1980

c 509 Travel Industry Act

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CHAPTER 509
Travel Industry Act

1. In this Act,

Interpretation

(a) “Director” means the Director under the Ministry of Consumer and Commercial Relations Act;

(b) “Minister” means the Minister of Consumer and Commercial Relations;

(c) “Registrar” means the Registrar appointed under section 2;

(d) “regulations” means the regulations made under this Act;

(e) “travel agent” means a person who carries on the business of selling to the public travel services provided by another person;

(f) “travel salesman” means a person who deals with the public in the performance of the functions of the travel agent as set out in clause (e);

(g) “travel service” means transportation, sleeping accommodation or other service for the use of a traveller, tourist or sightseer;

(h) “travel wholesaler” means a person who purchases or acquires from another person rights to a travel service for the purposes of resale or who carries on the business of dealing with travel agents or other travel wholesalers for the sale of travel services provided by another;

(i) “Tribunal” means The Commercial Registration Appeal Tribunal under the Ministry of Consumer and Commercial Relations Act. 1974, c. 115, s. 1.

2.—(1) The Lieutenant Governor in Council shall appoint a Registrar for the purposes of this Act.
Duties

(2) The Registrar may exercise the powers and shall perform the duties conferred or imposed upon him by or under this Act under the supervision of the Director. 1974, c. 115, s. 2.

3.—(1) No person shall act or hold himself out as being available to act as a travel agent or travel wholesaler unless he is registered by the Registrar under this Act.

(2) A travel agent shall not conduct business from a place at which the public is invited to deal unless it is named in the registration and, where there is more than one such place, one shall be designated in the registration as the main office and the remainder as branch offices.

(3) No person shall act as a travel salesman unless he is registered by the Registrar under this Act. 1974, c. 115, s. 3.

(4) Subsection (3) does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1974, c. 115, s. 28.

4.—(1) An applicant is entitled to registration or renewal of registration as a travel agent or travel wholesaler by the Registrar except where,

(a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

(b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or

(c) the applicant is a corporation and,

(i) is incorporated without share capital; or

(ii) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or

(iii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or

(d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.
(2) A travel agent or applicant for registration as a travel agent is entitled to have any place of business he specifies named in the registration except such branch offices as are in contravention of the regulations.

(3) An applicant is entitled to registration or renewal of registration as a travel salesman by the Registrar except where,

(a) he is a corporation; or

(b) he is not in the employ of a travel agent; or

(c) the past conduct of the applicant affords reasonable grounds for belief that he will not carry out his duties in accordance with law and with integrity and honesty.

(4) Without restricting the generality of clause (1) (b), subclause (1) (c) (iii) and subsection (3), a conviction within the previous five years for theft in any of its forms or for an offence under paragraph 95 (h), (i), (j) or (m) of the Immigration Act, 1976 (Canada) is sufficient grounds for the purpose of those provisions.

(5) A registration is subject to such terms and conditions as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations. 1974, c. 115, s. 4.

5.—(1) Subject to section 6, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 4.

(2) Subject to section 6, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 4 if he were an applicant, or where the registrant is in breach of a term or condition of the registration. 1974, c. 115, s. 5.

6.—(1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration or to refuse to name a branch office in a registration, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or registrant.

(2) A notice under subsection (1) shall inform the applicant or registrant that he is entitled to a hearing by the Tribunal if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing to the Registrar and the Tribunal, and he may so require such a hearing.
Powers of Registrar where no hearing

(3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the proposal stated in his notice under subsection (1).

Powers of Tribunal

(4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out his proposal or refrain from carrying out his proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

Conditions of order

(5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act.

Parties

(6) The Registrar, the applicant or registrant who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

Voluntary cancellation

(7) Notwithstanding subsection (1), the Registrar may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering his registration. 1974, c. 115, s. 6.

Interim suspension

7. Where the Registrar proposes to suspend or revoke a registration, the Registrar may, where the Registrar considers it to be necessary in the public interest, by order temporarily suspend the registration and the order shall take effect immediately and where a hearing is required, the order expires fifteen days from the date of the notice requiring the hearing unless the hearing is commenced in which case the Tribunal holding the hearing may extend the time of expiration until the hearing is concluded. 1974, c. 115, s. 7.

