

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF Commercial Vehicle License Number CV03429 issued to **8177201 CANADA LTD. o/a SEESIGHT TOURS**

BEFORE: Roland A. Deveau, K.C., Vice Chair

LICENSEE: **8177201 CANADA LTD. o/a SEESIGHT TOURS**

INTERVENORS: **John Jeffrey (Jeff) Babineau o/a ANCHOR TOURS**
Paul MacNeil o/a HALIFAX TITANIC HISTORICAL TOURS

BOARD COUNSEL: William L. Mahody, K.C.

HEARING DATE: April 24 and June 6, 2024

UNDERTAKINGS: June 24, 2024

DECISION DATE: **September 23, 2024**

DECISION: **The Licensee contravened various sections of the *Motor Carrier Act* and *Regulations*. A further hearing will be scheduled to consider whether the license should be cancelled, suspended or other resolution ordered.**

Table of Contents

I	SUMMARY	3
II	PROCESS	5
III	ISSUE	6
IV	LEGAL REQUIREMENTS FOR COMMERCIAL VEHICLES.....	6
V	EVIDENCE	10
	(i) SeeSight Tours.....	10
	(ii) Board Counsel Witnesses – Motor Carrier Inspectors.....	14
	(iii) Interested Parties	16
VI	FINDINGS	22
	(i) Failing to cross the HRM municipal boundary	22
	(ii) Operating a motor vehicle without the proper class of driver’s license	24
	(iii) Failing to provide driver hours of service log	25
	(iv) Operating a vehicle with tire treads below 4/32”	25
	(v) Parking illegally in an accessible parking zone.....	26
	(vi) Operating a vehicle without appropriate child restraint systems.....	27
VII	CONCLUSION.....	27

I SUMMARY

[1] The Board received complaints that SeeSight Tours was contravening the *Motor Carrier Act* and the *Board Public Passenger Motor Carrier Act Regulations* in the operation of its Commercial Vehicle license by failing to cross a municipal boundary on its tours in Halifax Regional Municipality (HRM) to Peggy's Cove.

[2] Under the *Regulations*, a Commercial Vehicle is defined as a public passenger vehicle that has a seating capacity of 8 passengers or less (excluding the driver) that provides tours or charters. The *Regulations* require Commercial Vehicles to cross a municipal boundary on any tour or charter. They may not be used for transportation solely within a municipality, such as driving students from the Halifax Peninsula to the Airport or from the Peninsula to Peggy's Cove. Those services are regulated by the municipalities, in this case under the Halifax Taxi By-law.

[3] On February 29, 2024, the Board issued a Notice to Appear to SeeSight Tours directing it to attend before the Board and be given an opportunity to provide any evidence and/or arguments about whether its Commercial Vehicle license should be cancelled, suspended or other available resolution ordered because it operated contrary to the provisions of the Commercial Vehicle license, the *Motor Carrier Act* and the *Regulations*, by failing to cross a municipal boundary on its trips, and any other breaches which may become known to the Board in the proceedings.

[4] Before the hearing, Board Counsel provided SeeSight Tours with copies of evidence he intended to present at the show cause hearing. Board Counsel called two motor carrier inspectors as witnesses at the hearing. Two existing motor carriers also

asked to participate in the hearing: Paul MacNeil, owner and operator of Halifax Titanic Historical Tours, and John Jeffrey (Jeff) Babineau, owner and operator of Anchor Tours.

[5] The hearing occurred on April 24, 2024, and continued on June 6, 2024. At the conclusion of the hearing, the Board indicated that it would first render its written decision on whether the Licensee contravened the requirements of the Commercial Vehicle license under the *Motor Carrier Act and Regulations*. If the Board concluded that the Licensee contravened the *Motor Carrier Act and Regulations*, it would schedule a further hearing to hear submissions from the parties on whether the Commercial Vehicle license should be cancelled, suspended or other resolution ordered. If the Licensee complied with the requirements of the Commercial Vehicle license, no further hearing would be required.

[6] Following its review of the evidence, the Board has concluded that SeeSight Tours contravened various provisions of the *Motor Carrier Act*, the *Motor Vehicle Act*, and the *Regulations*, including that it regularly failed to cross the HRM municipal boundary on tours from downtown Halifax to Peggy's Cove; that its drivers operated the Commercial Vehicles without the proper class of driver's license; that it failed to provide a driver's hours of service record when requested; and that it operated a Commercial Vehicle with worn tires below the required tread depth.

[7] The Board will schedule a further hearing to hear submissions from the parties on whether the Commercial Vehicle license should be cancelled, suspended or other resolution ordered.

II PROCESS

[8] The Board received complaints that SeeSight Tours was contravening the *Motor Carrier Act (Act)* and the *Board Public Passenger Motor Carrier Act Regulations (Regulations)* in the operation of its Commercial Vehicle license by failing to cross a municipal boundary on its tours in HRM to Peggy's Cove. A group of licenced carriers filed a petition on November 2, 2023, requesting that the Board hold a public hearing into these allegations.

