

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE MOTOR CARRIER ACT**

- and -

**IN THE MATTER OF AN APPLICATION of GARRY JOLLYMORE o/a SEASCAPE EXCURSIONS OF NOVA SCOTIA** for the issue of a Motor Carrier License.

**BEFORE:** David J. Almon, LL.B., Member

**APPLICANT:** **GARRY JOLLYMORE o/a SEASCAPE EXCURSIONS OF NOVA SCOTIA**  
Garry Jollymore

**OBJECTORS:** **ABSOLUTE CHARTERS INC. o/a COACH ATLANTIC HALIFAX**  
Mary Dempster

**COACH ATLANTIC TRANSPORTATION GROUP INC.**  
Ryan Cassidy

**GREAT E.A.R.T.H. EXPEDITIONS INC.**  
Ryan Barry

**MOLEGA TOURS LIMITED**  
Marie Malloy and Scott Callaghan

**PAUL MCNEIL o/a HALIFAX TITANIC HISTORICAL TOURS**  
Paul McNeil

**THARIQ (TYE) ALI o/a PRESTIGE LIMOUSINE**  
Thariq (Tye) Ali

**HEARING DATE:** April 20, 2020

**DECISION DATE:** June 23, 2020

**DECISION:** **Application is denied.**

## I SUMMARY

[1] In this application, Garry Jollymore o/a Seascapes Excursions of Nova Scotia (Seascapes or Applicant) applied for a Motor Carrier Licence to operate one 15-passenger vehicle from anywhere in HRM to anywhere in Nova Scotia. The application was opposed by six licenced carriers, who testified they are providing charter services in the same area.

[2] The primary objective of the *MC Act* is to ensure a quality, safe and *sustainable* motor carrier industry in Nova Scotia.

[3] The Board accepts the evidence of the six private operators who oppose the application. They say that allowing Seascapes to provide similar charter services would have a negative impact on their business. The Applicant provided no evidence of demand for charter work that was not already met by the existing carriers.

[4] As a result, the application is denied.

## II BACKGROUND

[5] Seascapes filed an application with the Nova Scotia Utility and Review Board (Board) on March 17, 2020, for the issuance of a Motor Carrier License to operate a 15-passenger Mercedes Benz Sprinter-type vehicle, for the transportation of individuals or groups on guided tours from anywhere in the Halifax Regional Municipality (HRM) to anywhere in the Province of Nova Scotia, and return.

[6] The Notice of Application was published in *The Royal Gazette* on April 1, 2020; industry distribution by email, fax and regular mail was completed on March 27, 2020.

[7] Six objections to the application were received as follows:

- Absolute Charters Inc. o/a Coach Atlantic Halifax (Absolute)
- Coach Atlantic Transportation Group Inc. (Coach Atlantic)
- Great E.A.R.T.H. Expeditions Inc. (Great E.A.R.T.H.)
- Molega Tours Limited (Molega)
- Paul McNeil o/a Halifax Titanic Historical Tours (Halifax Titanic)
- Thariq (Tye) Ali o/a Prestige Limousine (Prestige)

[8] A Notice of Public Hearing was issued to the parties on April 6, 2020. The public hearing was held on April 20, 2020, by teleconference.

[9] Seascape was represented by Mr. Jollymore.

[10] Mary Dempster, Absolute; Ryan Cassidy, Coach Atlantic; Ryan Barry, Great E.A.R.T.H.; Marie Malloy and Scott Callaghan, Molega; Paul McNeil, Halifax Titanic; and Thariq (Tye) Ali, Prestige, gave evidence on behalf of their respective companies.

### III ISSUE

[11] The issue in this matter is described as follows:

**Taking into consideration the provisions of the *Motor Carrier Act (MC Act)*, should the Board exercise its discretion and issue the motor carrier license?**

[12] For the reasons outlined in this Decision, the Board denies the application.

