

Changes to Ontario Regulation 26/05:

New And Improved Rules

*As part of the Ontario government's ongoing efforts to have its travel legislation as relevant and airtight as possible, it recently approved several significant amendments to the **Travel Industry Act, 2002** regulation. Much careful thought and consideration has been invested in the crafting of Ontario Regulation 161/10, which amends Ontario Regulation 26/05 and comes into force on July 1, 2010.*

While the underlying raison d'être is to ensure the best possible protection of Ontario consumers, the updating of the regulation has also been undertaken with the real concerns of TICO's retail and wholesale registrants firmly in mind.

This issue of TICO TALK covers some of the main areas in which the regulation has been amended. To review all changes in their entirety, an Explanatory Paper has been produced and is available at www.tico.ca, where it can be read on-line or downloaded.

CEASING TO SELL TRAVEL SERVICES

In the *Assessment of Consumer Protection against Financial Instability in the Travel Industry* (the Assessment), which was produced by the Ontario government following the closure of Conquest Vacations, it was recommended that

notice of intention to cease selling travel services should be made a condition of registration. This was based upon the belief that if TICO had received timely notice of Conquest's intention to close, the closure could have been managed in a more orderly manner, with less disruption to the travelling public.

Since the release of the Assessment, TICO has made notice of intention to cease selling travel services a condition of registration. Through Ontario Regulation 161/10, this condition is now entrenched in the Regulation, which reinforces the importance of the provision.

Section 18.1 of the Regulation requires registrants to notify TICO, in writing, of their intention to close their business as soon as practicable. Whatever the circumstances, notice must be provided within a minimum of ten days before ceasing to sell travel services.

When a registrant does not know at least ten days in advance that it will cease to sell travel services, it is incumbent on the registrant to notify the Registrar as soon as possible after becoming aware of their business's imminent closure. The Registrar must also be informed, by letter, of the location in which the registrant's business records relating to the travel services already sold will be kept.

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Michael Pepper
President and Chief Executive Officer
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LETTER FROM THE CEO



This issue of the *TICO TALK* Newsletter explains the changes to Ontario Regulation 26/05, which come into force on July 1, 2010.

Most of these changes were initiated following the closure of Conquest Vacations on April 15, 2009 and will provide more clarity to the Regulation.

Providing notice of intention to close a business is now a requirement of the Regulation. This should help to alleviate the disruption that can occur when a business closes abruptly without notice. There are also significant changes to the repatriation and claims sections of the Regulation, which will provide enhanced protection to consumers in the event of the failure of an Ontario registrant. Other changes clarify requirements in the Regulation. More details can be found in this newsletter. For complete information on the changes, an Explanatory Paper is available on TICO's website.

The Minister of Consumer Services, Sophia Aggelonitis, has recently announced the appointment of Michael Janigan to the TICO Board of Directors for a three-year term. Michael is the Executive Director and General Counsel for the Public Interest Advocacy Centre in Ottawa. He has previously served on the TICO Board as a Minister's appointee. TICO welcomes this appointment and looks forward to working with Michael. This appointment brings the TICO Board up to full complement with ten industry members and five government appointees.

Wishing you all a great summer,

Michael Pepper
CEO

Documenting this requirement in the legislation enables TICO to work with the registrant in managing an orderly closure that reduces the negative impact on consumers.

COMPENSATION FUND CLAIMS: TRIP COMPLETION

Until now, trip completion compensation, as defined under **Section 69** of the Ontario Regulation 26/05, was paid out at the Director's discretion. There was no clearly defined entitlement to claim from the Compensation Fund. In addition, trip completion applicants had no further recourse to appeal, as the Director's decision was final. The Assessment recommended improving trip completion compensation protections, including a right of appeal process for the consumer.

A review of the Assessment determined that in order to assist consumers stranded mid-trip and needing arrangements to be made on very short notice, the Director's authority to direct payment of funds to repatriate travellers was still necessary. However, the process applied to stranded travellers who paid their own costs to return home could be improved by having the Board of Directors consider reimbursements similar to regular claims on the Compensation Fund.

Section 57.1 of Ontario Regulation 26/05 lists the rules that apply to consumer compensation claims for trip completion expenses. By establishing entitlements, limitations, and claims and appeals processes, the intent is to make the process more transparent, fair and effective.

