



Draft Project Report

AN ANALYSIS OF CONSUMER ISSUES AND FRAUD IN THE TRAVEL AND TOURISM INDUSTRY

Prepared for

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I.

Introduction

As part of an inter-jurisdictional process focused on identifying new approaches to consumer law in Canada, Industry Canada identified the travel industry as an initial case study for further investigation. The travel industry was seen as an obvious starting point given the degree of cross-jurisdictional commerce—both within Canada and internationally.

KPMG was engaged to review the incidence of consumer problems (including mischiefs and fraud) in the travel industry. This report summarizes the results of the research and analysis undertaken in this area and identifies possible methods to mitigate consumer issues, mischief and fraud connected with the travel industry.

A. Study objectives

To evaluate and enhance the understanding of consumer concerns in the travel industry, the objectives of the assignment were threefold, specifically to:

- ▶ Assess the consumer issues, problems and "mischief" (e.g., fraud, misrepresentation) that are arising now and could arise in the future.
- ▶ Evaluate the challenges facing consumer law and other market place roles with regard to consumer issues in the Canadian Travel industry.
- ▶ Identify options to mitigate these concerns.

These objectives guided the consultants in preparation of the report.

The study was focused on problems and fraud at the consumer level and did not deal in any manner other than superficially with fraudulent practices at the enterprise level (e.g., defrauding of travel suppliers by unscrupulous travel agents). Such enterprise-level fraud might have negative ramifications on the consumer if the costs incurred by a given enterprise are passed on. For example, airlines will no doubt factor the costs of airline tickets obtained fraudulently by unscrupulous travel agents, into the overall pricing equation. The extent of such enterprise-level fraud is difficult to determine and was not the subject of this study.

B. Scope of the study

In completing our analysis we undertook extensive research and conducted numerous interviews with individuals knowledgeable on travel-related consumer issues specifically, and fraud more generally. The study included the following steps:

- ▶ A secondary data review including electronic database searches.
- ▶ Interviews with representatives of major tourism associations, both Canadian and international, including the World Tourism Organization, World Travel and Tourism Council, American Society of Travel Agents and the National Fraud Information Center.
- ▶ A legal and regulatory review focused on existing legislation and its applicability to the areas of fraud and mischief identified in the previous worksteps.
- ▶ Interviews with law enforcement agencies in Ontario, elsewhere in Canada and internationally.
- ▶ Interviews with technology suppliers.
- ▶ The conduct of an advisory panel workshop with representatives from the travel industry and consumer organizations based in both Canada and the United States. The advisory panel also included representation from the Canadian legal profession and Industry Canada. A list of workshop participants is included in Appendix A.
- ▶ A review of various areas of documentation reflecting current trends and issues in Canadian Consumer law.

Following the completion of these steps we completed a report summarizing conclusions and recommendations.

C. Definitions

This study focused primarily on consumer issues and concerns in the travel industry, specifically in three areas:

- ▶ **Travel products and product providers**—Includes all forms of travel products and services including airline flights, hotels, recreational activities, attractions

- **Travel packages**—The sale of more than one travel product bundled into a single commodity. Such commodities are assembled by and/or sold through tour wholesalers, travel agents and other intermediaries.
- **Timeshare/Vacation share**—Given the significance of the accommodation component of a leisure trip, the timeshare/vacation share industry is also included within the travel industry for purposes of this analysis.

Travel products are often used as the incentive or “bait” in fraudulent practices such as telemarketing scams. This report also addresses, in a more cursory fashion, the impact of such travel related consumer issues.

II.

Highlights

The travel and tourism industry is one of the world's major economic sectors reaching \$3 trillion in gross revenues and providing one-tenth of world employment. Canada's travel industry, both inbound and outbound, is also significant. Foreign and domestic visitors spent a record \$41.8 billion in Canada in 1995, a \$2.8 billion (7.1%) increase over 1994 (\$39 billion). Canadians traveling outside Canada accounted for 18.2 million person trips in 1995—80% of these trips were to the United States, a majority by passenger vehicle. Canada welcomed some 16.9 million visitors in the same period, 76% from the United States, with a majority of the balance from Canada's largest four inbound markets: United Kingdom, Japan, France and Germany.

As part of an inter-jurisdictional process focused on identifying new approaches to consumer law in Canada, Industry Canada identified the travel industry as an initial case study for further investigation. The travel industry was seen as an obvious starting point given the degree of cross-jurisdictional commerce—both within Canada and internationally. KPMG was engaged to review the incidence of consumer problems (including mischiefs and fraud) in the travel industry. This report summarizes the results of the research and analysis undertaken in this area and identifies possible methods to mitigate consumer issues, mischief and fraud connected with the travel industry. For the purposes of this study, the travel industry was defined as having three components: suppliers (e.g., transportation accommodation, attractions); intermediaries and packages (e.g., tour operators and wholesalers); and retailers (travel agents and others).

A. The travel transaction

The Canadian Tourism Research Institute estimated that in 1994 some 151 million person trips were taken by Canadians within Canada. Of these, 16.8 million person trips were taken within Canada but outside the traveler's province of residence. Canadians traveling outside Canada to the United States and overseas destinations accounted for almost 19 million trips, an increase of about 4% from the previous year.¹ Based on interviews with travel industry suppliers, the Better Business Bureau and others, the vast majority of these transactions, and transactions of foreign visitors to Canada, occurred without incidence of consumer concern or fraudulent practice. However, the industry is structured in such a

¹ *The Statistics Canada, International Travel Section*

way that the *potential* for consumer concerns is very real. This study categorized these concerns into three areas

- **Pre-contractual problems**—Problems occurring before travel commences include the potential for misrepresentation of travel components (e.g., quality of accommodation), pricing variations (e.g., what is included) and inconsistent quality. Characteristics of the industry that have the potential to exacerbate the concern include the standard requirement to pay in advance and the consumer's need to buy the travel product virtually "sight-unseen", unless a return visit is planned to the same destination.

The preponderance of travel packaging in Canada (primarily for outbound travel) may limit the opportunity for consumers to make comparisons between individual travel components. Further the terms, conditions and pricing of both packaged and single travel products have the potential for consumer confusion.

- **Contractual problems**—With regard to the travel "contract" either between the end purchaser and the agent and/or between the agent and the travel supplier, several potential problem areas arise. Of particular concern is the ability to identify the entity to which the end consumer is entering into a contract, especially when a purchase has been made from an intermediary that may not be responsible for providing the end product or service.

Other contractual-related issues include the large number of small businesses selling travel products in Canada (making regulation more problematic), the large number of relatively small transactions and a generally confusing rate structure for major travel components (e.g., airfare, accommodation).

- **Post-contractual problems**—Post-contractual problems centre around redress mechanisms and potential confusion regarding the entity to which complaints should be addressed. The possibility of responsibility being transferred between several parties (e.g., the travel agent, packager, end product supplier) is very real given the roles (either clearly stated or implied) of the various parties involved in the transaction.

Inter-jurisdictional issues also have an impact on redress, particularly for Canadians traveling outside the country.

None of these characteristics suggest the industry is rife with fraud or abuses, rather that the potential for consumer concerns does exist. However, as the industry continues to evolve so to will the range and scope of consumer issues. As a result, the taxonomy of issues set out above provides a framework for identifying and addressing these issues within a broader context.

B. The regulatory environment

Due to the nature of the Canadian constitution, consumer law is a shared responsibility between federal and provincial governments. Only Ontario, British Columbia and Quebec have specific statutes that regulate the travel industry. In the remaining provinces reliance for regulating the travel industry remains with general consumer protection statutes. Many of the "mischiefs" that occur in the travel marketplace arise from frauds or questionable practices in the sectors concerning travel certificates and travel clubs, telemarketing and timeshare. With the recent exception of telemarketing and timeshare in the western provinces, these segments of the industry are not regulated by specific statutes, and what regulation that exists will come from statutes of a more general nature.

The Competition Act is a broad-based statute not limited to a particular industry or sector. Sections of the Act address illegal trade practices, discounts and rebates, misleading advertising, multi-level marketing, pyramid selling, referral selling, bait and switch selling and promotional contests.