Order effective, stay
R.S.O. 1980, c. 274

8. Notwithstanding that a registrant appeals from an order of the Tribunal under section 11 of the Ministry of Consumer and Commercial Relations Act, the order takes effect immediately, but the Tribunal may grant a stay until disposition of the appeal. 1974, c. 115, s. 8.

Continuance pending renewal

9. Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his registration, a registrant has applied for renewal of his registration and paid the prescribed fee, his registration shall be deemed to continue,
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(a) until the renewal is granted; or

(b) where he is served with notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its order. 1974, c. 115, s. 9.

10. A registration is not transferable. 1974, c. 115, s. 10.

11.—(1) In this section, “equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

(2) Every registrant that is a corporation shall notify the Registrar in writing within thirty days after the issue or the entry of a transfer of any shares of its capital stock where such issue or transfer results in,

(a) any shareholder and shareholders associated with him acquiring or accumulating at least 10 per cent of the total number of all issued and outstanding equity shares of such stock; or

(b) any shareholder and shareholders associated with him who already own 10 per cent or more of the total number of all issued and outstanding equity shares of such stock increasing such holding.

(3) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purposes of this section, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries.

(4) Where a registrant that is a corporation is aware that a transfer that comes within the provisions of subsection (2) has taken place, it shall notify the Registrar in writing within thirty days after such knowledge came to the attention of its officers or directors, and not within thirty days of the entry of the transfer.

(5) For the purposes of subsection (2), a shareholder shall be deemed to be associated with another shareholder if,

(a) one shareholder is a company of which the other shareholder is an officer or director;
(b) one shareholder is a partnership of which the other shareholder is a partner;

(c) one shareholder is a company that is controlled directly or indirectly by the other shareholder;

(d) both shareholders are companies and one shareholder is controlled directly or indirectly by the same individual or company that controls directly or indirectly the other shareholder;

(e) both shareholders are members of a voting trust where the trust relates to shares of a corporation; or

(f) both shareholders are associated within the meaning of clauses (a) to (e) with the same shareholder.

(6) Where, in the opinion of the Registrar, an issue or transfer of equity shares of capital stock of a registered corporation results in a shareholder and shareholders associated with him having a material or substantial interest in the corporation, such issue or transfer shall be deemed to be a change of ownership for the purposes of section 10 and the registration ceases to exist except with the consent of the Registrar and the provisions of this Act applying to the refusal to renew a registration apply, with necessary modifications, to the refusal to give a consent under this subsection. 1974, c. 115, s. 11.

12.—(1) Every travel agent and travel wholesaler shall, within five days after the event, notify the Registrar in writing of,

(a) any change in its address for service;

(b) any change in the officers in the case of a corporation or of the members in the case of a partnership; and

(c) any commencement or termination of employment of a travel salesman.

(2) Every travel salesman shall, within five days after the event, notify the Registrar in writing of,

(a) any change in his address for service;

(b) any commencement or termination of his employment. 1974, c. 115, s. 12.

13.—(1) Where any person is entitled to the repayment of any money paid for or on account of a travel service,
any travel agent and any travel wholesaler who received such money or any part thereof is liable jointly and severally with any other person liable therefor, for the repayment of such money to the extent of the amount received by him. 1974, c. 115, s. 13.

(2) Subsection (1) does not apply where,

(a) the travel agent or travel wholesaler has properly disbursed the money received;

(b) the travel agent or travel wholesaler has acted in good faith and at arm’s length with any person with whom he would, but for this subsection, be jointly liable under subsection (1); and

(c) the person referred to in subsection (1) who is entitled to repayment of money is entitled to be reimbursed therefor out of the compensation fund established under the regulations,

unless the travel agent or travel wholesaler would, but for this subsection, be jointly liable under subsection (1) with a travel agent and travel wholesaler who is not registered under this Act. 1976, c. 53, s. 1.

14.—(1) No travel salesman shall be in the employ of, or act on behalf of, a travel agent other than the one for whom he is registered as a salesman on the records of the Registrar and no travel salesman is entitled to or shall accept any commission or other remuneration from any person except the travel agent for whom he is registered.