[9] On February 29, 2024, the Board issued a Notice to Appear directing 8177201 Canada Ltd., operating as SeeSight Tours (Licensee), to attend before the Board on April 24, 2024, and that it be given an opportunity to provide any evidence and/or arguments about whether its Commercial Vehicle (CV) License should be cancelled, suspended or other available resolution ordered because of:

1. operating illegally contrary to the provisions of the License, the *Motor Carrier Act, R.S.N.S. 1989, c. 292*, and the *Board Public Passenger Motor Carrier Act Regulations*, by failing to cross a municipal boundary on its trips;
2. advertising, booking, and providing transportation services it was not licensed to perform; and
3. any other breaches which become known to the Board in the proceedings.

[10] SeeSight Tours was also directed to attend with all documents relating to its services, in particular, its services to Peggy's Cove, including invoices, website, itineraries and advertisements. The Notice informed SeeSight Tours that if it failed to appear, the hearing would proceed on April 24, 2024, in its absence.

[11] The Notice indicated that, by March 29, 2024, the Licensee would be provided copies of evidence Board Counsel intended to present at the show cause hearing.

[12] The hearing occurred on April 24, 2024, and continued on June 6, 2024.

[13] The Board approved the request of two existing motor carriers to participate in the hearing: Paul MacNeil, owner and operator of Halifax Titanic Historical Tours, and John Jeffrey (Jeff) Babineau, owner and operator of Anchor Tours.

III ISSUE

[14] The sole issue to be decided in this decision is whether the Licensee contravened the *Act* and *Regulations*?

[15] Following its review of the evidence, the Board concludes that SeeSight Tours contravened the *Act* and the *Regulations*. The Board's reasons are explained below.

IV LEGAL REQUIREMENTS FOR COMMERCIAL VEHICLES

[16] Commercial vehicles licensed by the Board under the *Regulations* are only permitted to provide charter or tour services for people traveling across a municipal boundary. CVs may not be used for transportation solely within a municipality, such as driving students from the Halifax Peninsula to the Halifax Airport or from the Peninsula to Peggy's Cove. Those services are regulated by the municipalities, in this case under the Halifax Taxi Bylaw. *Regulation 2(j)* requires a CV to cross a municipal boundary:

- 2 (j) "commercial vehicle" means a public passenger vehicle that has a seating capacity of 8 passengers or less excluding the driver, and that provides a

- (i) daily, weekly, or other regular service, or
- (ii) charter or tour service

that enters or departs any municipality, but, for greater certainty, does not include a commuter vehicle, courtesy vehicle or taxicab; [Emphasis added]

[17] The definition of “municipality” includes a regional municipality:

2 (t) “municipality” means a regional municipality, town, or county or district municipality;

[18] Section 5 of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39,

s. 5 (*Charter*) states the HRM is the geographical area of the County of Halifax:

5 The inhabitants of the County of Halifax are, and continue to be, a body corporate under the name "Halifax Regional Municipality". [Emphasis added]

[19] Anyone wanting to provide a tour to Peggy’s Cove from downtown Halifax with their vans may do so upon obtaining a taxi license from HRM, after meeting the requirements of the HRM Taxi Bylaw. SeeSight Tours did not have a taxi license. If an operator wants to provide tours to Peggy’s Cove from downtown Halifax with a CV, the tour must cross the HRM municipal boundary at some point. In the case of Peggy’s Cove, the closest location to crossing the HRM boundary is in the vicinity of Hubbards, in the Municipality of the District of Chester.

[20] For greater context, there are only two practical routes that can be taken from Halifax to Peggy’s Cove. The shortest route from downtown Halifax is along Highway #333, arriving at Peggy’s Cove from the east. However, this route does not cross HRM’s municipal boundary. The alternative route from downtown Halifax starts along Highway #103 (Highway #3 is an alternative to Highway #103, but takes much longer because it runs through communities and, for practical purposes, is not used by CV operators). Traveling along Highway #103, the route crosses the HRM municipal boundary in the vicinity of Hubbards and the CVs use exit #6 near Simms Settlement to leave highway

#103. The route then travels along a part of Highway #3, then along a different part of Highway #333 to reach Peggy's Cove from the westerly direction.

[21] The direct route along Highway #333 is shorter but does not cross the HRM municipal boundary. According to evidence described below in this decision, which the Board accepts, the direct route along Highway #333 takes about 51 minutes.

[22] The longer route, which travels along Highway #103, #3 and #333, takes about 1 hour 30 minutes. However, this route crosses the HRM municipal boundary near Hubbards and it must be taken by CV operators either inbound to, or outbound from, Peggy's Cove.

[23] The Board has the authority to cancel or suspend a license if the operator has operated in contravention of the *Act* and *Regulations*.

Variation or suspension or cancellation of license

19 (1) The Board may, at any time or from time to time, amend or suspend any license or may, for cause, and after a hearing upon such notice as the Board may direct, cancel any licence.