To summarize, a customer must have booked through a registered Ontario travel agent and paid money to or through the travel agent to be eligible for compensation from the Compensation Fund. The customer must first demand payment from the registered travel agent and wholesaler, from any other person who received the customer's money, or from any other person who may be legally obligated to reimburse or compensate the customer – including an insurance company or a credit card company. To be eligible for compensation, the customer must not have been reimbursed by any other party. TICO may require claimants to provide proof that they have not been reimbursed by other parties prior to allowing the claim.

Section 58.1 of the Regulation allows a travel agent to make a claim on the Compensation Fund for money paid to reimburse a customer for reasonable trip completion expenses. The travel agent is only entitled to be reimbursed if the customer would otherwise have had a claim against the Compensation Fund. Reimbursement

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Who "Owns" The Education Standards Certificate?

Occasionally TICO is contacted by travel counsellors who are planning to move to another travel agency. In each case, they have been informed by their supervisor/manager that they will lose their TICO Travel Counsellor certification once they change jobs.

In fact, this is not the case. No matter who paid for the exam, the certification remains with the individual who passed the exam. TICO recommends that travel counsellors keep the original documentation that confirms their pass, although their employer must see the original, and be provided with a copy of it.



Canada 3000 and Missing Claimants

In December 2009, the Ontario Superior Court of Justice approved the discharge of PricewaterhouseCoopers Inc. (PWC) as the Judicial Trustee of **C3 Leisure Limited** o/a **Canada 3000 Holidays**, and appointed TICO to administer the remaining funds in the trust account. Currently \$282,062.37 is being held in trust for distribution to 1,035 claimants in Ontario because – despite extensive efforts – PWC was unsuccessful in locating them.

TICO has set up a process enabling consumers to submit a Refund Application against C3 Leisure Limited trust funds to TICO. In order to claim, consumers must have:

- purchased their Canada 3000 Holidays travel services from an Ontario travel agency, and
- previously filed a claim with the Trustee that was approved but not paid in full.

The list of individuals with an outstanding refund due to them may be found at www.tico.ca/consumers/news/advisories/219--consumer-advisory-canada-3000-holiday-claims.html. Only these consumers may file a Refund Application, which can be downloaded from TICO's website. For further information, contact TICO at **905-624-6241** or toll-free at **1-888-451-8426**.

PRESENTING

Soussanna Karas, LL.B, LL.M, Legal Counsel TICO



● *Please outline your career, prior to joining TICO.*

I graduated from Syktyvkar State University – in the far north of Russia – in 1996, having obtained two degrees, a Bachelor of Laws – Civil (LL.B) and a Master of Laws – Civil (LL.M). I worked with a commercial bank for two years, before immigrating with my husband to Toronto, in 1998. Then I went back to school and graduated from Osgoode Hall Law School, York University, in 2004 and was called to the Ontario Bar in 2005.

● *What was it like to study in English when you came to Canada?*

Fortunately, I had studied English as my second language while in Russia. Nonetheless, I took numerous courses once I arrived in Toronto. Preparing for the LSAT exam, which is the admissions test for law schools here, was rigorous, and worked wonders on my skills in the English language!

● *When did you join TICO?*

After articling with the Region of Peel, I joined TICO in February 2006.

● *What are your main responsibilities at TICO?*

Most of my work revolves around litigation. There are three main areas. First, I handle all cases that go to the Licence Appeal Tribunal (LAT), which encompass proposals to revoke registration and any appeal from a registrant or from a consumer when their claim to the Compensation Fund has been denied by the Board of Directors.

Second, when there has been a breach of the legislation, TICO lays charges under the *Travel Industry Act, 2002* prosecuting on behalf of the Crown. These prosecutions are quasi-criminal matters heard by the Ontario Court of Justice, Provincial Offences Court.

And third, whenever a decision made by either LAT or the Provincial Offences Court is appealed, we will take the case to the Ontario Superior Court of Justice or to the Ontario Court of Appeal.

● *Is there an area of particular concern to you?*

One of the issues that we constantly struggle with – both in court and with consumers in general – is getting people to understand what TICO is and what TICO does. Over the past few years, partly due to some high profile failures of tour operators and airlines, there is a better understanding of TICO, although it continues to require ongoing education.

● *What are your main challenges?*

In addition to the general understanding of TICO, one of the biggest challenges is that as the travel industry is constantly evolving, the legislation inevitably lags behind, and does not protect every change that takes place when it comes to operating within the industry. For example, look at e-commerce – making Internet bookings presents challenges. This is a new element for e-law in general, and for travel law in particular. I will be very interested to see how this develops, since it will impact both the legislation and the future of the travel industry.