Section 380 of the Criminal Code describes the general offence of fraud and creates the specific offence of fraudulently affecting the public market price of stocks, shares, merchandise or anything offered for sale to the public. Under the general offence the fraud must be committed by "deceit, falsehood or other fraudulent means" which must fit the definition of "false pretense" within section 361 of the Criminal Code. The mental test for this section requires proof of an intention to cause the external circumstances of the offence.

From a provincial perspective, The Constitution Act in Section 92 grants to the provinces jurisdiction in matters relating to consumer law under the powers of property and civil rights (which includes contracts), administration of justice and local works and undertakings. The British Columbia and Ontario Travel Acts require each travel agent and travel wholesaler operating in the province to register with a registrar appointed by the Crown. Conditions of registration, suspension and termination are established. Deposits are to be dealt with as trust funds. There are requirements for ongoing supervision including the filing of financial statements, and regulation of changes in share structure. The Quebec legislation is different in style from the Ontario and British Columbia statutes, although the effects of the legislation are considered to be similar.

Timeshare is a unique product, which is neither truly real estate nor a security. British Columbia, Alberta and Saskatchewan have addressed this problem in their respective real estate statutes. In Saskatchewan, "real estate" is defined as including a "time-share plan." In British Columbia "developer" is defined as someone who sells "more than 4 timeshare interests in one timeshare plan" or sells more than one "shared interest in land. In Alberta, "property user's licence" (which by definition is essentially a timeshare interest), is defined as real estate.

C. Sizing the problem

Consumer transactions related to the purchase of travel products and/or services encompass a broad continuum that ranges from a fully efficient and informed transaction, to misrepresentation (either innocent or not) to criminal fraud (as defined in the Criminal Code). No true definition of travel fraud exists. Rather, travel fraud is used as a colloquial term to describe any wrong-doing within the continuum and thus, this wrong-doing (e.g., misrepresentation) may not constitute fraud in the legal sense. However, there is no doubt that any form of wrong-doing can be considered as damaging to the industry's image and to consumers as any "legally-defined" fraudulent activity.

Various figures have been used to estimate the value of consumer concerns and fraud in the North American travel industry. Some estimates range as high as US\$40 billion. Part of the difficulty in estimating the problem however, as mentioned above, is that many fraudulent practices (e.g., some forms of telemarketing) use travel products as "bait." While not travel fraud in the truest sense, these scams do have a negative impact on the industry—and provide additional challenges for legitimate operators. Both the Alliance Against Fraud in Telemarketing and the National Consumers League have drastically reduced their widely-reported estimates of travel fraud—by as much as 90%.

The number of claims paid by the travel funds in British Columbia, Ontario and Quebec may provide the best indication of the size of the consumer problem. Comparing the almost 2,000 claims paid in the most recent year with the 16.8 million inter-provincial trips and the 19 million trips taken outside the country by Canadians, suggests a general level of satisfaction with travel products and services purchased.

D. Remediating the problem

A number of challenges could potentially have a negative impact on the effective remediation of consumer issues and fraud in the travel and tourism industry. Such challenges are a function of both the regulatory environment and the nature of the fraudulent practices and problems themselves. Some of the more significant challenges include:

- **Incomplete reporting**—For various reasons only a minority of fraudulent practices and consumer issues are reported. As a result, quantifying the size and scale of a problem has proven problematic.
- **Inability to enforce existing regulations**—The difficulty of gathering information, the size of the individual cases (i.e., the number of small value transactions) and the priority given other matters by law enforcement agencies, result in limited attention being paid to travel-related consumer problems and even fraudulent acts.

- **Ineffective reporting mechanisms**—Confusion exists over the appropriate agency or body to which claims and/or complaints should be addressed. Options range from the Better Business Bureau to industry trade associations to law enforcement bodies.
- **The appeal of the scam**—The nature of certain fraudulent practices has such an underlying appeal that many consumers are too tempted to resist. The opportunity of receiving a valuable commodity for “free” is too attractive for some to pass up.
- **Reduced budgets**—Bureaucracies at all levels are faced with reduced financial and human resources making the development, implementation and monitoring of new policies and regulations difficult.

None of these challenges are seen as insurmountable. However a framework, against which efforts to remediate consumer issues can be evaluated, is necessary. While this study identified on a cursory level, the framework legislation in place in other jurisdictions, a detailed evaluation of legislation in place elsewhere (e.g., the European Community and Australia models) may prove useful on an issue-by-issue basis. Ultimately, responsibility for consumer protection should be shared among all parties including the consumer, government and the private sector interests selling travel and tourism products.

Three crucial elements of an effective and balanced consumer protection program and the implication from a travel and tourism perspective are:

1. **Co-ordinated law enforcement by state and federal agencies against fraud and deception.**

The focus on co-ordinated law enforcement and inter-jurisdictional co-operation recognizes the existence and suitability of legislation in some provinces to deal with many of the consumer problems and frauds discussed earlier. The travel acts in British Columbia, Ontario and Quebec provide a mechanism for at least partially protecting the residents of these provinces, although little effective legislation governs the sale of timeshare and vacation share products, except in British Columbia, Alberta and Saskatchewan. As well, the inability to regulate Internet-based and other forms of technology used for the sale of travel products and services may become a problem in the future.

The travel industry, as represented by workshop participants and supplementary interviews, seems to believe that new legislation is not necessary to address many of the consumer issues addressed above. Alternatively, consideration could be given to extending the travel acts in British Columbia, Ontario and Quebec to the other provinces, either through separate statutes in the other seven provinces, or through voluntary codes of practice established within each province at the industry level.

2. Self-regulation and private initiatives to protect consumers.

Within some areas of the travel industry, self-regulation may be an alternative to—or act as an alternative enforcement process for—existing and/or new legislation. Effective self-regulation requires an industry association that enjoys broad industry participation, respect from both existing and potential members, and a high degree of independence. Some uncertainty exists over whether or not mandatory legislation (e.g., membership) is necessary to make self-regulation workable.

Self-regulation is seen as a more flexible and cost-effective means of regulating certain industries. Organizations in the Canadian travel industry among those most likely to show the greatest interest in self-regulation include the Alliance of Canadian Travel Associations (ACTA) and the Canadian Resort Development Association (CRDA).

3. Consumer education through the combined efforts of government, business and consumer groups.

Consumer education should be focused on the prevention of consumer problems through heightened awareness, recognizing that the consumer is not without responsibility in this area. Consumer education falls into several broad areas, specifically:

- ▶ Awareness of key industry participants and the operating environment.
- ▶ Awareness of reporting procedures—making the public aware of the options for reporting fraud and consumer problems.
- ▶ Awareness of travel fraud schemes—The focus in this area would be on making consumers aware of the existence of such schemes, the “approach” taken by perpetrators to attract victims and methods to avoid being duped.
- ▶ Co-operative service providers—for example, working with direct mail associations in providing information on fraudulent practices through bulk mailings or other means.

Much information is available in a variety of jurisdictions and from (primarily) U.S.-based industry associations to assist with consumer education.

III.

Current Situation

This Chapter identifies the nature of the tourism industry in Canada, provides some perspective on an international basis and identifies the scope of consumer concerns in the industry.

A. Nature of the tourism industry

The travel and tourism industry is one of the world's major economic sectors reaching \$3 trillion in gross revenues and providing one-tenth of world employment. The industry is expected to reach \$7 trillion in a decade and will add 93 million new full-time and part-time jobs.