(2) When deciding whether to amend, suspend or cancel a license pursuant to subsection (1), the Board shall take into consideration the factors enumerated in Section 13.

[24] The *Act* and the *Regulations* also outline safety requirements for public passenger vehicles. There are also other requirements under the *Motor Vehicle Act* and its *Regulations*, including equipment safety standards and child restraint systems (i.e., car seats), which will be canvassed in greater detail below in this decision.

[25] CV operators in Nova Scotia must comply with the province's regulatory framework. In a decision about a show cause hearing to consider whether a CV operator complied with its CV license (see *Driver Dave's*, 2013 NSUARB 49, M05501), the Board stated:

[23] The objects of the *MC Act*, stated broadly, are to ensure there are safe, quality and sustainable public passenger services which best meet the interests of the traveling public within, to, and from Nova Scotia.

[24] Important factors affecting the industry include the fact that generally, the costs of investing in the motor carrier industry are high; see *Trius Tours Limited*, 2003 NSUARB 71, para. 62 and most recently the *Discount Review Interim Decision*, 2013 NSUARB 21, para. 76.

[25] This large capital investment, along with a number of unique factors in Nova Scotia, affect the sustainability of the industry. The population in Nova Scotia is scattered and demand for services is low in comparison to more densely populated regions of the country. Tourism is important, but it is a short season. Despite this short season, the capital investment must be paid year round. There are no subsidies such as gas rebates given in some provinces, except for those few operating under a community program in rural areas.

[26] Consequently, the sustainability of the industry is largely dependent upon not licensing an excessive number of vehicles and regulating the rates the carriers charge. Although rates must be sufficient to cover the costs of operating the service and providing some profit to the carrier, equally important, the rates cannot be predatory. Rates cannot be purely to obtain customers from other legally operating transportation services. Predatory rates jeopardize the existence of other carriers and other transportation providers.

[27] Considering the large capital investment, it is not financially prudent for people to make an investment in the industry if there is no reasonable prospect of recovering their investment with a profit. A practical outcome is that people and corporations eventually stop investing in the industry and transportation services may then be lost to the public unless supported by government subsidies.

[28] To ensure there is a motor coach industry, the *MC Act* requires the Board to regulate virtually every aspect of the industry from routes and vehicles to rates.

[2013 NSUARB 49, paras. 23-28]

[26] The Board does not regulate the rates charged by CV vehicles. CV operators may charge what they wish. Further, the Board does not regulate the number of CVs in the market. Anyone may license one or more CV vehicles. However, CV vehicles are subject to the inspection regime under the *Act* and *Regulations* that require them to be inspected every six months.

[27] On the other hand, the remaining motor carrier charter industry is economically regulated by the Board, including mini-buses, activity buses (like school bus type vehicles) and large motor coaches. The Board sets the rates for the charter industry,

and it regulates how many motor carriers can enter the charter market, the number of vehicles they can use, and the areas they can serve.

[28] However, sustainability applies to both the charter industry and to CV operators. In addition to the above comments, the regulatory framework under the *Act* and the *Regulations* requires CV licensees to operate within the requirements imposed on CVs so that they do not compete illegally with other licensed carriers. This requires that CV licensees comply with the requirements that apply to other CV vehicles (i.e., the geographic requirement to cross a municipal boundary on every trip) and that they do not provide charter or tour services that are only allowed to be offered by motor carrier operators who hold a charter authority granted by the Board. The sustainability of all participants in the motor carrier industry is only assured if all operators follow the rules that apply to them. If not, other operators will be negatively impacted.

V EVIDENCE

(i) SeeSight Tours

[29] Adrian White appeared on the first day of the show cause hearing for the Licensee. He was the Licensee's Director of Operations and Business Development for North America. SeeSight Tours operates across 22 cities. He noted that the business recently made a branding change and is now called Tripshepherd. The Board will continue to refer to the Licensee as SeeSight Tours in this decision, but any reference to Tripshepherd in excerpts from the testimony or exhibits is a reference to SeeSight Tours. The business offers small group tours to popular destinations in North America, like Peggy's Cove.

[30] At the resumption of the hearing on June 6, 2024, John Albrecht appeared for the Licensee instead of Mr. White, who had left the organization. Mr. Albrecht is the Licensee's Operations Manager.

[31] Mr. White said that the Licensee entered the Halifax market in about 2019. When it started operating in the province, SeeSight Tours was under the impression that it did not require a taxi license from HRM for tour vehicles under seven passengers. It also understood it was not regulated by the Board under the *Motor Carrier Act*. It based this understanding on its experience with regulatory frameworks in other jurisdictions.

[32] After suspending its tour services during COVID-19, it resumed its operations, but learned in July 2022 that it was non-compliant with HRM's Taxi Bylaw. It required a taxi license to operate within the HRM, but its business model conflicted with some of the taxi licensing requirements.

