

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2013-05-22
FILE: 8292/TIA
CASE NAME: 8292 v. Registrar, *Travel Industry Act, 2002*

An Appeal from a Notice of Proposal by the Registrar, *Travel Industry Act, 2002*,
S.O. 2002, c. 30, Sch. D - to Revoke Registration

2363495 Ontario Inc. o/a Performance Travel Solutions

Applicant

-and-

Registrar, *Travel Industry Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Laurie Sanford, Vice-Chair

APPEARANCES:

For the Applicant: Timothy J. Law, Counsel
Assunta Mazzotta, Counsel

For the Respondent: Sussanna S. Karas, Counsel

Heard in Toronto: December 11, 12, 2013
February 3, 4, 5, 6, 28, 2014

Post hearing motion heard: April 22, May 1, 2014

REASONS FOR DECISION AND ORDER

This hearing arises from an appeal by 2363495 Ontario Inc. o/a Performance Travel Solutions (“PTS”) to the Licence Appeal Tribunal (the “Tribunal”) from a Notice of Proposal issued by the Registrar, *Travel Industry Act, 2002* (the “Registrar”) dated August 1, 2013 which proposes to revoke the registration of PTS as a travel agent under the *Travel Industry Act, 2002* (the “Act”). There is a Notice of Further and Other Particulars in this matter dated January 6, 2014. Following the closing submissions but before the release of this decision, PTS brought a motion to introduce new evidence and that motion will also be addressed in this decision.

ISSUES

The reasons the Registrar advances for proposing to revoke the registration of PTS depend critically on the Registrar establishing certain legal relationships between PTS and a company called MKI Travel and Conference Management Inc. (“MKI”) and between the owner of PTS, Ms. Jennifer Klein, and her parents, Mr. Ron and Ms. Christina Greenwood. The law that the Registrar relies on to establish these relationships is contained in subsection 1(2) and subsection 8(5) of the Act. These sections provide:

1(2) For purposes of this Act, one person is associated with another person in any of the following circumstances:

1. One person is a corporation of which the other person is an officer or director.
2. One person is a partnership of which the other person is a partner.
3. Both persons are partners of the same partnership.
4. One person is a corporation that is controlled directly or indirectly by the other person.
5. Both persons are corporations and one corporation is controlled directly or indirectly by the same person who controls directly or indirectly the other corporation.
6. Both persons are members of the same voting trust relating to shares of a corporation.
7. Both persons are associated within the meaning of paragraphs 1 to 6 with the same person.

8(5) For the purposes of this section, a person shall be deemed to be an interested person in respect of another person if the person is associated with the other person or if, in the opinion of the registrar,

- (a) the person has or may have a beneficial interest in the other person’s business;
- (b) the person exercises or may exercise control either directly or indirectly over the other person; or

- (c) the person has provided or may have provided financing either directly or indirectly to the other person's business.

The Registrar submits that MKI, which is now in receivership, is an associated company with PTS because MKI was controlled by Mr. Ron Greenwood and PTS is currently controlled in fact by Mr. Ron Greenwood despite the corporate structure which makes his daughter, Ms. Klein, the sole shareholder and President. The Registrar also asserts that both Mr. and Ms. Ron Greenwood, the parents of Ms. Klein, are interested persons in respect of PTS. Mr. Ron Greenwood is an interested person because of his *de facto* control of PTS, in the Registrar's submission, and Ms. Greenwood is an interested person because she was a major lender to both companies. Assuming these relationships exist, the Registrar submits that the registration of PTS must be revoked on two grounds. The first ground stems from the fact that after a receiver was appointed for MKI, a claim was made by the Canada Games Council ("Canada Games") against a fund (the "Compensation Fund") administered by the Travel Industry Council of Ontario ("TICO"), the non-profit organisation which governs the industry and supports the activities of the Registrar. Canada Games claimed compensation for monies it paid MKI for travel services it did not receive. TICO paid over \$2 million on the claim.

Subsections 5(4) and 5(6) of Ontario Regulation 26/05 (the "Regulation") to the Act provide:

For the purposes of subsection 8 (1) of the Act, an applicant for registration or renewal of registration shall meet the following requirements:

4. The administrative authority has not paid any claims from the Fund in relation to the applicant's bankruptcy, insolvency or ceasing to carry on business, or if the administrative authority has paid such claims, the applicant has reimbursed the administrative authority for them and for the administrative authority's costs, or made arrangements acceptable to the registrar to do so. . . .
6. Every other person who is an interested person in respect of the applicant for the purposes of section 8 of the Act also satisfies the conditions in paragraphs 2 to 5.

The Registrar submits that because MKI is an associated party in respect of PTS, PTS must assume MKI's obligation to reimburse the Compensation Fund for the amounts paid to Canada Games and this must be done as a pre-condition to the continuing registration of PTS.

The second ground for proposing to revoke PTS' registration in the Registrar's submission is that the past conduct of both Mr. and Ms. Ron Greenwood, as interested persons with respect to PTS, disentitles PTS to registration under subsection 8(1) of the Act, which reads:

8(1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

- (d) the applicant is a corporation and,

- (ii) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
 - (iii) having regard to the financial position of its officers or directors or of an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
 - (iv) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or
 - (v) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration;
- (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 42;
- (f) the applicant is in breach of a condition of the registration

The Registrar alleges several incidences of past conduct of Mr. Ron Greenwood which, he submits, disentitles PTS to registration under subparagraph 8(1)(d)(iv) of the Act. The Registrar asserts that Mr. Ron Greenwood, while in control of MKI, caused the company to breach the trust accounting provisions of the Act by directing funds to be deposited in a general account of a bank which was not disclosed to TICO rather than in a trust fund with a bank which had been disclosed to TICO. The sections of the Regulation that the Registrar relies on are Sections 17 and 27, which read:

17(1) During the period that ends on June 30, 2009, a registrant shall notify the registrar at least five days before any of the following takes place:

1. A change of address for the office or a branch office of the registrant.
2. A change of the person identified under section 14 to manage and supervise an office.
3. A change in the name or number of an account or in the financial institution in which the account is maintained.

(2) On and after July 1, 2009, a registrant shall notify the registrar at least five days before any of the following takes place:

1. A change of address for the office or a branch office of the registrant.
2. Any change of the person who satisfies the requirements of clause 15 (2) (a), if the registrant is aware of the change at least five days before the change takes place.
3. A change in the name or number of an account or in the financial institution in which the account is maintained.

27 (1) A registrant shall maintain a trust account for all money received from customers for travel services.

- (2) The trust account shall be designated as a *Travel Industry Act* trust account.
- (3) A registrant shall hold all money received from customers for travel services in trust and shall deposit all such money into the trust account within two banking days after receiving it.
- (3) No registrant shall maintain more than one trust account under subsection (1) without the registrar's written consent, obtained in advance.
- (5) A registrant shall file with the registrar,
 - (a) a copy of the trust agreement with the financial institution, within five days after establishing a trust account; and
 - (b) a copy of any changes to the trust agreement, within five days after making the changes.
- (6) No registrant shall disburse or withdraw any money held in a trust account under subsection (1), except,
 - (a) to make payment to the supplier of the travel services for which the money was received;
 - (b) to make a refund to a customer; or
 - (c) after the supplier of the travel services has been paid in full, to pay the registrant's commission.

The Registrar also asserts that Mr. Ron Greenwood misled him about the financial position of MKI immediately prior to the appointment of a receiver for the company in order that the Registrar would register PTS. The exchanges that the Registrar relies on took place in the context of the filing of the annual financial statements of MKI. The obligations of companies like MKI, with Ontario revenues in excess of \$20 million, are set out in section 22 of the Regulation, which reads:

- 22(1) Every registrant shall file with the registrar the financial statements required by this section for each fiscal year.
- (2) A registrant who had sales in Ontario of less than \$10 million during the previous fiscal year shall file, within three months after the end of the fiscal year,
 - (a) annual financial statements with a review engagement report by a public accountant licensed under the *Public Accounting Act, 2004*; or
 - (b) annual financial statements with an auditor's report from a licensed public accountant, if the registrant is required to obtain annual financial statements with an auditor's report under the *Business Corporations Act*.
- (3) A registrant who is a travel agent and had sales in Ontario of \$10 million or more but less than \$20 million during the previous fiscal year shall file,
 - (a) annual financial statements with an audit opinion from a licensed public accountant within three months after the end of the fiscal year; and
 - (b) semi-annual financial statements within 45 days after the end of each fiscal half-year.
- (4) A registrant who is a travel agent and had sales in Ontario of \$20 million or more during the previous fiscal year shall file,
 - (a) annual financial statements with an audit opinion from a licensed public accountant within three months after the end of the fiscal year; and
 - (b) quarterly financial statements within 45 days after the end of each quarter during the fiscal year. . . .
- (6) Financial statements required under this section shall include a statement of sales in Ontario made during the period to which the financial statements refer, a balance sheet, an income statement and a reconciliation of the trust accounts maintained under section 27.
- (7) If additional information is necessary to provide an accurate and complete review of the registrant's financial position, the registrar may require that the registrant file audited

financial statements that consolidate or combine the registrant's financial statements with,

- (a) the financial statements of another registrant; or
 - (b) if the registrant is a corporation, with the financial statements of another person who is a shareholder associated with the registrant.
- (8) If the registrar has reason to believe that a registrant is in financial difficulty, the registrar may require that the registrant provide to the registrar a written statement of the registrant's current net working capital, and the registrant shall do so within the time the registrar specifies.
- (9) The registrar may require that a statement provided under subsection (7) or (8) be verified by affidavit.

