



Explanatory Paper

**Ontario Regulation 161/10
made under the
Travel Industry Act, 2002**

What the New Rules Mean to You

This document will explain in detail the changes to Ontario Regulation 26/05 (Regulation), which come into force on **July 1, 2010**. Any questions with respect to information contained in this paper should be directed to the Travel Industry Council of Ontario (TICO).

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EXECUTIVE SUMMARY

This summary highlights the main changes to the Regulation, which may be of interest to stakeholders. More details with respect to these changes are outlined in the body of the paper.

NOTICE OF CEASING TO SELL TRAVEL SERVICES – Registrants will be required to provide TICO with notice of their intention to close as soon as practicable and in any event within a minimum of ten days before closure of their business.

TRIP COMPLETION – New entitlements, limitations, claims and appeal processes have been established related to trip completion expenses.

EDUCATION STANDARDS – The supervisor/manager education requirements have been clarified.

FINANCIAL STATEMENTS – Financial reporting is being improved by requiring registrants acting as both wholesalers and agents to meet reporting requirements for their combined total sales.

SECURITY IN LIEU OF TRUST ACCOUNTING – Required security amounts are being lowered to a level better matched to risk so that businesses have a viable alternative to trust accounts.

INVOICING – The travel agent invoicing requirements are being simplified.

DISCLOSURE OF INFORMATION ON REGISTRANTS – TICO is permitted to provide bulk lists of new and recently terminated travel agents and wholesalers. The confidentiality of financial information has been clarified.

NOTICE OF CEASING TO SELL TRAVEL SERVICES

Section 18.1 of the Regulation requires a registrant to provide notice to the Registrar if it intends to stop selling travel services as follows:

- A registrant that knows that it will close at least 10 days in advance, shall provide written notice to the Registrar as soon as possible. The notice must be provided as soon as practicable and in any event at least 10 days before ceasing to sell travel services.
- The written notice may be a letter setting out the date when the registrant intends to close the business.

- If the registrant does not know that it will cease to sell travel services at least 10 days in advance, it shall notify the Registrar as soon as possible after becoming aware.
- A registrant that ceases to sell travel services shall provide a letter to the Registrar setting out the date that the registrant ceased to sell travel services, if notice of that date has not already been provided.
- A letter must also be provided to the Registrar setting out the location where the registrant's business records relating to the travel services that were sold will be kept.
- This change was recommended in the *Assessment of Consumer Protection against Financial Instability in the Travel Industry* (the Assessment), which was completed following the closure of Conquest Vacations. The Assessment found that it was likely that if TICO had received timely notice of Conquest Vacations' intention to close, the closure could have been managed in a more orderly manner, resulting in 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. Having the requirement entrenched in the Regulation gives the provision more impact and reinforces the importance of the notice provision.
- This requirement will allow TICO to work with the business to manage an orderly closure and reduce the negative impact on Ontario consumers.

COMPENSATION FUND CLAIMS

Claims

Reimbursement of customer:

Subclause 57(1)(c)(i) of the Regulation has been amended to better link the demand for payment and failure to reimburse with section 25 of the *Travel Industry Act, 2002* (Act) dealing with liability for deposits. The consumer must make a demand for payment from the registered travel agent and appropriate registered wholesaler. Whether the registered travel agent and registered travel wholesaler is liable to reimburse depends on section 25 of the Act. If the registrant is liable to reimburse under section 25 of the Act, but has not done so for one of the listed reasons, there may be a claim on the Compensation Fund.

Trip Completion

The Assessment by the government following the closure of Conquest Vacations also recommended improving trip completion compensation protections under

the Regulation. It was noted that the trip completion provisions under section 69 of the Regulation were at the Director's discretion; they are not a clear entitlement, as is the case with claims from the Fund. It was suggested that the Regulation should be amended to provide for clear entitlement to claim for trip completion compensation, and to set out the process by which claims would be made. The Assessment also noted that under section 69 of the Regulation, trip completion applicants have no further recourse as the Director's decision is final. It was recommended that the trip completion expense claim process include a right of appeal for the consumer.

Following the review of the Assessment, it was determined that the Director's authority to direct payment of funds to repatriate travellers is still necessary to assist consumers who are stranded mid-trip as arrangements need to be made on very short notice. However, it was noted that where stranded travellers have paid their own costs to return home, the process could be improved by having the Board of Directors consider reimbursements similar to regular claims on the Compensation Fund. The revisions made in Ontario Regulation 161/10 create rules that apply to consumer compensation claims for trip completion expenses. The regulations establish entitlements, limitations, and claims and appeals processes, which are intended to make the process more transparent, fair and effective.

Reimbursement of customer for trip completion:

Section 57.1 of the Regulation allows a consumer to make a claim on the Compensation Fund for reasonable expenses incurred to complete a trip where travel services have not been provided as the result of the failure of a TICO registrant.

