

January - March 2005



The recent approval of Ontario Regulation 26/05 under the *Travel Industry Act, 2002* is an important event for the travel industry in Ontario.

The Legislative and Regulatory review process has taken many years to complete and the resulting Regulation has been modernized - making it more relevant than ever before to the Ontario travel industry.

That said, some registrants may initially be concerned about having new requirements to learn about and comply with. Change in any area of life can be stressful. Registrants can take comfort in knowing that TICO is firmly committed to helping you get up to speed on the new requirements. We're in this together and, we are confident that, at the end of the day, the industry as a whole will be stronger as a result of the changes.

The new Regulation comes into force on July 1, 2005. Therefore, registrants have approximately five months to prepare, so that by the time the new Regulation is in place, they will be compliant.

During the next five months, TICO will use a number of channels - including this newsletter, our web site, Town Hall meetings and various printed materials - to explain

the new legislation, what it means to you, and how you will have to change or fine-tune the way you operate, in order to remain compliant.

In this issue of TICOTALK, we will begin to highlight some of the more significant changes. Please note that the Regulation has been renumbered. Although some of the basic requirements have not changed, most of the numbers have, so you will need

to pay particular attention to the numbering of sections that apply specifically to your operation as a registrant.

The claims process

The important change here, as stated in Section 60 (1), is that all claims submitted to TICO, by a customer or a registrant, must be filed in writing **within six months** of the failure of the relevant registrant or end supplier. Any claim for reimbursement after the end of the six-month period will not be accepted.

According to Section 57 (1) (b) and (c), the customer is only entitled to be reimbursed by the Compensation Fund after they have made a demand for payment - and have not been reimbursed due to the cessation of carrying on business or an unwillingness to pay - from the registrant, any other person who has received their money and any other person who may be legally obliged to reimburse or compensate the customer, such as an insurance company.

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LETTER FROM THE CEO



Now that TICO has received an effective date for the new travel Regulation, plans are being finalized to conduct Town Hall Meetings across the province to explain the new requirements. These informative sessions will take place during April and May, which will leave agencies plenty of time to become familiar with the new

requirements before the new Regulation becomes effective on July 1, 2005. We have already received calls from some registrants expressing concerns with respect to the new minimum educational requirements. In this letter, I will try to ease some of your concerns with respect to this issue.

First, it should be noted that the new educational requirements will not come into effect until 2008. The reason for the delay is to give TICO and CITC an opportunity to develop the course, which is being prepared based on the new Regulation. As well, it ensures that schools and colleges can incorporate it into their calendars, and that registrants have an opportunity to learn the materials and take the exam before the requirements become law.

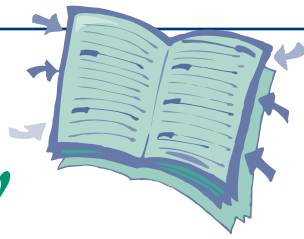
Second, it should be noted that the minimum educational requirements will focus on the Travel Industry Act, 2002 and the Regulations. The goal is to ensure that all registrants know and understand the requirements in the Act and Regulation so they can better serve their clients. Individuals are not required to get their CTC or CTM designations. The standard is not an onerous one. CITC is the body that will administer the testing for TICO.

All travel counsellors who deal directly with the public will be required to take and pass an exam in order to obtain their certification and meet the new standard by 2008. All supervisor managers currently in the industry will be grandfathered and will not be required to take the supervisor/manager exam in order to remain in their current positions. The supervisor/manager standard will apply to those entering or moving around within the industry after the effective date.

Prior to the Town Hall meetings, TICO will post an Explanatory paper on its website and distribute information to registrants regarding the new requirements. Registrants are encouraged to review these materials prior to attending the meeting. In this way, if registrants have questions, they can seek clarification at the meetings. Stay tuned for further updates.

Michael Pepper CEO

A question of responsibility



With the tragic tsunami in Asia, outbreaks of malaria and gastrointestinal illnesses in the Dominican Republic, and a water shortage in Holguin, Cuba, some registrants have asked exactly what are they responsible for when these events occur.

The 'force majeure' factor - accommodation and transportation

When damage to a destination is caused by severe weather or *force majeure*, your responsibility to customers travelling to or in the area is laid out in Sections 27 and 28 of the current Regulation.

Section 27 makes registrants responsible for taking reasonable measures to ensure that the accommodations sold to customers are in the same condition as described by you at the time of sale when the time comes for your customer to use them. If they are not, you must promptly notify the travel agent or customer and offer the customer a choice of a full and immediate refund or comparable alternate services.

If the accommodations were sold as part of a package that included transportation to the destination affected, the refund or comparable alternative services must cover the entire package. Otherwise, they need only be applied to the accommodation portion of the travel services sold.

