

Assessment of Consumer Protection Against Financial Instability in the Travel Industry

Report
July 2009

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ISBN 978-1-4435-0852-0 (PDF)

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Disponible en français

Executive Summary

- In April 2009, the Ministry of Small Business and Consumer Services undertook an assessment of the overall role, responsibilities and powers of the Travel Industry Council of Ontario (TICO) in regulating the Ontario travel industry. The goal was to ascertain whether TICO has sufficient powers to provide the necessary level of protection to consumers and fulfill its responsibilities, including reporting obligations and statutory duties. This assessment was in response to the closure of Conquest Vacations, on April 15, and its impact on Ontario consumers.
- Overall, the assessment found that Ontario's regulation of the travel industry is equal to, or better than, other Canadian jurisdictions reviewed as part of the assessment. The regulatory system is working well but there are opportunities to strengthen consumer protection and address industry changes.
- While TICO has adequate powers and authority in general, additional specific requirements upon registrants and powers for TICO should be considered and these are set out in a series of recommendations.

Recommendations:

More Information for Consumers

1. TICO should provide more information to consumers on its website that will guide them through the necessary steps and inform them about options available to them in the event of a registrant's failure. This information would be related to event-specific situations as well as general information.
2. TICO's website should be enhanced to provide further information about travel agents and tour operators that would help consumers make decisions whether to use the services of that company.

Requirement of Notice of Intention to Close Business

3. It should be a condition of registration for all registrants to provide notice to TICO of their intention to cease operations "as soon as practicable."
4. TICO should require this condition of new registrants at the time of application and on the annual renewal of existing registrations.
5. The requirement to give notice should also be imposed by regulation, and be similar to the requirement under the *Real Estate and Business Brokers Act, 2002*.

Improved Trip Completion Compensation Provisions

6. The provisions of the *Travel Industry Act, 2002* regulation (specifically, section 69, dealing with trip completion authority) should be reviewed to ensure they are effective and fair, and that they allow for the coverage of costs incurred by consumers affected by registrant closures when they are in the middle of a trip.

National Considerations

7. The Minister of Small Business and Consumer Services should initiate discussions with his federal and provincial counterparts, through the Federal-Provincial-Territorial Consumer Measures Committee, regarding the need for a national scheme for travel compensation, in recognition of the fact that larger companies now form the majority of the market and provide services that are national in scope.
8. The Minister of Small Business and Consumer Services should work with the Ontario Minister of Finance to bring to the attention of the federal Minister of Finance issues regarding the impact of credit card requirements on tour operators.

1. Background

Travel Industry Overview

Ontario's travel industry includes 2,264 travel agents and 419 tour operators, all of which are required to be registered with the Travel Industry Council of Ontario.

Travel agents are the traditional retail travel agencies that consumers use to book vacations. Tour operators are travel wholesalers and do not normally deal directly with consumers. Travel wholesalers purchase various components of a vacation package (e.g., air, hotel, excursion) and then resell the bundled product to consumers through travel agents.

In travel transactions, it is the wholesaler rather than the agent who bears most of the financial risk. Wholesalers have already purchased the rights to air flights and hotel stays before the consumer pays for them. If these trips do not get sold in a timely manner, the wholesaler may be forced to offer them for sale at a discount and absorb the difference in cost.

Conquest Vacations was an example of a travel wholesaler or tour operator.

Current Industry Conditions

The travel wholesale business has undergone a lot of consolidation in recent years. Today in Ontario, five major national or global companies dominate the market: Air Canada Vacations, Sunwing, Transat Holidays, Thomas Cook, and Signature Vacations.

Tour operators face an array of market pressures, some of which Conquest cited on its website in the wake of its closure. These include:

- over-capacity and price wars among major tour operators
- end-suppliers (e.g., airlines) requesting increased deposits and/or an increased lead-time on those deposits
- credit card merchant issuers requesting increased levels of security (e.g., letters of credit) or delaying payment to wholesalers by as much as 30 to 52 days
- global competition and poor economic conditions
- Internet competition (on-line sales)
- increased risk of supplier insolvency
- currency fluctuation (e.g., the U.S. dollar's strength in 2008-2009 was up 25%).

