Improving Consumer Protection in the Travel Industry

Public Consultation Paper

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Introduction

The Department of Family Services and Consumer Affairs is moving forward on a five-year plan for stronger consumer protection in Manitoba, *Let’s Make a Better Deal™*. This plan aims to ensure that the marketplace is fair for everyone: consumers want fairness and honesty in the marketplace; and businesses benefit when rules are enforced that put all competitors on an even playing field. Simply put, better consumer protection means better business.

*Let’s Make a Better Deal™* includes a commitment to improve consumer protection in the travel marketplace. The Consumer Protection Office has received consumer complaints related to travel agent and agency conduct, including advertising practices and fraud. There have also been events in the news, such as travel suppliers going out of business.

The Government of Manitoba wants to provide better consumer protection and improve the travel marketplace. Manitoba is considering new measures specific to the travel industry that would:

- Ensure advertising of travel is honest and accurate;
- Increase the level of consumer protection available to Manitobans and visitors to Manitoba that purchase travel services through Manitoba travel agents; and
- Protect Manitobans in the event of a supplier going out of business, such as an airline or tour operator.

This type of regulation would also allow Manitoba-based travel agencies to better compete with agencies in provinces that license travel agencies and have travel compensation funds.

Consultation

A working group has been organized to provide advice to the Manitoba government on consumer protection in the travel industry, including the Association of Canadian Travel Agencies (Manitoba), the Consumers’ Association of Canada (Manitoba), Travel Manitoba, and government representatives.

This discussion paper provides an overview of the travel industry in Manitoba, current consumer protection issues, and information on travel protection in other provinces.

Your feedback is very important. The Province of Manitoba wants to consider all interests to ensure any new measures reflect Manitoba’s marketplace needs. All comments, including proposed changes, questions and potential solutions are welcome. Your feedback will be used to help us create better protection for consumers and improve the travel industry marketplace in Manitoba.

Confidentiality

Any personal information you provide will be kept confidential, and will be used for the consultation only. Your personal identity will not be given out or made public without your consent. However, the name of an organization may be made public. You may be contacted by a staff member to clarify your comments. Your name will not be placed on any mailing lists that are not a part of the review.
Current Situation

Complaints filed with the Consumer Protection Office, media reports, and marketplace events have led to the identification of three key concerns within Manitoba’s travel marketplace: the need for clear, honest disclosure of prices and details of travel packages in advertising and sales; regulation and oversight of travel agents and agencies; and the potential impact of a supplier going out of business.

Clear and Honest Disclosure in Advertising and Sales
The focus of a family vacation should be fun and relaxation; families should not be surprised with additional fees and costs they did not expect. Travel services advertised at low prices by excluding fees or additional mandatory charges can cost consumers more than they realized. Other unfair practices can include misleading photos, testimonials, or offers that do not accurately reflect the service being purchased. Travellers also need clear terms and conditions in their contracts, especially those terms dealing with cancellations or disputes.

Travel Agents and Agencies
Making sure that money paid in advance to travel agencies is safe and secure is an area of concern in Manitoba as well as in other provinces. Consumers are typically required to pay well in advance of travelling. For example, a family may pay thousands of dollars for their winter vacation months ahead of their departure date. There is some risk involved with paying for the service before it is received. The family relies on the travel agent to pay the end supplier so they can receive the service. If the end supplier is not paid, due to fraud, closure, or bankruptcy by the travel agent, the family may lose their money and not get their vacation.

Risk of Suppliers Going out of Business
Consumers purchasing travel services may be at risk of a travel supplier going out of business. For example, Conquest Vacations was a well-known tour operator based in Ontario that had been in business for 37 years. Its sudden closure affected a total of 3,697 travellers, including some Manitobans. A number of these travellers were left stranded on international trips.

Industry Overview

Travel and tourism are important to our economy and way of life. Tourism is a $1.2 billion industry in Manitoba and Manitobans are among the most likely Canadians to travel out of province. Key participants in the travel industry include travel agents, travel agencies, travel wholesalers, and tour operators. There are approximately 700 travel agents in Manitoba, and there are an estimated 110 travel agencies in Manitoba. Other participants include airlines, outfitters, hoteliers, passenger rail operators, and bus companies.

Travel agencies in British Columbia, Ontario, and Quebec may offer higher levels of protection to customers than those in Manitoba because travel agents and agencies are licensed and consumers are protected by travel compensation funds. These compensation funds protect consumers in the event that travel services are not provided due to fraud, bankruptcy or closure by a travel agency or supplier. Given the global nature of this industry, Manitoba travel agencies and consumers may be disadvantaged because the same level of protection in other provinces is unavailable here.
Trends

Consolidation of travel wholesalers
Travel wholesalers are companies that purchase various components of a vacation package and then sell the package to travel agents. A wholesaler does not sell direct to consumers.