(2) No travel agent shall,

(a) employ or engage the travel salesman of another travel agent or permit such salesman to act on his behalf;

(b) employ or engage an unregistered person to act as a travel salesman or permit such person to act on his behalf; or

(c) pay any commission or other remuneration to any person referred to in clause (a) or (b),

but this subsection does not prevent the employing, engaging or paying of a person who is duly registered or licensed as a travel salesman or its equivalent in another jurisdiction in respect of the arranging for travel services in that jurisdiction. 1974, c. 115, s. 14.

(3) Subsections (1) and (2) do not come into force until a day to be named by proclamation of the Lieutenant Governor. 1974, subss. (1, 2) c. 115, s. 28.
15. Where the Registrar believes on reasonable and probable grounds that a travel agent or travel wholesaler is making false, misleading or deceptive statements in any advertisement, or that the advertisement is in contravention of the regulations, the Registrar may order the immediate cessation of the use of such advertising and sections 6 to 8 apply with necessary modifications to the order in the same manner as to a proposal by the Registrar to refuse a registration and the order of the Registrar shall take effect immediately, but the Tribunal may grant a stay until the Registrar’s order becomes final. 1974, c. 115, s. 15.

16.—(1) Every travel agent and travel wholesaler shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matter specified by the Registrar and signed by the travel agent and travel wholesaler and certified by a person licensed under the Public Accountancy Act.

(2) The information contained in a financial statement filed under subsection (1) is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. 1974, c. 115, s. 16.

17.—(1) The Registrar or any person designated by him in writing may at any reasonable time enter upon the business premises of a travel agent or travel wholesaler to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

(2) Where the Registrar has reasonable and probable grounds to believe that any person is acting as a travel agent or travel wholesaler without being registered, the Registrar or any person designated by him in writing may at any reasonable time enter upon such person’s business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 3.

(3) Upon an inspection under this section, the person inspecting,

(a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of the person being inspected that are relevant for the purposes of the inspection; and

(b) may, upon giving a receipt therefor, remove any material referred to in clause (a) that relates to the
purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

(4) Any copy made as provided in subsection (3) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original. 1974, c. 115, s. 17.

18.—(1) Where the Registrar receives a written complaint in respect of a travel agent or travel wholesaler and so directs in writing, the travel agent or travel wholesaler shall furnish the Registrar with such information respecting the matter complained of as the Registrar requires.

(2) The direction under subsection (1) shall indicate the nature of the complaint involved.

(3) For the purposes of subsection (1), the Registrar or any person designated in writing by him may on notice at any reasonable time enter upon the business premises of the travel agent or travel wholesaler to make an inspection in relation to the complaint. 1974, c. 115, s. 18.

19. The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister’s order and the person appointed shall report the result of his investigation to the Minister, and for the purposes of the investigation, the person making it has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation as if it were an inquiry under that Act. 1974, c. 115, s. 19.

20.—(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person has,

(a) contravened any of the provisions of this Act or the regulations; or

(b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to his fitness for registration under this Act,
the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence has occurred and the person appointed shall report the result of his investigation to the Director.

Powers of investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

(a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents, consumer files and things relevant to the subject-matter of the investigation; and

(b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the Public Inquiries Act, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction of investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation.

Entry and search

(4) Where a justice of the peace is satisfied, upon an ex parte application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry
and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause (2) (a) or subsection (4) relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

(7) The Minister or Director may appoint any expert to examine books, papers, documents or things examined under clause (2) (a) or under subsection (4). 1974, c. 115, s. 20.

21.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 17, 18, 19 or 20 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administra-
tion of this Act and the regulations or any proceed-
ings under this Act or the regulations;

(b) to his counsel; or

(c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. 1974, c. 115, s. 21.

22.—(1) Where,
(a) an investigation of any person has been ordered under section 20; or

(b) criminal proceedings or proceedings in relation to a contravention of any Act or regulation are about to be or have been instituted against a person that are connected with or arise out of the business in respect of which registration is required under this Act,

the Director, if he believes it advisable for the protection of customers of the person referred to in clause (a) or (b), may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any assets or trust funds or direct the person referred to in clause (a) or (b) to hold such assets or trust funds or direct the person referred to in clause (a) or (b) to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of investors, customers or others in his possession or control in trust for any interim receiver or liquidator appointed under the Bankruptcy Act (Canada), the Judicature Act, the Corporations Act, the Business Corporations Act, or the Winding-up Act (Canada), or until the Director revokes or the Tribunal cancels such direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction.