Travel Industry Council of Ontario (TICO)

The Travel Industry Council of Ontario (TICO) is a not-for-profit corporation that was created in 1997 to administer the *Travel Industry Act, 2002* on behalf of the government and to regulate Ontario travel agents and tour operators in order to protect consumers.

TICO also administers the Ontario Travel Industry Compensation Fund. This fund can reimburse consumers for travel services they do not receive as a result of the bankruptcy or insolvency of a TICO member or an end-supplier such as an airline or cruise line.

TICO and the Fund are entirely financed by registration fees and contributions paid by Ontario travel agents and tour operators.

Consumer Protection Role

As part of its consumer protection mandate, TICO monitors travel agents and tour operators to make sure they are financially sound and operating with honesty and integrity. This monitoring includes ensuring, for example, that agents and operators maintain the required levels of working capital, proper trust accounting and other appropriate financial management systems.

If TICO has any concerns, TICO can respond in a variety of ways depending on the seriousness of the situation. TICO can issue:

- a proposal to suspend or revoke registration, in which case the registrant can continue operating if it requests a hearing before the Licence Appeal Tribunal
- an immediate suspension, if it is in the public interest. This means the registrant must immediately stop providing travel services, pending a hearing before the Tribunal.
- an order freezing the registrant's assets
- an application to the Superior Court of Justice for the appointment of a receiver and manager who will take possession and control of the assets of the registrant's business, conduct the business of the registrant, and take such steps that are, in the opinion of the receiver and manager, necessary for the rehabilitation of the business.
- prosecution under the *Provincial Offences Act*.

In general, TICO prefers to work with agents and operators that are struggling financially. In many cases, this can avoid the companies going out of business with the resulting impact on their employees, suppliers and consumers.

Travel Industry Compensation Fund

Ontario is one of three provinces including Québec and British Columbia, whose regulatory system for the travel industry includes a compensation fund for consumers.

The Fund can reimburse consumers to a maximum of \$5,000 per person. There is a \$5 million cap per event. The Fund is financially sound with a balance, as of December 31, 2008, of approximately \$29.3 million.

A key priority of the Fund is paying for the repatriation of travel consumers who have been stranded as a result of a bankruptcy or insolvency. TICO has up to \$2 million available to fund repatriation costs.

Claims against the fund are infrequent. Over the last 10 years, there have been on average 275 registrant closures per year of which on average 10 closures per year (or 3.8%) result in claims on the Fund. In fiscal year 2007-08, TICO paid approximately \$530,000 to consumers from the Fund.

Conquest Vacations: What happened and why

After 37 years in business, Toronto-based Conquest Vacations abruptly and voluntarily shut down on April 15, 2009. This decision by the well-known tour operator directly affected 3,697 travellers, approximately 80% of them from Ontario. Some consumers were left stranded in the middle of international trips.

The Travel Industry Council of Ontario (TICO) immediately began to arrange or confirm return flights for those stranded customers.

Simultaneously, TICO issued a closure advisory on its website and provided information about how customers could apply for reimbursement from the Travel Industry Compensation Fund for future travel services purchased from Conquest Vacations.

As of April 20, 2009, TICO had guaranteed over \$320,000 in payments to 27 hotels, covering over 540 travellers. By April 29, 2009, TICO reported that all affected travellers had returned home.

What happened to trigger the closure? Conquest Vacations cited the poor economy, price wars within the industry and “unreasonable demands” by credit card processing companies as the reasons for its decision to close the business.

Prior to the closure, TICO had been working with Conquest to ensure that the company maintained the legally-required levels of working capital. On April 3, 2009, TICO sent a letter to Conquest, advising that if it did not correct its working capital deficiency by April 14, 2009, TICO would issue a proposal to revoke Conquest’s registration as a tour operator. Without any advance notice to TICO, Conquest decided to shut down voluntarily.