As only three provinces – Ontario, BC and Québec – have legislation that protects travelling consumers, we are constantly tackling new issues. We are pioneering in a way, and it's exciting to be part of it.

● *What do you like best about your job?*

I enjoy the fast pace, the variety of issues and being part of something that is always evolving. It also gives me great pleasure, knowing that TICO offers consumers such a great protection tool, through the legislation and the Compensation Fund. And, I love practising law!

I should also say that TICO is a great place to work. As it's a small office, we are almost like family. ▲

Update on Conquest Vacations

Payment of \$1,518.50 was approved at the June 1, 2010 Board of Directors' meeting. The payment was for eligible claims filed by four consumers who had not received the travel services for which they had paid.

A further payment of \$5,564.06 was approved by the Statutory Director, under the trip completion (repatriation) provisions of Ontario Regulation 26/05. This was to assist 16 consumers who incurred additional expenses in destination for transportation, accommodation and meals in order to complete their travel plans as a result of the closure of Conquest Vacations on April 15, 2009.

To date, a total of \$1,783,842.70 has been paid to consumers for all approved claims and trip completion in relation to Conquest's failure.

TICO TALK Feedback

If you have questions, comments or concerns on anything that you read in **TICO TALK**, or on any other matter that impacts the travel industry, please contact us. Your opinions are important to us. We can be reached very easily - at **(905) 624-6241**, or at **1-888-451-TICO**, or by e-mail to tico@tico.ca.

Raising Consumer Awareness

The overall strategy for the 2010 – 2011 Consumer Awareness Campaign is in place and details of the action plan are being finalized. One of the main thrusts of the campaign will be encouraging registrants to partner with TICO in building consumer awareness. Working the frontlines, travel agents are in the best position to expand and reinforce consumers' understanding of the value of purchasing travel services with a TICO registrant. Registrants' efforts in this endeavour will benefit both consumers and the Ontario travel industry at large.

Taxing Matters

Established by an *Act of Ontario*, the Travel Industry Compensation Fund is considered a type of insurance, and a rate of 8 percent has always been applied to registrants' contributions to the Fund. As insurance premiums have generally been exempt from the federal Goods and Services Tax (GST), this will continue once Ontario's harmonization tax is implemented on July 1, 2010. Consequently, registrants will continue to remit 8 percent RST only on their semi-annual contributions to the Fund.

As GST was not applied to registration and renewal fees, HST will also not apply to these payments.

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will not be provided for any commission or other remuneration, including a service charge owing on account of the travel services purchased by the customer.

For more detailed information on what is covered and what is not covered, please refer to the Explanatory Paper.

Deadlines for filing claims have been amended under **Section 60** of the Regulation. Claims for trip completion expenses must be made to the Board of Directors within three months after the relevant registrant becomes bankrupt or insolvent or ceases to carry on business. As trip completion payments take priority, the shorter filing deadline will allow TICO to determine the possible exposure sooner and minimize the delays in paying out other claims.

EDUCATION STANDARDS

A number of amendments have been made to clarify the requirements.

Section 12 of the Regulation now clarifies that **all supervisors/managers** must pass the TICO Travel Counsellor Exam, whether the supervisor/manager is grandfathered or has passed the Supervisor/Manager Exam. This will help ensure that all supervisor/managers have the necessary background and knowledge to conduct business, in keeping with provincial legal requirements.

Section 15 of the Regulation addresses industry concerns about unanticipated staffing changes and potential problems in finding a qualified supervisor/manager who has already passed the Supervisor/Manager Exam. It permits a supervisor/manager to be hired who has not yet passed the exam, with three provisos – that the individual: has passed the Travel Counsellor Exam; has been approved by the Registrar as having sufficient experience and knowledge to ensure that the office is managed in compliance with the *Act* and the Regulation; and passes the Supervisor/Manager Exam within six months of accepting the position.

The Regulation has also been amended to clarify that TICO – as the administrative authority – sets the educational standard. The Canadian Institute of Travel Counsellors (CITC) administers the program on behalf of TICO, but the reference to CITC has been removed to clarify that it is a TICO certification.

INVOICING REQUIREMENTS

Subsection 38 (1) has been amended to simplify the invoice requirements.

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Under **Clause (a)**, the requirement to include the name and address, if known, of each person on whose behalf the payment is being made has been amended. The invoice now requires the purchaser's name and address, but only the names of additional travellers.