[33] The Licensee's activities in the Nova Scotia market can be described as being divided in three stages, as follows:

- Up to August 30, 2022 – SeeSight Tours continued operating in HRM, attempting to secure a taxi license from the Municipality, but believing it did not require a motor carrier license to operate tours from Halifax to Peggy's Cove;
- From August 31, 2022, to November 3, 2022 – Having been denied a taxi license from HRM, SeeSight Tours began the process of applying for a CV license from the Board. During this period, SeeSight Tours continued its tours to Peggy's Cove and other Halifax destinations, like Citadel Hill; and

- November 3, 2022, to the present – SeeSight Tours received its CV license and has since operated in Nova Scotia. When it originally received its CV license, it had six vehicles under its licence, but later added more vehicles.

[34] To provide further context, the Board will briefly review Mr. White's testimony about the two earlier stages, but the issue to be considered by the Board in this show cause hearing is whether the Licensee contravened the *Act* and *Regulations*. Accordingly, the Board will focus its discussion on the third stage, i.e., the Licensee's activities after November 3, 2022, when it was granted a Board-approved CV license. SeeSight Tour's activities before November 3, 2022, did not fall under the scope of the Board's jurisdiction because it was not licensed.

[35] Mr. White testified that the municipal taxi licensing regime was more prescriptive than what he had observed in other jurisdictions, such as Niagara Falls, Ontario, where the Licensee has an extensive tour business. He submitted HRM's licensing regime does not address tour operators like SeeSight Tours, adding that HRM's taxi licensing does not contemplate tours to Peggy's Cove, which are outside the downtown core. He was advised in July 2022 that SeeSight Tour's business model did not meet the requirements of the HRM Taxi Bylaw and decided to apply for a CV license issued by the Board. After engaging HRM staff he was hopeful that there would be changes to the HRM Taxi Bylaw to address his concerns, but these changes did not proceed to Council. He applied to the Board for a CV license on August 31, 2022. After satisfying the insurance and inspection requirements under the *Regulations*, SeeSight Tours was issued CV license No. CV03429 on November 3, 2022.

[36] Mr. White acknowledged both in his testimony and on cross-examination by Board Counsel that, as early as August 2022, the Clerk of the Board advised him that CVs must leave and re-enter HRM with each tour group of passengers to satisfy the requirements of a CV license.

[37] Mr. White testified that, after he filed the CV application, SeeSight Tours thought it could continue to conduct its tours to Peggy's Cove while he was making arrangements to have the CV vehicles inspected under the *Regulations* by motor carrier inspectors. He learned in mid-September that SeeSight Tours could not offer tours until its vehicles were inspected and it had been issued its CV license. He said that it then gave refund vouchers to all customers who took tours before the CV license was issued so the tours would be free of charge.

[38] Mr. White acknowledged various concerns which led the Board to initiate this show cause hearing. These issues are outlined in greater detail later in this decision by various witnesses, including by inspectors of the Motor Carrier Division. He said "sadly we were uneducated on some elements of these specific license requirements." Mr. White's specific response to each of the alleged infractions will be addressed later in this decision. However, in general terms, Mr. White asserted the Licensee's commitment to comply with the *Regulations*. He noted there were transitional difficulties in adopting to Nova Scotia's different licensing regime; in the training of new drivers; failures in the onboarding process to track driver licensing; and in providing the proper vehicle pre-trip and post-trip inspection reports and hours of service logs.

[39] Mr. White stated that his instructions to drivers were clear that any trips to Peggy's Cove had to cross the municipal boundary of the Halifax Regional Municipality, either inbound to the destination, or on the return trip to Halifax.

[40] Mr. White also sought to assure the Board that the Licensee was committed to the safety aspects of the *Regulations* and that any operational procedures related to safety would be addressed. He noted that the Licensee's Employee Code of Conduct was revised in January 2024.

(ii) Board Counsel Witnesses – Motor Carrier Inspectors

a) Keith Carter

[41] Keith Carter has been an inspector with the Motor Carrier Division of the Department of Transportation and Infrastructure for three years, with prior experience in vehicle transportation inspections. The bulk of his daily activities are vehicle inspections and the related paperwork, as well as answering industry queries. Mr. Carter said that new companies are generally assigned to an inspector upon receiving a license so there can be an orientation to the regulatory requirements, responding to any questions, and carrying out the initial vehicle inspections. He said that he was assigned to SeeSight Tours and that he had various meetings with Mr. White and others of SeeSight Tours to review the requirements of CV licenses. He added that he met them again after the various infraction reports (described below) were issued to SeeSight Tours, so that the regulatory requirements could be re-confirmed with the Licensee.

[42] Inspector Carter issued the following violation report to SeeSight Tours on July 24, 2023:

- Report #2379 – July 24, 2023 (Peggy’s Point) – Driver unable to access driver hours of service logs.

b) Alain Bilodeau

[43] Alain Bilodeau has been a motor carrier inspector with Vehicle Transportation Inspections (Department of Transportation and Infrastructure) for over eight years. He has been a licensed truck and transport mechanic since 1988. He carries out the six-month inspections on licensed public passenger vehicles and conducts patrols and roadside inspections in the field.