Foreign and domestic visitors spent a record \$41.8 billion in Canada in 1995, a \$2.8 billion (7.1%) increase over 1994 (\$39 billion). Canadians traveling outside Canada accounted for 18.2 million person trips in 1995—80% of these trips were to the United States, a majority by passenger vehicle. Canada welcomed some 16.9 million visitors in the same period, 76% from the United States, with a majority of the balance from Canada's largest four inbound markets: United Kingdom, Japan, France and Germany. Despite this significant level of inbound travel, Canada's international Travel Account posted a \$3 billion deficit in 1995 compared with 1994.¹

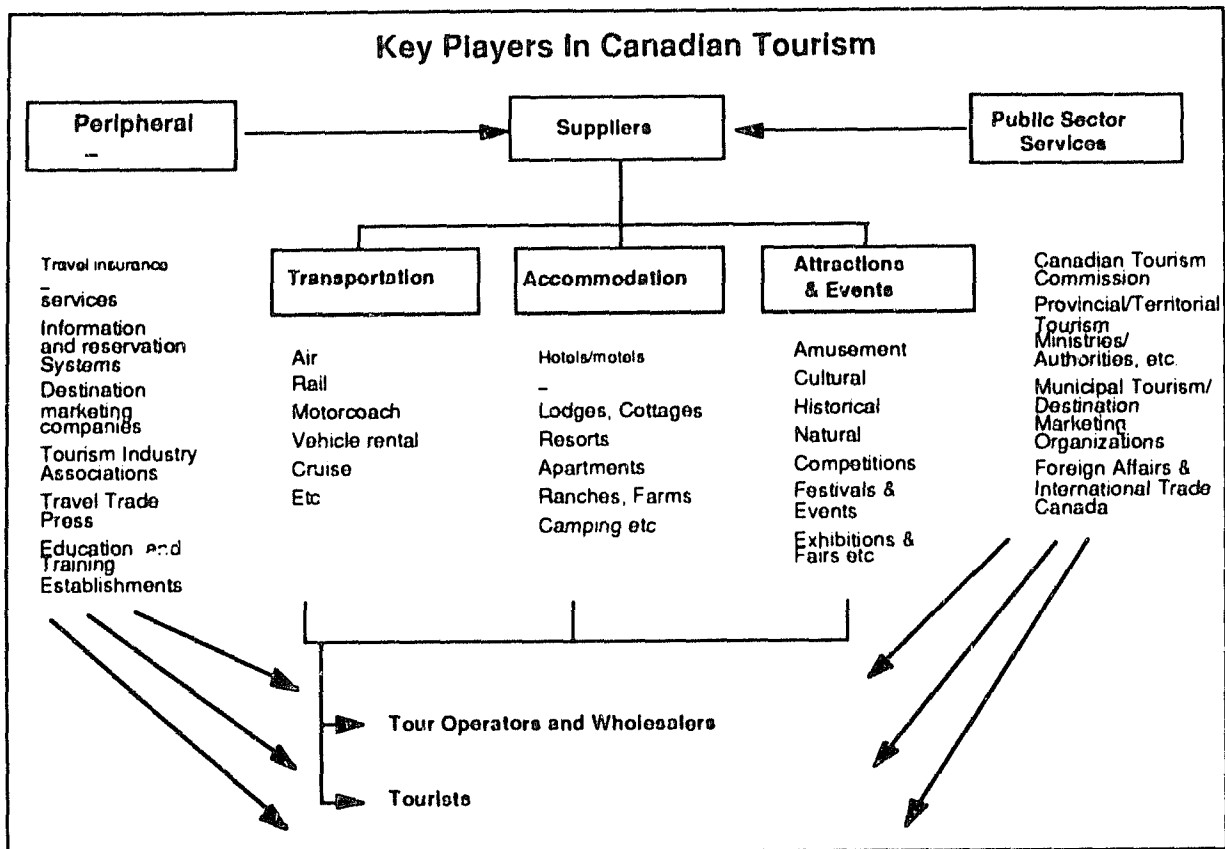
This travel sector can be broken into three components:

- ▶ Suppliers (e.g., transportation companies: air, rail, boat, car; accommodation establishments: hotels, resorts, etc.; and attractions). For the purposes of this analysis, timeshare/vacation share products have been included with the supplier category.
- ▶ Intermediaries and packagers (e.g., tour operators and wholesalers).
- ▶ Retailers (travel agents and others).

Key players are illustrated in Exhibit III-1.

¹ *Canada Communiqué*, November 1996

Exhibit III-1 Key players in Canadian tourism



Updated from: The Business of Tourism, Holloway, J.C. 1990.

From the consumer's point-of-view, the primary interface either for a domestic trip or a trip outside Canada, will occur with a tour operator, travel agent or directly with the supplier.

1. Tour operators and wholesalers

Tour operators buy a range of tourist products in bulk (e.g., transportation, accommodation, attractions and other services) and bring these together in a package or product. These are sold to the Canadian and international travel market through travel agents or directly to customers. Tour operators and wholesalers include receptive operators, receptive agents, motorcoach companies, inbound operators, outbound operators and other companies (e.g., transportation companies) involved in packaging tours for one or many customers. Statistics Canada

estimated that in June 1996 some 850 tour operators conducted business in Canada.²

Operators and wholesalers buy a variety of products from different suppliers in quantities that enable them to negotiate better prices and package them for sale at a mark-up allowing them an acceptable margin of profit. Profit margins in the industry are generally viewed as modest, at best, and are subject to a variety of factors largely out of the operators' hands (e.g., weather, currency fluctuations).

The nature of packaging in the travel industry, specifically the long lead time required to arrange and market packages, results in a degree of rigidity. Choice, while available to a certain extent, is limited to prearranged package components. Time of travel (i.e., high season, low season and day of departure) and the quality of accommodation, are the components having the greatest impact on the eventual sale price of the package.

For the most part, tour operators and wholesalers provide a legitimate service by catering to those travelers who prefer to have someone else arrange all aspects of a trip including transportation, accommodation, meals, admission to attractions, entertainment and various other services. However, the opportunity for mischief does exist, particularly in a situation where the purchaser is unaware of the true value of various components. Unreputable tour operators might, for example: overstate the value of certain package components (e.g., the cost of an airline flight); provide a substandard component (e.g., switch a "view" room for a non-view room), or add components with little value to the purchaser but great value to the packager (e.g., a "free" trip to an artisan's shop, where the intent is to sell product to a captive audience).

2. Travel Agents

Travel agents are part of the retail sector of the distribution chain. In addition to buying travel services at the request of their customers, they also provide travel planning and reservation services to the general public and commercial clients. Travel agencies provide a convenient network of sales outlets that cater to the needs of local areas. Statistics Canada estimated in June 1996 that 4,211 travel agents operated in Canada³. An additional 2,000 agents operate in specialty areas (e.g., cruise only, charter airline) that do not require IATA certification.

² Statistics Canada, *Annual Survey of Travel Agencies, Tour Operators and Tour Wholesalers*, (Unpublished).

³ Statistics Canada, *Annual Survey of Travel Agencies, Tour Operators and Tour Wholesalers*, (Unpublished).

The growing use of Internet-based and other forms of technology are likely to have a significant impact on the number of travel agents and the types of services provided. As the public, and to an extent travel suppliers, become more comfortable with direct booking and ticketless travel, some of the traditional functions of the travel agent will be reduced or disappear all together. Consolidation in the travel agency sector has been occurring for several years, with mergers of agencies expected to continue into the future. A greater differentiation between business-focused and consumer-focused agents is also expected to occur.

In the past, travel agents have been compensated by travel product suppliers (e.g., a commission for selling an airfare or hotel room). While no documented evidence exists, such an approach implies a tendency to "up-sell" higher-value products and services in order to increase commissions. However, some travel agents are currently moving to a fee-for-service strategy, where the consumer "pays" transaction fees. This approach is more prevalent in the corporate travel area, where travel volume provides an opportunity to secure discounts.

3. Other Services

Other public and private sector services also interact with the distribution system. Private sector services include travel insurance, financial services (e.g., banks' currency exchanges), information and reservation systems, travel trade publications and industry associations. Public sector services include passport and visa services, education, partnership marketing, information programs and tourism industry development.

An important peripheral service is provided through the Bank Settlement Plan ("BSP"). Most airline bookings are made through travel agents and processed through the BSP, a central collection point for the airlines. However, bookings through charter airlines which are not members of the BSP can occur, and the tour operator (more likely acting as a consolidator) becomes the 'merchant' instead of the travel agent. The most significant potential impact for the consumer is the lack of exchangeability of airline tickets between charter and non charter/BSP-processed airlines. Non BSP-processed tickets have no value other than to the charter airline, unlike most other full-fare and even reduced-fare tickets, which may often be exchanged between airlines. Although many tour operators are now linked electronically so that credits are delivered on a daily basis to the financial institution, some still process manually.

