

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

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

**- and -**

**IN THE MATTER OF AN APPLICATION by ROCKINGRIDERS TRANSPORTATION INC. for a Motor Carrier License**

**BEFORE:** Richard J. Melanson, LL.B., Member

**APPLICANT:** **ROCKINGRIDERS TRANSPORTATION INC.**  
Shailender Singh

**INTERVENORS:** **COACH ATLANTIC TRANSPORTATION GROUP INC.**  
**TRI-MARITIME BUS NETWORK INC.**  
Ryan Cassidy, Director of People and Processes

**HALIFAX TITANIC HISTORICAL TOURS**  
Paul McNeil, Owner/Operator

**THARIQ ALI O/A PRESTIGE LIMOUSINE**  
Thariq Ali, Owner/Operator

**TRANSOVERLAND LIMITED**  
Jamie Callaghan, Office Manager

**A WORLD CLASS LIMOUSINE COMPANY LIMITED**  
Josh Chabinka, President

**JOHN JEFFREY BABINEAU O/A TOURS**  
John Jeffrey Babineau, Owner/Operator

**HEARING DATE:** November 30, 2023

**FINAL SUBMISSIONS:** November 30, 2023

**DECISION DATE:** February 27, 2024

**DECISION:** The application is denied.

## Table of Contents

I	INTRODUCTION .....	4
II	ISSUES .....	5
III	BACKGROUND .....	5
IV	LAW.....	7
V	ANALYSIS AND FINDINGS .....	9
VI	SUMMARY .....	15
VII	CONCLUSION.....	15

## I INTRODUCTION

[1] RockingRiders Transportation Inc. (RockingRiders) applied to the Board for a motor carrier license, pursuant to the *Motor Carrier Act*, R.S.N.S. 1989, c.292 (*MCA*). RockingRiders has a business address at Unit 1505, 5214 Gerrish Street, Halifax, Nova Scotia. The applicant seeks a motor carrier license to operate one 14-passenger vehicle. While the application describes the various services RockingRiders proposes to offer in some detail, if granted, this will be an open license to provide charter services within the Province of Nova Scotia.

[2] RockingRiders' primary initial target market will be the international student population who are enrolled in educational institutions in Sydney but living in Halifax because of a lack of housing and job opportunities in Sydney. RockingRiders did not limit its application to this target demographic. The application cannot, therefore, be described as serving a niche market. RockingRiders has not established, on a balance of probabilities, that there is a need for the proposed service.

[3] The applicant has also not demonstrated that even if there was a need, it could not be served by other licensed carriers, at least for all the various tour options described in the application. The granting of this licence is likely to create excess equipment in the general charter market.

[4] The Board is also not satisfied with some of the answers provided about whether the applicant had been operating without a motor carrier license when providing services that required one. The Board denies the application.

## **II ISSUES**

[5] The issue to be determined is whether RockingRiders should be granted a motor carrier license. The Board must decide if RockingRiders has established a need for the proposed service and whether it can provide a quality service in a safe, reliable, and sustainable manner.

## **III BACKGROUND**

[6] RockingRiders applied for a motor carrier license described as:

OPERATING AUTHORITY – Schedule F:

F(1) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE.

Shuttle transportation of any individual or group from anywhere in the Halifax Regional Municipality to anywhere in the Province of Nova Scotia and return.

F(2) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE.

Transportation of university students from anywhere in Halifax Regional Municipality to any university in Nova Scotia located outside of Halifax Regional Municipality, including Cape Breton University, and return.

F(3) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE

Transportation of any individual or group from anywhere in Halifax Regional Municipality to Halifax Stanfield International Airport or return.

F(4) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE

Transportation of any individual or group from anywhere in Halifax Regional Municipality to any local tourist attractions and return.

VEHICLES – Schedule E(1):

One 14-passenger vehicle, to be determined.

RATES, TOLLS, AND CHARGES – Schedule D:

D(1) RATES:

\$2.00 per kilometre

Minimum 8 passengers, maximum 14 passengers.

D(2) RATES:

For Cape Breton University:

Halifax to Sydney or vice versa - \$90 per trip

For universities located outside HRM but not in Cape Breton:

\$2.00 per kilometre or \$45.00 per hour

Minimum 8 passengers, maximum 14 passengers

D(3) RATES:

Halifax to Airport or vice versa - \$250 per trip

Minimum 8 passengers, maximum 14 passengers

D(4) RATES:

\$2.00 per kilometre or \$45.00 per hour

TIMETABLES – Schedule C:

C(1) TIMETABLES:

Monday to Saturday

Depart Halifax Regional Municipality between 2:30 and 3:00 a.m. and arrive in Sydney approximately 8:00 – 8:30 a.m.