[44] Inspector Bilodeau issued six violation reports to SeeSight Tours drivers in 2023, as follows:

- Report #1638 – July 19, 2023 (Peggy’s Cove) – Operating a motor vehicle without proper class of driver’s license (Driver M. Goodwin);
- Report #1639 – July 19, 2023 (Peggy’s Cove) – Operating a public passenger vehicle outside authority of the license (i.e., did not cross municipal boundary) (Driver M. Goodwin);
- Report #1640 – July 19, 2023 (Peggy’s Cove) – Operating a motor vehicle without proper class of driver’s license (Driver W. Flood);
- Report #1641 – July 19, 2023 (Peggy’s Cove) – Operating a public passenger vehicle outside authority of the license (i.e., did not cross municipal boundary) (Driver W. Flood);

- Report #1644 – August 22, 2023 (Peggy’s Cove) – Operating a public passenger vehicle outside authority of the license (i.e., did not cross municipal boundary) (Driver W. Flood); and
- Report #1645 – August 22, 2023 (Peggy’s Cove) – Operating a public passenger vehicle outside authority of the license (i.e., did not cross municipal boundary) (Driver E. McAllister).

[45] Inspector Bilodeau warned SeeSight Tours in June 2023 that its drivers needed Class 4 driver’s licences to operate CV vehicles.

[46] Inspector Bilodeau said that while on patrol he regularly stations himself at the entrance to Peggy’s Cove. Peggy’s Cove is a very popular tourist attraction for cruise ship passengers and visitors arriving in Halifax. He testified that he has never seen a SeeSight Tours vehicle arriving at Peggy’s Cove from the direction of Hubbards, or returning to Halifax via the longer Hubbards route. He said that he has always observed its vehicles taking the shorter direct route east of Peggy’s Cove from, or returning to, Halifax, along Highway #333.

(iii) Interested Parties

[47] John Jeffrey (Jeff) Babineau is the owner and operator of Anchor Tours. He operates a tour business in Nova Scotia, including tours of Halifax, Peggy’s Cove, and the Annapolis Valley. Mr. Babineau’s fleet includes charter authorities and CVs.

[48] Mr. Babineau was one of the carriers who signed a petition in November 2023 that was filed with the Board. He said his motivation was to protect the financial interests of carriers in the region. He expressed concern with the Licensee’s non-

compliance, including its failure to cross the municipal boundary on trips to Peggy's Cove and various safety concerns.

[49] Most of Mr. Babineau's testimony was about SeeSight Tours' alleged failure to cross the HRM municipal boundary on trips from downtown Halifax to Peggy's Cove. He provided Google-generated maps for trips from downtown Halifax (Pier 22 cruise ship pavilion) to Peggy's Cove (Exhibit S-6). First, for the route via a crossing of the HRM municipal boundary at Hubbards, the Google-generated map calculated the duration of the one-way trip to Peggy's Cove as 1 hour and 29 minutes, which he said assumed the various speed limits and no traffic delays. The generated maps for the direct route between Halifax and Peggy's Cove along Highway #333 (not crossing the municipal boundary) was 51 minutes. Another map generated for the combined two routes resulted in a total time of 2 hours and 21 minutes. These maps showed the difference in the two routes as being 36 minutes. Mr. Babinau said that in practice this was closer to 45 minutes, resulting in a total return trip duration of at least 2 hours and 30 minutes.

[50] He corroborated this evidence with his personal experience of driving the route on trips to Peggy's Cove in his CV vehicle over several years. Over the past five years, he said that he has driven this tour about 500 times. He said that the duration of the trip via the "Hubbards route" always took longer than the 1 hour 30 minutes calculated by Google Maps. Mr. Babineau described the highway along that route as winding through various communities, which could be impacted by traffic or other conditions requiring him to slow down. Again, he asserted the combined return trip to Peggy's Cove almost always took about 2 hours and 30 minutes.

[51] To further support his view that SeeSight Tours was not crossing the HRM municipal boundary, as required, Mr. Babineau filed about 250 pages of pre-filed evidence copied from SeeSight Tours' webpages on the VIATOR website, which is Tripadvisor's tour marketing and booking website.