2. Recommendations

The Ministry of Small Business and Consumer Services undertook an assessment of the overall role, responsibilities and powers of the Travel Industry Council of Ontario (TICO) in regulating the Ontario travel industry. The goal was to ascertain whether TICO has sufficient powers to provide the necessary level of protection to consumers and fulfill its responsibilities, including reporting obligations and statutory duties.

Overall, the assessment found that Ontario’s regulation of the travel industry is equal to, or better than, other Canadian jurisdictions reviewed as part of the assessment.

The regulatory system is working well but there are opportunities to strengthen consumer protection and address industry changes.

While TICO has adequate powers and authority in general, additional specific requirements upon registrants and powers for TICO should be considered and these are set out in the following recommendations.

A) More Information for Consumers

When a travel agent or tour operator goes out of business or otherwise fails to deliver travel services that the consumers has paid for, people need to know what their options are and how they can make claims for cost reimbursements.

In addition to the TICO Fund, for example, approximately 45 per cent of travellers purchase travel insurance and many consumers have credit cards that also provide refunds.

Travel consumers would be helped if TICO made information easily available which could guide consumers step-by-step through the process of applying for reimbursements or refunds both from the Compensation Fund and through their credit card and/or insurance companies.

This information could be posted on the TICO website, www.tico.ca, and would be available to consumers 24/7 from anywhere in the world.

Secondly, it would also help consumers to know more about their travel agent or tour operator before they booked their trip. This information could also be posted on the TICO website.

There are legal restrictions on TICO's ability to disclose some of the information it obtains using its regulatory authority. That being said, TICO could increase the information available to consumers about the business status of Ontario travel agents and tour operators.

This information could include:

- the number of complaints TICO has received regarding the agent or operator
- information about suspensions
- whether TICO is holding security
- whether fund contributions and financial statements are up to date
- the date of TICO's last inspection
- agents' and operators' registration and last renewal dates.

Recommendations

1. TICO should provide more information to consumers on its website that will guide them through the necessary steps and inform them about options available to them in the event of a registrant's failure. This information would be related to event-specific situations as well as general information.
2. TICO's website should be enhanced to provide further information about travel agents and tour operators that would help consumers make decisions whether to use the services of that company.

B) Requirement of Notice of Intention to Close Business

Before its closure, TICO had been working with Conquest Vacations for several months. Without notice, Conquest advised TICO on April 15 that it was closing down the business, effective immediately.

It is likely that, had TICO received more notice (as little as one or two weeks) that Conquest intended to close, it could have been wound down in a more orderly manner, with less disruption to the travelling public.

This type of notice is not currently required in Ontario, although it is required of the travel industry in Australia and in other Ontario regulatory regimes such as the real estate industry.

A requirement to provide adequate notice would help protect consumers from trip disruption. This requirement could be brought into effect in two ways.

First, TICO can, at any time, apply to a registration any conditions that it considers appropriate. A requirement to provide adequate notice could be applied to all registrants. It could be imposed annually, at the time of renewal of registration.

The second method of applying conditions would be by Lieutenant Governor in Council regulation, stating that provision of notice to TICO is a requirement of registration.

The best approach to such a new notice provision would be to impose it in both ways, by *TICO making it a requirement* and by regulation.

To further reinforce the seriousness of the notice requirement, and as a deterrent, the regulation provision could be used as a basis for *Provincial Offences Act* charges.

TICO could also tell the industry what amount of notice it considers reasonable in different circumstances (e.g., depending on the sales volume of the travel agency or tour operator).

Recommendations

3. It should be a condition of registration for all registrants to provide notice to the registrar of their intention to cease operations "as soon as practicable."
4. The registrar should require this condition of new registrants at the time of application and on the annual renewal of existing registrations.
5. The requirement to give notice should also be imposed by regulation, and be similar to the requirement under the *Real Estate and Business Brokers Act, 2002*.