If a travel wholesaler becomes aware of certain things defined in Section 28 of the Regulation, including the delay or advance, by 24 hours or more, of the scheduled departure of any transportation that forms part of the travel services, the wholesaler must offer the customer the choice of a full, immediate refund or comparable alternate travel services acceptable to the customer. However, Section 28 (2) states this does NOT apply if the change results from a *force majeure*.

Health advisories

After the Public Health Agency issued Travel Health Advisories on the situation in the Dominican Republic, many registrants whose customers had immediate or future departures already booked to that country were anxious to know what their responsibilities were under the *Travel Industry Act*.

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TRAVEL DOCUMENTS ADVISORY: update

If your customers require a birth certificate for travel, the processing time for regular service has returned to six to eight weeks, providing their application is complete and the information is accurate. Should they want to telephone the Office of the Registrar General, please advise them that the office receives more than 4,500 calls per day. As a result, many clients receive a busy signal or experience long waits. For more detailed information on travel documentation requirements, visit the Consular Affairs Bureau web site at <http://www.voyage.gc.ca/>



TICOTALK feedback

With the speed of change within the travel industry, TICO's role is more vital than ever. Every issue that TICO is working on impacts all of our registrants. In this issue of **TICOTALK**, we are profiling Brett Walker, one of the three Elected Members at Large on the Board of Directors (see page 4). We encourage you to consider taking up his request to "use him" as yet another avenue to approach TICO on any issue that is important to you. In the meantime, we can be reached at (905) 624-6241, or at 1-888-451-TICO, or by e-mail to tico@tico.on.ca.

Changes on the board

Farewell and thank you to Ted Warren, who has served on the TICO Board of Directors for the last four years. An appointee of the Ministry of Consumer and Business Services, his contributions were greatly appreciated. And a warm welcome is extended to Patricia Jensen, Board member and Treasurer of the Consumers Advisory Council of Canada, who has taken over the Ministry-appointed position on the Board.



STATUS REPORT: Canada 3000 holidays

Unfortunately, there is nothing further to report on the distribution of payments on claims, as it is still in the hands of the Judicial Trustee, PricewaterhouseCoopers LLP. As soon as TICO receives the files from the Trustee, we will deal with the remaining claims as swiftly as possible. For the time being, we appreciate your understanding and patience during this long and arduous process.

Brett Walker

*Operations Manager,
Collette Vacations
Elected Member at Large
TICO Board of Directors*



Brett Walker has held many positions since he joined the Canadian office of Collette Vacations in 1989, from tour guiding to sales to his current position as Operations Manager - which entails overseeing day-to-day operations as well as strategic planning and initiatives.

"The last 15 years have given me a good understanding of how any travel wholesaler needs to operate, from bottom to top, and I suspect, in many ways, it's how a retail business needs to operate, too," says Brett - which is why, as one of the Board's Elected Members at Large, he is anxious to reach out to ALL registrants.

There have been many profound changes to the travel industry since Brett was first elected to the Board, in 2001, and he predicts that more will come. "All registrants were impacted by the events on September 11, 2001, and the subsequent plight of the industry immediately thereafter. In my view, TICO's stewardship through these difficult times has been excellent - I can't speak highly enough of how incredibly relevant TICO is, to the industry at large."

Since joining the Board, Brett has served on the Legislative and Regulatory Review Committee, and more recently he was appointed to the Governance Committee. "It's been rewarding to be a part of TICO and share in many milestone achievements, notably the amending of Section 26 of the *Travel Industry Act, 2002* which removes the liability for travel agents in the event of an end supplier failure."

Brett's commitment to TICO runs deep. Above and beyond TICO's mission to create a fair and informed travel marketplace, he feels it has sought successfully to strengthen the viability and competitiveness of Ontario registrants in many ways. "The health of the Ontario Travel Compensation

Fund, which TICO administers, attests to TICO's successful administration of the *Act*, and management of the industry as a whole. The Compensation Fund is certainly one of the major reasons why consumers can feel confident booking their travel with a registrant. It's a real selling advantage for registrants, especially with the advent of so many on-line retailers."

The education of consumers about the Compensation Fund and the importance of booking travel with a registrant has been so strongly promoted by TICO, says Brett, that as the travel industry changes, both globally and here in Canada, the stewardship that TICO provides will continue to benefit registrants and consumers alike.

"However", says Brett, "the issues that affect the industry are not always so profound, and I am anxious to know what more I, as an elected member at large, can do for my constituents, both wholesalers and retailers?"

Reaching out to you!

Spurred on by his belief in the importance of TICO, Brett wants to make himself available to all registrants.

And he has these questions:

- * Are the issues that TICO constantly works on of interest to you?
- * Do you want to be more involved? If so, how?
- * Are there other issues that you would like brought to the table?