[52] Mr. Babineau gave several hours of testimony starting on April 24, 2024, and continuing on June 6, 2024, about Tripshepherd's website posts about tour itineraries and customer reviews. The website included posts by Tripshepherd describing their various tours in the HRM region, including the following:

- Best of Halifax Tour including Peggy's Cove and Citadel Hill (4 hours)
- Halifax: Peggy's Cove Small Group Tour (3.5 hours)
- Peggy's Cove Express Tour from Halifax (4 hours)
- Peggy's Cove Sunset Tour from Halifax (3 hours)
- Peggy's Cove Sunset Tour and Dinner (4 hours)

[53] Mr. Babineau reviewed the tour descriptions in detail, as described on the SeeSight Tours' web postings. He noted that the timeline for all of the tours demonstrated that the CVs could not conceivably be traveling via Hubbards (i.e., across the HRM municipal boundary) on the route to, or from, Peggy's Cove. In cross-examination by Board Counsel, Mr. White acknowledged that none of the tour itineraries mentioned that the tours crossed over the HRM municipal boundary near Hubbards, stating there was no requirement to provide such information.

[54] Moreover, Mr. Babineau said that the posted itinerary timelines did not change after SeeSight Tours received its CV license in November 2022. In other words, tours that were described as 4-hour or 3-hour tours before it received its CV license (when

it was purportedly trying to operate within HRM's taxi regime and did not have to cross the HRM municipal boundary), did not change after SeeSight Tours received its CV license. Thus, the tour itineraries were not revised to reflect the extra 45 minutes that were necessary to travel the longer route back to Halifax along the #103 Highway, crossing the HRM municipal boundary at Hubbards. Customer reviews about the 3-hour or 4-hour tours appeared to confirm that these remained as 3-hour or 4-hour tours after SeeSight Tours received its CV license. No other changes were made to the other parts of the tours, including what was required to allow the same visit durations at Peggy's Cove or other attractions in Halifax. Further, maintaining the original tour itineraries did not interfere with the tour arrivals to catch the "noon cannon" and "changing of the guard" at the Halifax Citadel, which could not have been accommodated if the length of the tours had been changed. Mr. Babineau stated that this clearly demonstrated SeeSight Tours' vehicles did not change their routes after it received the CV license. They were still traveling directly to and from Peggy's Cove on the trips from Halifax (i.e. along the shorter route on Highway #333 that did not cross the municipal boundary). Thus, in his view, the CV vehicles were not complying with the *Regulations*.

[55] Mr. Babineau also filed a video taken on March 26, 2024, from a SeeSight Tours CV on a return trip from Halifax to Peggy's Cove. The time-lapse video was entered as Exhibit S-5. Mr. Babineau booked the trip to Peggy's Cove with a SeeSight Tours CV for an associate.

[56] The video showed Thor Henrikson, a Tripshepherd CV driver, picking up Mr. Babineau's associate at the Cambridge Suites on Brunswick Street in Halifax. The video shows the CV traveling to Peggy's Cove along Highway #333 from the east and

returning to Halifax along the same route, i.e., turning east onto Highway #333 from Peggy's Cove to return to Halifax. In other words, the CV vehicle did not take the route west of Peggy's Cove either to, or from, the destination and, consequently, did not cross the HRM municipal boundary at any time during the tour. The trip lasted three hours fifty-one minutes (1:23 p.m. to 5:14 p.m.). On the trip outbound to Peggy's Cove, the CV tour made short stops at the Fairview Cemetery (presumably to view Titanic-related gravesites), at the Royal Armdale Yacht Club, and at the Dingle Tower on the Northwest Arm. Mr. White provided a letter by the driver, Mr. Henrickson, saying that he returned directly to Halifax because it was raining.

[57] Mr. Babineau also introduced a memo and pictures outlining what he described as serious safety concerns about SeeSight Tours. The memo was written by Mel Zilkowsky, owner and operator of Down East Tours, who was present at the hearing. The memo included several photos taken by Mr. Zilkowsky of SeeSight Tours' licensed Mercedes Benz CV parked at Peggy's Cove on October 14, 2023. The photos showed "severely worn tires", which he described as a "significant safety hazard". The memo stated that when Mr. Zilkowsky confronted the CV driver about the tires, he was met with "indifference and excuses".

[58] Mr. Babineau showed the photos to Inspector Carter during questioning at the hearing, including close-up pictures of the tire treads. Inspector Carter testified that, in his opinion, the tire treads appeared to be under the required depth and agreed it was a safety issue and did not comply with the *Regulations*. He said that the tire wear would have occurred over an extended period, not in the matter of a few weeks.

[59] Mr. Babineau also provided a photo of a SeeSight Tours CV vehicle parked in an accessible parking space. Moreover, he referred to language in the Licensee's tour descriptions on VIATOR saying that infant children could sit on a passenger's lap, which Mr. Babineau said was not allowed in Nova Scotia.

[60] In reply to Mr. Babineau's evidence that the tour descriptions did not change after SeeSight Tours received its CV licence, Mr. White said that its vehicles were nevertheless crossing the municipal boundary at Hubbards during one leg of the trip. When asked by the Board about the time it took for the two routes, Mr. White testified that the direct route along Highway #333 took about 45-50 minutes and the longer route via Hubbards added a maximum 30 minutes to that for the return trip (i.e., 1 hour 15 minutes to 1 hour 20 minutes for the return trip to Halifax). The Board notes that this would result in a combined return trip (using both routes) being as short as 2 hours.