(2) Subsection (1) does not apply where the person referred to in clause (1) (a) or (b) files with the Director,

(a) a personal bond accompanied by collateral security;

(b) a bond of a guarantee company approved under the Guarantee Companies Securities Act; or

(c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

in such form, terms and amount as the Director may determine.

(3) Any person in receipt of a direction given under subsection (1), if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may
apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just.

(4) In any of the circumstances mentioned in clause (1) (a) or (b), the Director may in writing or by telegram notify any land registrar that proceedings are being or are about to be taken that may affect land belonging to the person referred to in the notice, and the notice shall be registered against the lands mentioned therein and has the same effect as the registration of a certificate of *lis pendens* except that the Director may in writing revoke or modify the notice.

(5) Any person referred to in clause (1) (a) or (b) in respect of whom a direction has been given by the Director under subsection (1) or any person having an interest in land in respect of which a notice has been registered under subsection (4) may, at any time, apply to the Tribunal for cancellation in whole or in part of the direction or registration and the Tribunal shall dispose of the application after a hearing and may, if it finds that such a direction or registration is not required in whole or in part for the protection of customers of the applicant or of other persons interested in the land or that the interests of other persons are unduly prejudiced thereby, cancel the direction or registration in whole or in part, and the applicant, the Director and such other persons as the Tribunal may specify are parties to the proceedings before the Tribunal. 1976, c. 53, s. 2.

23.—(1) Any notice or order required to be given, delivered or served under this Act or the regulations is sufficiently given, delivered or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at his last-known address.

(2) Where service is made by mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date. 1974, c. 115, s. 22.

24.—(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may
have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application, the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1974, c. 115, s. 23.

25.—(1) Every person who,

(a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(b) fails to comply with any order made under this Act; or

(c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is $25,000 and not as provided therein.

(3) No proceeding under clause (1)(a) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director.

(4) No proceeding under clause (1)(b) or (c) shall be commenced more than two years after the time when the subject-matter of the proceeding arose. 1974, c. 115, s. 24.

26.—(1) A statement as to,

(a) the registration or non-registration of any person;

(b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;

(c) the time when the facts upon which proceedings are based first came to the knowledge of the Director; or
(d) any other matter pertaining to such registration, non-registration, filing or non-filing, purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

(2) Any document under this Act purporting to be signed by the Minister, or any certified copy thereof, is receivable in evidence in any action, proceeding or other proceeding as *prima facie* proof that the document is signed by the Minister without proof of the office or signature of the Minister. 1974, c. 115, s. 25.

27. The Lieutenant Governor in Council may make regulations,

(a) exempting any class of persons from this Act or the regulations or any provision thereof;

(b) governing applications for registration or renewal of registration and prescribing terms and conditions of registration;

(c) providing for the expiration and renewal of registrations;

(d) requiring the payment of fees on application for registration or renewal of registration, or any class thereof, and prescribing the amounts thereof;

(e) requiring travel agents and travel wholesalers or any class thereof to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;

(f) requiring and governing the maintenance of trust accounts by travel agents and travel wholesalers or any class thereof, and prescribing the moneys that shall be held in trust and the terms and conditions therefor;

(g) governing the form and content of advertising by travel agents and travel wholesalers;

(h) regulating the management and operation of branch offices of travel agents;
(i) governing contracts for the purchase or acquisition of travel services by travel wholesalers;

(j) requiring and governing the establishment and maintenance of compensation funds in trust by travel agents and travel wholesalers and the form and terms of the trust;

(k) requiring and governing the books, accounts and records relating to the due compliance with the provisions of this Act that shall be kept by travel agents and travel wholesalers;

(l) prescribing further procedures respecting the conduct of matters coming before the Tribunal;

(m) prescribing forms for the purposes of this Act and providing for their use;

(n) requiring any information required to be furnished or contained in any form or return to be verified by affidavit. 1974, c. 115, s. 26.

Moneys 28. The moneys required for the administration of this Act shall be paid out of the moneys appropriated therefor by the Legislature. 1974, c. 115, s. 27.