#### **IV PROPOSED LICENSE**

[13] Seascope has applied for a Motor Carrier License to furnish services as follows: to operate one 15-passenger Mercedes Benz Sprinter-type vehicle under the following rates and authorities:

##### **SCHEDULE D – RATES:**

D(1) Rates:

Day tours to local sightseeing locations in HRM - \$1,045.00 per day  
Fundy Shore and Valley Tours - \$1,170.00 per day  
Lunenburg/Peggy's Cove Tour - \$1,170.00 per day  
Cape Breton/Cabot Trail 5-day Tour - \$4,473.50 (based on 15 people)

##### **Terms and Conditions:**

Rates inclusive of taxes, tolls and entrance fees unless otherwise noted.

Accommodations and meals not included.

Non-refundable (Lifetime) Deposit due at time of booking, based on total booking.

Cancellation received 60 days or more prior to departure, Lifetime Deposit will be held and remainder of payment will be refunded in full; cancellation received 59-30 days prior to departure, Lifetime Deposit will be held and 50% of remaining payment will be refunded; cancellation less than 30 days prior to departure will result in the Lifetime Deposit being held by the operator and no further refund will be payable.

Non-Refundable (Lifetime) Deposit – if you cancel your booking as noted above, the Lifetime Deposit will be held with no expiry and may be applied towards payment of a deposit on any other tour offered by the operator. Only the non-refundable deposit is considered a Lifetime Deposit and it has no cash value. Only one Lifetime Deposit may be applied per tour per product booked and must be applied to a tour of equal or greater value to the cancelled tour for which the Lifetime Deposit was originally received. The Lifetime Deposit is transferable to another individual of your choosing by providing notice to the operator.

##### **SCHEDULE E – VEHICLES:**

2009 Mercedes-Benz Sprinter Type Van 15-passenger

##### **SCHEDULE F – AUTHORITIES:**

F(1) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER  
SIGHTSEEING TOUR SERVICE

The transportation of individuals or groups on guided tours from anywhere in the Halifax Regional Municipality to anywhere in the Province of Nova Scotia and return.

## V EVIDENCE

### 1. Applicant – Garry Jollymore

[14] In advance of the hearing Mr. Jollymore filed a prepared statement with the Board, a copy of which was given to each of the Objectors, and a portion of which is repeated here:

#### MARKET OPPORTUNITY

An opportunity lies in multi-day touring options. I have learned the basics of this multi-day service from my 21 years of experience with other tour operators. Now I want to expand and enhance it. Expanding means adding a higher capacity vehicle, enhancing means providing luxury. See the images below that reflect the luxury I am planning to provide.

In a summary of this business opportunity I can say that I simply want to provide service for those who have asked for it. My prospect inquiries have included the requests to travel in groups larger than six or seven.

It is worth noting here that in the past I have witnessed efforts to accommodate clients in larger groups by chartering appropriate vehicles. However, anyone who has tried this has found that the availability of these vehicles is sporadic. This is due to the fact that there is a great demand for these vehicles in peak season. In addition to this problem, when these small busses are available, the cost to the client is usually prohibitive. That is because of the flawed system where the driver of the bus is not the guide, therefore the customer must pay for bus, bus driver and guide.

There is another market opportunity. That opportunity exists in the people visiting here from other parts of Canada. Their numbers dwarf all other statistics being approximately 628,000 in 2019. My plan is to tap that market is inexpensive and relatively easy to expedite.

Additional opportunities exist and must be defined and tested for feasibility. One such market is described in this plan as a touring option for people with handicaps. This is just one market open to explore.

#### Equipment and luxury example

In 2018 and 2019 I participated with tourism partners. In 2019 we had 43 calls for group tours of between seven and 17 people. These were a combination of day trips and multi-day trips. We were able to retain four of these jobs using multiple minivans. The remaining 39 represent our lost business due to not having the adequate vehicle.

It is worth noting that we were approached for these large group needs even though we did not advertise the availability of service. It is a good business maneuver to acquire the equipment and add advertising to this scenario.

This would substantially increase the number of inquiries for small bus service. The rented bus service is nowhere near a dependable option. The vehicles needed are often spoken

for in the bus company's own commitments. We have to deal with so-called "blackout" months in prime tourist season when a small bus just cannot be had.