Finally, the Registrar asserts that both Mr. and Ms. Ron Greenwood were involved in a scheme to avoid reimbursing the Compensation Fund for the monies it paid out to Canada Games. The scheme consisted of placing MKI in receivership and registering PTS to continue in its place, in the Registrar's submission. The Registrar asserts that Ms. Greenwood is likely to call her loan to PTS in the same way that she forced the appointment of a receiver for MKI.

Mr. Law, counsel for PTS, submits that there is no association between MKI and PTS. He concedes that MKI and PTS were associated persons when PTS was first incorporated as Mr. Ron Greenwood was in control of MKI and of PTS, which he was setting up for his daughter. Mr. Law notes that subsection 5(4) of the Regulation refers to "claims paid" and he submits that the relevant time for determining when the obligation arises under that subsection is when the claim is paid. In Mr. Law's submission, at the time of the association between the companies, there was no claim which had been paid from the Compensation Fund. By the time the claim was paid, on July 12, 2013, the companies were no longer associated. Mr. Ron Greenwood was no longer in control of MKI, since a receiver had been appointed and Mr. Ron Greenwood is no longer in control of PTS, having assumed the position of "Sales and Relationship Specialist" or sales manager on July 1, 2013.

Mr. Law also submits that neither Mr. nor Ms. Greenwood is an interested person in respect of PTS. Mr. Ron Greenwood is not in control of the company and while Ms. Greenwood is a creditor of the company, there is nothing in that fact which ought to concern the Registrar.

Finally Mr. Law submits that even if a relationship is found between Mr. or Ms. Ron Greenwood and PTS, there is nothing in the past conduct of either of them which ought to raise any concerns about the ability of PTS to operate in accordance with the law, with honesty and integrity and with financial responsibility.

FACTS

Testimony of Mr. Ron Greenwood, Part I

Mr. Ron Greenwood began his career in the travel service industry in 1978. His principal company, which operated as "Algonquin Travel", grew to become a leader in vacation travel. Algonquin Travel was operating in 80 locations when he sold it in 2000 for a substantial amount. His wife was an investor in Algonquin Travel and profited from the sale of the business. Ms. Greenwood was not active in the business; instead she worked inside the home, raising the couple's three children. There were no regulatory issues during the operation of Algonquin Travel by Mr. Ron Greenwood and in the 1990's, he became actively involved in a number of industry associations. He sat on the precursor of TICO and was a charter board member of TICO itself when it was first established. In this way, he got to know Mr. Michael Pepper, the current Registrar.

In 2000, Mr. Ron Greenwood bought MKI, a travel agent that focussed on corporate and institutional business. Beginning in 2009 or 2010, Mr. Ron Greenwood actively expanded MKI by acquiring other companies. MKI entered the leisure segment of the travel business, again through acquisitions. Overall, Mr. Ron Greenwood testified, he acquired 20 businesses and eventually his principal role in the company became to drive mergers and acquisitions. He brought his elder son, Mr. Chris Greenwood, into MKI in 2001. Mr. Chris Greenwood, who had worked at Algonquin Travel before joining MKI, advanced to the position of Vice-President of Operations and reported to his father. Ms. Christina Greenwood was a financier of MKI and "personal mentor" to Mr. Ron Greenwood. Although she did not work at the company, she received a salary of approximately \$120,000 a year in consideration for extending loans to the company and for making funds available on an ongoing basis. Mr. Ron Greenwood's salary, by contrast, was \$140,000 while other senior officers earned substantially less. The couple had an informal method of securing funds. Mr. Ron Greenwood would advise his wife of how much funding was required from time to time and, with her concurrence, he would arrange the advance of the money, often from their joint bank account. By April, 2013, Ms. Greenwood had outstanding loans of over \$1.1 million to MKI.

Although Mr. Ron Greenwood was devoting much of his time to acquisitions, he was still "involved" in financing the company and in retaining what he characterised as "key accounts." Included in this category was Canada Games. MKI had done business with Canada Games since 2004. The Canada Games take place bi-annually, on the odd years. MKI made travel arrangements and did some event planning for the 2005, 2007, 2009, 2011 and 2013 games. Initially, the monies Canada Games advanced to MKI were deposited in a trust account by MKI. Money was used from that trust account to pay travel suppliers. When all the travel suppliers were paid, then MKI could take its fees from the balance. This is the practice required by the Act "for all money received from customers for travel services." MKI changed this practice sometime around the 2011 Canada Games.

In 2009 or 2010, Mr. Ron Greenwood had the first of two exchanges with Mr. Pepper, the Registrar, the meaning of which are in dispute. According to Mr. Ron

Greenwood, he complained to Mr. Pepper that MKI had lost a major government contract to a company which was not registered with TICO but which was offering travel services as part of an event planning business. Mr. Ron Greenwood testified that he and Mr. Pepper exchanged a number of e-mails on the matter and in one of them Mr. Pepper wrote, "Ron, Government does not equate to consumer." Mr. Ron Greenwood testified that it seemed clear to him after this exchange that Canada Games and other "government" accounts were not "consumers" for the purposes of the Act. His logic in concluding that Canada Games was a government entity was that Canada Games was 100% funded by the federal government with a budget approved by Sports Canada. The contract he had with Canada Games said that if Canada Games was not funded by Sports Canada, their contract with MKI was at an end. So, in his words, "we deemed Canada Games to be a government account and therefore not a consumer." Mr. Ron Greenwood's understanding of the Act was that a travel agent sold services to a consumer. If Canada Games was not a consumer, there would be no requirement under the Act to hold Canada Games' advances in a trust fund. Therefore, Mr. Ron Greenwood concluded, he would be free to deposit any advances into MKI's general account and use the money for general business expenses prior to paying the travel suppliers he had contracted with on Canada Games' behalf. In his words, he "extrapolated" this meaning from the comment that "government does not equate to consumer" and from the conduct of an event planner which seemed to him to be offering travel services without operating a trust account. Mr. Ron Greenwood decided to continue to treat provincial and municipal governments as consumers. Approximately 50% of travel business in Ottawa, where MKI was headquartered, is government business, according to Mr. Ron Greenwood. He testified that he did not consult a lawyer about his various understandings of the Act at the time. He did not inform Canada Games that he was no longer regarding them as a "consumer" for the purposes of the Act because, he testified, he didn't regard it as any of their business. Mr. Ron Greenwood explained that he relied on the word of the Registrar of TICO. He also testified that he did mention this exclusion of governments from the definition of consumer to one or two other members of an industry organisation. He did not name them nor were they called to corroborate his evidence.

In 2012, Canada Games presented a draft contract to MKI for the 2013, 2015, 2017 and 2019 games. The contract did not expressly address the issue of trust account protection but it did contain a clause in which MKI acknowledged that Canada Games was entitled to make claims against the Compensation Fund under the Act. Mr. Ron Greenwood did not advise Canada Games that, because of his understanding of the Act, their advances would not be protected in an MKI trust account. He explained that the contract had been prepared by the Canada Games lawyers and was four months late in arriving. He felt that attempting any amendment might jeopardise the whole contract so he accepted the contract as it was presented.

Mr. Pepper did not give evidence on the question of what he told Mr. Ron Greenwood about the status of government accounts. Ms. Karas, counsel to the

Registrar, conceded in submissions that Mr. Pepper did say or write something to the effect that governments were not consumers. However, her submission was that this statement was made in the context of a discussion about event planning, which does not ordinarily involve providing travel services. Further, she submits, the exchange between Mr. Pepper and Mr. Ron Greenwood did not expressly address the question of trust accounting for government accounts, whether in the context of event planning or otherwise. These submissions are not evidence and were not given weight by the Tribunal in reaching its decision.

Government and institutional work, including United Nations' institutions, were significant parts of MKI's business. Mr. Ron Greenwood testified that these organisations tend to pay in arrears, resulting in MKI carrying large accounts receivable. His evidence was that MKI switched to a third party accounting program in October, 2011 and this program systemically overstated MKI's accounts receivable. This problem was not uncovered until a new Chief Financial Officer ("CFO") was hired in July, 2012. Mr. Ron Greenwood testified that it took the new CFO "the best part of six months" to find the problem. Mr. Ron Greenwood explained that even experienced accountants take a while to understand the accounting requirements of the travel industry. As of June, 2012 Mr. Ron Greenwood believed, based on the accounts he was receiving, that MKI made a year-to-date profit of between \$350,000 and \$400,000. MKI's year ended in September. In October or November, MKI's CFO advised Mr. Ron Greenwood that the company was going to break even at best and that more work was needed to determine the financial position. In late November or early December, the CFO advised that there would be a loss of between \$300,000 and \$400,000. Just before Christmas, Mr. Ron Greenwood learned that the loss would be approximately \$500,000. His testimony was that he took Christmas to mull the situation over. During the Christmas discussions with his family, Mr. Ron Greenwood testified, there was no discussion of the business failing.

