

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

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

- and -

**IN THE MATTER OF THE APPLICATIONS of SUNSHINE ATLANTIC HOLDINGS LTD. and GREAT WALL INTERNATIONAL GROUP O/A CANADIAN NATIONAL TOUR SERVICE to amend Motor Carrier License Numbers P03017 and P03236**

**BEFORE:**

 Richard J. Melanson, LL.B., Member

**APPLICANTS:**

**SUNSHINE ATLANTIC HOLDINGS LTD. and  
GREAT WALL INTERNATIONAL GROUP o/a CANADIAN  
NATIONAL TOUR SERVICE**  
Mingjie (Andy) Deng, Director

**INTERVENORS:**

**ABSOLUTE CHARTERS INCORPORATED. o/a COACH  
ATLANTIC HALIFAX**  
Mary Dempster

**COACH ATLANTIC TRANSPORTATION GROUP INC.**  
Ryan Cassidy, Chief Executive Officer

**MOLEGA TOURS LIMITED**  
Marie Malloy, President

**WARD L. MARKIE o/a MARKIE BUS TOURS**  
Ward Lucius Markie, Owner/Operator

**HEARING DATE:**

November 25, 2021

**DECISION DATE:**

January 10, 2022

**DECISION:**

**Application to remove the restrictions on the charter authority contained in License Number P03017 is granted. Application to remove the restrictions on the**

**charter authority contained in License Number P03236  
withdrawn.**

**Erratum:**

[1] On the cover page, page one, the neutral citation number “**2022 NSUARB 159**”, is to be amended to read “**2022 NSUARB 3**”. The remainder of the document is unchanged.

**Erratum Dated:** January 13, 2022

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## I SUMMARY

[1] Sunshine Atlantic Holdings Ltd. (Sunshine Atlantic) filed an application with the Nova Scotia Utility and Review Board on September 29, 2021, to amend Motor Carrier License Number P03017 to remove conditions currently on the License that require each trip or charter group to have a minimum of 80% of passengers originating in Asia and requiring all other passengers to comprise a maximum of 20% of the group (including passengers whose trip to Canada originated in Japan). Sunshine Atlantic has one licensed vehicle. It is a 2018 Mercedes-Benz 14-passenger van.

[2] Great Wall International Group o/a Canadian National Tour Service (Great Wall), which has similar licensing conditions, filed a similar application in relation to License Number P03236. Great Wall currently has one authorized vehicle under its license. It is a 2014 Freightliner 39-passenger mini-bus.

[3] The Notice of Amendment applications were advertised in The Royal Gazette on October 13, 2021, posted on the Board's website, and forwarded to licensed carriers by email, fax, or mail. The Clerk of the Board received four objections to the granting of the applications, including Absolute Charters Incorporated o/a Coach Atlantic Halifax. (Absolute); Coach Atlantic Transportation Group Inc. (Coach Atlantic); Molega Tours Limited (Molega), and Ward L. Markie o/a Markie Bus Tours (Markie Tours or Markie).

[4] Prior to the hearing, the applicants, which have a common director who was shepherding the applications, advised that they were only seeking to remove the restrictions on 14-passenger and 25-passenger buses. During the hearing, it was confirmed, and the applicants agreed, that the only applicable vehicle was the one

authorized under Sunshine Atlantic's license. This effectively means the Great Wall application has been withdrawn and that application need not be discussed further.

[5] After reviewing all the evidence and the provisions of the *Motor Carrier Act* (*MC Act*), the Board grants Sunshine Atlantic's request to amend the License to remove the restrictions on its charter authority. The Board notes that Sunshine Atlantic increased its fleet capacity from one 12-passenger vehicle in 2014 to eight vehicles having a seating capacity, in total, of up to 127 passengers, by 2019. Most of the applications for increased seating capacity were unopposed.