[61] At the conclusion of the hearing, in rebuttal, Mr. Albrecht filed his own Google-generated map, showing the time along the Hubbards route to Peggy's Cove as being 1 hour 18 minutes. When asked by the Board what Mr. Albrecht used as the starting point for the trip, he said he just inserted "a general Halifax" for the location. The Board notes this unknown departure point could be some distance from the Halifax waterfront and is not helpful to the Board's analysis in this matter.

[62] For the evidence about the duration of the respective routes between Halifax and Peggy's Cove, the Board places greater weight on the evidence of Mr. Babineau than that of Mr. White or Mr. Albrecht. He corroborated his maps with his extensive personal experience driving these routes about 500 times in the past five years. Neither Mr. White nor Mr. Albrecht spoke to any personal experience driving these routes.

Another video tendered by Mr. Babineau (of a trip to Peggy's Cove by Mr. MacNeil along the direct route, in low traffic, accompanied by two Tripshepherd CVs) showed it to be a 53-minute trip. The shortest leg of the video showing Mr. Henrickson's direct route to Peggy's Cove was 1 hour 10 minutes (with a short stop at Dalhousie University and Kings College). These times are much longer than Mr. White's estimate of 45 minutes for the direct route.

[63] Mr. Babineau also noted several references in SeeSight Tours' customer reviews about concerns with the driving of their CV drivers, describing various instances of tailgating, driving too fast, of customers being frightened for their safety and dangerous driving. The Board notes these were anecdotal comments that were made in a generally anonymous public internet forum. Those making the comments were not called as witnesses and were not available for cross-examination. This is not the type of evidence on which the Board can base a finding of careless or imprudent driving.

VI FINDINGS

(i) Failing to cross the HRM municipal boundary

[64] There is overwhelming evidence that CV tours operated by SeeSight Tours failed to cross the HRM municipal boundary as required by the *Regulations*. The Licensee acknowledged knowing about this requirement before it was issued its license. Mr. White was advised beforehand by both the Clerk of the Board and Inspector Carter.

[65] First, Mr. Babineau entered a video as an exhibit showing a return trip on March 26, 2024, from downtown Halifax to Peggy's Cove, traveling the entire route

outside the downtown core on Highway #333 along the shorter eastern route to and from Peggy's Cove. The CV did not cross the HRM municipal boundary at any point. This omission was acknowledged by the Licensee. The only explanation for this violation was that it was raining during the tour.

[66] Second, Motor Carrier Inspector Bilodeau also testified about four violation reports he issued to SeeSight Tours for failing to cross the municipal boundary (i.e., two separate violations for two CV vehicles on July 19, 2023, and another two separate violations for two CV vehicles on August 22, 2023).

[67] Further, Inspector Bilodeau testified that he regularly stations himself at the entrance to Peggy's Cove while on duty. He said that he has never seen a SeeSight Tours' vehicle arriving from, or returning to, Halifax from the westerly direction (which would be required to take the longer route that crosses the municipal boundary near Hubbards). The Board accepts Inspector Bilodeau's testimony on this point, which was not challenged by the Licensee, and which corroborates Mr. Babineau's evidence about the Licensee's tour itineraries and customer reviews for its 3-hour and 4-hour tours, submitting that it did not change its route from, and to, Halifax after it received its CV license.

[68] The Board finds that the Licensee has failed to cross the HRM municipal boundary on tours from Halifax to Peggy's Cove. Based on the March 26, 2024, video and the four violation reports issued by Inspector Bilodeau, the Licensee violated the *Regulations* at least five times between July 2023 and March 2024. Having accepted Inspector Bilodeau's evidence that he has never seen the Licensee's vehicles arrive at, or depart, Peggy's Cove from the longer route which would have crossed the HRM

municipal boundary at Hubbards, the Board finds, on the balance of probabilities, that this violation was a regular occurrence.

(ii) Operating a motor vehicle without the proper class of driver's license

[69] Under s. 64 of the *Motor Vehicle Act*, and the regulations thereunder, CV drivers are required to have a Class 4 driver's license. Inspector Bilodeau testified that he issued a violation report to two different SeeSight Tours' CV drivers on July 19, 2023, for operating their CV vehicle without the proper class of driver's license.

[70] Mr. White did not challenge Inspector Bilodeau's issuance of the two violation reports and acknowledged the Licensee was aware of this requirement. Rather, he explained that these violations were caused by a technical flaw in the onboarding process used by SeeSight Tours' drivers to track their driver licensing. The Licensee's process did not require the driver to upload his or her license to the Licensee's system and management did not verify the drivers' licenses. Mr. White acknowledged that when SeeSight Tours was licensed in 2022, all of the Licensee's drivers should have held a Class 4 driver's license. He said management accepted responsibility for this failure, acknowledging that it should have followed up to ensure the drivers had the correct class of driver's license. The Board notes that, given that SeeSight Tours received its license in November 2022 and the violation reports were issued July 19, 2023, this licensing requirement eluded management for about nine months.