At the end of January or early February, the CFO advised Mr. Ron Greenwood that MKI had lost an additional \$250,000 in the first quarter of its fiscal year and that the company had an obligation to inform HSBC of this. HSBC was a bank with which MKI had several accounts, including a trust account, and a line of credit. A TICO investigator testified that TICO was unaware that MKI had accounts with HSBC. The fact that MKI had undisclosed bank accounts was uncovered by the TICO investigator during the course of his investigation. Mr. Ron Greenwood did not address the issue of whether TICO ought to have been informed of the HSBC accounts and was not asked about it. Sometime in the first week in February, HSBC demanded that all money coming into MKI be directed to the company's general account with HSBC to be used to pay off the outstanding loan under the credit line. Mr. Ron Greenwood told MKI's accounting staff that any cheques coming in should be sent to HSBC. As it happened, Canada Games advanced approximately \$1,580,000 on the day in question and this cheque was forwarded to the MKI's general account with HSBC. Mr. Ron Greenwood testified that he was not involved in the specific decision to send the Canada Games cheque to HSBC and may not have been in town on the day but he believes that

no mistake was made in sending the money to MKI's general account at HSBC. When Mr. Ron Greenwood was advised during cross examination that MKI had deposited an earlier Canada Games cheque, received in December 2012, into a trust account with a second bank, Scotiabank, he replied that he did not know which bank account the money went into and reiterated his earlier evidence that no mistake had been made. MKI had disclosed to TICO that it was doing business with Scotiabank. The following day, February 5 or 6, 2013, Mr. Ron Greenwood attended a meeting with HSBC where the bank advised that it had received the Canada Games cheque, had used part of it to repay the line of credit and did not wish to renew the financing arrangement. At that point there remained approximately \$860,000 from the Canada Games cheque. On February 14, 2013, MKI transferred the balance of the Canada Games cheque from its general account with HSBC to its general account with Scotiabank. Mr. Ron Greenwood does not know where this money went. He believes it is "in the business somewhere" and his evidence is that no one, including him, took it out of the business. He does acknowledge that approximately \$130,000 might have been withdrawn from the business in April, 2013 but his evidence was that there might have been money both coming in and going out during this time.

In January, February and March, according to Mr. Ron Greenwood's evidence, there were evolving discussions with his family, including his daughter, Ms. Jennifer Klein, about doing some family planning and possibly splitting off the travel business from the event business. In the winter of 2013, Mr. Ron Greenwood approached other banks and travel companies to obtain funding. In March and April, 2013, Mr. Ron Greenwood's evidence is that his activities moved from trying to obtain financing for MKI to trying to sell components of the company, retaining some parts of the event planning business. He also considered the option of selling off the event planning business to his younger son, Mr. Michael Greenwood and his wife but by March, most of the event business had gone and the accounts receivable for that division of the business were too high to fund the remaining events. Mr. Ron Greenwood testified that the situation was changing rapidly during the winter and spring of 2013 but that "none of us" realised there would be a receivership until the last day of April or first day of May, 2013. One of the options Mr. Ron Greenwood was considering was setting up a new company designed in part to protect some of the money his wife had invested in MKI. On March 4, 2013, the new company, PTS, was incorporated and on April 5, 2013, TICO received PTS' application for registration as a travel agent under the Act. The original goal was to sell some of MKI's business to PTS and to generate new travel business in the new company with Ms. Greenwood providing the initial funding.

The TICO CFO gave evidence that that MKI was a \$47 million dollar business with Ontario revenue in excess of \$20 million. MKI, like all registered travel agents, had an obligation under the Act to provide financial statements to TICO. Given that MKI had revenue of over \$20 million, it was obliged to file audited statements annually and unaudited quarterly statements, which were due 45 days after the end of the quarter. The TICO CFO testified that MKI was late in its filings but that

this was not unusual in the industry. Travel agents with revenue of less than \$10 million may file annual “review engagement reports”. These reports are prepared by outside accountants following a review of the company’s financial operations. They are less rigorous and less expensive than an audit.

Mr. Ron Greenwood explained that MKI’s annual statements had been filed late for several years because of a complicated accounting situation arising from the company’s Quebec operations. Mr. Pepper, the Registrar, agreed that it is not unusual for companies to be late filing and TICO generally tries to work with companies in that situation. TICO had notified MKI that it was late with its annual filing for the year 2012 and on Friday, April 19, 2013, Mr. Pepper sent an email to Mr. Ron Greenwood reminding him that the statements were now over three months in arrears and asking “Can you please let me know what is happening?” Mr. Ron Greenwood and Mr. Pepper had a telephone conversation on April 19th. The accounts of the two men differ about what was communicated during this conversation.

According to Mr. Ron Greenwood, one of his objectives during this telephone conversation was to follow-up on PTS’ application for registration. Mr. Pepper advised him by follow-up e-mail that PTS’ registration should be completed before the end of April. His other objective, Mr. Ron Greenwood testified, was to “share” with Mr. Pepper that MKI could not afford to produce audited statements, which were estimated to cost \$50,000 because of the complications arising from the accounts receivable problems the company had uncovered. The two men, according to Mr. Ron Greenwood, reached no understanding that MKI was to file further statements at any time or that Mr. Ron Greenwood was providing a personal guarantee about the financial health of the company. In fact, Mr. Ron Greenwood is not sure that any understanding was reached at all. The men discussed some specific actions that MKI had taken to transfer some businesses in southern Ontario back to the companies that had sold them to MKI and Mr. Ron Greenwood advised Mr. Pepper that MKI was out of the Quebec part of the business. Mr. Ron Greenwood’s expectation at the time of the telephone conversation was that MKI would transfer some of its travel business to PTS and would retain some of the event planning business. When asked whether he was seeking permission from Mr. Pepper to file unaudited statements or advising him of what MKI was going to do, Mr. Ron Greenwood reiterated that he was “sharing” with Mr. Pepper that MKI could not afford the audit fees. This conversation occurred on Friday and on Saturday, April 20th Mr. Ron Greenwood e-mailed a copy of the unaudited financial statements to Mr. Pepper. His covering e-mail refers to working capital for the company of \$125,298 and “tangible equity” of \$2,947,168.

Mr. Pepper’s recollection of the telephone call on April, 19, 2013 is very different. According to Mr. Pepper, Mr. Ron Greenwood contacted him frequently, usually about late filing of MKI’s financial statements. Mr. Pepper agrees that Mr. Ron Greenwood told him that he was having difficulty obtaining audited statements as they would cost \$50,000. In Mr. Pepper’s testimony, Mr. Ron Greenwood called

on April 19th to say that he was planning to break up MKI, which would bring the gross sales down below ten million dollars. Thus, after the break-up, MKI would need to file annual financial statements with only a review engagement. Mr. Ron Greenwood explained that he planned to sell the regional components of MKI and that he would transfer the remaining leisure and corporate travel segments to PTS. MKI would be left with event planning which would yield revenues of under the audit threshold. Mr. Pepper testified that Mr. Ron Greenwood asked if he would accept “something unaudited”. Mr. Pepper assumed this would be a review engagement. According to Mr. Pepper, in the e-mail of April 20th, Mr. Ron Greenwood provided financial statements which were not reviewed but Mr. Ron Greenwood said the working capital and equity were good. On April 22, 2013, Mr. Pepper wrote a memo to the CFO of TICO advising that Mr. Ron Greenwood had sent him a copy of internal financial statements and summarising his understanding of their April 19th phone call. Mr. Pepper states in this memo, “In view of these changes I am prepared to accept the unaudited financial statements from MKI, for the fiscal year ending September 30, 2012, in exchange for a personal guarantee from Ron Greenwood.” Mr. Pepper’s testimony was that Mr. Ron Greenwood personally guaranteed to him that “everything would be fine” if he, Mr. Pepper, accepted the unaudited financial statements and that the company was in a good financial position. Mr. Pepper trusted Mr. Ron Greenwood and took him at his word. His testimony was that, notwithstanding his memo of April 22nd, he did expect further financial statements, with a review engagement to be filed later for MKI.

AT some point following the receipt of the unaudited financial reports, the TICO CFO reviewed them. She noted an approximate \$600,000 swing from a 2011 profit of approximately \$260,000 to a 2012 loss of approximately \$400,000 which she testified was “concerning”. Offsetting this, the working capital was “on side” and the trust account was apparently in order.

According to Mr. Ron Greenwood, his wife’s advisors decided on the last day of April or first day of May, 2013 that calling for repayment of his wife’s loan and moving to appoint a receiver was the best option open to her. Mr. Ron Greenwood reluctantly agreed and a receiver was appointed for MKI on May 13th. Mr. Ron Greenwood’s evidence is that right up to the date his wife called the loan, he believed the business could be restructured in some way and that it was not until May 7th, that he was certain that a receiver would be appointed.

On May 7, 2013, Mr. Ron Greenwood advised his contact at Canada Games that MKI had been placed in receivership. Mr. Pepper’s evidence is that TICO was not advised of the receivership until Canada Games wrote to TICO on May 20, 2013 to tell the organisation that Canada Games intended to make a claim against the TICO Compensation Fund for the shortfall between what it had paid MKI and the travel services which had been provided. Mr. Pepper contacted Mr. Ron Greenwood who confirmed the receivership and advised that MKI would voluntarily terminate its registration under the Act. According to Mr. Pepper, Mr. Ron Greenwood assured him on May 23rd that there would be no claims against

the TICO Compensation Fund as a result of the receivership. However, on May 24th, Mr. Ron Greenwood submitted a voluntary termination form which referred to a possible claim by Canada Games. Ultimately, TICO paid a claim of over \$2 million to Canada Games out of a total Compensation Fund of \$23 million. The size of the claim pay-out attracted considerable attention in the industry. Mr. Ron Greenwood testified that no “consumers” lost money as a result of MKI’s going into receivership.