Depart Sydney between 6:00 and 7:00 p.m. and arrive in Halifax approximately 11:00 p.m. – 12:00 a.m.

[Notice of Application]

[7] A Notice of Application was advertised in the Royal Gazette on September 27, 2023, as well as posted on the Board's website and forwarded to licensed motor carriers by email, fax, or mail. The following licensed carriers objected to the application:

- Coach Atlantic Transportation Group Inc. (Coach Atlantic);
- Tri-Maritime Bus Network Inc. (Tri-Maritime);
- Paul MacNeil o/a Halifax Titanic Historical Tours (Titanic);
- Thariq Ali o/a Prestige Limousine (Prestige);
- Transoverland Limited (Transoverland);
- A World Class Limousine Company Limited (World Class); and
- John Jeffrey Babineau o/a Anchor Tours.

[8] A virtual hearing to consider the matter was held on the *GoToWebinar* platform on November 30, 2023. The Notice of Hearing provided dates for submissions or documentation to be filed in advance of the hearing.

[9] RockingRiders was represented by its owner, Shailender Singh. Ryan Cassidy spoke on behalf of Coach Atlantic and Tri-Maritime. He is on their operations team. Paul MacNeil is the owner/operator of Titanic. Thariq (Tye) Ali is the owner/operator of Prestige. Josh Chabinka is the President of World Class, and John Jeffrey (Jeff) Babineau is the owner/operator of Anchor Tours. Transoverland did not participate in the hearing. Mr. Ali left the hearing at some point in the proceedings and did not make submissions or give evidence.

[10] The Board has summarized the key points raised by the objectors:

- the market is saturated with 14-passenger vans;
- there is a lack of hard evidence about the need for the service;
- the evidence about potential ridership was based on people looking to share rides and expenses;
- as this is an open-ended licence, the service will be in direct competition with most of the objectors;
- one 14-passenger vehicle would not be sufficient to provide a quality service given the scope of the authorizations requested; and
- more than one driver would likely be required to provide the Halifax to Sydney service.

#### **IV LAW**

[11] The principles and tests the Board applies with respect to this type of application are well known in the provincial motor carrier industry. They have been

reiterated on many occasions and are well summarized in *Re Pengbo Fu o/a Pengbo's Shuttle*, 2020 NSUARB 87, affirmed 2020 NSCA 83, at paras. [44] to [47] and [51]:

[44] In Nova Scotia, motor carrier transportation services are regulated under the *Motor Carrier Act (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.

[45] 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.

[46] Thus, in assessing an application, the Board considers, among other factors in s. 13, 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. In addressing whether there would be an excess of equipment under s. 13(a) above, the Board must consider whether there are vehicles currently licensed which could provide the services applied for. In other words, is there a need for the services and/or equipment sought by the Applicant?

[47] 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.

...

[51] 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**

[12] The Board has provided some guidance as to the type of evidence it generally expects applicants and objectors to provide in a contested matter. In *Re 3259293 Nova Scotia Limited o/a Grape Escape Wine Tours of Nova Scotia*, 2023 NSUARB 160, the Board made the following comments:

### **Quality of Evidence**

[35] There is an obligation on the part of an applicant to provide cogent and tangible evidence supporting the need for the requested license. While it is up to an applicant to decide how the application is presented to the Board, it is reasonable to expect that an applicant would provide evidence about how it intends to operate and the potential clientele. Preferably, this should be a written business plan, but at a minimum at least some documentation is required to support the application. This might include:

- financial projections of forecasted revenues and expenses, including operating expenses such as salaries, fuel, insurance, repairs and maintenance, as well as expenses to purchase, lease, or finance the motor coach, bus, minibus, van or limousine to be used in the business;
- any financial analysis undertaken including projected ridership and breakeven points based on a few assumptions;
- the qualifications, training and experience of the applicant and key employees to manage and operate a safe and sustainable motor carrier business; and
- a marketing or sales plan about the target market, how the applicant intends to attract its clients, and more importantly, to demonstrate to the Board that this clientele is not already being served by the existing motor carrier industry. This type of evidence would generally include:
  1. letters and emails from potential clients who tried to hire existing carriers but were refused because the carriers were not available,
  2. letters or emails of support from potential clients that show there is a “niche” market that is not adequately served by existing carriers, and
  3. survey or market research that demonstrates the size of the market and demand for any increased service.