- In order to be eligible for compensation from the Compensation Fund, the customer must have booked through a registered Ontario travel agent and paid money to or through the travel agent.
- The customer must make a demand for 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.
- In order to be eligible for compensation from the Compensation Fund, 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.

What is covered?

- A consumer may only claim for the following reasonable expenses related to trip completion:
 - The cost of airfare, car hires or other transportation required in order to bring the customer or other person to the final destination. The individual may also be returned home if it is preferable and does not exceed the cost to bring the person to the final destination.
 - The cost of necessary accommodation and meals for the customer or other person before the trip can be completed.
 - Costs related to obtaining access to money or making financing arrangements to enable one to pay for the above costs. For example, this could include costs of wire transfers or costs of phone calls and faxes to arrange for funds to be sent.

What is not covered?

- An individual must make every reasonable effort to obtain services comparable to those originally purchased. Expenses may not be covered if there has been unreasonable upgrading of services.
- An individual must make every reasonable effort to travel as close to the originally scheduled travel date as possible. Consumers who chose to extend their vacation for an extra week, for example, would not be entitled to reimbursement for accommodation and meal expenses.
- An individual is not entitled to be reimbursed if the travel services were not provided because an end supplier became bankrupt or insolvent or ceased to carry on business. An individual is only entitled to reimbursement under this section if the services were not provided because a TICO registrant failed.
- An individual is not eligible to be reimbursed if he or she was notified that the Director had made alternate arrangements for him or her to travel pursuant to Section 69 of the Regulation and he or she did not take advantage of those arrangements though it was possible to do so.
- A claimant is not entitled to be reimbursed for the following:
 - payments for travel services that were provided or for which alternate travel services were made available;
 - payments for travel services that were available, but were not received because of an act or a failure to act on the part of the customer or of another person for whom the travel services were purchased;
 - counseling fees paid to a travel agent;
 - amounts for travel services that were to be received as a prize, award or goodwill gesture;

- amounts for travel services that the customer obtained with a voucher, certificate, coupon or similar document that the customer did not pay for;
- amounts for travel services that the customer did not pay for with cash or by a cheque, credit card or other similar payment method;
- insurance premiums;
- expenses based on the cost, value or quality of the travel services or alternate travel services;
- expenses in connection with travel services that were provided under section 68 or 69; and
- amounts for consequential or indirect damages incurred as a result of the failure to provide the services.

Reimbursement of travel agent for trip completion:

Section 58.1 of the Regulation allows a travel agent to make a claim on the Compensation Fund for money paid by the travel agent to reimburse a customer for reasonable trip completion expenses.

- A travel agent is only able to claim on the Fund if they have refunded a customer for the following reasonable trip completion expenses:
 - The cost of airfare, car hires or other transportation required in order to bring the customer or other person to the final destination. The individual may also be returned home if it is preferable and does not exceed the cost to bring the person to the final destination.
 - The cost of necessary accommodation and meals for the customer or other person before the trip can be completed.
 - Costs related to obtaining access to money or making financing arrangements to enable one to pay for the above costs. For example, this could include costs of wire transfers or costs of phone calls and faxes to arrange for funds to be sent.
- The travel agent is only able to claim the amount for which the customer would have been entitled to claim under the consumer trip completion reimbursement section.
- The customer must have booked their travel services through a registered Ontario travel agency and made payment to or through the travel agency.
- The travel agent must have dealt with a travel wholesaler in good faith and at arm's length.
- The travel agent must have passed all or part of the customer's money to the travel wholesaler. If the travel agent is still holding any of the

customer's money, the travel agency will be responsible for refunding that money.

- The travel services were not provided as a result of the failure of a registrant.
- If the travel agent acquired the rights to travel services for resale, the travel agent would not have a claim on the Compensation Fund.
- The travel agent is only entitled to be reimbursed if the customer would otherwise have had a claim against the Compensation Fund.
- The travel agent is not entitled to be reimbursed for any commission or other remuneration, including a service charge owing on account of the travel services purchased by the customer.

Time for claim:

Section 60 of the Regulation has been amended to provide for a specific filing deadline for trip completion claims.

- All claims for travel services paid for but not provided under section 57, 58 or 59 of the Regulation must be made to the Board of Directors within six months of the registrant or end supplier failure.
- Claims for trip completion expenses under section 57.1 or 58.1 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 payments for trip completion take priority over other claims, the shorter filing deadline for claims for trip completion expenses will allow TICO to determine the possible exposure sooner and minimize the delays in paying out other claims.
- A claim to be reimbursed that is made after the end of the specified time period is not valid.
- The TICO Board of Directors has no discretion to approve claims received after the filing deadline.
- Consumers and registrants must ensure their claims are made in a timely way.
- TICO encourages claimants to get their claim forms filed with TICO as soon as possible to ensure they meet the filing deadline. Additional information or documentation can be provided after the claim has been filed.