The travel wholesale business has undergone a lot of consolidation in recent years, with the result being that there are fewer wholesalers offering travel. There are five major national or global companies that dominate the market: Air Canada Vacations, Sunwing/Sunwing, Westjet Vacations, Transat Holidays, and Thomas Cook. If one of these companies goes out of business, a significant number of consumers may be affected.

Increased risk and operating pressures for tour operators
Tour operators bundle components of a vacation package and then directly sell the bundled product to consumers. The bundled product is not sold by other parties.

Tour operators assume a great deal of risk as they first purchase the components of a trip and then resell them as packages. If packages cannot be sold in time, tour operators may be forced to sell at a discount and recover little or no profit.

Industry participants are taking on varying roles
Recently, companies are becoming involved in more aspects of the travel trade. For example, companies such as West Jet and Air Canada operate as airlines, tour operators, and travel agents. They provide passenger air service direct to consumers, through travel agents, and as part of travel packages organized by tour operators. In addition to providing passenger air service, these companies act as travel wholesalers, by packaging components of vacations together for resale through travel agents. These companies also act as travel agents when selling packaged vacations directly to consumers.

Use of the Internet
The Internet is being used more and more by consumers to research, plan and purchase travel services. Travel agencies are increasing their use of the Internet to attract new customers and sell new services. Travel agencies are also using the Internet to increase the flexibility of their operations as agents can use it to work from home or other remote locations.

Current Consumer Protection in the Manitoba Marketplace

Consumers have some protection through legislation, payment processes, and industry regulation. There are also non-regulatory ways in which consumers are provided protection, through industry associations, travel insurance, and features of certain credit cards.

Legislation
Like all businesses, travel companies operating in Manitoba must comply with The Consumer Protection Act and The Business Practices Act. The Consumer Protection Office administers these two acts and mediates disputes between consumers and businesses.

The Consumer Protection Act provides for hearing, investigating and mediating consumer complaints related to consumer purchases. The Business Practices Act identifies unfair business practices in the marketplace related
to consumer transactions where a consumer might be deceived or misled. However, these two acts do not contain rules or regulations specific to travel agents or agencies.

**Industry Provisions**

The International Air Transportation Association is a trade association that represents 230 airlines. It has specific requirements for travel agents that wish to be registered and accredited with them to access and use the airlines’ distribution system, including the submission of annual financial statements and minimum experience levels for managers and agents of travel agencies. Through this organization, accredited travel agents are able to sell international and domestic tickets from member airlines. An accredited agent can also modify a booking on behalf of a traveller without having to go through an airline’s customer service department. International Air Transportation Association membership is needed to perform many of the functions typically expected of travel agencies related to air travel, such as booking and managing ticket purchases.

**Credit Card Purchase Protection**

Consumers who purchased their trips using a credit card may be entitled to have their credit charges reimbursed by the credit card companies. If they purchased online they may be protected by the Internet Agreements provisions in *The Consumer Protection Act* of Manitoba. However, there may be delays in receiving a refund or reimbursement.

**Consumer Protection in Other Provinces**

Ontario, BC and Quebec have regulations specific to the travel industry. BC has travel industry protection within their *Business Practices and Consumer Protection Act* that is administered by Consumer Protection BC. In Ontario, the Travel Industry Council of Ontario (TICO), a not-for-profit corporation, is responsible for administering and enforcing *The Travel Industry Act*. Quebec’s Consumers Bureau is responsible for administering their *Travel Agents Act*.

All three provinces require travel agents and agencies to be licensed and have provisions for how travel agencies operate. For example, travel agencies in these jurisdictions must comply with minimum working capital requirements, post bonds, or use trust accounts when dealing with customer funds. Regulations allow travel agencies to be inspected and there are administrative penalties for agencies that do not comply with regulations. In Ontario, travel agents must also pass an industry exam in order to obtain their license. Quebec plans to introduce a similar exam in 2012.

Licensing fees in these provinces range from fixed fees regardless of business size to fees that are relative to sales volume. The submission of financial statements by travel agencies and wholesalers is required as part of the annual licensing process in all three provinces to ensure businesses have adequate working capital and to determine licence fees, where applicable.

**Compensation Funds**

These three provinces have established compensation funds to reimburse consumers for the money they paid to a registered travel agency for services they did not receive because the travel agency or travel supplier (e.g. an airline or cruise line) went out of business.

The travel funds of the three provinces are similar in that they are all “insurers of last resort” – consumers are provided compensation only after trying to obtain compensation from other sources, such as the travel agent, supplier, or credit card company. For claims to be eligible, the travel services must have been purchased through a licensed travel agency in that province. For example, if a resident of Ontario purchased travel services
from a travel agency in Nova Scotia or did not go through a travel agent and bought directly from an airline’s website, they would not be eligible for compensation from the Ontario Travel Assurance Fund in the event of a supplier going under. Quebec has no maximum individual claim, while Ontario and BC have individual maximums of $5,000.