B. The travel transaction: A taxonomy of consumer issues

Millions of travel transactions occur annually in Canada. The Canadian Tourism Research Institute estimated that in 1994 some 151 million person trips were taken by Canadians within Canada. Of these, 16.8 million person trips were taken within Canada but outside the traveler's province of residence. Canadians traveling outside Canada to the United States and overseas destination accounted for almost 19 million trips, an increase of about 4% from the previous year.⁴ Based on interviews with travel industry suppliers, the Better Business Bureau and others, the vast majority of these transactions, and transactions of foreign visitors to Canada, occurred without incidence of consumer concern or fraudulent practice. However, the industry is structured in such a way that the *potential* for consumer concerns is very real. Such concerns can be categorized in three areas, as described below.

1. Pre-contractual problems

Problems occurring before travel commences include the potential for misrepresentation of travel components (e.g., quality of accommodation), pricing variations (e.g., what is included) and inconsistent quality. Certain industry characteristics have the potential to exacerbate the problem, including:

- ▶ **Payment of funds in advance**—Full or partial payment of the travel cost well in advance of the trip is common practice throughout the industry whether by major airlines, tour packagers or others. Other conditions (e.g., requirement to stay a Saturday night) may also apply. As airline seats and hotel rooms are considered perishable commodities, vendors establish advance prices in order to secure a guarantee of use at a future point. As a result, the rationale for this practice reflects a pricing discount given in exchange for pre payment. The consumer however, always has the option to book directly with an airline, accommodation and/or other travel service provider, pay the standard rate and avoid any conditions or restrictions.

A related concern is the security of funds paid in advance to an agent or tour operator. Are mechanisms in place to safeguard these funds? How is the consumer protected if the "holder" of the funds goes out of business?

- ▶ **Impact of time**—In addition to paying in advance, the lead time before travel can often be several weeks or months. Further, the trip itself may extend over a long period of time.

⁴ The Statistics Canada, International Travel Section

- **Buying "sight unseen"**—Aside from full-colour brochures, the traveler is unlikely to have any detailed knowledge of the travel product, unless making a repeat visit to the same destination. As a result, a heavy reliance is placed on integrity of the vendor as well as the tour operator that designed the package (and brochure).

In addition to the characteristics identified above, lack of information (sometimes false information) and the absence of a clear understanding of how the travel industry works, has the potential to cause confusion in the minds of consumers and, the potential for unscrupulous operators to commit fraud or mischief. Many of the issues surrounding lack of information or "dis-information" are specific to tour packages, although some single-service providers (e.g., airlines, hotel) also have the potential for generating confusion among customers. Of particular interest are these four areas:

- **Packaging**—To what extent does packaging mix products of various quality? How is the consumer to measure and thus search for the best deal if a direct comparison between packages is made difficult? For example, a tour operator could mix a five-star hotel with a lower quality car rental and airline flight, making comparison to a package encompassing a three star hotel, car and flight quite difficult.
- **Definition of terms**—Phrases used to describe the physical (e.g., hotel room configuration) and subjective (e.g. quality level) characteristics of a travel product vary by jurisdiction, both within Canada and internationally. While several hotel rating systems exist, including long-standing private sector systems such as Mobil and AAA/CAA and government-supported systems such as Canada Select, the definitions used in each system are somewhat different. Standard definitions describing the physical configuration of the room (e.g., a double room) can vary considerably. Descriptions of quality also vary, particularly in an international context where "5-star" or Luxury in a North American context may be substantially different than the same designations in a developing country.
- **Rate structure**—Both the airline and accommodation sectors have been criticized for using overly complex rate structures, with multiple pricing policies that vary by season, day of week (e.g., the requirement for a Saturday stay over) and market segment (e.g., leisure, corporate, convention). The maintenance of such confusing structures makes value comparisons difficult.
- **Conditions**—The rationale behind various conditions applied to travel products is not always as clear as possible. One example is the need for a "single supplement" charge to offset the tour operator's price commitments to a given accommodation property. In addition, statements of duration (e.g., "seven full days" that may or may not

include days of transit) might reflect more of a marketing bias than true disclosure.

- ▶ **Managing inventories**—Overbooking is a common practice in both the airline and accommodation industry, to offset the impact of “no-shows.” Consumers are rarely made aware of the formulas used to determine who is “bumped” to alternate airlines or accommodation providers. However, at least in North America among reputable organizations, compensation of equal or greater value is usually always given.
- ▶ **Marketing Practices**—Three areas, as explored in greater detail in the next section, affect consumers in the area of marketing practices. Telemarketing is used as a medium by which travel related fraud or mischief could be relayed. Add-on services are sometimes used as an ex poste manipulation of the contract to compel consumers to augment their travel plans. Finally, travel certificates could be used by some fraudulent operators as a scam.

Additional information, provided by either the packager or the travel product supplier, as well as a greater understanding of the relationships between travel industry participants would serve to mitigate many of these issues.

2. Contractual problems

With regard to the travel “contract” either between the end purchaser and the agent and/or between the agent and the travel supplier, several potential problem areas arise. Of particular concern is the ability to identify the entity to which the end consumer is entering into a contract. The majority of travel agents and tour packagers limit their responsibility to the booking service provided, by way of disclaimers on the brochure or other printed materials. Many tour operators and travel agents view themselves purely as intermediaries between the consumer and those providing the travel service (e.g., a hotel) and therefore not ultimately responsible if the product or service is not to the expectations of the purchaser. However, several brochures reviewed as part of this analysis which clearly limit the packager’s responsibilities, are not as clear as to the consumer’s options should the product not be as stated—either at the time the brochure was printed or at the time of travel.

Familiarization trips (usually expense-paid trips for travel agents/travel influencers to visit specific destinations or take part in travel activities such as a cruise) are an accepted part of the travel product selling process. The degree to which suppliers of travel products exert influence over travel agents and packagers, and the extent to which this practice has a negative impact on the consumer, is unclear. However, given the number of potential destinations and travel products available through various agents and directly from the travel product provider, the consumer’s choice is not thought to be limited to a great degree.

Other contractual issues include:

- **The preponderance of small businesses**—About 20% of the 6,000+ travel agents write 80% of all the airline tickets sold in Canada. The ability to control and regulate such a large number of businesses, and provide some comfort to consumers paying in advance for travel purchases, is more difficult given the volume of transactors.
- **A preponderance of small transactions**—Many travel purchases, particularly leisure and package travel, are for relatively small amounts, (i.e., in most cases within the guidelines set for small claims court).
- **A variety of pricing structures**—As with any “perishable” or time-sensitive product (e.g., airplane seats or hotel room availability at a given point in time) discounting does occur. As a result, differentiation between a valid discount and a decoy may be difficult to determine. For example, a customer may be unable to determine the difference between a valid discount (e.g., a discount of 75% or more given days before departure of a charter flight in order to fill up a few remaining seats) and a fraudulent discount.
- **Business Failure**—There is a risk that if pre-payment of travel services is not held in trust before the trip is taken, an insolvency of the travel agent would result in all assets becoming property of the estate for distribution to all creditors of that travel agent. The consumer could file a claim as an unsecured creditor but the return would be minimal. The problem could be further exacerbated if the insolvency occurs while the consumer is abroad and the pre-payment of the return flight becomes the property of the estate. The consumer could be left stranded unless a compensation fund is in place.

As with pre-contractual issues, many contractual concerns could be alleviated with greater information and a clearer understanding of how the travel industry works.

3. Post-contractual problems

Post-contractual problems centre around redress mechanisms and potential confusion regarding the entity to which complaints should be addressed. The possibility of responsibility being transferred between several parties (e.g., the travel agent, packager, end product supplier) is very real given the roles (either clearly stated or implied) of the various parties involved in the transaction.

Once these private attempts at complaint and redress have been exhausted, the formal consumer protection framework could be equally confusing to the consumer particularly in light of the varying degrees of protection explored in the following section. While business practices are covered under blanket provincial consumer protection and business practices acts, only three provinces have formal travel agent regulations and/or acts. The federal government also has some jurisdiction in the area of deceptive marketing. Private associations have emerged to accredit agents but membership is on a voluntary basis; as well intermediary agents are exploring the possibility of accreditation (e.g., Better Business Bureaus). The sheer number of channels for consumer protection and filing of complaints is likely very confusing to the consumer.

Inter-jurisdictional issues also have an impact on redress, particularly for Canadians traveling outside the country.

None of these characteristics suggest the industry is rife with fraud or abuses, rather that the potential for consumer concerns does exist. The following chapter details some of the major consumer issues.

IV.