Under **Clause (h)**, because some agents do not sell insurance, the requirement on what to include has been clarified to better reflect the obligation. If the agent sells insurance, the invoice must continue to indicate whether or not the customer has purchased trip cancellation insurance and, if applicable, out-of-province health insurance. If the travel agent does not sell insurance, the invoice must indicate whether the customer was advised of the availability of trip cancellation insurance and, if applicable, out-of-province health insurance.

SECURITY IN LIEU OF TRUST ACCOUNTING

Previously, the amount of security to be provided in lieu of trust accounting was based on total gross sales. It was determined that gross sales was not the most appropriate measure of risk. The amount was found to be too onerous for some industry members and it resulted in few registrants being able to take advantage of the alternative to trust accounting. **Section 28** of the Regulation reduces the amount of security required in lieu of trust accounting.

To exercise this option, the registrant must have been in business continuously for at least one fiscal year, and the requirement is now based on cash sales rather than total gross sales. The security provided must be equal or greater than one-sixth of the money that the registrant receives from customers for travel services for the 12-month period ending on the last day accounted for in the most recent financial statements.

It should be noted that money that a registrant receives from customers for travel services means money actually received. For example, if a customer pays by credit card through the registrant to a supplier's merchant credit card account, it is not considered money received, as the registrant does not actually handle the funds. (These amounts are still considered "sales".) If, however, a credit card payment is made to the registrant's merchant credit card account, then the funds have to be considered in the calculation of any security in lieu of trust accounting.

This amendment will assist business while maintaining sufficient protection for customers. The Explanatory Paper provides more detailed information on the security requirements and how they will work. ▲

Group Bookings and Complete Disclosure

Complete disclosure, as it relates to group bookings, continues to be a problem. When a group booking is made in which each member of the group pays the registrant individually, the travel agent is obliged to provide information on the travel documentation required for each person travelling. Often, the travel agent has informed the group's leader about the travel documentation required for their destination and presumes that the information will be passed on to everyone else in the group. This is not sufficient.

Section 38 (1) of the Regulation states that a statement, invoice or receipt must be promptly provided to a customer after selling travel services. Amongst the many categories of information that has to be included, the Regulation requires that advice should be given to the customer regarding the typical information and travel documents needed for each person for whom travel services are purchased.



Upcoming Issues

In future issues of **TICO TALK** we plan to include:

- Update on the Consumer Awareness Campaign
- Update on Current Legislation
- Trade Shows and Upcoming Events

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Court Matters

► CHARGES

Gary David Clegg has been charged with one count of operating as a travel agent without registration, contrary to **Section 4(1)(a)** of the *Travel Industry Act, 2002*. Gary Clegg operated under the name of **Safari Junction** in Meaford, Ontario.

Arif Assim and Sacred Tours Inc. have been charged with one count each of operating as a travel agent without registration, contrary to **Section 4(1)(a)** of the *Travel Industry Act, 2002*.

Franca Perruzza and 2062204 Ontario Inc., o/a Beltour Travel, have been charged with two counts each of operating as a travel agent without registration, contrary to **Section 4(1)(a)** of the *Travel Industry Act, 2002*. 2062204 Ontario Inc., o/a Beltour Travel, was previously registered under the *Act* and terminated its registration on September 30, 2009.

Simon Shiva Bala and Conquest Vacations Inc. have been charged with one count each of failing to maintain trust accounting, contrary to **Section 27** of Regulation 25/05 made under the *Travel Industry Act, 2002*. Simon Shiva Bala and Conquest Vacations Inc. were also charged with one count each of failing to maintain the minimum working capital required, contrary to **Section 24** of the Regulation.

► CONVICTIONS

Omkar Sharma has been convicted on one count of operating as a travel agent without registration, contrary to **Section 4(1)(a)** of the *Travel Industry Act, 2002*. Mr. Sharma was fined \$1,000 and sentenced to a one-year period of probation, during which time he cannot be employed in the travel industry in any capacity without written permission from the Registrar, *Travel Industry Act, 2002*.

Mary Nagy and Abbey Travel Service Limited have each been convicted on two counts of operating as a travel agent without registration, contrary to **Section 4(1)(a)** of the *Travel Industry Act, 2002*. Abbey Travel Service Limited was previously registered under the *Travel Industry Act, 2002*; however, the registration was terminated in June 2007.

► REVOCATIONS

Between February 10 and June 30, 2010, four companies had their registrations revoked: Paul C Cziraky o/a Zeus World Travel; 440629 Ontario Inc. o/a Adriatic Travel Agency & Tours; Muhammad Anwar Alvi o/a All Nation Travel and Tours; and Persian Gulf Inc. ▲