

April - June 2005

THE NEW LEGISLATION - A Close-up Look

On July 1, 2005, the *Travel Industry Act, 2002* and *Ontario Regulation 26/05* come into force; their impact on the Ontario travel industry and the way registrants conduct their business will be considerable.

To help you understand and comply with the new legislation, **TICO** prepared an Explanatory Paper. This has been posted on **TICO's** website and has been distributed at every Town Hall Meeting. In this issue of **TICO TALK** we will highlight some key issues.

Representations

The legislation could not be more emphatic: no registrant shall make a representation that is false, misleading or deceptive, and all representations are required to comply with the *Act* and the *Regulation*.

When deciding how to present your **pricing**, there are three options to choose from, and none of them has to include PST or GST. However, it's important to note that any conditions that affect or limit the availability of the travel services at the advertised price must be stated. When these conditions are detailed or complex, the representation must note the condition and may advise where the specific details on those conditions can be found.

The information on pricing must be clear, comprehensible and prominent. The listed price must refer to travel services available, at that price, during the time to which the representation applies. Placing the tax amount in fine print does not meet this requirement and is not permissible.



Describing a price as "from" a certain amount is also not acceptable. To cover cost variances depending on the date of travel, for example, a registrant could advertise the price range and include the conditions that cause the price to vary within that range.

The requirements for a fair and accurate description of the travel services, per **Section 34** of the *Regulation*, demand a higher standard than the previous *Regulation*, and are aimed at truthfulness and the content of representations.

Whenever **photography and other pictures** are used in representations, these should accurately depict what is being advertised. There should be a clear, prominent and

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Michael Pepper
President and Chief Executive Officer
Travel Industry Council of Ontario

LETTER FROM THE CEO

This is a very busy time at TICO. We have just completed 11 Town Hall meetings across the province and preparations are underway for implementation of the *Travel Industry Act, 2002* and Ontario Regulation 26/05, which come into force on July 1, 2005. It was great to see so many registrants in attendance at the Town Hall meetings. TICO staff hopes that registrants found the sessions useful and informative. This issue of **TICO TALK** contains more information on some of the regulatory changes that registrants should be aware of relating to representations, disclosure, working capital and trust accounting. Remember, TICO staff is here to assist you if you have questions or concerns regarding the new requirements. We must all work together to ensure a smooth transition to the new rules.



In addition to the new legislation, TICO staff has been busy dealing with calls and claims relating to the recent failure of Jetsgo. Again, this airline failure highlights major gaps in how consumers are financially protected when they travel by air. Inadequate operating capital and a lack of financial monitoring by the federal government contributed to the failure. The airline was able to lure consumers into paying in advance for future travel at artificially low prices. Those payments were then used to pay for current expenses rather than the travel services for which they were intended. At the end of the day, the failure was inevitable and the damage to the industry was far worse than the reported deficit of \$100 million. Jetsgo's strategy not only stranded thousands of consumers but it dragged down the whole industry as other carriers fought to compete with the pricing strategy. This behaviour has to stop and it is incumbent on the federal government to make sure that Canadian consumers are protected when they travel by air.

TICO, along with a coalition of consumer groups and travel industry associations from across the country, are joining forces to demand that the federal government provide appropriate protection for airline travellers in Canada. It is TICO's position that the proposed amendments to the *Transportation Act* contained in Bill C-44 do not go far enough to protect consumers. TICO will be encouraging the federal government to make changes that protect advance payments by consumers, to include better financial disclosure rules as well as rules concerning full price disclosure in advertising. TICO will keep registrants updated on the progress of its efforts in this area.

One good way for registrants to get an update on TICO's activities is to attend the Annual General Meeting, which is being held this year on June 28, 2005. The meeting will be held at the Airport Board of Trade at 4:00 p.m. At the meeting, TICO's financial statements for the year ended March 31, 2005 will be reviewed as well as the presentation of the Auditor's Report. TICO will present its Business Plan. Results of the Board election will be revealed and the composition of the new TICO Board will be announced. All registrants are encouraged to attend. I hope to see you all on June 28th!