Maximum amounts for payments from Fund:

Section 66 of the Regulation limits the amount that the Compensation Fund is permitted to pay out with respect to claims. This section has been amended

to clarify that claims for trip completion expenses made to the Board of Directors are subject to these payment rules.

- The maximum refund available is \$5,000 per person.
- The maximum amount available to satisfy claims for reimbursement or immediate departure arising from an event or major event is \$5 million plus any money TICO is able to recover by way of subrogated claim against a third party.
- In the event claims exceed \$5 million, TICO will prorate claims received.
- An additional \$2 million may be paid from the Compensation Fund for trip completion, to assist travelers who are stranded in a destination. Trip completion includes payments directed by the Director pursuant to section 69 of the Regulation and claims approved by the Board under section 57.1 or 58.1 of the Regulation.
- If \$2 million dollars is not sufficient for trip completion, the Director may, with the approval of the Board of Directors, direct that additional funds be used for trip completion up to a maximum of \$5 million. Those additional funds will be deducted from the \$5 million available to reimburse consumers or pay for immediate departures with respect to the event.
- Payments for trip completion take precedence over other claims on the Compensation Fund.

Section 67 of the Regulation clarifies that all claims made by customers, travel agents and travel wholesalers are subject to the maximum payment amounts detailed in section 66 of the Regulation. This section has been amended to clarify that claims for trip completion expenses made to the Board of Directors are included.

Hearing by Tribunal:

Section 71 of the Regulation entitles claimants to a hearing by the Licence Appeal Tribunal if their claim or a part of their claim is denied by the Board of Directors. The section has been amended to add that if the Board of Directors determines that a trip completion claim under s. 57.1 or 58.1 of the Regulation is not eligible for reimbursement, a claimant may appeal the decision to the Licence Appeal Tribunal.

- If the Board of Directors determines that a claim is not eligible for reimbursement, notice of that decision will be provided to the claimant and the claimant will be advised of their right to appeal the decision.

- If the claimant wishes to exercise their right to a hearing, they must mail or deliver a written request for a hearing to the Registrar **and** to the Tribunal within 15 days of being served with the notice.
- If a claimant does not request a hearing, the decision of the Board of Directors becomes final.
- If the claimant requests a hearing, the Tribunal will select a date and hold the hearing.
- The Tribunal has the power to allow the claim, in whole or in part, and direct the TICO to pay the amount allowed from the Fund or to refuse to allow the claim, in whole or in part.
- The claimant, TICO and any other person specified by the Tribunal are parties to the hearing.
- The claim provisions of the Regulation apply to any decision of the Tribunal.

EDUCATION STANDARDS

Sections 12, 15 and 16 of the Regulation have been amended to clarify the educational requirements as follows:

- All supervisor/managers must pass the TICO Travel Counsellor Exam. This applies whether the supervisor/manager is grandfathered or has passed the Supervisor/Manager Exam.
- This was always the intention of the two-tier program and the change to the wording of the Regulation more clearly articulates that requirement.
- Ensuring that all supervisor/managers have passed the correct exams will help ensure that travel professionals working in Ontario have the necessary background and knowledge to conduct business in keeping with provincial legal requirements.
- TICO will allow a supervisor/manager to be hired who has not yet passed the Supervisor/Manager Exam provided that the individual meets the following conditions:
 - has passed the Travel Counsellor Exam;
 - has been approved by the Registrar as having sufficient experience with and knowledge of the business of selling travel services to ensure that the office is managed in compliance with the Act and Regulation; and
 - passes the Supervisor/Manager Exam within six months of accepting the position.
- This change was made to address concerns raised by the industry about unanticipated staffing changes and potential problems in finding a

qualified supervisor/manager who has already passed the Supervisor/Manager Exam in a timely manner.

- The certification for being a travel counsellor or a supervisor/manager is obtained from TICO. The reference to the Canadian Institute of Travel Counsellors (CITC) has been removed to clarify that it is a TICO certification. It is the administrative authority, TICO, which sets the standard.
- CITC is administering the program on behalf of TICO. Further details on the exam can be obtained from CITC online at www.citc.ca/en/TICO, by phone at (416) 484-4450 or toll-free at 1-800-589-5776 or by email at ticotest@citc.ca.
- CITC also has its own Certified Travel Counsellor (CTC) and Certified Travel Manager (CTM) certification programs, which are completely separate and different from TICO certification. TICO registrants are not required to get their CTC or CTM designations.

FINANCIAL STATEMENTS:

Section 22 of the Regulation details the financial reporting requirements that registrants must complete each year. The section has been amended to clarify that where a registrant is a travel agent and a travel wholesaler, the business activities will be considered as one for financial reporting and the financial statements filed shall meet the wholesale requirement. This means that if the total retail and wholesale sales combined are greater than \$10 million, registrants will have to meet greater filing requirements. This includes filing annual financial statements with an audit opinion as well as filing unaudited interim financial statements. This amendment will help ensure that TICO has an accurate picture of the company's financial health.