On April 26, 2013 PTS was registered as a travel retailer under the Act. Mr. Pepper testified that at the time of the registration, he did not know of the impending insolvency of MKI or of the potential claim by Canada Games and that, if he had, he would not have registered the new company. On July 18, 2013, Mr. Pepper wrote to PTS, Mr. Ron Greenwood and Mr. Chris Greenwood requesting a reimbursement of the claim paid by TICO to Canada Games. In the letter, Mr. Pepper refers to subsections 5(4) and 5(5) of the Regulation. Mr. Pepper took the position that these subsections, read together with subsection 8(1) of the Act meant that Mr. Ron Greenwood and Mr. Chris Greenwood were “interested person(s)” under the Act and that PTS could not be registered unless either PTS or Messrs Greenwood repaid the amount paid from the Compensation Fund to Canada Games.

On July 24, 2013, Mr. Ron Greenwood responded by e-mail. Mr. Ron Greenwood asserted that he and Mr. Chris Greenwood did help get PTS established but were not officers, directors or shareholders of PTS. Mr. Chris Greenwood had been the manager of PTS but had been replaced by Ms. Kathy Morris. The “manager” of a travel agency is TICO’s primary contact for issues of customer complaints and corporate compliance. Mr. Ron Greenwood concludes his e-mail by saying, “PTS is not managed, funded or directed by Ron or Chris Greenwood and has its own set of experienced, competent, managerial, travel consulting and administrative employees.”

Testimony of Ms. Jennifer Klein

The President of PTS is Mr. Ron Greenwood’s daughter, Ms. Jennifer Klein. Ms. Klein testified that she lives in Edmonton, Alberta. She has a doctorate from University of Alberta and works as a research consultant at the Glenrose Rehabilitation Hospital. She grew up in a family which was involved in the travel business but she had no experience with the industry until January, 2013 and has never previously run a business. In January, during weekly telephone conversations with Mr. Ron Greenwood and her brother Mr. Chris Greenwood, they separately told her that MKI was not doing well. In her words, “it was going down the tubes and was going to close”. Ms. Klein testified that “the whole family” was aware that MKI was in trouble in January or February, 2013. Her testimony was that an opportunity arose to open PTS but it needed to be separate from MKI. Her motivation for becoming involved was to try to protect her mother’s retirement funding, to try to preserve the family cottage and to possibly save for her own

retirement. Ms. Klein agreed with Mr. Ron Greenwood and Mr. Chris Greenwood that she would head PTS but would use their expertise together with the expertise of others on the management team to operate the business. Ms. Klein referred specifically to Ms. Kathy Morris, PTS' manager, an accountant and a project manager who did not testify as being the other members of her management team with expertise.

Ms. Klein testified that she trusts her father absolutely and defers to his knowledge of the travel industry. Her evidence was that he ran a successful travel company until "life happened" to cause it to fold. Ms. Klein testified that her father had told her of his "misuse of funds for Canada Games". Her understanding is that MKI was given \$2.5 million by Canada Games and that this amount was put into a trust account. Ms. Klein testified that the bank was pressuring her father to repay a loan so he used the Canada Games money to pay the bank. She believes that this was not a proper use of the trust funds. Ms. Klein knew MKI was her father's business and he was responsible which is why she has signing authority at the bank – to prevent the same thing happening again. Initially, Ms. Klein conceded, Mr. Ron Greenwood had been a PTS signatory for banking purposes but she removed him because that was what was required by the bank and by TICO. She agreed that pressure from TICO was a specific cause for changing the banking arrangements. She referred to this as a "TICO formality".

Ms. Klein did not pay her father anything for PTS nor has she invested any money in the company. She believes her mother has loaned approximately \$250,000 to get PTS going and is being repaid, at going interest rates, in the amount of approximately \$140,000 a year which her mother is receiving in the form of a salary. When confronted with a note to the financial statements, signed by her, showing that the loan was without interest and with no fixed terms of repayment, Ms. Klein was unable to explain the discrepancy between her understanding and the financial statements.

As Ms. Klein lives in Edmonton, most of her interactions with other staff at PTS are by teleconference call and by e-mail. The last time she was in the PTS office was in August, 2013. She believes there are six or seven travel consultants but she does not know their names and she did not hire them. She believes her father and her brother Mr. Chris Greenwood decided how many travel consultants the business would require and it is her understanding that all of these people came over from MKI but she is not certain. There has been a recent downsizing of travel consultants but Ms. Klein is unaware of who was let go. She believes that Mr. Ron Greenwood and Ms. Morris decided which consultants should be fired. Ms. Klein is aware that the original CFO of PTS, brought over from MKI, left the company because Mr. Ron Greenwood told her. She thinks the CFO left in November but is unaware of whether or not he gave notice or if he received a severance package. She was not involved in hiring a replacement CFO. She is unaware of whether the employees of PTS have employment contracts or not; she believes her brother was in charge of that. She is unaware of what, if any, benefits employees are entitled to. She knows that Ms. Morris does the staff

performance reviews but does not know who does the managers' reviews. She feels that it would be her right to say who is to do that and she believes that Ms. Morris would review Mr. Ron Greenwood's performance.

Mr. Ron Greenwood has been under contract with PTS as a sales specialist since July, 2013 and Mr. Chris Greenwood left PTS at the end of June, 2013. Ms. Klein is unaware of what her father and brother were being paid prior to the end of June and she testified that they had decided what their compensation would be. She testified that neither man has an agreement with her to become a shareholder, officer or director of PTS. Mr. Ron Greenwood also set his current compensation, which is a percentage of Gross Revenue. Ms. Klein is unaware of whether or not Mr. Ron Greenwood is on the payroll but assumes he is being paid something on account of his contractual compensation. Ms. Klein is unaware of specifically what the other members of the management team are paid. Ms. Klein herself is currently not receiving a salary.

Ms. Klein understood that PTS was incorporated in June or July, 2013. When confronted with evidence that the company had been incorporated in March, she agreed. Ms. Klein testified that she had her "day-to-day" people telling her what needed to be done and she signed the forms. Her father chose the name for PTS because, she said, he knew what names were already taken.

Ms. Klein is not involved in day-to-day accounting decisions. She was unaware that her second brother, Mr. Michael Greenwood, was signing cheques for PTS when it was first established, despite not being an employee. She was not involved in selecting the company's accountants. Although she has signing authority for cheques, she does not ordinarily sign them as she is not in the office. Ms. Klein testified that she "knows" that PTS has \$900,000 in working capital but she is unaware of what the working capital requirements for PTS are, what the term "working capital" means or how it is calculated. She does have a monthly telephone conversation with someone at PTS to discuss the financial statements but that conversation centres on how much money the company has and what its expenses are. She knows PTS has a trust account but she does not know what a trust account reconciliation is. PTS has changed its bank. Ms. Klein believes that this was done because the new bank is easier to deal with but she was not involved in the decision. She believes Mr. Ron Greenwood and the CFO would have made that decision. Ms. Klein is not sure whether PTS reported a profit or a loss in its last financial report. She thinks it may have been a loss but she thinks the company may be "ahead" now.

Ms. Klein testified that her father was responsible for recruiting new clients, working with clients he already has and trying to determine how PTS can increase revenue from both existing and new clients. Mr. Ron Greenwood suggests what commission PTS should receive and whether this should be lowered in any given situation. According to Ms. Klein, her father makes suggestions about this and discusses it with Ms. Morris. Mr. Ron Greenwood has Ms. Klein's authority to sign contracts with new clients but she is unaware of whether or not he is doing that.

She does not know if there is a budget for client retention and her evidence is that is a decision that would be made by Mr. Ron Greenwood, Ms. Morris and the CFO. Mr. Ron Greenwood is responsible for customer satisfaction and has Ms. Klein's authority to deal with that issue "as he sees fit."

Ms. Klein is aware that PTS has had to buy their tickets through another travel agency as it did not have authority to ticket directly but she doesn't know how this arrangement works. Mr. Ron Greenwood is managing that.

Ms. Klein is aware that Ms. Kathy Morris was appointed Manager of PTS taking over from her brother Mr. Chris Greenwood. Ms. Klein knows that TICO requires a manager of record for a travel agency but she is unaware of the specifics of what TICO requires from this manager. She does not know what Ms. Morris is being paid or whether it is less than her brother received for the same job.

Testimony of Ms. Morris

Ms. Morris testified that she had trained and worked as a teacher for a year and subsequently trained in travel and tourism before joining a travel agency which was acquired by MKI in 2000. Her work has been primarily in the field of corporate travel; arranging travel, hotels and insurance, including cancellation or medical insurance. While she was at MKI, she worked as the Team Leader, Corporate Travel and had six travel agents in her team. She reported to the Director of Client Services who in turn reported to the Vice President of Operations, Mr. Chris Greenwood, who reported to the President, Mr. Ron Greenwood. At the end of April, 2013, MKI stopped operating, according to Ms. Morris. The employees of MKI were called into the boardroom and told by Mr. Chris Greenwood that MKI was going into receivership. Two or three days later, Mr. Chris Greenwood told the employees that a new company was being formed. Ms. Morris was given her new employment contract on May 5th or 6th and she believes the other staff were given theirs at the same time.

Ultimately, about half of the 22 MKI employees were offered employment at PTS. Ms. Morris was given a contract as the Team Lead, Corporate Services and Senior Travel Consultant. She had six travel consultants working in her team and her salary remained what it had been at MKI. In addition to acting as team leader, Ms. Morris also worked as a travel consultant. When PTS began it had fourteen travel agents but that number had now been reduced to nine. In addition there is an Information Technology manager, a CFO and accountant and a business development person, who is Mr. Ron Greenwood. When Ms. Morris began at PTS she was reporting to the same Director of Client Services who managed her at MKI. However, this Director left the company in June. Ms. Morris does not know the details of this departure but it happened at roughly the same time as Mr. Chris Greenwood left the company.