A handwritten signature in orange ink, appearing to read 'Michael Pepper'. The signature is stylized and fluid.

Michael Pepper CEO



Notice to Members ANNUAL GENERAL MEETING

TAKE NOTICE THAT the Annual General Meeting of the members of the Travel Industry Council of Ontario will be held at 4:00 p.m. on Tuesday, June 28, 2005 at the Board of Trade of Metropolitan Toronto (Airport Location), 830 Dixon Road, Etobicoke, Ontario for the purpose of:

- (a) receiving, considering and approving the financial statements for the previous financial year, together with the Auditor's Report;
- (b) receiving and considering the Annual Report;
- (c) appointing an Auditor for the next year following; and
- (d) transacting such other business as may properly come before the meeting

Only members in good standing are entitled to participate in and vote at the meeting. Members of the public are invited to attend.

Written notice must be received by the Secretary on or before June 7, 2005, of any motions to be made at the Annual Meeting.

Members who will not be attending the meeting are invited to submit written requests for proxies. Copies of the audited financial statements as at and for the fiscal period ended March 31, 2005 will be available at the Annual General Meeting and may be requested in writing prior to the meeting.

DATED at Mississauga this 12th day of April, 2005.

On behalf of the Board of Directors

Tracey McKiernan
Secretary

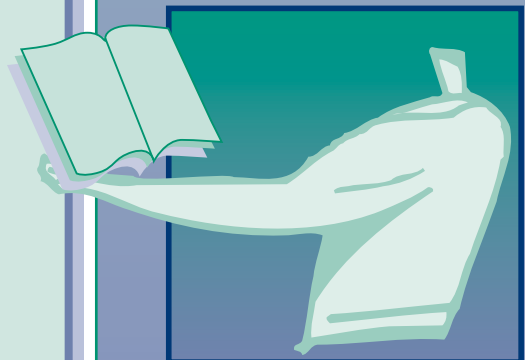
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Upcoming AGM

An invitation to the Industry was recently extended by TICO, inviting nominations for one elected position on the Board of Directors. The position is open to retail candidates, for a term of office of three years, commencing at the Annual General Meeting. The deadline for submitting nominations was April 15, 2005. Ballots have been sent to Member Registrants during May, and the results of the election will be announced at the Annual General Meeting, on June 28, 2005.

Business Plan and Annual Report

The Business Plan for 2005 and Annual Report for 2004 - 2005 are currently being prepared for presentation at the AGM. The Annual Report will be mailed to all registrants, while the Business Plan will be distributed at the AGM. It will also be available to registrants on request, and it may be downloaded from TICO's website at www.tico.on.ca after June 28, 2005.



Jetsgo fiasco

The recent collapse of Jetsgo, at the height of Ontario's March Break, left 17,000 travellers stranded - and highlighted the significant gaps in federal consumer protection within the airline industry. While the federal government is actively working to protect Canadian travellers from unsafe airline operators, Canadian airlines do not have to meet any kind of financial fitness criteria, under current rules, once 90 days have elapsed after the initial license has been approved. Nor are they subject to any rules around financial disclosure or security against advance ticket sales. As long as this continues, travellers remain at risk.

Along with a broad range of consumer and travel industry groups from across the county, TICO has called on the federal

government to close the gaps in consumer protection for airline travellers in Canada. Tighter monitoring of the airlines' financial status, financial protection of consumer advance payments, and a substantive policy to address the lack of transparency in travel industry advertising are all required.



PRESENTING

Trish McTavish *Vice President Sales, McTavish Travel Elected Member - Retail TICO Board of Directors*



Trish McTavish heads the corporate, sales and customer service operations at McTavish Travel, a company that was founded in Oakville, 33 years ago, by her husband Ross McTavish and his father. Since then, Ross and Trish have worked hard to grow their business, focusing on corporate, vacation and group travel.