Consumer Issues

Following a secondary data review to identify consumer issues, a workshop of industry representatives was convened to validate and prioritize consumer concerns in the Canadian tourism industry. Workshop attendees were from Canada and the United States and represented trade associations, private sector organizations, government departments, and enforcement agencies—a list of attendees is provided in Appendix A. Following the taxonomy used in the previous section, the workshop attendees concluded that the five major issues related to travel for Canadian consumers were the following (please note that the categories are not mutually exclusive) :

- ▶ Pre-contractual Problems:
 - Telemarketing Issues
 - Issues related to the use of travel certificates

- ▶ Contractual Problems
 - Issues arising from advances in technology
 - Timeshare

- ▶ Post-contractual Problems
 - Issues covered under existing regulations such as misrepresentation, business failures and licensing of agents.

This section defines the size of the problem, and discusses both fraud and consumer issues related to the travel industry.

A. Defining the size of the problem

Various figures have been used to estimate the value of consumer concerns and fraud in the North American travel industry. Some estimates range as high as US\$40 billion. Part of the difficulty in estimating the problem however, is that many fraudulent practices (e.g., some forms of telemarketing) use travel products as "bait." While not travel fraud in the truest sense, these scams do have a negative impact on the industry—and provide additional challenges for legitimate operators. Previous estimates of the problem include:

- The Alliance Against Fraud in Telemarketing estimates that Americans lose US\$40 billion annually to telemarketing fraud.
- Project Phonebusters estimates that in 1996 it will receive approximately 18,000 complaints regarding telemarketing prize complaints (based on complaints received in the first nine months). Based on historical ratios, these complaints would include approximately 2,300 victims of fraud representing \$4.9 million in losses.
- The Federal Trade Commission states that travel problems are among the top 10 complaints they receive annually. However, if prize promotions that use vacations as one of the hooks are counted, travel would be the second or third most common problem.
- The National Consumers League estimates North Americans pay out US\$12 billion annually in travel telemarketing scams.
- In 1995, one in five calls to National Fraud Information Centre (NFIC) was travel related.
- In 1995, the NFIC received 768 travel related complaints, representing total claims of \$241,850.

The Council of Better Business Bureaus tracks the number and inquiries received by all its member bureaus ("BBB"). In 1995, the BBBs in the United States handled approximately 7.9 million report requests and 1.3 million complaints. The type of business that received the most requests were "work-at-home" companies (i.e., 215,292 inquiries), while the type of business that received the most complaints were "auto dealers, franchised" (i.e., 13,556 complaints). Of the 332 types of businesses tracked by the Council several were in the travel industry. "Travel agencies, clubs, and discount services" and "vacation certificate and companies" received a significant number of requests and, in the case of the former, complaints.

<u>Type of business</u>	<u>Report Requests</u>		<u>Complaints</u>	
	Rank	Number	Rank	Number
Travel agencies/clubs/discount services	9	100,134	18	2,852
Vacation certificate/voucher companies	16	68,269	107	561
Timeshare Campground/resort companies	95	16,836	80	804
Timeshare Campground/resort promotions	74	21,255	165	241

Both the Alliance Against Fraud in Telemarketing and the National Consumers League have drastically reduced their widely-reported estimates of travel fraud—by as much as 90%. A general consensus exists that if travel used as bait is separated from true travel fraud, these latter estimates would be even lower.

Consumer satisfaction, or dissatisfaction, with travel products, tour operators, or travel agents is difficult to quantify. Both national industry research associations (i.e., Canadian Tourism Research Institute, Canadian Tourism Commission) and travel agent associations in the U.S. and Canada (e.g., Alliance of Canadian Travel Associations) are unaware of any consumer research in the public domain. However, discussions with industry experts and review of secondary data shows that the travel issues facing consumers have evolved over the years. Initially the issues revolved around misleading/deceptive advertising, false advertising (e.g., offer of \$25 airline ticket to Hawaii, where supply could not possibly meet demand), and credit card security. While these issues continue to exist, more recent issues concern, for example, timeshares/vacation clubs, vacation/travel certificates, and pyramid schemes. In the future consumer issues may revolve around the Internet, or at least its use as a vehicle to commit fraud.

Consumer transactions related to the purchase of travel products and/or services encompass a broad continuum that ranges from a fully efficient and informed transaction, to misrepresentation (either innocent or not) to criminal fraud (as defined in the Criminal Code). There is no true definition of travel fraud. Rather, travel fraud is used as a colloquial term to describe any wrong-doing within the continuum and, thus, this wrong-doing (e.g., misrepresentation) may not constitute fraud in the legal sense. However, there is no doubt that any form of wrong-doing can be as damaging to the industry's image and to consumers as "legally" defined fraudulent activity.

B. Issues covered under existing regulations

Only Ontario, Quebec and British Columbia have regulations that govern the conduct of travel agents and tour operators—the other Provinces have no means of licensing or regulating travel product providers and/or agents. The regulations in the three Provinces are quite similar and focus on ensuring the integrity of the transaction between the consumer and the agency/operator—these regulations are explained in more detail in the next section. In each of these provinces every travel agent and travel wholesaler operating in the province is required to register with the Travel Registrar.

The most significant mechanism in place to protect consumers in each of these three provinces is a fund designed to reimburse and/or repatriate travelers in the event of the insolvency of the agent or travel supplier. Industry experts suggest that the majority of consumers in the three provinces are unlikely to have a full understanding of what is covered by the province's fund. The funds in each Province are briefly described below:

- ▶ **British Columbia:** The Registrar of Travel Services administers the Travel Agents Act and the Travel Assurance Fund ("Fund"). The Fund is financed by mandatory initial and semi-annual contributions from registered travel agencies—1,113 registered travel agents and travel wholesalers in 1995. The fund is used to reimburse B.C. residents who have prepaid their travel services with a B.C. registered travel agency but did not receive those services. In fiscal year 1995 (the most recent data available), the Fund paid out \$35,670 to 47 consumers—a significant decrease from the previous year's claims of \$174,358.
- ▶ **Ontario:** The Ontario Travel Industry Compensation Fund Corporation administers the Province's Compensation Fund ("Fund"). The Fund is financed by registered travel businesses (i.e., travel agents or wholesalers) through an initial fee and semi-annual contributions. In fiscal year 1996 there were approximately 2,900 registrants in Ontario—an increase of approximately 200 registrants from the previous year. The Fund reimburses consumers that have dealt with an Ontario registered travel agent, but travel services have not been provided and the registrant is unable to refund their money by reason of bankruptcy or insolvency. The Fund can also be used to pay to allow the immediate departure of a registrant's customers or to return them if they are stranded outside Ontario. The fund does not pay claims resulting from the failure of end suppliers, such as airlines, to provide travel services. In fiscal year 1996 the fund paid 227 claims totaling \$256,930 and spent \$112,340 on repatriation.
- ▶ **Quebec:** L'Office de la protection du consommateur is responsible for administering the fund. The Travel Agents Act protects consumers in the event of a travel agency bankruptcy and compensates consumers that have received a judgment against a licensee. In fiscal year 1996 there were 1,131 registered travel agents and wholesalers—the number of registrants has remained relatively constant over the years with approximately 125 new registrants and 125 closures annually. The fund paid 1,610 claims totaling \$939,710 in the last fiscal year.

The number of claims paid by the funds in British Columbia, Ontario and Quebec may provide the best indication of the size of the consumer problem. Comparing the almost 2,000 claims paid in the most recent year with the 16.8 million inter-provincial trips and the 19 million trips taken outside the country by Canadians, suggests a general level of satisfaction with travel products and services purchased.

Issues covered under the purview of these bodies are summarized below:

1. Misrepresentation and lack of disclosure

The lack of disclosure or misrepresentation may result in consumers:

- ▶ Purchasing a product/service that does not meet their expectations (or initial understanding).
- ▶ Finding that they have to buy a more expensive product/service that better meets their needs.
- ▶ Finding that the product/service is not available at the advertised price during that desired period of time (e.g., "bait and switch").
- ▶ Purchasing additional products/services that are not necessary (e.g., medical insurance that may not be provide adequate coverage).