Ms. Morris qualified as a manager and as a travel consultant in 2009, the first year TICO required qualifications for those roles. Mr. Chris Greenwood discussed with

her the roles and responsibilities she would assume if she became Manager of PTS but no further contract was signed when she was promoted to Manager at the beginning of July. Her salary has remained the same and she continues to work as a full time travel consultant. No Team Lead has been hired to replace her. There has been no discussion of an increase in her compensation at any time in the future. Ms. Morris reports to Ms. Klein. There are no regular meetings between Ms. Morris and Ms. Klein. Ms. Morris testified that if a decision needed to be made, she would try to contact Ms. Klein by e-mail and, if she were not available, Ms. Morris would make the decision as she thought best.

Mr. Ron Greenwood reports to Ms. Morris. He is usually in the office on a daily basis. She has no idea what his compensation is and no performance review mechanism has been established. She would consult with Mr. Ron Greenwood in setting up a performance review process because of his experience in the industry. She would also consult with Ms. Klein. Ms. Morris has an idea of the salaries of her team members but does not know the details. She does not know the commissions of the outside agents but believes that the CFO and Ms. Klein, as owner, would know this.

There have been two employees hired since Ms. Morris became Manager and one who left. The former CFO left in October. Ms. Morris was on vacation at the time so he handed his resignation in to Mr. Ron Greenwood. Ms. Morris says now she would instruct employees to give their notice to Ms. Klein if she were not available. Ms. Morris testified that the former CFO and she were involved in interviews for a successor CFO. Mr. Ron Greenwood sat in on the interviews for the three short-listed candidates. The former CFO and she discussed the candidates and sought Mr. Ron Greenwood's opinion. She did not sign the employment contract with the new CFO and believes that Ms. Klein did. She did not discuss compensation with the new CFO and does not know who drafted the employment contract.

Ms. Morris' experience with sales generation is weak. She was working as a travel consultant and so did not make cold calls. However, she has worked with some clients over 18 years and believes that she could solve client issues. Mr. Ron Greenwood goes on customer calls as a representative of PTS and she has been with him on three calls. The individual travel agent who works on the account will brief Mr. Ron Greenwood before the call and go to the meeting to explain the travel details. If there were a client retention issue, Ms. Morris would first consult the travel agent on the account and would "possibly" consult with Mr. Ron Greenwood because of his experience.

Ms. Morris acknowledges that her experience with accounting is "very minimal" and her experience with finance is "minimal". She believes that the Manager is ultimately responsible for the accuracy of the financial statements but at present, she believes, this is being handled by accounting. She is unaware of what the working capital of PTS is or what the working capital requirements for the company would be. She does not know whether PTS is profitable. She has not been given any financial reports nor has she asked to see them. Her ongoing role

as senior travel consultant is a factor in this and she believes she must “transition” out of this role before becoming more involved in the finances of PTS. She is presented with cheques, which she signs, but she is not involved in the decision as to whether the payment is necessary. She is aware that PTS changed bankers in January, 2014 but she was not involved in the choice of bankers or with the negotiations. She believes that Mr. Ron Greenwood handled this.

The International Association of Travel Agents (“IATA”) is an organisation that approves travel agents to issue airline tickets directly to clients. When PTS was first set up, it did not have IATA approval to issue tickets and so arranged that tickets would be issued through another travel agent. Ms. Morris signed the application to IATA for approval but she believes that Mr. Chris Greenwood and the then CFO organised the details of the application. She also believes that Mr. Ron Greenwood more recently obtained a necessary letter of credit from PTS’ current bank to complete the application.

Ms. Morris believes that one of the responsibilities of a Manager or General Manager is to oversee everything on a day-to-day basis. The General Manager would be involved in negotiations with suppliers and agencies concerning commissions. She concedes that she is not at present involved in these negotiations.

Testimony of Mr. Ron Greenwood, Part II

Mr. Ron Greenwood also gave evidence about the beginning of PTS and his role with the new company. He gave a variety of explanations for the decision to set up PTS. His testimony was that the situation was evolving rapidly in the winter and early spring of 2013. Mr. Ron Greenwood testified that starting PTS was probably his idea. His evidence was that in January or February, the family decided to do some “family planning” and began looking at setting up a new company to protect some of the money his wife had in the industry, although his wife would loan the new company additional funds to start. In March, in Mr. Ron Greenwood’s testimony, the family first started talking about setting up PTS with the goal to assume MKI’s travel business but, according to Mr. Ron Greenwood, MKI ran out of funds. His testimony was that MKI was going to sell some of its travel business to PTS but in fact PTS ended up starting from scratch. Mr. Ron Greenwood testified that Ms. Greenwood was made a director of PTS because the women had had enough of the men and were tired of the losses. He implied that Ms. Klein was made President as part of the same rationale.

PTS hired its staff from MKI and used MKI’s offices initially. Mr. Ron Greenwood together with his son Mr. Chris Greenwood began the company. Mr. Chris Greenwood was to look after logistics, technology and the office set-up while Mr. Ron Greenwood was responsible for obtaining IATA approval, registering the

company with TICO, and determining which suppliers, in particular which airlines, the company would use. Mr. Ron Greenwood paid himself as required during the start-up period from May to July. This compensation was not discussed with Ms. Klein. Mr. Ron Greenwood thought the initial set-up would take a couple of months but it ended up taking eight months, primarily due to delays in obtaining the IATA approval. In early July he signed an employment contract making him the Sales and Relationship Specialist. Today, Mr. Ron Greenwood describes himself as the “sales guy” responsible for sales and revenue at PTS, including customer and supplier relations. He prepares “key” responses such as responding to the current Request for Proposal for travel services to all Ontario universities. Mr. Ron Greenwood notes that he is not a shareholder of PTS and has no agreement to become one, nor is he an officer or director. He is not a signing officer with PTS’ current bank, although he was with the initial bank during the company’s start-up. Today, he cannot sign agreements binding PTS. He did sign some equipment leases before his current employment contract was signed.

Mr. Ron Greenwood testified that the CFO quit PTS in the fall. Mr. Ron Greenwood had a relationship with a head hunter so, in his words, “I took it upon myself” to find a replacement CFO. He interviewed candidates and developed a short list of three which he presented to Ms. Morris and the departing CFO. They preferred the one who was ultimately hired. Mr. Ron Greenwood believes she represents an “upgrade” in terms of credentials as she has a CGA and an MBA. She and her accounting assistant run the finances of PTS, in Mr. Ron Greenwood’s testimony. The current CFO is paid on an hourly basis and started working three days a week and now works four.

Mr. Ron Greenwood testified that PTS currently occupies a 1500 square foot facility and has 13 to 14 employees in total, six of them working from home. The sales of PTS are less than \$10 million. Recently the company has lost some business because of the MKI situation and because of this hearing. Between 90 to 95% of PTS’ revenue is from business travel and most of that is paid by credit card, meaning that less than \$10,000 has gone into PTS’ trust account in the past six to eight months. Mr. Ron Greenwood described PTS’ receivables as “miniscule” at between \$40,000 and \$50,000, compared to millions “before”, meaning at MKI. PTS achieves gross margins of 6% to 7%, although these were lower before the company obtained IATA approval.

Mr. Ron Greenwood testified that the PTS’ policy concerning trust funds is that all consumer payments for their trips go into a trust fund and the suppliers are paid out of that trust. If commissions are left over, these are transferred from the trust account to the general account.

While he credits the travel consultants with providing PTS with the business it now has, his goal is to develop client relationships that are with PTS rather than with individual travel consultants.

Mr. Ron Greenwood testified that Ms. Greenwood knew that PTS would need funding at least until it obtained IATA approval to issue airline tickets directly. Originally, they budgeted \$100,000 to \$150,000 but ultimately Ms. Greenwood loaned between \$250,000 and \$300,000. Ms. Klein was not involved in these discussions; Mr. Ron Greenwood testified that he, his wife and the former CFO discussed the loan. Ms. Greenwood is on the payroll at PTS, as she was at MKI, and, as at MKI, she does not work for PTS. Her salary is, in Mr. Ron Greenwood's testimony, compensation for the money she has "invested" in PTS. Ms. Greenwood borrows money to invest in PTS and deducts her interest expense for tax purposes. She has been doing this with the various family businesses since 1978. From PTS she gets a paycheque with Canada Pension Plan and Employment Insurance deducted and taxes withheld. It is the same arrangement that she had at MKI and Mr. Ron Greenwood thinks the salary is about the same, around \$120,000. Mr. Ron Greenwood believes his wife also has a general security agreement with PTS and he may have seen it but he is not familiar with its terms. Mr. Ron Greenwood agreed that he may have signed the general security agreement on behalf of PTS. The loans are arranged in the same way as they were at MKI with the bulk of the money coming through the Greenwoods' joint account. Mr. Ron Greenwood issues the cheque for the loan as needed and Ms. Greenwood makes the money available. Mr. Ron Greenwood believes that there should be no further loans extended. At present, PTS is losing money. Now that PTS has its own IATA arrangement, Mr. Ron Greenwood believes that losses should disappear. The lack of the IATA approval was costing the company \$20,000 a month in Mr. Ron Greenwood's estimation.