INTERPRETATION:

Section 26.1 of the Regulation defines the term "money that a registrant receives from customers for travel services". This section impacts the trust accounting and security in lieu of trust accounting sections.

- In sections 27 and 28 of the Regulation, money that a registrant receives from customers for travel services in reference to a period of time means the money for travel services that the registrant actually receives from customers during that period, but does not include:
 - amounts for travel services that are paid by customers through the registrant during that period; or

- amounts for travel services sold to customers during that period if the amounts are to be paid to the registrant outside of that period.
- For example, payments made by credit card through the registrant to a supplier's merchant credit card account would not be considered money received because the registrant does not actually handle the funds. Therefore, there is nothing to deposit in the trust account and the registrant would not need to provide security on that amount in lieu of trust accounting. The amounts paid by credit card through the registrant would be considered sales, however, under the definition of "sales in Ontario".
- Please note that if the credit card payment is made to the registrant's merchant credit card account, then the registrant does receive the money and the funds would need to be deposited into the trust account and would be considered in the calculation of any security in lieu of trust accounting.

SECURITY INSTEAD OF TRUST ACCOUNT:

Section 28 of the Regulation provides registrants with the alternative of filing security with TICO in lieu of trust accounting. The section has been amended to reduce the amount of security required. Basing the security amount on total gross sales was not the most appropriate measure of risk and was found to be too onerous for some industry members, resulting in few registrants taking advantage of the alternative arrangement. This amendment will assist business while maintaining sufficient protection for consumers.

- In order to exercise this option, the registrant must have been in business continuously for at least one fiscal year.
- The requirement will now be 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 annual, semi-annual or quarterly financial statements.
- The money that a registrant receives from customers for travel services in reference to a period of time means the money for travel services that the registrant actually receives from customers during the period, but does not include,
 - amounts for travel services that are paid by customers through the registrant during the period; or
 - amounts for travel services sold to customers during that period if the amounts are to be paid to the registrant outside of that period.

- Cash sales are a better measure of the risk that the security is to offset as funds from non-cash sales, for example, payments made by credit card through the registrant to a supplier are not held by the business and, therefore, not at risk.
- The financial statements filed by the registrant shall set out the total amount of the money that the registrant received from customers for travel services for the period to which the statements relate.
- It is the registrant's responsibility to ensure that the security posted is sufficient within thirty days after the day the registrant is required to file any financial statements.
- Registrants must continue to maintain a trust account until they have received an acknowledgement letter from the Registrar confirming that the security has been received.

STATEMENTS, INVOICES AND RECEIPTS

Subsection 38(1) of the Regulation provides that a **travel agent** must promptly provide a statement, invoice or receipt to a customer after selling travel services. This section has been amended to simplify the following invoice requirements:

- **Clause (a)** - The requirement to include the name and address of the customer who purchased the travel services and the name and address, if known, of each person on whose behalf the payment is made is being amended. The addresses of all those who are travelling will no longer be required on the invoice. The invoice will only require the purchaser's name and address and the names of additional travellers.
- **Clause (h)** - The requirement to set out whether or not the customer has purchased, trip cancellation insurance and out-of-province health insurance if applicable is being amended. Section 36 of the Regulation requires that a travel agent must advise the customer about the availability of trip cancellation insurance and out-of-province health insurance, if applicable. As some agents do not sell insurance, the requirement has been clarified to better reflect the obligation as follows:
 - If the travel agent sells insurance, the invoice must 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.

This clarification will better protect both the registrant and consumer with respect to disclosure of the availability and purchase of insurance.

DISCLOSURE OF INFORMATION ON REGISTRANTS

Section 48 of the Regulation governs what information the Registrar should disclose with respect to registrants. The section has been clarified by adding the following provisions:

- The Registrar is now required to make available to the public an update on a monthly basis of the names of persons who, in the previous month, have become registered as travel agents or travel wholesalers or have ceased to be so registered.
 - Section 20 of the Regulation prohibits registrants from carrying on business with persons who should be registered under the Act but are not registered.
 - The purpose of this disclosure is to provide the industry with updated information to assist it in complying with the Regulation.
 - TICO has always provided this information for registrants but had concerns that the disclosure could be viewed as contrary to the prohibition against publication of information in bulk. The amendment reconciles TICO's efforts to assist the industry while respecting established privacy protections.
- The Registrar shall not make any information available to the public under this section if it is financial information relating to a person or the business of a person and the person could reasonably expect that the information would be kept confidential. This section was added to clarify that financial information, such as the information gained through inspection and mandatory filing, is required to be held confidential.