With the proclamation of the *Travel Industry Act*, 2002, Brett predicts that the revised legislation will have a huge impact on the industry as a whole, and on every registrant individually. "That being the case, I would like to engage myself in any discussion on any issue of general concern to the industry. Some of these issues may warrant including on the agenda at future Board meetings."

You have been notified: Brett is waiting to hear from you... whether you're looking for guidance, clarification, or wondering how to bring something to the Board's attention. "Whatever the issue - all-in-one price advertising, minimum standards, or something else - if you're unsure about who you should approach, please contact me!"

If you would like to help Brett make the very most of his mandate, as an elected member at large, feel free to get in touch with him! He can be contacted at (905) 629-0120 or by e-mail at BWalker@ColletteVacations.ca ▲

Closing Doors

Ella's Travel Inc. voluntarily terminated its retail registration under the *Travel Industry Act* on December 23, 2004.

This company was located at 2300 Lawrence Avenue East, White Shield Plaza, Scarborough and sold mainly air only, to various destinations.

TICO has received calls from approximately 90 consumers who purchased travel services and who have not received their travel documents. Based on the information collected, these consumers paid a total of approximately \$81,264.00 for their travel services, and have been sent claim forms. The total exposure to the Compensation Fund is currently unknown.

Ceylon Tours and Travels Inc. voluntarily terminated its retail registration on February 9, 2005. The company was located at 2347 Eglinton Avenue East, Scarborough, and sold mainly air-only and ITC packages. The total exposure to the Compensation Fund is currently unknown.

In both cases, any consumers who have purchased travel services, or who may be at risk of not receiving the travel services purchased, are asked to contact TICO for assistance. They may call **1-888-451-8426** or **(905) 624-6241** to request a claim form and/or to speak to one of TICO's Claim Co-ordinators.

What do you want to know...

...about the Travel Industry Council of Ontario, its activities and how they affect you?

Over the next month, TICO will be asking registrants how it can best meet their information needs. With upcoming changes to the *Travel Industry Act*, it's critical for us to know the easiest ways for you to get what you need to know.

The telephone survey is being conducted with randomly selected registrants by Sandown Communications Consulting. The survey is short - it will take less than 10 minutes - and all individual survey responses will remain completely confidential. We hope you'll make this small investment of your time so that we can best meet your communication needs. If you have any questions about the survey, please feel free to contact us at: tico@tico.on.ca.

Misleading or false promotions

Pursuant to Section 29 (4) of *Travel Industry Act*, 2002, if a registrant is believed to have made misleading or false statements in any advertising, circular, pamphlet or other outlet, the Registrar may request that all such materials be submitted for approval, before publication, for a certain period of time. The prescribed period will be for up to 90 days, per Section 49 of the new Regulation.

Introducing the new and improved legislation! continued from page 1

Another significant change is that the Compensation Fund will now reimburse for taxes.

Changes to financial requirements

There are two significant changes here. Until now, some registrants were not obliged to maintain **trust accounting** as they had been 'grandfathered' under the previous Regulation. Section 27 (1) of the new Regulation requires that all registrants maintain a trust account for all money received from customers for travel services or must provide security to TICO instead of maintaining a trust account.

Second, the **minimum working capital** requirement has been changed to include more ranges, depending on sales volume, per Section 24, as the following table illustrates:

SALES IN ONTARIO DURING PREVIOUS FISCAL YEAR

Minimum Working Capital

\$500,000 or less	\$5,000
More than \$500,000 but not more than \$750,000	\$10,000
More than \$750,000 but not more than \$1,000,000	\$15,000
More than \$1,000,000 but not more than \$2,000,000	\$20,000
More than \$2,000,000 but not more than \$5,000,000	\$25,000
More than \$5,000,000 but not more than \$10,000,000	\$35,000
More than \$10,000,000 but not more than \$20,000,000	\$50,000
More than \$20,000,000	\$100,000

Please note that there is a transition provision in the Regulation.

The minimum working capital requirement does not come into effect until December 31, 2005.

New applicants, or anyone who has not been registered during the previous 12 months, must provide \$10,000 in security when applying for registration, according to Section 25. Security provided by new registrants will be held by the Registrar until he has received two consecutive financial statements and has no concerns with the registrant's compliance.

Place of business

There has been much debate regarding whether registrants should be allowed to operate a travel business out of a residence. The new Regulation permits operating from a dwelling providing that certain conditions set out in Section 10 (2) 1 are met. One condition is that the registrant must provide proof to the Registrar that the dwelling meets the criteria for conducting a business according to local municipal zoning requirements.

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The pricing of travel services

This is a problematic issue for Ontario registrants, since they are often competing against end suppliers and out-of-province operators that are not subject to Ontario legislation. The new Regulation now states, in Section 33, that the consumer must be told clearly what the total cost is. It is not necessary for the representation to deal with the retail sales tax or the federal goods and services tax.