[36] The documentation should be filed in advance of the hearing. Depending on the sophistication of the business, the documentation should normally include a *pro forma*

income statement supported by estimates or quotes from potential suppliers; diplomas, training certificates and résumés of the owner/operator and key employees; and letters of support and testimonials from potential clients, groups and associations describing why the new service is needed and cannot be served by existing motor carriers. Where the application is opposed, those who wrote letters of support may be required to appear at the hearing if required by the objectors and the Board.

[37] In this application, as discussed, Ms. Downey Lim presented some of this evidence including contracts that showed increased ridership, emails of support, and evidence that the niche is not already being served by the existing motor carrier industry.

[38] The Board recently expressed concern about the quality of the evidence presented by applicants and objectors in motor carrier matters. In *Re McNeil, operating as Halifax Titanic Historical Tours*, 2023 NSUARB 138, the Board made the following comments:

Except for the general proposition that it is desirable that customers have options in transportation, which the Board fully accepts, Mr. McNeil has provided no verifiable evidence about the current need for the general charter services he proposes. The Board finds the evidence supporting this application is lacking. While the quality of the evidence advanced by the objectors might be similarly criticized and may not have withstood a more cogent presentation of evidence supporting the application, they do not bear the ultimate burden in this proceeding.

[39] In this case, Grape Escape provided cogent documentary evidence in support of its application. Where an applicant has provided substantial evidence to establish, on the balance of probabilities, if accepted, that an application should be granted, the Board expects an objector would provide evidence of sufficient quality to support the proposition that it should not.

[40] This is not shifting the burden of proof but recognizing that where an application cannot clearly be rejected because of a lack of verifiable evidence presented by the applicant, there is some evidentiary burden to establish the opposite proposition advanced by an objector. While an objector can attempt to succeed by merely challenging the applicant's evidence or positions, there is a real risk of falling short as occurred in this proceeding.

[41] While it is up to objectors to determine how they present their case, having some verifiable evidence would be helpful in the Board's deliberations. While not necessarily applicable to every case, this could include:

- Utilization data about the vehicles authorized under an objector's license and whether in fact there was availability at a reasonably comparable price to address the applicant's lack of ability to meet demands with its existing fleet.
- Financial statements showing the profit or loss trends of an objector's motor carrier business.
- Documentation showing whether in fact the objector's business is in competition with the applicants. This could include promotional materials and the point of origin of the objector's tours.
- Survey, market research, or other verifiable evidence that demonstrates the market has reached a saturation point.

[42] The Board recognizes some of this information could potentially be commercially sensitive. The economic regulation of a competitive industry is not without challenges in these circumstances. However, s. 12 of the Board Regulatory Rules allows the Board to

protect confidential information, including potentially sensitive commercial information, in the appropriate circumstances.

[13] RockingRiders provided a business plan. The applicant did not request confidentiality for this document. The business plan provided a summary of start-up costs, projected revenues and profits, and a break-even analysis. The plan also discussed a target market and potential marketing strategies.

[14] Initially, RockingRiders plans to primarily target the international student market. Mr. Singh explained there are many students who attend education institutions in Sydney but live in Halifax. This is primarily due to the lack of rental units and job opportunities in Sydney. This evidence is consistent with what the Board heard in another matter [see: *Re Now Rent Easy*, 2024 NSUARB 33].

[15] It is very difficult for the Board to assess the reasonableness of the assumptions in the business plan because of the lack of cogent evidence about demand for this proposed service. RockingRiders relied primarily on postings from groups on the WhatsApp Messenger platform to establish a market demand for the international student service. The Board accepts that this is a widely used service for posting various types of messages in a group chat format. Mr. Singh testified he had joined some 15 to 20 chat groups. The difficulty the Board has with using the WhatsApp data is that, although Mr. Singh said one group alone had 100,000 members, he provided only a small number of people who were looking for transportation to and from Sydney.

[16] Another issue the Board has with the WhatsApp data is that from the limited information available, students appear to be searching for ride-share opportunities. In this context, the Board agrees with some objectors that people sharing expenses for a

ride are not part of the same market as those willing to pay the rates for a charter service proposed by RockingRiders.

[17] The Board has a further concern about the evidence provided to support the need for, and the quality of service, RockingRiders emphasizes in its business plan. RockingRiders filed screenshots of six email chains dated October 22, 2023. While not in precisely the same language, the authors indicated they were happy or impressed with the service provided by Mr. Singh. There were indications the service was professional, courteous, timely or reliable, and affordable. Some authors indicated they wished Mr. Singh had more seating capacity or a larger van. The wording of these emails leaves the Board with the impression that a transportation service was already being offered at a price without a license.