Mr. Ron Greenwood testified that Ms. Kathy Morris is the agency manager and manages the travel agency teams. She is currently being paid about \$50,000 a year and, in Mr. Ron Greenwood's words, "is due for a raise". The current CFO is the controller and is responsible for the financial statements and for keeping Ms. Morris and Ms. Klein advised of any deficiencies. Mr. Ron Greenwood testified that the CFO would also advise him and his wife of any deficiencies and that Ms. Morris, Ms. Klein, Ms. Greenwood and he would all be advised if any money were needed. Ms. Greenwood and Ms. Klein review the financial statements, according to Mr. Ron Greenwood and Ms. Greenwood consults with her sons as required. Mr. Ron Greenwood testified that "we are all part of the team running

Performance”. He testified that Ms. Klein “values” the opinions of the travel consultants and that he shares some of his opinions.

Given the divergent testimony on material facts, credibility and reliability were issues in this hearing. The Tribunal found the evidence of Ms. Klein and Ms. Morris to be credible. Both women made admissions against their own interest with candor and without hesitation. There were issues of reliability in Ms. Klein’s evidence stemming from her lack of knowledge about the operation of PTS.

The Tribunal accepts the testimony of Ms. Klein that by January or February, 2013, the “whole family” knew that MKI was in trouble, based on what she had been told separately by Mr. Ron Greenwood and Mr. Chris Greenwood. The Tribunal prefers this evidence to that of Mr. Ron Greenwood that he did not know until May 7, 2013 that the company was going into receivership. While he may not have known the exact means of MKI’s demise, he knew or ought to have known in January or February, as his daughter did, that the company was in trouble and, as she said, “was going to close”.

Concerning the account of how Ms. Greenwood is being compensated for her loans to PTS, the Tribunal prefers the testimony of Mr. Ron Greenwood. Ms. Klein’s lack of knowledge about the arrangement makes her testimony unreliable on this point. Similarly, Ms. Klein’s testimony that she knows PTS has working capital of \$900,000 is unreliable. Based on documentary evidence, the working capital of the company as of May 31, 2013 was \$227,952 and there is no evidence of an additional infusion of over \$670,000 in the months since then.

The Tribunal notes that Ms. Klein testified as to a “misuse of trust funds” by her father while he was running MKI. However, given Ms. Klein’s lack of understanding of trust funds and how they are used, the Tribunal is reluctant to draw conclusions based solely on this testimony.

The Tribunal accepts Mr. Ron Greenwood’s evidence about his exchange with Mr. Pepper regarding whether governments were “consumers”. Mr. Pepper could have given reply evidence on this point had he chosen and it is noted that Ms. Karas, counsel for the Registrar, acknowledges that a statement was made by Mr. Pepper to the effect that governments were not consumers. The interpretations Mr. Ron Greenwood chose to place on this remark will be addressed below.

Concerning the various exchanges between Mr. Pepper and Mr. Ron Greenwood on April 19th and 20th, the Tribunal finds that Mr. Pepper’s account is not always internally consistent and therefore is somewhat unreliable. For example, Mr.

Pepper testified that on April 20, 2013, Mr. Ron Greenwood assured him that the working capital and trust account positions of MKI were “good”. In fact, Mr. Ron Greenwood e-mailed Mr. Pepper with the numbers for the working capital and the tangible equity of MKI and Mr. Pepper interpreted these numbers as good. Mr. Pepper was confused about key dates in the April exchanges and became defensive when challenged. The Tribunal concludes that Mr. Ron Greenwood might have offered some reassurance during their April 19th conversation, he did not expressly, personally guarantee that “everything would be fine” if Mr. Pepper accepted unaudited statements from MKI. Nor does the Tribunal accept that Mr. Pepper ever communicated to Mr. Ron Greenwood that he expected a follow-on review engagement of the 2012 annual statements, in light of the memo he wrote to TICO’s CFO which makes no reference to any further annual statements that would be forthcoming.

MOTION

Following the closing submissions, PTS moved to enter new evidence. In submissions, the parties agreed that on February 28, 2014, the Registrar wrote to PTS requesting certain information about the company’s trust accounting practices, including trust account statements or reconciliations for some period ending in January, 2014. PTS replied to this query in March, 2014. Mr. Law submits that the request for information stemmed directly from evidence given during this hearing.

The parties agree that the law which ought to apply is as summarised in *Blackburn v. Midland Wahvyn Capital Inc.* [2002] O.J. No. 3177 (OSCJ) which sets out the test to be used as follows:

- a) The new evidence, if presented at trial, would probably have changed the result; and
- b) Such evidence could not have been obtained by reasonable diligence before the trial.

Mr. Law submits that the proposed evidence is fundamental to the outcome as it contradicts Mr. Ron Greenwood’s suggestion that PTS was following the same accounting practices relative to government accounts that MKI did. Because of this, Mr. Law submits, the evidence shows that Mr. Ron Greenwood does not influence the accounting decisions of PTS. He also submits that the evidence did not exist at the time of the hearing as the Registrar’s request was not made until the last day of the matter.

These arguments are problematic in several respects. Firstly, concerning the trust accounting practices of PTS, the Registrar has expressly abandoned the

allegation that PTS is continuing the trust accounting practices of MKI as a ground for revocation. Thus, the evidence of PTS' trust accounting practices is not required to address this allegation. Secondly, it does not follow that lawful trust accounting practices necessarily mean that Mr. Ron Greenwood does not influence these practices. There are other interpretations possible. For example, during closing submissions, Mr. Law submitted that, notwithstanding Mr. Ron Greenwood's testimony that MKI did not make a mistake in depositing Canada Games' funds into the company's general account, Mr. Ron Greenwood must realise by now that this practice is not correct. Mr. Law invited the Tribunal to conclude that despite Mr. Ron Greenwood's testimony, PTS was correctly establishing trust accounts for their government accounts.

Ms. Karas also raises concerns about the weight the proposed evidence ought to be given. Ms. Karas submits that even if the evidence would potentially change the outcome of the hearing, it is not persuasive on its own. There was a apparently a second follow-up request for information from TICO and a second response, which, Ms. Karas submits, would also have to be entered. Further, Ms. Karas submits that without the evidence of PTS' CFO, the business statements by themselves are of limited probative value. The Tribunal agrees with Ms. Karas' arguments. For these reasons, PTS has not demonstrated that the documents they seek to produce would probably have changed the results of this Decision.

The question of whether the proposed evidence could have been obtained before the trial is also problematic for PTS. It is true that the Registrar's request for further information did not exist before February 28th and stemmed directly from the hearing. However, PTS is not seeking to introduce the Registrar's request only. PTS also seeks to introduce its reply and it may be logically inferred that it is the reply that is of particular interest to PTS. The data in this reply have been within the exclusive possession and control of PTS throughout the period in question. PTS could have called its CFO to testify about PTS' trust accounting practices and any other issues of concern about PTS' accounting decisions. PTS chose not to call its CFO and it cannot now seek to accomplish through the back door what it chose not to do through the front. The motion must fail on both heads of the test set out in the *Blackburn* decision.

DECISION

In submissions on the question of whether or not Mr. Ron Greenwood is in *de facto* control of PTS, Ms. Karas cited the case of *IMAGIN Diagnostic Centres Inc., Re*, 2010 CarswellOnt 6336, 33 O.S.C.B. 7761, a 2010 decision of the Ontario Securities Commission. The Ontario Securities Commission reviewed the case law and concluded:

A *de facto* director has been characterized by the case law as “one who intermeddles and who assumes office without going through the legal formalities of appointment” *Canadian Aero Service Ltd. v O’Malley* (1969). 61 C.P.R. 1 (Ont. H.C.).

The test for determining if a person is a *de facto* director or officer was referred to by the Alberta Securities Commission in the case of *World Stock Exchange, Re* (2000), 9 A.S.C.S. 658 (Alta. Securities Comm.):

In each case, it is the entirety of the alleged director’s involvement that must be considered in the context of the company’s activities. No individual factors are necessarily determinative. The test is whether, under the particular circumstances, the alleged director is an integral part of the mind and management of the company.

(*Re World Stock Exchange, supra* cited in *R. v. Boyle*, [2001] CarswellAlta 1143 (Prov. Ct.) at para. 98)

World Stock Exchange, Re also lists several factors that have been identified as relevant to the determination of whether an individual is a *de facto* officer or director such as:

- (a) appointing nominees as directors;
- (b) being responsible for the supervision, direction, control and operations of the company;
- (c) running the company from their office;
- (d) having signing authority over the company’s bank account(s);
- (e) negotiating on behalf of the company;
- (f) being the company’s sole representative on a trip organized to solicit investments;
- (g) substantially reorganizing and managing the company;
- (h) selecting the name of the company;
- (i) arranging a public offering; and/or
- (j) making all significant business decisions.

Essentially, the term *de facto* officers and directors is meant to capture persons who have avoided liability by arranging for others to be named under the formal title of officer and/or director. All the while, it is the *de facto* officer and/or director who maintains control over the affairs of the company and exercises the powers of a director and/or officer.

The question of whether Mr. Ron Greenwood is in *de facto* control of PTS should be considered not only from the perspective of what he knows and what he does but from the perspective of what he knows and what he does relative to any other employee. To hear the evidence of Ms. Klein and Ms. Morris, one would conclude that no one is running the company. Ms. Klein has a lack of knowledge and understanding of the business she ostensibly owns that is startling. Mr. Law, counsel for PTS, invites us to conclude that Ms. Klein is content to let those who are knowledgeable about the business run it. Ms. Karas concedes that it is not necessary under the Act for Ms. Klein to have any particular knowledge in order to own a travel agency. But, Ms. Karas, submits, someone must have that knowledge and, in the absence of it, Ms. Klein cannot be said to be in control. Ms. Klein clearly does not have a sufficient knowledge or understanding of the business to control it. Ms. Klein does not know if the company she owns is

making or losing money. She does not set employee compensation and is not involved in hiring or firing decisions. She is unsure of what Ms. Morris' responsibilities as manager are under the Act. There is as well the issue of her geographical remoteness from the business. She lives in Edmonton and was last in Ottawa over six months prior to the hearing.