C) Improved Trip Completion Compensation Protections

Consumers are able to make claims on the Fund, either after their travel has been completed, or in the event that they paid for but never received their travel services.

In addition, for travellers stranded in mid-trip, trip completion funds are available to bring the customers home or take them to their final destination. This fund was used to bring some of Conquest's customers home and to reimburse them for their additional hotel payments.

Currently, trip completion payments are made at the director's discretion; they are not a clear entitlement, as is the case with claims from the Fund.

The regulation under the *Travel Industry Act, 2002* 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.

Secondly, if a consumer is dissatisfied with the outcome of a claim they've made to the Travel Industry Compensation Fund, they have the right to request a hearing before the Tribunal. Trip completion applicants have no further recourse; the director's decision is final.

Finally, trip completion claimants are potentially eligible for full reimbursement for their expenses, whereas claimants on the Fund are subject to its payment limits. These differences could create unfairness between consumers, and need to be addressed.

Recommendation

6. The provisions of the *Travel Industry Act, 2002* regulation (specifically, section 69, dealing with trip completion authority) should be reviewed to ensure they are effective and fair, and that they allow for the coverage of costs incurred by consumers affected by registrant closures when they are in the middle of a trip.

D) National Considerations

The travel industry is becoming increasingly concentrated in the hands of a few large players, which are national or multinational in scope. In the case of travel wholesalers, five large operators now dominate the Ontario and Canadian market. These changes are part of the global trend of multinational ownership in most large industries. The multinational nature of the industry makes it difficult for any single jurisdiction to apply regulations that might vary significantly from other jurisdictions.

The Ontario Travel Industry Compensation Fund was originally created to protect consumers against failures of registered Ontario travel agents or tour operators. At that time, the industry was not as highly concentrated as it is today and the risk of the Fund

not being able to fully reimburse consumers was low. Now, if there is a major failure, consideration may have to be given to raising the Fund's current cap of \$5 million per event to cover consumer losses.

Because major tour operators are national or, in most cases, multi-national in scope, one may also question whether a provincial compensation fund remains the appropriate scheme to provide reimbursement in the event of a major wholesaler's failure, or whether a provincial regulator is best positioned to deal with such a company.

The need for a national scheme has been recognized by Ontario in the past, and continues to exist. One approach to a national scheme would be to ask the federal government to assume responsibility for the travel compensation function, preferably with the participation of end-suppliers such as airlines and cruise lines. It could apply to wholesalers who put travel components together and sell them as a package through retailers to the public. This could be similar to the UK scheme where there is specific legislation for wholesalers who are required to hold an "air travel organizers licence" (ATOL) in order to sell packaged travel to consumers.

Another option for a national scheme could be a cooperative provincial program for all sellers of travel (both retail and wholesale), similar to the Australian model where separate regulations exist in each state and a central fund exists for consumer reimbursement.

In the absence of a federally-run scheme, a third alternative would be for the three provinces with travel regulators (Ontario, Québec and British Columbia) to develop a cooperative interprovincial scheme. The Prairie and Maritime provinces, and the territories, could also be invited to participate in such a scheme. These options should be explored further.

As noted earlier in the Industry Overview and cited by Conquest Vacations as a contributor to the company closing, credit card companies are requesting increasing levels of security from tour operators, and/or imposing extended hold-back periods before releasing payment to them. As banking is a federally regulated industry, it is important for this matter to be brought to the attention of the federal Minister of Finance.

Recommendations

7. The Minister of Small Business and Consumer Services should initiate discussions with his federal and provincial counterparts, through the Federal-Provincial-Territorial Consumer Measures Committee, regarding the need for a national scheme for travel compensation, in recognition of the fact that larger companies now form the majority of the market and provide services that are national in scope.
8. The Minister of Small Business and Consumer Services should work with the Ontario Minister of Finance to bring to the attention of the federal Minister of Finance issues regarding the impact of credit card requirements on tour operators.