[6] Due to the market conditions created by the worsening diplomatic relations between Canada and China, Sunshine Atlantic divested itself of two 24-passenger vehicles to Great Wall in 2019. In 2020, in response to the additional impact of the COVID-19 pandemic, it also cancelled authorizations for all its licensed vehicles except the 14-passenger van which is the subject of this proceeding.

[7] The Board has been reluctant to make many changes to the current fleet of vehicles licensed in the province until the impacts of the COVID-19 pandemic are more fully understood. That said, the granting of this application will result in a capacity to offer seats to the public at large which is less than Sunshine Atlantic could offer in the pre-pandemic period, where 25 such seats were available under the License.

[8] Even after transferring the two 24-passenger vehicles, Sunshine would have been able to offer some 15 seats to the general public. In the unique circumstances of this case, the Board is satisfied the granting of the application is like maintaining the *status quo*, such that additional pressure will not be placed on the market due to excess capacity.

## II APPLICATION - PROPOSED AMENDMENT

[9] Sunshine Atlantic was issued the License pursuant to the Board's written decision dated October 29, 2014, [2014 NSUARB 179]. Initially, the 2014 application was to provide general charter services to the public throughout Nova Scotia, and to and from anywhere in Nova Scotia, Atlantic Canada, Quebec and/or Ontario. However, that application was opposed by three of the four objectors who participated in this proceeding. The parties reached a settlement, during the hearing, whereby Sunshine Atlantic's charter authority would be conditional and require that at least 80% of each charter group be passengers who had travelled to Nova Scotia from Asia, exclusive of Japan.

[10] Thus, in 2014, the approved Licenses were conditioned as follows:

1. Subject to condition 2, a minimum of 80% of each trip or charter group must be passengers whose trip to Canada originated in Asia, including any such passengers temporarily residing in Canada as students, workers or landed immigrants.
2. All other passengers, including passengers whose trip to Canada originated in Japan, may constitute a maximum of 20% of the trip or charter group.

[11] In the current application, Sunshine Atlantic requested that the above two conditions be removed from the License. If granted, it will be able to offer its charter services to the general public with one 14-passenger vehicle.

[12] The original License was to operate a 2013 Mercedes Benz 12-passenger vehicle. After successful efforts to develop the Chinese market, more vehicles were added. By 2019, the Board had authorized Sunshine Atlantic to operate two 24-passenger mini-buses and five 12 to 15-passenger vehicles. In 2019, Sunshine Atlantic applied to the Board to transfer the two 24-passenger vehicles to Great Wall. Sunshine Atlantic also applied to remove the conditions which are the subject of this proceeding

from all vehicles. The genesis for the requests was an anticipated loss of business due to the worsening relationship between Canada and China. The transfer proceeded unopposed and was granted by the Board. The request to remove the licensing restrictions was opposed and the Board refused to grant that part of the application.

[13] The Board was of the view there was an excess of equipment in the marketplace. This factor, combined with Sunshine Atlantic's original bargain which allowed for unopposed entry in the Nova Scotia charter market, led the Board to conclude that removing the restrictions would unfairly have a negative impact on existing carriers, in the circumstances of that case [see: *Re Sunshine Atlantic Holdings Ltd.*, 2019 NSUARB 58].

### **III EVIDENCE**

[14] The evidence presented at the hearing was not particularly extensive. Mingjie (Andy) Deng testified on behalf of the applicant. He is a Sunshine Atlantic director. He has appeared numerous times before the Board and is familiar with Sunshine Atlantic's operations. He testified that the application was made because Sunshine Atlantic has experienced a significant downturn in passengers traveling from China to Canada. In addition to the matters raised in the 2019 hearing, because of the COVID-19 pandemic, China will not issue exit visas to any country for non-essential travel. It appears that Sunshine Atlantic has experienced a significant decline in business. The company is now in survival mode and is asking for more flexibility with its one remaining vehicle.