Ms. Klein referred to a management team which runs the day-to-day business of the company but she specifically referred to her father as the person she trusted with in-depth knowledge of the business to whom she would defer. While her father testified that Ms. Klein also values the advice of the individual travel consultants, Ms. Klein did not know what their names are and was unaware of which of them had been dismissed in a recent downsizing. It is improbable that she is consulting them on any material issue affecting PTS.

Ms. Morris is a soft-spoken, mild-mannered woman who is aware of her responsibilities as the notional manager of PTS but is unable to assert her authority. She is responsible for the financial statements but is not being shown them and has not insisted on seeing them. She is given cheques to sign but is not involved in the decision to issue them. She understands that hiring and firing employees is her responsibility but in the one case where an employee left the company and in the two cases where an employee was hired, she acknowledged that Mr. Ron Greenwood played an influential role in the hiring and departure and she is unaware of who set the new hires' compensation or negotiated their contracts. Her inability to assert herself is clearly demonstrated by the fact that she was unable to obtain an increase in her salary despite taking on the significantly greater obligations of Manager. Not only that, but she has been unable to shed her former responsibilities as senior travel consultant.

It is important to note that neither the former nor the current CFO of PTS gave evidence. Mr. Law, counsel for PTS, explained that the former CFO was on vacation and that the current CFO was new. The implication is that the current CFO would not be of assistance in determining how the finances of PTS are being managed.

It is only when Mr. Ron Greenwood speaks of PTS that the missing piece of the puzzle is found. He speaks with the knowledge and depth of understanding of the business of PTS that one would expect of an experienced executive who is combining the roles of Chief Executive Officer and Chief Operating Officer. The company was his idea in the first place, he named it and he set it up, together with his son Mr. Chris Greenwood. He is aware of the key strategic positioning of the company and is the only one who apparently knows which segments of the travel market it will pursue. He has identified the importance of minimising the accounts receivable and of tying customers to PTS rather than to individual travel consultants, both matters of important corporate strategy. Mr. Ron Greenwood makes key decisions about which suppliers PTS will use. It is he who pursued the IATA approval, which he regards as critical to the profitability of the company. Although he is not a signing officer, he set up the banking arrangements,

negotiated the letter of credit for the IATA application and he decides how much of his wife's money needs to be injected into the business. He decides what commissions to charge various customers and he decides when to discount those commissions. He testified knowledgeably about the current financial position of PTS and what would be required to make the company profitable. Although he notionally reports to Ms. Morris, she does not know how he is being compensated. By contrast, Mr. Ron Greenwood not only knows approximately what Ms. Morris is paid, it was he who was able to assert that she was "due for a raise".

Mr. Ron Greenwood is an experienced and successful executive and, in common with many such people, he has a bias to action. He built the Algonquin travel business and the business of MKI. He "took it upon himself" to retain a head hunter and develop a short list of candidates to replace the CFO. He shares his opinions and his daughter defers to him. While Ms. Klein understands that her father cannot be seen to be in control of PTS, there is a control vacuum in the current structure of the company that only Mr. Ron Greenwood can fill. He has the skills, the knowledge and the inclination to fill this control vacuum. He meets the key criteria for *de facto* control in that it is he who is making or materially influencing all key decisions about PTS.

Mr. Law submits that even if Mr. Ron Greenwood is in control of PTS, nothing flows from this. There is no liability on the part of PTS under subsections 5(4) and 5(6) of the Regulation because these sections are time critical. The liability under these sections to reimburse TICO for amounts paid to Canada Games arises, in Mr. Law's submission, when the claims are paid. At that point, on July 12, 2013, Mr. Ron Greenwood could not be said to be in control of MKI because a receiver had been appointed. Thus the chain of control was broken and MKI was not an "associated company" to PTS and liability could not pass from MKI to PTS.

The provision in subsection 5(4) reads, "the administrative authority has not paid any claims from the Fund in relation to the applicant's bankruptcy, insolvency or ceasing to carry on business . . .". It is both the payment of the claim and the fact that the claim was paid in relation to an applicant's bankruptcy, insolvency or ceasing to carry on business that triggers the unique provisions of this subsection to impose an obligation to reimburse the Compensation Fund before an applicant can be registered or have its registration renewed. To accept Mr. Law's reading of the subsection would render it meaningless. The moment a receiver or trustee were appointed, control of the company would pass from its officers and directors and they would then be free, after the claim were paid, to begin a new company without reimbursing the Compensation Fund. All that would be required of them is the patience to wait until the critical time was passed and they could evade responsibility under the Regulation. This interpretation would turn the provision into a cat and mouse game. That surely cannot be the intent.

The intent of this provision seems clear within the context of the Act. The Compensation Fund is contributed to by all registrants under the Act. Thus the burden of an unexpected claim is spread throughout the industry. All registrants

face the possibility that one of them may cease to do business, leaving the travelling public with recourse against the Compensation Fund. Subsection 5(4) of the Regulation provides a partial protection to contributors to the Compensation Fund and thereby indirectly to the travelling public. It is a provision designed to protect the Compensation Fund by requiring a registrant whose insolvency has given rise to claims to reimburse the fund before the registrant can resume business. The section is clear in extending its coverage to interested persons, including associated corporations.

Ms. Karas submits that the Greenwood family was involved in a “scheme” to evade assuming responsibility for the \$2 million claim paid to Canada Games by setting up PTS to carry on the business of MKI. The evidence of such a scheme involving multiple family members is not convincing but TICO is not obliged to demonstrate such a scheme. Section 5 of the Regulation does not require *mens rea*. Regardless of the intent of the Greenwood family, the effect has been that Mr. Ron Greenwood is now *de facto* control of a company which is associated to MKI by virtue of his control of MKI at the time of its receivership. The claim paid to Canada Games was made in relation to that receivership. For the purposes of this hearing, the parties do not dispute that the claim was properly paid. Two of the three conditions of this provision - that a claim be paid and that the payment be in relationship to MKI’s receivership - have been met. The third condition is that either the applicant be the same party which earlier triggered the claim or be an associated or interested party to the one whose cessation of business triggered the claim. There is an association between MKI and PTS by virtue of the common control by Mr. Ron Greenwood. Thus, the liability of PTS to reimburse the fund exists.

It is important to note that Mr. Law is correct in arguing that there may be an element of time criticality in this section if events intercede which change the analysis. While the Tribunal does not accept Mr. Law’s argument that the control of both companies must exist simultaneously in the same person for the liability to arise, there would, of course, be circumstances where the element of control is sufficiently remote that there cannot be said to be an association. If Mr. Ron Greenwood had set up PTS but had then, as his son did, left the company at the end of June, it would be a substantially different case that the Registrar would have to make. That would be particularly true if Mr. Ron Greenwood had sold the company to a third party which bought it in good faith.

Mr. Law also submits that the Registrar, having registered PTS, cannot now raise subsections 5(4) or 5(6) which specifically state they are pre-conditions to registration. However, Section 5 of the regulation refers to a pre-condition of registration or renewal and Section 8 of the Act specifically incorporates meeting any pre-conditions into the ongoing test for registration. Ms. Karas submits that the Registrar has an ongoing obligation to monitor travel agents and if a cause of revocation is found, then the Registrar must move to revoke. This is the only interpretation of Section 8 of the Act, and by extension, Section 5 of the

Regulation that accords with the ongoing regulation of the travel industry contemplated by the Act.

Until PTS either reimburses or makes an arrangement satisfactory to the Registrar to reimburse the Compensation Fund for the amount paid to Canada Games, it is not entitled to be registered. The fact that the Registrar registered PTS based on the facts as he understood them at the time does not change the conclusion that it is not entitled to the registration now that new facts have emerged.

The parties made submissions on the question of whether an arrangement satisfactory to the Registrar to reimburse the Compensation Fund for the amount paid to Canada Games might exist. The Registrar advised that he would accept repayment made in equal monthly installments, paid in arrears, over a period of ten years. The payments would be made without interest. Mr. Law, after consultations with PTS, advised that the company could not in good faith undertake to make these payments nor could PTS enter into negotiations with the Registrar to make any other arrangement for reimbursing the Compensation Fund. Therefore, PTS has not met the pre-condition of registration contained in section 5 of the Regulation.

The fact that Mr. Ron Greenwood is in *de facto* control of PTS also makes him an interested party in the company under subsection 8(5) of the Act. Thus, Mr. Ron Greenwood's conduct is relevant to consider in determining under subparagraph 8(1)(d)(iv) whether the past conduct of an interested person in PTS "affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty."