[71] The Board finds that SeeSight Tours operated its CV vehicles with drivers that did not have the proper class of driver's license.

(iii) Failing to provide driver hours of service log

[72] A carrier and driver must be able to verify the hours of service of a driver. All drivers of CVs are required to maintain a record of their “duty status” and they must be able to provide the information upon request.

[73] Inspector Carter issued a violation report to SeeSight Tours on July 24, 2023, for failing to provide this information. Inspector Carter stated that the driver tried to access the driver logs on his cell phone when stopped at Peggy’s Cove, but was unable to provide the information because of poor cell phone service.

[74] The Board notes under s. 25 of the *Governor in Council Motor Carrier Act Hours of Service Regulations*, a driver may use an electronic recording device, but the information must be provided on request on a digital display screen, in handwritten form, or on a printout. Mr. White stated that at the time of the violation they were not aware about the paper requirement and relied on the cell phone record. He noted that the Licensee has ensured that the logs are now available in hard copy and are accessible on a new phone app.

[75] The Board finds that on July 24, 2023, the driver of the Licensee’s CV vehicle was not able to provide the inspector with the hours of service log.

(iv) Operating a vehicle with tire treads below 4/32”

[76] Vehicles operating on provincial highways must have tire treads that have a depth of not less than 4/32”.

[77] Mr. White did not challenge Mr. Babineau’s evidence of Mr. Zilkowsky’s photos showing a SeeSight Tours CV vehicle at Peggy’s Cove with severely worn tires on October 14, 2023. He acknowledged to Board Counsel the tires were “bald”. Mr. White

expressed his disappointment about this incident. He said that the Licensee's operational procedures were updated to ensure drivers conduct inspections to discover such equipment deficiencies and that this will never happen again.

[78] The Board accepts Inspector Carter's testimony that the tires on this vehicle did not appear to comply with the *Regulations*. The Board also accepts his evidence that the wear on the tires would not have been caused in the matter of a few days or weeks. In his view, the vehicle would have been driven with the tires in this condition for some time. The Board observes that if the Licensee's drivers were conducting proper pre-trip and post-trip vehicle inspections, the poor condition of the tires should have been discovered and remedied.

[79] The Board finds that SeeSight Tours operated its CV vehicle on October 14, 2023, and likely many days before, with tires having a tread depth of less than 4/32".

(v) Parking illegally in an accessible parking zone

[80] In the evidence, there was also a photograph of a SeeSight Tours' CV vehicle parked in an accessible parking space. The photograph shows a portion of the vehicle license plate, which does not appear to be an accessible parking license plate.

[81] Mr. White described this as "definitely not cool" but suggested this may have been due to a client being an older cruise ship passenger. On days that Peggy's Cove is busy, he said its vehicles "only [park in accessible parking spaces] on days when it was absolutely necessary".

[82] The Board notes that the license plate on the rear of the CV vehicle does not appear to be an accessible parking license plate. However, there is no evidence about whether the vehicle exhibited an accessible parking identification permit in the front

window or elsewhere on the vehicle. In the circumstances, the Board is unable to find, based on the evidence, that the Licensee contravened section 145 of the *Motor Vehicle Act*.

(vi) Operating a vehicle without appropriate child restraint systems

[83] Mr. Babineau testified that SeeSight Tours advertised its tours on VIATOR by stating children could participate on CV tours “on the laps” of passengers during the trip. On questioning by Mr. Babineau of Inspector Carter, the Inspector agreed this was contrary to the *Motor Vehicle Act*.

[84] Mr. White’s response to this was: “if this is wrong, can please somebody tell me and we will update it. But legally children are allowed to ride in our vehicles without a car seat.” When the hearing resumed later, Mr. Albrecht said this was on the Licensee’s VIATOR page because it was permitted under Ontario law.

[85] The posting of incorrect information by SeeSight Tours, and Mr. White’s reply at the hearing, were unfortunate. If such trips did occur, the lack of proper child car seats would have been unlawful. However, there is no evidence such trips actually occurred, and if so, when. Accordingly, there is no evidence that a child actually participated in a trip during which there were no proper child restraint systems, i.e., car seats.

VII CONCLUSION

[86] Following its review of the evidence, the Board has concluded that SeeSight Tours contravened various provisions of the *Motor Carrier Act*, the *Motor Vehicle Act* and the *Regulations*, including that it regularly failed to cross the HRM municipal boundary on

tours from downtown Halifax to Peggy's Cove; that its drivers operated CVs without the proper class of driver's license; that it failed to provide a driver's hours of service record when requested; and that it operated a CV vehicle with worn tires below the required tread depth.

[87] The Board will schedule a further hearing to hear submissions from the parties on whether the CV license should be cancelled, suspended or other resolution ordered.

DATED at Halifax, Nova Scotia, this 23rd day of September, 2024.



Roland A. Deveau