[15] As noted earlier in this Decision, the application was opposed by Absolute, Coach Atlantic, Markie and Molega. The basic rationales for the objections are:

- Sunshine Atlantic agreed to the License restrictions as part of a negotiated settlement which allowed its original application to proceed unopposed. It would be unfair to amend the terms of the license at this stage.
- The COVID-19 pandemic has had a major impact on all carriers and the timeframe for, and extent of, a recovery remains uncertain.
- There is an excess of equipment in the province.

#### IV LAW

[16] In Nova Scotia, motor carrier transportation services are regulated under the *MC Act*. In general, the *MC Act* regulates motor carrier operators in Nova Scotia to ensure there is a quality, safe, sustainable industry in the province. To accomplish this, the Board has been given the jurisdiction to regulate virtually all aspects of the industry.

[17] The *MC Act* provides the following guidance to the Board on matters it may consider:

##### **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.

These apply equally to amendment applications, ss.12 and 19.

[18] The *MC Act* requires the Board to balance, in each case, the various relevant issues and interests which may overlap and, at times, conflict. In the *Trius Inc.* Decision, dated September 22, 1993, the Board described the s. 13 considerations as follows:

The Board has noted in previous decisions that the various considerations are not mutually exclusive. They tend to overlap and it is difficult at times to isolate one from another. The considerations will not be of equal importance in every application. The weight to be put on various considerations will depend on the facts of each application.

[19] Even when no carrier opposes an application, the Board must be satisfied the application meets the requirements of the *MC Act*, s. 12(3). Furthermore, the Board has the jurisdiction to dismiss an application without a hearing, if the Board is of the opinion the application is not in the public interest (s. 12(3A)).

[20] In each case, the applicant must prove to the Board that, after taking all factors into consideration, the Board should grant the application, *Molega Tours Limited*, 2013 NSUARB 243, para. 23.

## **V ANALYSIS AND FINDINGS**

[21] The objectors argue that there is currently an excess of equipment in a decimated charter market. They say removing the license conditions will put Sunshine Atlantic in direct competition with them. They say this was not what was intended when a settlement was reached in the 2014 proceeding. The economic effect, according to the

objectors, is to simply trade dollars between carriers, thus diluting the financial viability of the objectors, who have the capacity to service the current Nova Scotia charter market.

[22] Sunshine Atlantic says there has been a significant change in the landscape since the settlement agreement was reached in 2014. In addition to the issues associated with the worsening relationship between China and Canada, raised in the 2019 proceeding, which, it must be said, were not stressed in this proceeding, China has restricted all non-essential travel because of the COVID-19 pandemic. Direct travel from China is Sunshine Atlantic's core business. Mr. Deng testified it formed 50 percent of the company's business. He said that, while the applicant has significantly reduced its licensed motor carrier fleet, it needs more flexibility to be able to stay in business. Sunshine Atlantic also points to Fame Tours Inc, another Nova Scotia charter company that was formed to cater primarily to travel from China. It was granted a motor carrier license in October 2017 without license restrictions like the ones in the License, which Sunshine Atlantic says is unfair.

[23] The Board is, of course, aware of the Fame Tours matter [see: *Re Fame Tours Inc.*, 2017 NSUARB 171]. The only parties who objected to that application were Sunshine Atlantic and Bannockburn Tours Ltd. These parties did not ask the Board to impose license conditions like those in the License. They asked the Board to refuse the application in its entirety. The basis for the objections was that there were existing licensed motor carriers who specialized in travel from China, with sufficient equipment to meet demand. There were also concerns about rates and the inexperience of Fame Tours Inc.'s principals.

[24] The Board was satisfied Fame Tours Inc. had put forward a sound business plan for the target market. Based on the circumstances at the time, it held the addition of one licensed vehicle would help to grow tourism from China, without any significant negative impact on the motor carrier industry as a whole. Promoting tourism from China is a goal the Board has accepted is reasonable, given the recommendation in the *Ivany Report* that steps be taken to double provincial tourism revenue by 2024 [see: *Re Sunshine Atlantic Holdings Ltd.*; *Re Pi Yao International Travel Inc.*, 2014 NSUARB 179]. The pandemic obviously impacts this goal.