Experience has shown me that bus company costs for vehicles and drivers are very expensive. Adding on the cost of my guide service creates such expense that it discourages most prospects.

The demand for small bus service was even greater in 2018. In both 2018 and 2019, when a small bus was available, the typical cost was \$1988.49 per day. This left little or no margin for profit without pricing the job beyond the client's expectation. It should be noted, with regard to the charter pricing, that it varied based on the date and business volume of the bus company.

A more affordable price for my prospects would be possible by cutting out the middle man plus cutting out the cost of the non-guide bus driver. In one example of a quote to a customer for bus, bus driver and our step-on guide the client was expected to pay \$2,573.26 for one day for 14 people. (This price included a 20% mark up for my profit)

As indicated earlier with my own equipment and as driver guide I can reduce this cost to my client to approximately \$1704.26 this difference reflects an \$869.00 saving to the client difference in price would have saved the client \$869.00. These numbers represent potential deal makers or breakers.

#### Market overview

Tourism started in Nova Scotia in 1871 with 300 people visiting. In 2017 there were 2.4 million people. In 2018 record breaking revenue was reported with an estimated 2.61 billion dollars. In 2024 the tourism contribution is predicted to reach 4 billion. (Since this was written the covid 19 pandemic has occurred and this will probably delay the 2024 prediction for a number of years)

No discussion of market overview would be complete without due consideration for the current world crisis. It is sufficient to say that the tourism business is a nonstarter for the 2020 season.

However, the question is how long will this last?

For this hearing I will make an effort to shine some light on this question. We can start this conversation at a point where we will all agree. That observation is that all over the world a fortune in trillions is being lost by businesses big and small.

Another point of agreement is that this level of economic disruption is unprecedented. However, although not as catastrophic we do have a pair of comparables to our current crisis. They are the financial and business failures of 2008 and the impacts on tourism as a result of 911 terror attacks.

The lesson we learn from 2008 is that the western economy is too big to fail. Many, myself included find the hubris in that statement too much to take but on the practical side there has not been a shred of real evidence to support a counter argument. Unless that argument might be this global pandemic.

The point here is that the economy has the resiliency to bounce back as it did shortly after the 2008 melt down. I believe it will overcome this adversity and march on.

The 911 events ushered in another collapse in tourism by virtue of the fact that U.S. citizens were extremely averse to travel outside their country. To some extent that act of terror affected travel all over the world.

My point is that even though terrorism is an ongoing threat tourism not only rebounded but reached new heights. The evidence here suggests that this rebound will happen again.

So realists say that we will get over this pandemic but the question is how long will it take? I have already classified the loss to businesses worldwide to be in the trillions of dollars.

This colossal loss generates its own question. What will these powerful moneyed interests do in the face of such loss? There is no other answer to this they will apply pressure wherever necessary to have medical research come up with a cure.

Medical researchers say 18 months for a cure I am going to suggest that because so much is at stake and because a cure will come with such a huge reward that a cure is as close as late summer. How can it be otherwise and have any chance to get back to normalcy and to avoid a world bankruptcy.

For an example of how huge money interests are surging ahead to solve this virus riddle we have to go no further than the example of Bill Gates and his involvement.

In a commendable move of preparedness Bill Gates (through his foundation) is building seven production facilities for seven different drugs. All are currently being tested and only one or two will pan out but the manufacturing facility will already exist to mass produce them once proven.

Just imagine the billions wasted because only one or two drug manufacturing facilities will be used and five or six will be torn down. That is how serious the search is for a cure. I don't pretend to have a crystal ball but because forces are falling into place to beat this virus I am more upbeat about our future than most. I feel there is good reason to believe that normalcy will begin to creep back this year. I would like to prepare for that, in one way, by having the proper 14 passenger vehicle to satisfy the group requests for touring.