One of the difficulties in attempting to regulate this issue is that there is no unanimity in defining misrepresentation—what is considered misrepresentative in one culture may be considered "creative marketing" in another. In addition, certain misrepresentative marketing practices are accepted as the norm and commonly used by legitimate travel promoters. For example, in the United States, airlines quote one-way fares based on the lowest return ticket fare, when often very few seats are available at that fare.

Provincial travel acts frequently specify advertising standards (e.g., disclosure requirements) that ensure consumers are provided with pertinent information. These requirements may require that the total price be disclosed (including local taxes, service charges and other charges) and that all components of the package be identified (e.g., name of carrier, operator, departure dates).

In the absence of travel acts, advertising standards in print media and radio are controlled to a limited extent by the medium's respective publishers and, possibly, national associations through codes of ethics or standards. These associations' codes of ethics detail what must be disclosed either in advertisements or upon request by the consumer—the latter assumes that the consumer knows what information should be provided, which is unlikely the case for the majority of consumers.

The effectiveness of these codes will depend on the association's membership base (i.e., are the majority of industry organizations members of the association?), and how the codes are monitored and enforced. The monitoring aspect is significant, as the association or enforcement agency must have the necessary resources (e.g., staffing and funds) to monitor and follow-up on infractions on a timely basis. Codes of ethics can be enforced either through a court of law, if the codes mirror national or provincial legislation, or through actions taken by the association (e.g., withdraw the organization's membership). Associations will only be able to

effectively enforce codes of conduct if the association has significant awareness and credibility among consumers. If consumers hold the association in high regard then association membership could become a pre-requisite for operating successfully in the industry.

The extent to which the industry is prepared for self-regulation varies by province—primarily due to different perceptions as to the appropriate role for government and the private sector. Therefore, how travel agents are regulated will likely continue to vary significantly by province. For example, ACTA in Alberta is establishing a compensation fund similar to the funds in the three Provinces that have travel acts. British Columbia is reportedly satisfied with its current situation (e.g., the role of government), while Ontario is considering the establishment of a self-management group for the travel industry. Once self-management has been tested in Ontario, it could be extended to other provinces, to cover provinces with and without statutes.

2. Licensed and unlicensed travel agents

There are an estimated 5,700 to 6,000 travel agencies in Canada. Of these agencies, over three-quarters are located in a province with a travel act (i.e., B.C., Ontario, Quebec)—travel agents doing business in these provinces, legally must be licensed and contribute to a compensation fund (security fund in Quebec).

These travel acts allow consumers to make a claim against the compensation/security fund in the event of a business failure or, in the case of Quebec, if products/services are not delivered as contracted. The travel acts require agents to: demonstrate financial stability (through an annual filing of financial statements), not have a history of complaints (typically stored with the Ministry, Registrar or agency responsible for administering the fund), and place consumer deposits into a trust fund. In Ontario and British Columbia the travel acts also have fairly stringent disclosure requirements.

However, in provinces without travel acts, consumers have limited protection and recourse in addressing difficulties that they may have with travel agents. Therefore, consumers in these provinces must rely on their judgment, or the travel agent's reputation, to select a travel agent. Also, consumers can base their decision on whether the travel agent is a member of a major and reputable trade association. For travel agents in Canada, the major trade associations are the Alliance of Canadian Travel Associations ("ACTA"), and/or the International Air Transport Association ("IATA"). In Canada, approximately 4,000 travel agents are IATA accredited members (i.e., they can issue tickets on IATA member airlines), and 2,400 are ACTA members. Membership in both these organizations is voluntary, and the decision to join is likely driven by the perceived benefits of joining the association. For example, a travel agency may choose not to be an IATA member because they, for example, deal only with cruises and/or charter airlines.

- ACTA's new name (Alliance of Canadian Travel Agents) is in the process of being registered. Approximately two-thirds of ACTA's members are retail travel agents. ACTA's primary objectives are to represent its members on national issues (e.g., tax issues), to develop national standards, and to facilitate the exchange of information between its members. ACTA has codes of ethics and standards that define membership admission criteria and behavior. These codes have been in existence in some form since the inception of ACTA approximately twenty years ago—a copy of the code is attached in Appendix B. Some of the codes that are designed to protect consumers include the need to be a credible/proven operator in the travel industry (e.g., two years in business), to employ qualified staff (e.g., staff can receive training through the "Access" Program), and to disclose all information (e.g., description of accommodation) and additional charges (e.g., taxes) to consumers. However, the effectiveness of the code is somewhat limited because membership is voluntary and no monitoring process exists.
- International Air Transport Association ("IATA") accredits travel agents to issue airline tickets of IATA members (i.e., airlines). To be accredited, agents must satisfy criteria in the following four areas: financial (e.g., financial statements must be submitted annually), security (e.g., regarding the storage and distribution of tickets), personnel (e.g., having qualified staff), and premises (e.g., office cannot be shared with another company). Most major airline carriers are members of IATA, although many charter airlines are not.

The increased rate of interaction between consumers and travel agents through toll-free telephone lines and the Internet will likely make it more difficult in the future for consumers to know where the agent is based, whether the agent is licensed or a member of a major association.

3. Business failures

The number of business failures among travel agencies in a year is relatively small. For example, IATA reports that 22 of their member travel agencies defaulted on their payments and 151 members filed for voluntary closure in 1996. However, the impact on consumers can be significant, as consumers may lose their deposit or total payment for a future trip. If the tour operator or travel supplier goes bankrupt, consumers may be left stranded at their vacation destinations and be forced to make, and pay for, their own arrangements to get home. The travel acts and compensation/security funds in Quebec, Ontario, and British Columbia can be used to provide financial remedy (including the repatriation of travellers) to consumers in the event that a travel agency, tour operator, or travel supplier goes bankrupt.

Consumers likely do not have a complete understanding of what the travel acts and compensation/security funds cover. For example, business failures of public carriers that provide only one type of transportation (e.g., national airlines that only provide scheduled flight services) are not covered under the travel act—this

exemption is likely not known to the majority of consumers. In addition, the consumer may not be properly protected if an unlicensed travel company in, for example, Quebec declares bankruptcy.

In provinces that do not have travel acts, consumers may have some, albeit limited, protection through, for example, consumer protection law or unfair trade practice statutes. In addition, consumers may be protected under trade association consumer protection plans. For example in January 1997, ACTA Alberta implemented a consumer protection plan that reimburses consumers in the event that an ACTA travel agency member goes bankrupt.

4. Add-on services

Insurance is probably the add-on service that results in the greatest number of consumer issues. Travel-related insurance ranges from life to medical to rental car liability (i.e., personal injury and vehicular damage). The consumer's inability to determine if existing coverage may already be in place almost certainly results in excess coverage in some situations. For example, does insurance associated with the traveler's credit card cover an automobile rented through the credit card? Under what circumstances? Or, do consumers fully understand what components—and respective costs—are included in the package of insurance being offered. Conversely, consumers may not fully understand what is covered by the insurance purchased. For example, does the insurance adequately cover emergency needs (e.g., medical operations outside Canada), and in all cases (e.g., age restrictions on medical insurance)?

A related issue is that consumers may learn of charges for add-on services upon arrival at the destination. For example, a requirement for car insurance may significantly increase the daily cost of renting a car.

C. Telemarketing fraud

Telemarketing has long been one of the most popular mediums for scamming consumers. While the National Consumers League has estimated pay outs in travel telemarketing scams, these estimates have been withdrawn because of a lack of data (the majority of telemarketing scams are not reported). However, industry experts continue to believe that travel telemarketing scams are a significant problem.

Frequently, telemarketers establish "boiler-room" operations where well-trained employees contact consumers to sell a product/service by using a deceptive sales pitch. Only after paying a deposit, or the full amount, does the consumer receive additional information and realize that the product/service is not what was contracted for or that the product/service will cost more than originally anticipated.

Travel promotions are frequently the featured product in illegal telemarketing activities. The Alliance Against Fraud in Telemarketing reports that travel scams were among the top seven telephone scams in 1995—these seven scams were:

- Free prize offers (including travel prizes)
- Charitable solicitation
- Travel offers (bargain priced travel offers)
- Investment fraud
- "900" numbers
- Advance fee loan scams
- Credit repair scams

Examples of travel scams that use telemarketing as a medium follow. Other mediums include direct mail or print media.