The representation must set out **either** the total amount the customer will be required to pay for the travel services, including all fees, levies, service charges and surcharges **or** the amount the customer will be required to pay excluding fees, levies, service charges and surcharges.

If the latter option is chosen, the representation must include **either** an itemized list of the cost of each fee, levy, service charge and surcharge **or** the total cost the customer will be required to pay.

Exemptions

This is another area that has proved to be challenging, and will be covered in greater detail at a future date. In Section 2 of the Regulation, exemptions have been added for end suppliers who package local travel services. In order to qualify for the exemption, local tourism packagers must not accept payment of more than 25 per cent of the total cost of the travel services sold to a customer, more than 30 days before the travel services are to be provided. More information on the *Travel Industry Act*, 2002 and the new Regulation will be provided over the upcoming months. ▲

Court Matters

CHARGED

Austin Shaw and 1528331 Ontario Inc., who carried on business as Sunrise Vacation Club, have been charged with eight counts and seven counts respectively, of operating without registration, contrary



to Section 3 (1) of the *Travel Industry Act*. The next court appearance is scheduled for March 7, 2005 at the Barrie Provincial Offences Court, 56 Mulcaster Street, Barrie, Ontario.

Jasen Earle Plunkett, who carried on business as Access Services and/or Access Vacation Services, has been charged with eighteen counts of operating without registration, contrary to Section 3(1) of the *Travel Industry Act*, R.S.O. 1990. An ex-parte trial has been set

for October 17, 2005 at 9:00 am at the Scarborough Provincial Offences Court, 1530 Markham Road, Scarborough.

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Don't forget the health insurance

As of July 1, 2005, there will be a new condition under the "Duty of travel agent, disclosure and advice", in Section 36, (d) (ii) of Ontario Regulation 26/05. It requires you to advise the customer of the availability of out-of-province health insurance, if applicable, as well as trip cancellation insurance.

Keep those records up to date

When the accommodation purchased by a customer is no longer in the condition represented when sold, the registrant must promptly notify the customer. Depending upon whether it was sold as part of a package that included transportation, or on its own, the customer must be offered the choice of a full and immediate refund of the amount they paid, including all fees, levies, service charges, taxes and other charges, or a comparable alternative package - or accommodation - that is acceptable to the customer. What is now compulsory is that Section 39 (3) of the Regulation requires you to make a written note in the file, stating what information was communicated to the customer, the date on which it was communicated, the method of communication and what choice the customer made.

Upcoming Issues

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

- In-depth analysis of the Legislative and Regulatory changes
- Update on Canada 3000
- Profiles on TICO staff and Board, and much, much more!

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CONVICTIONS

Hugo Maggi and Aviacion Corporation plead guilty to one count each of failing to maintain trust accounting, contrary to Section 36 (1) of the Regulation made under the *Travel Industry Act*. Maggi was fined \$3,000, payable within six months, and is also subject to a one-year period of probation during which he is to make complete restitution to three of his victims, for a total amount of \$6,162.00.

Brian David Huston and Planit Travel Ltd. plead guilty to one count each of failing to maintain trust accounting, contrary to Section 36 (6) of the Regulation made under the *Travel Industry Act*. Huston received a suspended sentence and was placed on probation for two years, during which period he is to serve 150 hours of community service and report to a probation officer.

Following an ex parte trial, Andrew Carleton Smith, who carried on business as Carleton Productions, was convicted of three counts of operating without registration, contrary to Section 3 (1) of the *Travel Industry Act*. Smith was fined \$3,000.00 per count, for a total fine of \$9,000.00, to be paid in thirty days.

Jason Konstantos plead guilty to one count of operating without registration, contrary to Section 3 (1) of the *Travel Industry Act*. Konstantos received a suspended sentence and was placed on probation for two years, during which time he is to serve 200 hours of community service and report to a probation officer. Konstantos was ordered to make restitution in the amount of \$62,175.94 to consumers and fined \$2,500.00. He was also ordered to pay costs of \$1,653.00.

REVOCATIONS

Between November 1, 2004 and January 27, 2005, five companies had their registration revoked: Bronte Tours & Travel (Ontario) Inc. o/a Bronte Tours; Mikhail (Michael) Efimov o/a Contair Travel; 1541108 Ontario Ltd. o/a Fantasy Holiday Travel & Tours; Mesa Travel Agency Inc.; and Travel 4 Net Inc. ▲

A question of responsibility continued from page 3

Section 22 (2) of the Regulation states that registrants must bring to the customer's attention "any conditions relating to the purchase of travel services that the travel agent has reason to believe may affect the customer's decision to purchase" before reserving the travel services. In fact, you are obligated to inform customers of any safety concerns relating to their travel destination at the time of making the reservations, whether or not the federal government has issued a travel advisory in relation to that destination. ▲