[25] As indicated during this hearing, although the Board was aware of the license conditions in Sunshine Atlantic's License during the *Fame Tours* proceeding, it did not seek to impose similar conditions, especially where no party was making such a request. The Board was comfortable, based on the details in Fame Tours Inc.'s business plan, that the target market was China and did not see the need to impose license conditions restricting access to the service to passengers originating their trip from a particular geographic area.

[26] Prior to 2019, Sunshine Atlantic's business had grown significantly. This growth was in keeping with the goals discussed when the License was initially granted. Objectors were seemingly unaware of this growth and expressed surprise at the number of vehicles that had been licensed over time. There appeared to be some suggestion that objections would have been raised if the objectors had been aware of the applications.

[27] The Board has reviewed its files and it appears the various applications to add vehicles to the License were advertised in the usual manner, with notice being

provided to the industry. This leads the Board to infer that Sunshine Atlantic followed its original business plan and cultivated tourism originating from China. This would have had no significant impact on the objectors, who do not have the specialized language skills and market connections in Sunshine Atlantic's target market. This might explain why there were few objections to Sunshine Atlantic's requests to add vehicles to the License.

[28] Whether the license conditions played any significant role in limiting Sunshine Atlantic's business to the target market is open to debate. As Ms. Dempster pointed out, although in making a different point, offering tours in Mandarin and Cantonese, in addition to English, is a good indication of the target market and who is likely to take advantage of the services offered by Sunshine Atlantic. On the other hand, clearly Sunshine Atlantic sees the condition as limiting its flexibility in the current market conditions.

[29] Mr. Deng spoke of his company's business model as a travel agency model tied to travellers entering the country, or residing in Toronto, Montreal, and Vancouver. The Board assumes the residents are temporary residents as described in the licensing condition. The applicant offers travel packages to individuals, including hotel, tour guides, and travel facilities, including the licensed motor carrier business. This model is the same as indicated in Sunshine Atlantic's original application. It is not really the same tour group or organized group model which appears to be the objectors' mode of operation. It is unlikely that removing the license conditions will significantly change the business model or the primary target market. It would provide some flexibility as to the countries of origin of the tourists the company is targeting. It could provide more flexibility in advertising.

[30] The Board also raised some concerns with exactly how the Motor Carrier Division could enforce the current license conditions on the ground. To verify whether Sunshine Atlantic is complying with the area of origin conditions in the License, obtaining passport information from individual travellers would probably be required. As well, given the language surrounding permanent residents and students, there are some issues which would require further investigation. It must be kept in mind that the license conditions arose during the original hearing itself, which the Board then attempted to codify in appropriate language. While the Board spent some time canvassing this issue during the current hearing, in the end, it does not form the basis of its final disposition in this matter.

[31] The Board recognizes that the terms of settlement agreements should not be altered except in exceptional circumstances, which were not reasonably within the contemplation of the parties at the time. In this case, the combined impact of a significant diplomatic chill between Canada and China and the COVID-19 pandemic are extraordinary circumstances which could not have reasonably been foreseen by the parties in the original proceeding when the settlement agreement was reached. There is no known end date when these two factors will no longer impact travel to Canada.

[32] If Sunshine Atlantic's business plan had simply not worked, the Board would probably not be inclined to revisit the issue. In this case, Sunshine Atlantic's proposed business model was in fact successful. It led to significant additional investment in the provincial motor carrier industry.