The company believes strongly in offering hands-on service, and is renowned for the longevity of its employees. Two of McTavish Travel's 22 staffers recently celebrated 25 years, several others have spent more than 20 years with the company, and many have reached the ten-year mark.

Trish became deeply involved with the travel industry over the past ten years. Initially she joined the ACTA-Ontario Board of Directors and was soon working on an ad hoc committee set up to provide input into the Legislative and Regulatory Review of the *Travel Industry Act*. It was this experience that spearheaded her ongoing interest in the legislation.

Her election as ACTA-Ontario's president placed her automatically on TICO's Board of Directors, representing retail registrants. (At this time she also sat on the board of the Canadian Institute of Travel Counsellors and on a Greater Toronto Airports Authority consulting committee.) A year after her first term on TICO's Board ended, she decided to run again for a position on the Board - in addition to the Legislative and Regulatory Review, there were other issues she felt strongly about, such as end supplier failure, and she wanted to maintain her involvement.



Trish is now completing a three-year term on the Board; she has always sat on the Legislative and Regulatory Review Committee and is currently its chair. "We worked closely with the government, and although we didn't get everything that we wanted, there are a lot of things that we did get. Most people have no idea how much work by so many people has gone into the review - I do sometimes wonder what the legislation would have looked like without our input!"

For example, the government originally planned to allow only one way of stating the price when advertising a travel service; however, TICO pushed hard and successfully for the inclusion of the three options that are now offered.

Another issue of immense importance to Trish is minimum standards. Because she sits on the Minimum Standards Committee, she has decided to run for another term on the Board. "It's one of the last pieces of business to be completed, and we are still in the process of defining the program and what the curriculum should look like," she says.

There has been a great deal of discussion on the big picture of what the new minimum educational requirements should focus on. "The bottom line is that travel agency owners and travel agents have to understand their responsibilities and obligations under the *Travel Industry Act*, period. They have to know what must be disclosed to clients, and their financial disclosure requirements to TICO."

Consequently, Trish feels that the minimum educational standards course has to cover exactly what registrants need to know. Ultimately, she says, it is going to have a huge impact on the Ontario travel industry, since no one will be exempt and everyone who works with the general public will have to take the course. Which means that it's crucial to develop a curriculum that is exactly right.

Being on the TICO Board of Directors has been a pleasure for Trish. "I have sat on many boards, and I find that TICO Board members come to meetings fully prepared, bringing a great deal of dedication, industry experience and knowledge. Everyone is working towards what is best for the industry as a whole - they look at the big picture and search for the best solution. It has been an honour to sit on the Board, and to play a role at such a pivotal time in the travel industry." ▲

Transport act amendments

At the end of March, federal Transport Minister Jean Lapierre introduced Bill C-44 and its new airline specific advertising guidelines, which would lead to some much-awaited amendments to the *Canada Transport Act*. In an attempt to clear up the public's frequent confusion between advertised and actual airfares, Ottawa pushed the airline industry to include all taxes and fees in their ads. In addition, the new *Act* will eliminate the position of Air Travel Complaints Commissioner, which was established as a temporary measure in 2000.

TICO President and CEO Michael Pepper immediately expressed TICO's disappointment in the scope and strength of the proposed changes, saying that the suggested amendments don't go far enough to reflect the real needs of Canadians. "There is no mention of tighter monitoring of the financial status of airlines, no federal compensation fund to protect consumers when failures like Jetsgo occur, and they have left the creation of legislation to address the lack of transparency in travel industry advertising up to the Canadian Transport Agency."

TICO will continue to pressure the federal government into tabling tougher consumer-oriented measures, with the imposition of strict rules on an industry that is so clearly volatile - and apparently disinclined to balance its business practices with the needs of consumers.