1. Vacation prizes

Consumers are advised either by telephone or by direct mail that they have "won a fabulous vacation"—generally, a trip to a well-known destination resort. The telephone operator (or accompanying letter) will advise the consumer that to redeem the prize, the consumer must either send a deposit (e.g., \$100) to a specified address or participate in a specific promotion (where the promotional product is purchased at an inflated price). Subsequently, a vacation package is provided that details the process for making a reservation—this process may include additional charges or hard-to-meet terms or conditions.

A vacation prize may also be marketed as the grand prize in a contest. The use of a vacation prize can result in two possible consumer issues. If the vacation prize is not awarded to anyone, then the contest organizer may be guilty of fraud; and, if the odds of winning are not identified then the contest organizer may potentially be guilty of creating a false perception.

2. Affordable vacations

Fraudulent operators will promote memberships or vacation offers that appear reasonably priced based on information provided to the consumer. These vacations may have a hidden cost (e.g., a second airline ticket must be purchased at full fare) or the quality of services/product may be inferior to what is described by the telephone operator. If the consumer asks questions, the operator may provide vague answers or make oral misrepresentations. Contradictions will become apparent after the consumer has made a deposit (or paid in full) and receives written material describing the vacation (which may reveal additional costs, terms or conditions). Or the consumer may go on the trip and find that, for example, the accommodation provided is inadequate, requiring payment for an upgrade.

An associated travel scam involves travel clubs. Consumers are invited to join a travel club for an initial membership fee. Travel club members are entitled to affordable vacation packages that operate in the same fashion as described above (e.g., the requirement to purchase an expensive second ticket).

3. Limited time offer

Many of the fraudulent offers made by telemarketers will involve time pressure tactics. The consumer is told that a special offer is available for a limited time and that the consumer must make a decision immediately (e.g., make a deposit immediately). When additional detail on the offer's associated terms and conditions are provided, the consumer realizes that the offer is no longer attractive.

Several law enforcement and regulatory initiatives have been undertaken to combat telemarketing issues. In January 1993, Project Phonebusters was created. The goal of the Project is to prosecute key individuals involved in telemarketing fraud through the fraud section of the Criminal Code, United States agencies through extradition, and/or Industry Canada under the Competition Act. In the early 1990's the Federal Bureau of Investigation undertook its most significant initiative against illegal telemarketing (code name "Operation Disconnect"). Among the products sold by the 95 illegal operating telemarketing operations identified, 9% were related to travel clubs and 27% were related to professional services which include vacation clubs.

In November, 1996 proposed amendments to the Competition Act were introduced. Certain amendments relate to deceptive telemarketing, as described in a later section. In the summer of 1995, a joint treaty was signed between the United States and Canada that would allow for the cross-border prosecution of illegal telemarketing operations. In the United States, significant lobbying by various organizations, including the offices of the state Attorneys General, resulted in the Federal Trade Commission introducing new telemarketing legislation in January, 1996. This new legislation may result in telemarketers establishing their base of operations in Canada—the National Consumers League claims that complaints against Canadian based telemarketing companies increased after the passage of this legislation.

D. Travel certificates

Travel certificates are provided to consumers either for a low price or for free, and offer a consumer a "great" deal on a vacation. Travel certificates are frequently used as "gimme gifts" (i.e., given to all customers) in illegal telemarketing schemes or as bait for timeshares. Telemarketing and, to a lesser extent, direct mail or consumer shows, are used to distribute travel certificates to consumers. The fraudulent use of travel certificates also has an impact on legitimate vendors or suppliers in other industries—for example, a retailer that unknowingly provides "fraudulent" travel certificates as part of an in-store promotion.

Consumers are led to believe that the travel certificate is legitimate; however, travel certificates become fraudulent when consumers cannot use the certificates because the underlying conditions or restrictions make the certificate either very expensive or impossible to use. Examples of onerous conditions/restrictions include:

- Not all components of the vacation package are included in the certificate (e.g., certificate is for a cruise from Florida, but the air flight to Florida is not included).
- Additional charges are not identified. For example, the certificate provides one low airfare, but requires that second airfare be purchased at full economy fare. There may also be other hidden charges that are not documented (e.g., departure taxes and fees, hotel, service, port and other taxes).
- Not all components are priced accurately. For example, a promoter deflates the cost of the travel component, but inflates the cost of the accommodation component.
- The quality of accommodation does not meet consumer expectations and, as a result, the consumer pays to upgrade or uses another service provider.
- Limited dates are available or, dates are only available during the off-season.

In addition, consumers may believe that travel certificates are legitimate because of the display of logos of various reputable organizations (e.g., travel association, car rental company, airline, hotel) on the certificate. In some jurisdictions, the issuing company must provide written authorization from each company whose logo they use on the certificate and copies of the contracts with companies that are providing the services identified on the certificate.

Representatives of law enforcement agencies believe that some of the difficulties in addressing travel certificate issues are the long time horizon of the certificates (e.g., the consumer can redeem the certificate over the next 18 months), quantifying the extent of the problem, and prosecuting the operator (due to cross-jurisdictional issues). The long time horizon results in a large portion of consumers not reporting the incident (e.g., they attribute the incident to bad luck or to a learning experience), and thus leads to the extent of the problem being under-stated—authorities believe that only 5% or 10% of cases are reported. Because the problem is under-stated, the enforcement agencies are not given the necessary resources to combat the issue.

E. Timeshare and vacation ownership

Timeshare is the advance purchase of vacation time (generally in increments of 7 days) in a unit at a tourist resort for a specific period for every future year. To acquire the timeshare, the consumer makes both an initial capital investment and then pays an annual maintenance fee. Through an exchange company, a timeshare owner can then use his/her vacation time at alternate resorts.

The timeshare industry has experienced significant and rapid growth since its inception in the mid-1960s. The industry's appeal to consumers as a viable vacation concept—with international exchange possibilities—also continues to grow. In recent years, the industry has seen a broadening of product offering (e.g., campground timeshares), and geographic scope (e.g., Europe, South America and Mexico). This growth has made the industry a truly worldwide product with developments in an estimated 81 countries and timeshare owners living in 174 countries.¹ In 1994, there were 4,145 resort-timeshare projects in the world, with the largest concentration of resort-timeshares being in the United States and Europe. There were 93 resort-timeshares in Canada. Of the approximately 127,000 Canadians that owned resort-timeshares in 1994, nearly 55% (i.e., 57,000) owned resort-timeshares outside Canada² (with the largest concentration in Florida).

The Canadian Resort Development Association estimates that currently almost 200,000 Canadians own resort-timeshares, and that in 1996 approximately 14,000 Canadians purchased timeshares. The average timeshare unit in Canada is estimated by CRDA to be \$10,000, with an annual maintenance fee of approximately \$325. Down payments are generally estimated at 15% of the timeshare cost. The resale market for timeshares is limited and, thus, timeshares are frequently re-sold at a significant discount—according to CRDA the resale value is approximately 20%-30% of the original value. Most Canadian timeshare developments are affiliated with one of the two major exchange companies (i.e., Resort Condominiums International, Interval International³).

A product related to timeshare is vacation ownership. Vacation ownership does not offer consumers any underlying real estate asset, but provides access and use of accommodation in various locations. Frequently vacation ownerships are associated with hotel developments (e.g., combination of hotel rooms and vacation ownership suites in one development) and are based on a point system. The point system provides flexibility, as consumers are not purchasing a unit for a fixed week at a specific resort but rather are purchasing points that can be redeemed at various locations at all times of the year. Another development in the last decade has been the entry of several major hotel chains into the timeshare/vacation ownership industry (e.g., Marriott, Hilton, Westin, and Disney), which has served to add further credibility to the industry.