[33] As discussed in *Fame Tours*, protecting the viability of an existing motor carrier industry is a statutory goal, which the Board has emphasized when focusing on

whether there is excess equipment in Nova Scotia. That said, the Board must be careful not to create stagnation in the industry. Sunshine Atlantic has been a successful addition to the Nova Scotia charter market. The company has cultivated a niche market. There is no evidence in this proceeding that other carriers, including the objectors, have been negatively impacted by Sunshine Atlantic's charter business.

[34] Sunshine Atlantic can still be a factor in this niche market, given it can offer its services in some major Chinese languages. Allowing the company to operate, without requiring that the persons who might take advantage of this offering originate their trips from Asia, would mean the potential to attract tourists seeking this type of service from, for example, Canada and the United States, where travel restrictions have eased somewhat. While Sunshine Atlantic wishes to be able to expand to small groups, the main target market would still not be in direct competition with the objectors. In fairness, this would put Sunshine Atlantic on the same footing as Fame Tours Inc.

[35] Since the onset of the COVID-19 pandemic, the Board has repeatedly shown a reluctance to add capacity to the licensed Nova Scotia charter fleet or change license terms that would put increased competition pressures on existing licensed carriers. This matter is distinguishable in that, until the diplomatic chill and pandemic impacts, Sunshine Atlantic was able to offer more seats outside the limiting conditions than it is requesting in this amendment.

[36] Currently, 11 of 14 available seats under the License are subject to the license conditions the company wants removed. Before the divestiture of its vehicles, up to 25 seats were not restricted to travellers originating their trips from Asia. Even after transferring two vehicles to Great Wall, 15 seats were not so restricted. Granting this

application will only add a seating capacity of 11 available to anyone from the general public, for a company which can cater to patrons who speak Mandarin or Cantonese. While the Board recognizes removing the conditions will allow Sunshine Atlantic to change its business model to some extent, this should not be a material change to the current landscape.

[37] The Board, therefore, finds, after considering all the foregoing factors, that granting this application is in the public interest. It recognizes the material and unforeseen change in circumstances since the original settlement agreement in 2014. It does not materially impact the *status quo* with respect to pre-pandemic capacity. It is not likely to create excess equipment which will negatively impact existing motor carriers.

[38] That said, the Board offers a word of caution to Sunshine Atlantic. Much confusion was created at the hearing because of an apparent indication that the company had numerous idle licensed vehicles. Correspondence the day before the hearing appeared to suggest the request to remove the condition would impact more than one licensed vehicle. This may have been the result of some language barrier issues. In any event, at the request of the parties, the Board reviewed the entire licensing history and reported back to the participants.

[39] The Board wants to be clear that the vehicles which have been removed from the License cannot be simply interchanged with the one vehicle which is currently authorized. As Mr. Deng acknowledged during the hearing, adding vehicles to the License at this stage will require an amendment application. Given the positions taken at this hearing, Sunshine Atlantic cannot assume adding such vehicles will be as routine as

many of its past applications. It is likely that the issue of licensing restrictions will resurface.

[40] This decision is based on the particular facts of the matter. It is not a general endorsement for the removal of similar conditions from other licenses. Other licensees, such as Great Wall and Pi Yao, would not have had the same level of increase in seating capacity as Sunshine Atlantic experienced prior to the pandemic. Different considerations might well apply to those carriers.

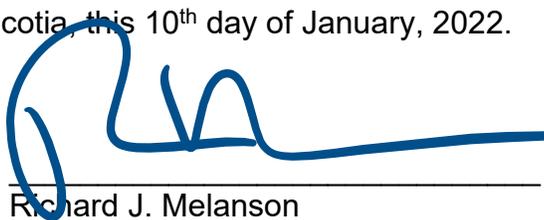
[41] Taking all of the above into account, the Board grants the application by Sunshine Atlantic to amend the License to remove the existing conditions on the charter authority.

## **VI CONCLUSION**

[42] The application to remove the restrictions on the License's charter authority is granted.

[43] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 10<sup>th</sup> day of January, 2022.



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Richard J. Melanson