Compensation Fund Models
The travel compensation funds in Ontario and British Columbia are supported by contributions paid by travel agents and wholesalers. In these two provinces, the travel fund contributions become an operating expense for the agencies that must be covered by agency revenues. In Quebec, consumers pay $3.50 per $1,000 of travel purchases to support the fund. These fees are collected by the travel agency and submitted to the fund by the travel agent. Ontario may be currently considering a change to the consumer-supported model.

How do the compensation funds work?
The following examples show how the funds from British Columbia, Ontario, and Quebec work.

Example 1 – Supplier goes out of business
A retired couple books an ‘around the world’ cruise through a registered travel agent at a cost of $12,000 per person and the cruise line goes bankrupt prior to departure.
- In BC and Ontario, the couple could receive compensation up to $5,000 each.
- In Quebec, the couple could receive compensation for their entire purchase.

Example 2 – Arrange for travel back to Manitoba
A church group books a travel tour to Europe. Their package includes airfare, hotels, some meals, and transportation around various countries. While in the middle of their tour, they hear from the hotel owner that their tour company has gone bankrupt. They also learn that their charter plane, owned by the tour company, will not be flying them home, stranding them in Europe.
- Consumers who booked the tour through a company registered in BC and Quebec would be eligible for emergency travel fund assistance to return home to Canada, but might have to return partway through their trip.
- Consumers booking through an Ontario agency may need to make their own arrangements to return home, but then be eligible for compensation from the fund. However, in extreme circumstances where large numbers of travelers are affected, TICO, the Ontario travel authority that oversees the legislation, may make charter flight arrangements to bring home the entire group.
Considerations for Manitoba

Given consumer complaints related to travel advertisements and purchases; recent news events like airlines and others suppliers going under; and the fact that travel agents in Manitoba may be having trouble competing with agencies in other provinces who offer more protection, moving ahead with increased consumer travel protection is a priority for the Manitoba government.

Consideration is being given to legislating what kind of information needs to be disclosed to consumers in advertising for travel. An “all-inclusive pricing” rule, that would ensure that the price advertised for a travel package is the actual price, and includes all fees and charges (except government taxes), may assist consumers to make informed decisions about what travel package to buy.

Licensing travel agents and agencies, as is done in the three other provinces, would mean that people wishing to become travel agents would have to go through steps such as background checks, testing, and educational requirements. Travel agencies might have to provide a bond or other financial security to protect consumers.

Manitoba would have to consider different ways to set up a compensation fund to protect consumers. Could a fund be paid into by travel agencies, or consumers, or perhaps both? There may not be enough travel agencies in Manitoba to support a model similar to Ontario and British Columbia, where the fund is supported through payments from travel agencies. For a consumer-funded approach to work, analysis would be needed on whether or not there are enough consumers making travel purchases in Manitoba. There also may be a possibility that Manitoba could partner with one or several other provinces to establish a fund Manitobans could access.

Another consideration is how much protection is feasible to provide consumers through a fund. There is a range of protections that could be provided. For example, if an airline goes under, there would be different costs and levels of consumer convenience involved with sending a charter flight to get all travellers at once, whether or not they have stayed for their entire holiday, or having consumers take seats on a variety of flights as available.
Feedback

We hope to gather information and feedback from consumers, consumer groups, and members of the travel industry in this consultation. Your submission and comments are an important part of this process. We have developed discussion questions to help guide you or your group in preparing your submission for this consultation. Other comments and feedback are also welcome, particularly personal experiences with travel purchases.

1. What do you think are the most important consumer protection needs relating to travel purchases in Manitoba?

2. Do you feel that advertisements for travel packages and services can be misleading? Should regulation be brought in to ensure that the advertised price is the actual price of the package or that the product being sold is accurately and honestly described in advertising?

3. Should travel agents and agencies have to be licensed and meet certain training requirements in order to sell travel services in Manitoba? What considerations should be given to licensing?

4. How do you feel about a small consumer fee on travel purchases (e.g. $3.50 per $1,000 of travel purchased) to establish and maintain a compensation fund that would provide consumers with protection if their travel agent or wholesaler went under?

5. What kind of consumer protection should be considered for travel purchased on the internet?

6. Are there any industry issues that Manitoba should be aware of in considering consumer protection?

We welcome all comments, including proposed changes, questions and potential solutions. Your feedback will be used to create better protection for consumers and improve the travel marketplace in Manitoba.

Please send your comments, by June 24, 2011, by mail, e-mail or fax to:

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