Mr. Ron Greenwood was a leading member of his industry for many years. His stature may be seen by the fact that the Registrar e-mailed him personally when his company was late in filing its annual report in 2012 and the Registrar intervened personally to expedite his application for the registration of the new company PTS. However, sometime around 2009, things started to wobble. It was around then that Mr. Ron Greenwood embarked on an aggressive campaign of take-overs and mergers. It was in 2009 that Mr. Ron Greenwood complained to Mr. Pepper about losing business to an event planning firm and was told that governments were not consumers. He extrapolated from that that MKI did not have to hold monies paid by certain government clients in its travel industry trust account. Mr. Ron Greenwood is a sophisticated businessman; he testified that he has a law firm on retainer to deal with legal issues such as contracts. However, he did not consult them as to whether his new interpretation of the Act was correct. He did not send a confirmatory e-mail to his regulator. He may or may not have mentioned his new understanding to some other industry members – his testimony was that he did but he did not name these people and they did not testify. Despite his understanding that governments are in a different category, he decided to continue treating provincial and municipal governments as he has always done, putting their travel advances into a protected trust fund. This distinction makes no sense on the face of it; if governments are not consumers

and not entitled to trust account protection, then why would MKI burden itself with trust account obligations for any government account? It only makes sense if Mr. Ron Greenwood was not in fact sure of his new interpretation of the treatment of government accounts. The Tribunal concludes that Mr. Ron Greenwood did not seek confirmation of his interpretation because he did not want to know.

Ms. Karas submits that it has always been the Registrar's position that Governments are "customers" under the section 27 of the Regulation which provides that a travel agent "shall maintain a trust account for all money received by customers for travel services." Ms. Karas submits that "customer" must be given its ordinary meaning. The Tribunal notes that the Canadian Oxford Dictionary defines a customer as:

1. A person who buys goods or services from a store or business
2. A person one has to deal with

There appears to be no compelling reason in the Act not to afford government entities the same trust account protection that other customers of travel services are entitled to. The Tribunal agrees with the Registrar that government entities are customers for the purposes of section 27 of the Act and are entitled to have money they pay for travel services placed in a trust account.

Mr. Ron Greenwood was faced with a clear moral dilemma when the Canada Games contract was renewed in 2012. His explanation for not telling the government accounts he was dealing with that they were no longer being afforded trust account protection is not persuasive. He said it was "none of their business". As a businessman he knew or ought to have known that the trust accounting provisions of the Act were designed specifically to protect travellers who advance funds for travel services. He would certainly have known that Canada Games cared about the protection available to it under the Act because Canada Games had inserted language into the contract asking MKI to acknowledge that Canada Games was entitled to make claims against the Compensation Fund. Mr. Ron Greenwood had a choice to make at the time of that contract, in late 2012. He could disclose to Canada Games that their status had changed, they were no longer "consumers" and were no longer entitled to trust fund protection. Or he could remain silent and let them continue to believe that their funds were going into a trust account. Mr. Ron Greenwood offered a number of explanations for his silence. He testified that the contracts were late in coming, that any attempt to change things would only delay matters. He also testified that funds had been removed from MKI's trust funds by third party agencies, implying that the protection of a trust fund was imperfect. None of those explanations is convincing. What is more probable than not is that Mr. Ron Greenwood knew or ought to have known that his interpretation of the Act was a stretch; that it was probably not valid.

At some point, Mr. Ron Greenwood developed a banking relationship with HSBC which included trust accounts, general accounts and a line of credit. MKI did not

disclose this relationship to the Registrar despite a clear obligation under the Act to do so.

In January or February, 2013, according to his daughter, the whole family knew that MKI was in trouble and was going to close. It was at this point that Mr. Ron Greenwood began to plan for a new company, which was incorporated on March 4, 2013 as PTS. He offered several explanations for why he wanted to start a new company. He testified that he wanted to do some family planning. This is unlikely in the face of the financial crisis engulfing his business. His explanation that he wanted to preserve some part of MKI's business by selling it to PTS is more convincing. His explanation that he wanted to protect his wife's investment in MKI is intriguing. His wife's investment in MKI was in the form of a loan. The only way to protect it is to do what she ultimately did – seek a receiver to act on behalf of the secured creditors of the company, of which she was one. Thus there was no need to start a new company to protect her investment.

Notwithstanding the lack of clarity of the rationale for PTS, Mr. Ron Greenwood was determined to expedite its registration and he called the Registrar, Mr. Pepper with that in mind. His other goal, he testified, was to “share” with Mr. Pepper that MKI cannot afford an audit. His testimony was that he was not sure if any understanding was reached between the men. This is not plausible. The next day, a Saturday, Mr. Ron Greenwood e-mailed copies of the unaudited statements to Mr. Pepper together with his calculation of MKI's working capital and tangible equity. He would not have done this without some expectation that Mr. Pepper would at least consider them. What Mr. Ron Greenwood did not disclose to Mr. Pepper is that in the first quarter of MKI's fiscal 2013, which ended in December, 2012, MKI's annualised losses had accelerated. Mr. Ron Greenwood was aware of this; he had known since late January. He knew as well that his bank, the one he had neglected to inform Mr. Pepper about, had called his line of credit, precipitating a crisis for his company. He knew that over \$680,000 of a cheque paid by Canada Games had gone to pay off that line of credit and would not be available to pay for the travel services Canada Games had contracted for. At this point, April 20, 2013, Mr. Ron Greenwood knew or ought to have known that the chances of obtaining a new line of credit were remote. He had been trying for several months. Finally, Mr. Ron Greenwood knew that he had an obligation under the Act to report his first quarter results to Mr. Pepper and that report, due 45 days after the end of the first quarter, was already overdue. In light of the above, Mr. Ron Greenwood's decision to “share” only selected information with the Registrar while pushing to obtain the registration of PTS is disingenuous to the point of duplicity. The Tribunal accepts Mr. Pepper's testimony that he would not have registered PTS had he known of the true state of finances at MKI.

It is not clear when Mr. Ron Greenwood realised that it might be possible for PTS to avoid reimbursing TICO for the over \$2 million it had paid Canada Games for the services MKI did not provide. At the latest, it would have been on July 24, 2013 when Mr. Ron Greenwood wrote to Mr. Pepper to advise him of his position that PTS had no liability to replenish the Compensation Fund.

It was striking that Mr. Ron Greenwood in his testimony did not acknowledge making any mistakes. It was not a mistake, in his testimony, to pay the Canada Games cheque into a general account at HSBC. The accounting system was responsible for the decline of MKI, in Mr. Ron Greenwood's testimony. Other entities were involved. However, Mr. Ron Greenwood accepted no personal responsibility for the failure of the business or the claim made by Canada Games against the Compensation Fund. There is no requirement for remorse as a condition to registration or re-registration under the Act. But if Mr. Ron Greenwood acknowledges no mistakes it is hard to see what, if any, lessons he has learned. There seems to be no immediate prospect of reform. In particular, there can be no assurance that Mr. Ron Greenwood will not develop his own interpretation of other provisions of the Act and conduct his business in accordance with his personal understanding of PTS' legal requirements.

Most recently, Mr. Ron Greenwood has taken the position that he is not in control of PTS whereas in fact he is. It is clear from Mr. Ron Greenwood's e-mail to the Registrar of July 24, 2013 that one reason for this deception is an attempt by Mr. Ron Greenwood to avoid his responsibility to reimburse the Compensation Fund while continuing in business. What is particularly unsettling about Mr. Ron Greenwood's subterfuge is the invidious position in which it places the nominal manager, Ms. Morris. Ms. Morris genuinely accepts that she bears the responsibilities of manager at PTS but she is being denied the information and support she needs to perform the role. She is a potential scapegoat if something goes wrong and yet, she has no real ability to affect the company's strategy, business practices or financing.

Mr. Ron Greenwood is an interested person in respect of PTS under subparagraph 8(5)(b) of the Act and his past conduct does afford reasonable grounds for the belief that PTS, with him in control, will not carry on business in accordance with the law and with integrity and honesty.

The Tribunal gave consideration to the question of whether it might be possible to continue PTS' registration on condition that Mr. Ron Greenwood's employment with the company cease. The difficulty is that there is really no one other than Mr. Ron Greenwood who appears able to run the company at present. Therefore, PTS' registration must be revoked. The Tribunal is mindful that under the Act, PTS might reapply for registration in 30 days if material circumstances have changed. Obviously, having someone with an unblemished record in control of the company would constitute a material change.

Finally, the Registrar expressed concerns about the role of Ms. Greenwood as an interested party in both MKI and PTS. It is true that Ms. Greenwood was a major lender to MKI and appears to be the only lender to PTS. Thus she is an interested party in both companies. But there is nothing in her conduct which ought to give rise to concern. Ms. Greenwood acted with rational self-interest in moving to appoint a receiver for the secured creditors at MKI. She has loaned money to

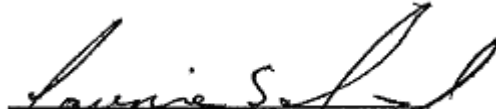
PTS and is being compensated for making the line of credit available. She receives a salary of \$120,000 a year for having agreed to lend \$300,000. It seems highly unlikely that she would wish to disrupt such a lucrative exchange unless she feels her capital is in jeopardy. There is nothing inherently sinister in that position and the Tribunal finds no reason for concern in her continued financing of PTS.

PTS' registration must be revoked on two grounds. The first ground is PTS' inability to reimburse the Compensation Fund for the amount paid to Canada Games despite an obligation to do so under the Regulation. The second ground is the past conduct of Mr. Ron Greenwood and the concerns this conduct raises about the future operations of PTS with him in control.

ORDER

By authority of subsection 11(5) of the Act, the Tribunal directs the Registrar to carry out his proposal to revoke the registration of PTS as a travel agent under the Act.

LICENCE APPEAL TRIBUNAL



Laurie Sanford, Vice-Chair

Released: May 22, 2014