Furthermore, TICO feels that eliminating the position of the Air Travel Complaints Commissioner, that was put in place to help consumers deal with problems, is yet another sign of the government's lack of commitment to the consumer.

Town hall meetings a success

On July 1, 2005, new *Travel Industry Act, 2002* and Ontario Regulation 26/05 come into effect. As it is vital that registrants understand how the legislative changes will impact their business, TICO held a series of open Town Hall meetings throughout the province. At each of the two-hour meetings - held in Hamilton, Windsor, London, Waterloo/Kitchener, St. Catharines, Kingston, Sudbury, Thunder Bay, Orillia, Ottawa and Toronto - Michael Pepper, Travel Registrar and President & CEO of TICO, reviewed and explained the legislative changes. All stakeholders were invited and encouraged to ask any questions that they might have. To facilitate the discussion, copies of an Explanatory Paper prepared by TICO could be downloaded from TICO's website and were also available at the meetings. Overall, the turnout was excellent, and each Town Hall generated wide-ranging discussion.

Canada 3000 holidays: update

As claims are still in the hands of the Judicial Trustee, PricewaterhouseCoopers LLP, there is nothing further to report. All TICO can do is reiterate that as soon as the files are received from the Trustee, the remaining claims will be processed as swiftly as possible.



The new legislation - a close-up look continued from page 1

comprehensible indication of whether it is a photograph or picture, and what the image refers to.

The Registrar's powers when dealing with false advertising - be it in an advertisement, circular, pamphlet or other material - are detailed in **Section 29** of the *Act*.

Pre and Post Sale Disclosure

The duties of travel retailers pertaining to disclosures and advice that is provided before entering into an agreement with a customer for travel services, and before taking payment or credit card information from the customer, are covered in **Section 36** of the Regulation.

You are obliged to disclose, prior to making the sale to the customer, any conditions that may affect their decision to purchase the travel services. These include the total price, travel dates, and a *fair and accurate* description of the travel services; the availability of trip cancellation insurance and out-of-province health insurance; and typical information and travel documents needed for travel outside Canada.

Under **Section 37**, if a registrant - either a travel agent or a wholesaler - becomes aware of a change to the travel services that, if known, might have affected the customer's decision to purchase, they must immediately advise the customer of the change.

The prompt provision of a complete statement, invoice or receipt to a customer is addressed in **Section 38 (1)** of the Regulation. The statement must indicate that if the total price of the travel services, excluding an increase in retail sales tax or federal goods and services tax, increases more than 7%, the customer has the right to obtain a full refund.

Section 39 of the Regulation addresses the condition of accommodation (of which a definition is provided in **Section 1** of the Regulation). One of the key provisions is that if conditions change and customers are offered the choice of a refund or alternate services, the registrant must keep written records of what information was communicated to the customer, on what date, the method of communication, and the choice the customer made.

Section 40 of the Regulation speaks to events that require notice and the offer of refund or comparable alternate travel services acceptable to the customer. It includes the definition of a *force majeure* and outlines the written records that the registrant must keep, as in **Section 39** above.

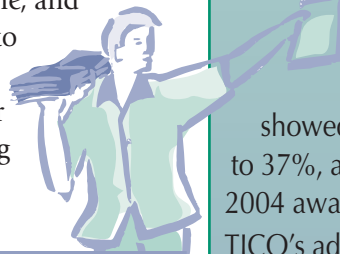
Section 44 of the Regulation declares that travel agents must advise the customer of the existence of counselling fees or service charges prior to counselling or selling travel services. They must also advise whether the fee or service charge is refundable or not.

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Working Capital

New working capital requirements are set out in **Sections 23** and **24** of the Regulation. The working capital requirements outlined in **Section 25** of the current Regulation will apply until December 31, 2005.