Excerpt from the wall Street Journal The Wall Street Journal

Bill Gates says he'll spend billions on coronavirus vaccine development

Published: April 6, 2020 at 10:41 a.m. ET By Jennifer Calfas Microsoft Corp. MSFT, +0.00% co-founder Bill Gates said his foundation will spend billions of dollars to fund the construction of factories for the most promising efforts to develop a vaccine to combat the novel coronavirus.

Mr. Gates, a billionaire philanthropist who is one the richest person in the world, said the Bill and Melinda Gates Foundation will work with seven makers of a possible vaccine to build these factories. Mr. Gates, who announced the efforts in an appearance on "The Daily Show With Trevor Noah" Thursday, acknowledged that billions of dollars would be wasted on vaccines that won't pan out.

"Our early money can accelerate things," Mr. Gates said. "Even though we'll end up picking at most two of them, we're going to fund factories for all seven, just so that we don't waste time in serially saying which vaccine works and then building the factory."

A representative for the Gates foundation didn't respond immediately to a request for comment. In March, the foundation announced a \$125 million effort to identify and develop treatments for Covid-19, the disease caused by the novel coronavirus.

[Exhibit G-13]

[15] In his opening remarks, Mr. Jollymore said that his whole argument was wrapped up in the summary, which he read:

This phase of crisis History will not last forever. When it ends business like cruise ships and Expedia and the largest tourism operators will spend accordingly to rekindle their businesses. We will be the recipients of the business this advertising produces.

How long will it take to get our tourism numbers back to normal? Previous comparisons like the 911 terrorist attack and the 2008 are our guide. From my experience my business was back to normal within three years.

Preparing for that return to normalcy is just good business planning which always comes with risk.

My focus on luxury and long distance touring is not in conflict with the other operators in this area. The idea is a way to leave good impressions on the people who visit here.

There are three reports from my previous clients on pages 11, 12 and 13. They are not included here as a reference to my ability as a tour guide. They are included to support the assertion that people seek out specific guides and businesses that give exceptional service.

This idea is highlighted in the three emails on pages 8, 9 and 10 from other tour operators I have networked with. The theme in those 3 emails is that people seek out our services and not the services of competitors. Now the question emerges. By objecting to this license application do our competitors feel that they have a right to our customers?

The same three emails also offer up an interesting statistic. That is, in 2019, in this network, there were 63 lost jobs due to lack of availability of 14 passenger vehicles. Some of these jobs may have gone to competitors but the majority were completely lost because the supply of 14 passenger vehicles is not adequate. It is also the case that people wanting prearranged service do not want bus tours. Shall we now force them into the bus tours?

[Exhibit G-13, p.14]

[16] In the course of his evidence, Mr. Jollymore was asked whether, in fact, he had already purchased the bus, in anticipation of his hearing. His response was that they had "entered into negotiations to buy the vehicle," placing a deposit on it, but that he

didn't own the vehicle yet. As part of his presentation, Mr. Jollymore included purported testimonials and letters of support for his van application and his services as a guide.

## **2. Objections**

[17] The application was opposed by six licensed carriers, all of whom testified during the hearing.

[18] Mary Dempster, Vice-President, Absolute Charters Inc. o/a Coach Atlantic Halifax, testified that she saw no evidence to support that other motor carriers in Nova Scotia could not have provided the 63 "potential movements" of which the Applicant spoke, and which could have been carried out by either Coach Atlantic or Ward Markie. She testified further that (because of the COVID-19 pandemic) she has come to understand that the 2020 season is all but lost and that they cannot take any further risk into the 2021 season. She said there is no evidence to suggest that there is a multi-day tour business that isn't already being serviced.

[19] Ms. Dempster testified that her company and, indeed, all companies, are going through a very difficult time watching idle equipment, lost business, with no evidence to suggest that the charter business is going to come back anytime soon. So, in her opinion, there will definitely be an excess of equipment and there is no need for the services sought by Mr. Jollymore. She also believes the letters of support offered by Mr. Jollymore are not indicative of sufficient evidence that an exhaustive search for other carriers has been made.