[18] Mr. Singh explained that he used his personal vehicle, a Honda Odyssey, to transport passengers. He said he went from Halifax to Sydney "...four times. Or a very few times." He indicated it was a ride-share situation. He said some passengers were friends. He initially said some people were charged an amount while others were not. When questioned by Mr. MacNeil, Mr. Singh then further clarified that he just took money for gas from some passengers. The Board is skeptical about these responses. The filed emails spoke of the affordability and professionalism of the service offered by Mr. Singh. In expressing support for his obtaining a larger vehicle to provide the service, it seems unlikely the passengers were talking about a ride-share service for gas money.

[19] With respect to sustainability, Mr. Singh advised the Board he did not anticipate going back and forth to Sydney every day. He said he planned to go once or twice per week. This was in response to questions about how RockingRiders would

schedule and manage its trips. Mr. Singh also indicated he would be the only driver, although he would prefer to have two. Mr. Singh further testified that if he had a bare minimum of three trips per month, with a minimum of eight passengers and a maximum of 14 passengers, he would reach the break-even assumptions in his business plan.

[20] When questioned by Mr. Cassidy about scheduling based on demand, Mr. Singh first stated if he had five or six passengers for a particular day, he would advise he would be making the trip that day. When the Panel interjected to point out that his application appeared to call for a minimum of eight passengers, Mr. Singh said he was talking about his Honda Odyssey when discussing a minimum of five or six passengers. While the clarification is appreciated for the purposes of looking at the sustainability of the proposed service, it again raises a question as to what service Mr. Singh provided with his personal vehicle. The Board finds it is more likely than not that a charter service was being provided for a fee. This is another consideration relating to s.13(c) of the *MCA* that weighs against granting this application. Proper service includes abiding by the legislative regulatory scheme.

[21] The Board notes there is insufficient cogent evidence in this application to indicate that the proposed student charter service between Sydney and Halifax is needed or sustainable. This is somewhat different than the *Now Rent Easy* matter, where at least there was evidence of some demand for a charter service, from tenants of the applicant, at charter rates. Even there, the Board found there was insufficient evidence to establish a need for the service on a permanent and sustainable basis.

[22] The applicant presented no cogent evidence for all the other tour and charter services he requested be a part of his license, including transportation services

to universities not located in Sydney. The evidence of this larger market need is either very general in nature, or anecdotal about the travels of Mr. Singh's friends and acquaintances. The Board finds this is insufficient to support a finding that a new permanent license for charters throughout the province will either be needed or sustainable.

[23] The applicant provided no reliable evidence that any of the potential clients had attempted to book services with other licensed carriers and been unable to obtain such services. While the available evidence from the chat platforms indicates there were searches for transportation to Sydney, again, these searches appear to be for ride-sharing transportation.

[24] The Board is aware from the licenses held by the objectors, all of which form part of the record, that Anchor Tours, Prestige, Titanic, and World Class all offer charters with vehicles similar to that proposed by RockingRiders. To that extent, the submissions, based on general evidence provided at the hearing, that they will be impacted by the grant of this license, have some merit. However, they can be given limited weight given the lack of hard evidence presented.

[25] The Board notes that none of the objectors presented documented evidence about the impact the proposed service would have on their businesses. Instead, there were some generalities about the excess of equipment and difficult market conditions. Mr. Singh rightly pointed out how this approach made it difficult to provide a response. The Board agrees, and if RockingRiders had provided sufficient cogent evidence to establish a need for the proposed services, the objectors approach would raise the same concerns discussed in *Grape Escape*.

[26] The Board further notes that this is not a case where the applicant seeks to cater to a niche market, not serviced by other carriers, such as discussed in the *Now Rent Easy* matter. It is not meant to address a special need like the *Now Rent Easy* matter, where the applicant was attempting to alleviate some travel issues for its tenants. Therefore, the considerations in favour of providing service to niche markets discussed in that case are not relevant to this matter.

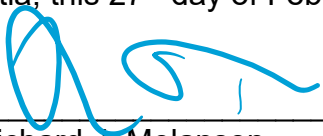
## VI SUMMARY

[27] In the final analysis, the applicant has simply not provided sufficient evidence to establish the need for this service. Many similar services are already being provided by the motor carrier industry. The Board is further concerned that Mr. Singh likely offered charter services without a motor carrier license. The Board, therefore, denies this application.

## VII CONCLUSION

[28] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 27<sup>th</sup> day of February, 2024.

  
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Richard J. Melanson