the issuance of this decision:

a. The appellant shall hire a compliance monitor appointed by the Ministry for a period of no less than six months following the date of this order to ensure adherence to the Act and Regulation.

b. The appellant shall immediately implement the following:

i. All receipts and related documentation will accurately reflect the program name, “AZ-Tractor Trailer (MELT)” in compliance with the Ministry's requirements.

ii. The appellant shall issue a separate document for each individual payment made by or on behalf of a student and maintain a separate file for each issued receipt in the respective student’s file.

iii. The appellant shall ensure that all receipts issued clearly display the issue date for the receipt and include a comprehensive and itemized breakdown of all fees associated with the program.

iv. The appellant shall ensure that all contracts include a detailed breakdown of fees, specific hours of instruction and potential changes, as well as a more structured payment schedule and contact information for students who need assistance with payment arrangements.

v. The appellant will ensure that admissions documentation will include a dedicated provision in its contract that explicitly outlines the requirements of Appendix A from Factsheet 11. This section shall allow each prospective student to select and sign for the document they have provided as proof of meeting the “OSSD or equivalent diploma” requirement. The appellant shall also include a copy of Appendix A from Factsheet 11 in its updated contract to provide further clarity and alignment with the regulatory standards.

vi. The appellant shall not accept or file documents that are not listed on appendix A Factsheet 11 as proof of meeting the “OSSD or equivalent diploma” requirement.

vii. The appellant shall no longer grant advanced standing to students enrolling in the program with prior completion or possession of the air brake endorsement.

viii. The appellant shall discontinue the use of the In-yard Sign-In Sheet and require instructors to maintain a single attendance record within the training yard and update these documents immediately following the relevant instruction or as soon as practical to ensure accurate records of student attendance and training hours.

ix. The appellant shall allocate a dedicated truck and trailer specifically for independent study, accompanied by a separate sign-in sheet to provide students with a supervised practice environment that does not count toward their AZ Tractor-Trailer (MELT) program completion hours.

x. The appellant shall continue to instruct students according to the parameters for S-back training as set out in the Standard.

LICENCE APPEAL TRIBUNAL

Kevin Lundy
Adjudicator

Released: November 27, 2023