[20] Ryan Cassidy, Coach Atlantic, testified that he is not quite convinced that all operators who have fleets of vehicles were asked whether some of the 63 movements or "lost jobs" as described by the Applicant, could have been serviced. He also stated

that in the unfortunate reality everyone is experiencing with the COVID-19 crisis, there is no need for extra equipment in the marketplace. He felt quite confident that there are vehicles currently licensed which can provide the bus services applied for and that there would be an excess of equipment if Mr. Jollymore's application was granted.

[21] Ryan Barry, President, Great E.A.R.T.H., testified that there were "obvious reasons" for opposing this application. With the effects the pandemic is having on business, so far this year, and in the months ahead, there is so much uncertainty in the industry. He testified that there are vehicles already licensed to conduct the multi-day trips for which Mr. Jollymore is applying. In his opinion, there will, most definitely, be an excess of equipment and there is no need for the services sought at this time.

[22] Marie Malloy, President, Molega Tours, testified that she and her husband started their business in 1994 and they have consistently utilized their two multi-passenger vans. She stated that during the height of their season, which is September and October, their vans can be quite busy; however, for the rest of the year other than their clients who are participating in biking and walking tours, their vans are not utilized. So, as for Molega Tours, to add another participant such as the Applicant, Ms. Malloy testified that it could be very damaging for her business.

[23] Scott Callaghan, Charter Manager for Molega, added that he doesn't perceive that there is enough call to add another vehicle into the system right now. Like Ms. Malloy, he could not recollect being contacted by the Applicant or any representative of his seeking the availability of a Molega minibus or van.

[24] Paul MacNeil, Halifax Titanic, testified that he did not think there is a demand right now for a vehicle the size of which Mr. Jollymore is looking for. He testified

that (because of the pandemic) “next year, people are going to be avoiding cruise ships like crazy.” It was his opinion that he could not see the industry bouncing back in even three years. He feels that there are vehicles currently licensed which can provide the bus service applied for and, if the application was granted, there would be an excess of equipment.

[25] Thariq (Tye) Ali, owner operator, Prestige, testified that he agrees with everyone else. He does not think that a demand has been proven that another vehicle is needed in the same category. If the application was granted, he believes there will be an excess of equipment.

#### **IV LAW**

[26] In Nova Scotia, motor carrier transportation services are regulated under the *MC Act*.

[27] In assessing an application, the Board considers the public interest; the quality and permanence of service to be offered; general effect on other transportation services; and the sustainability of the industry including whether there is need for additional equipment in the area.

[28] These factors are outlined in s. 13 of the *MC Act*.

##### **Factors Considered**

**13** Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

[29] Specifically, “need” is referenced in s. 13(a) by asking whether there would be an excess of equipment if the license was issued. The section considers whether there are vehicles currently licensed which could provide the services applied for. Is there a need for the services sought by the Applicant?

[30] In this application, the Applicant has the burden of proof to show, on a balance of probabilities, that the Board should grant the license, considering s. 13 of the *MC Act*.

## **VI FINDINGS AND ANALYSIS**

[31] Pursuant to s. 13 of the *MC Act*, the Board must consider, among other factors, whether there would be an excess of equipment if the license is granted and whether there would be a detrimental effect on existing licensed carriers.

[32] In this respect, the Board accepts the evidence of those who object to the issuance of the license. They all testified that the charter segment of the industry has suffered a significant decline from the fallout of the COVID-19 pandemic. The Board notes that most of their equipment is sitting idle.

[33] The Board finds that there would be an excess of equipment if the license was granted and that the licensing of an additional carrier would impair the sustainability of the existing licenced carriers.

[34] Mr. Jollymore has failed to provide sufficient evidence that his 15-passenger van is required in Nova Scotia to operate the service he seeks. On the other hand, all the Objectors testified that, in the best of circumstances, they are already able to serve the clients to which Mr. Jollymore refers.

## VII CONCLUSION

[35] Accordingly, having reviewed all the evidence, the Board is not satisfied, having regard to the factors outlined in s.13 of the *Motor Carrier Act*, that it is in the public interest to approve this application.

[36] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 23<sup>rd</sup> day of June, 2020.

  
David J. Almon