The new legislation has changed the minimum working capital requirement to include more ranges, depending on sales volume, and is detailed in **Section 24**. These requirements will not come into effect until January 1, 2006, to give registrants time to meet the new requirements. If the end of a reporting period occurs on or after January 1, 2006, the registrant must meet the new working capital requirements, as tabled below:



SALES IN ONTARIO DURING PREVIOUS FISCAL YEAR

Minimum Working Capital

\$0 - \$500,000	\$ 5,000
\$500,000 - \$750,000	\$ 10,000
\$750,000 - \$1,000,000	\$ 15,000
\$1,000,000 - \$2,000,000	\$ 20,000
\$2,000,000 - \$5,000,000	\$ 25,000
\$5,000,000 - \$10,000,000	\$ 35,000
\$10,000,000 - \$20,000,000	\$ 50,000
\$20,000,000 +	\$100,000

Please note that the value of security provided or capital belonging to an interested person shall not be included when calculating working capital.

Trust Accounting

As has been previously covered in *TICO TALK*, **Section 27 (1)** of the new Regulation requires that all registrants maintain a trust account. However, in lieu of trust accounting, registrants may provide security to TICO, according to **Section 28** of the Regulation. To exercise this option, the registrant must have been in business continuously for at least one fiscal year and the security must be equal or greater than one-sixth of the registrant's sales in Ontario for the 12-month period ending on the last day accounted for in the most recent financial statements. If the sales level changes, it is the registrant's responsibility to ensure that the security submitted meets the requirements. ▲

Consumer awareness campaign continues

An omnibus survey was recently conducted on behalf of TICO, with 1,000 random calls placed to people across Ontario. The purpose was to assess consumers' awareness of TICO and the encouraging result showed that awareness had jumped to 37%, an increase of 11% over the 2004 awareness study.

TICO's advertising campaign will be underway again, later in the summer, with the television commercials appearing on various stations across the province. Please continue to display the TICO logo, window decals and posters in prominent locations - it will both reinforce our message and encourage the consumer to support your business.

Correct paperwork is crucial!

During the processing of the Jetsgo claims, it transpired that a number of travel agents, after booking a ticket for their customer on Jetsgo's own web site, provided only a printout from the web site detailing the flight dates and amount paid, and not a proper receipt. Section 23 of the Regulation specifies exactly what must be set out on a statement, invoice or receipt - including whether cancellation insurance was offered and/or declined, and the serial number of the receipt, invoice or statement, or its unique identifier. A printout is not acceptable and does not meet the requirement under the *Travel Industry Act*. For the claims to be processed, travel agents must provide their clients with a proper receipt.

Upcoming Issues

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

- Further analysis of the Legislative and Regulatory changes
- Update on Canada 3000
- Update on Jetsgo

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Court Matters

CHARGED

Elorine Johnson, Ella's Travel Inc. and Bronte Tours & Travel (Ontario) Inc. have been charged with a total of 54 counts under the *Travel Industry Act (Act)*. Elorine Johnson and Ella's Travel Inc. have been charged with one count each of failing to maintain working capital, contrary to Section 25 of Regulation 806/93 of the *Act*; one count of carrying on business with an unregistered agency, contrary to Section 18 (1) of the Regulation; and 22 counts each of failing to maintain trust accounting, contrary to Section 36 of the Regulation. Elorine Johnson and Bronte Tours & Travel (Ontario) Inc. have been charged with one count each of operating as an unregistered travel agent contrary to Section 3 (1) of the *Act* and one count each of operating as an unregistered travel wholesaler contrary to Section 3 (2) of the *Act*. Elorine Johnson has also been charged with two counts of providing a false statement, contrary to Section 25 (1) a of the *Act*. An ex-parte trial has been set for March 20, 2006 at the Provincial Offences Courthouse at 1530 Markham Road, Scarborough.



REVOCATIONS

Between January 27, 2005 and April 28, 2005, four companies had their registration revoked:

- 1525011 Ontario Ltd. o/a Astor Travel Services;
- Garrison Travel Inc.;
- International Travel & Tours Inc.;
- 1444834 Ontario Inc. o/a Travel Route.