¹ World Tourism Organization, *Timeshare: The New Force in Tourism*, 1996 p. 6

² World Tourism Organization, *Timeshare: The New Force in Tourism*, 1996. p. 7

Among timeshare owners in North America, 71.7% of owners are either satisfied or very satisfied with their purchase, 18.6% are neutral and 9.6% are dissatisfied or very dissatisfied. These results are consistent with owners of Canadian resort-timeshares, where 71% of owners described themselves as satisfied with their resort timeshare purchase—18.6% described themselves as neutral and only 10.4% described themselves as dissatisfied.³ Among consumers that are dissatisfied, consumer issues fall into three basic categories. These categories as summarized below with examples:

1. Marketing approaches

The aggressive marketing approaches used to sell timeshare developments has frequently been criticized. Some of the marketing-related issues are:

- ▶ **Pressure sales tactics**—Travel certificates may be used to attract the consumer to the development. The travel certificate may provide free accommodation at the destination, with consumers having to pay their travel expenses. Once there, consumers must attend sales talks in order for their hotel vouchers to be validated. The consumer is subjected to strong sales tactics, that may use deceptive and misleading information, and purchase a timeshare contrary to their initial intention.
- ▶ **"Buyers' remorse"**—Consumers may not have a "cooling off" period (e.g., ten days) to annul the contract.
- ▶ **Contract terms**—The consumer may not fully understand the legal obligations of the contract. In addition, should the timeshare owner die, the contract represents an on-going obligation to the individual's estate. In the case of a resort timeshare, the estate can likely sell the asset (albeit at a significant discount) and, thus terminate these obligations. However, for a campground timeshare this may be more difficult and the estate may have to negotiate a settlement with the timeshare owner/developer. Another issue is that whether familiar with them or not, the purchaser/owner must abide by the regulations of where the development is located (e.g., Mexico).
- ▶ **Potential credit damage**—If consumer defaults on timeshare mortgage payments or maintenance fees, the developer/marketer may file a report that damages the consumers' credit report or history. Generally, this course of action is used only after several installments have been missed and is done concurrently with the developer/marketer referring the matter to a collection agency.

³ World Tourism Organization, *Timeshare: The New Force in Tourism*, 1996. p. 108

2. Delivery of product

Most consumer issues exist with the financial stability of the promoter and/or developer and the availability and physical condition of the timeshare, now and in the future.

- **Over-selling of timeshare units**—The developer may over-sell the timeshare intervals with the expectation that the owner will not use the unit every year.
- **Upkeep of unit/resort**—The developer may not undertake necessary renovations (or preventative maintenance) to the unit or resort in the future. An associated issue may be the owner/tenant mix in the development.
- **Promoter's scam**—The promoter may collect the deposit from investors and then abscond with the funds. Or, the promoter may inflate marketing costs and expenses and drive the company into bankruptcy. As a result, resort owners are not paid, and timeshare owners are left with useless shares.
- **Developer's cash flow problems**—This may result in the development going bankrupt and timeshare owners losing their entire investment.

3. Ongoing fees and commitments

By entering into a contract to purchase a timeshare, the consumer assumes certain ongoing obligations which may become financially onerous in the future. However, the contract is difficult to sever without damaging one's credit history.

- **Escalating costs**—The consumer may not have control over future increases in maintenance fees. In some instance owners may be required to pay for future renovation programs. In addition, there may be other hidden charges that the consumer was not aware of when the contract was initially signed.
- **Limited re-sale opportunities**—There is a limited re-sale market for timeshares, especially in developments that have unsold timeshare units. An associated form of fraud involves a real estate agent who offers to re-sell the timeshare for a prepaid registration fee and then absconds with the fees.

In the opinion of industry experts, many of the issues identified above can be addressed through the implementation of the appropriate legislation (e.g., legislation in Florida and United Kingdom—see Section V, heading C. "Other Jurisdictions"), establishment of trust accounts, introduction of consumer education programs, and self-regulation by

industry. In Canada, these mechanisms generally do not exist (there are some regulations in Quebec and British Columbia) and, thus, the consumer has limited protection.

Several initiatives are underway that would provide consumers with increased protection. These initiatives involve more consumer education (e.g., CRDA's information line) and, possibly, increased regulation. CRDA has recently submitted a proposal to the Ontario government for self-regulation—the Government has rejected the proposal as is, but has recommended that CRDA continue with efforts to further enhance codes of conduct in the industry. Under self-regulation, CRDA members would follow certain standards on disclosure, use of plain language in the contract, and provide rescission rights (i.e., a cooling off period for new buyer).

One recent enforcement initiative is Project Timeshare, a joint initiative of the Ontario Provincial Police, York Regional Police, Peel Regional Police, and Ontario Ministry of Consumer and Corporate Relations. Project Timeshare was started in August 1995 with the objective to investigate over 2,400 consumer complaints (e.g., over-selling of timeshare products) that had been collected since 1991 and determine whether these activities involved criminal activity or poor business practices. Based on their investigation of 50 specific complaints (representing approximately \$400,000 of claims), the task force is currently prosecuting one individual for defrauding the public, and is preparing another case. According to Officers involved with Project Timeshare, the initiative has resulted in a decrease in the amount of questionable sales and marketing practices used by unscrupulous timeshare operators/developers (e.g., use of pressure sales tactics has been reduced). However the long-term benefits of this type of operation are thought to be less significant unless these initial efforts are supported by new legislation, resources for enforcement, or other forms of regulation (e.g., self-management, a compensation fund).

F. Consumer issues from advances in technology

The use and impact of technology in the travel and tourism industry has increased dramatically in recent years, and this trend is expected to continue. Some of the recent breakthroughs include: ticketless air travel, airplane telephones that can be used for data transmission or receive calls, and the Internet.

The Internet may represent the biggest breakthrough because it is an easy medium for both consumers and suppliers to access, has global reach, provides consumers with information on destinations or travel suppliers, and can be used to make travel reservations. The travel industry is considered one of the fastest growing segments on the Internet. Jupiter Communications (a private research house) projects that Internet-based and related on-line travel product sales (i.e., US\$1 million) will represent nearly half of total on-line sales (i.e., US\$2.3 million) in 1997. Accordingly, suppliers perceive marketing on the Internet as a necessity and feel that this medium can be a significant source of business—several sectors (e.g., airline, hotel) are actively promoting the Internet as an effective medium for consumers to book reservations.

1. Consumer Issues

Various industry and consumer organizations (e.g., ACTA, National Consumers League) have established committees to examine the role that technology could play in the tourism industry. However, at this time the committees are primarily concerned with how to more efficiently use the technology (e.g., increase the volume of reservations made via the Internet), rather than identifying and addressing potential consumer issues.

To date, organizations and enforcement agencies (e.g., Project Phonebusters, National Fraud Information Centre) report few complaints regarding travel scams on the Internet. Recent Internet scam cases prosecuted by the Federal Trade Commission did not involve travel related scams—cases involved, for example, bogus income opportunities, work at home schemes. Looking into the future, there is no consensus among industry experts as to whether the Internet will result in an increase in travel-related consumer issues.

Some experts suggest that the scope of consumer issues will remain the same, but that the medium will change from being paper-based to being electronic. These experts feel that consumers' security concerns are more based on a lack of knowledge, than actual risk—for example, they suggest that there is greater risk in having a credit card imprinted at, for example, a restaurant than sending a credit card number over the Internet. They also believe that security issues will continue to be addressed through new technologies (e.g., protocols, encrypting or certifying web sites). Travel industry executives attending the third annual Travel Technology Association networking dinner in mid-1996 concluded that the low level of booking travel on the Internet is due to the difficulty in doing so and the lack of perceived needs and not to the lack of security.

Other experts suggest that the rapid growth in the number of web sites, increased number of vendors/suppliers using the Internet, and the international reach of the Internet will make monitoring this medium very difficult. One of the key concerns, according to a recent informal, one-day survey of web sites by the Federal Trade Commission, is that many web sites appear, on initial inspection, to be deceptive. The absence of applicable legislation, limits the FTC to merely advising the operator of their concerns, rather than mandating a change. These monitoring and enforcement issues will be exacerbated in international situations (e.g., a Canadian resident defrauded by an operator based overseas).

The type of travel fraud that is most likely to arise on the Internet is, for example:

- Advance purchase (either by credit card or cheque) of a product/service or travel certificates.

- ▶ Business opportunities linked to travel pyramid schemes—profits are generated from the referral of new investors into a distributor network rather than the sale of a product. For example, a new broker buys a travel certificate for \$500, then has the option to buy eight more for \$500. These eight are then sold to new recruits.
- ▶ Work-at-home schemes—these may include establishing a travel agency office at home that is linked to the main travel agency office.
- ▶ Card mills—which involve the purchase of travel agent identification that entitles the individual to travel agent discounts.

2. Initiatives to address consumer concerns

Because of the broad range of web sites, the “branding” of sites will likely gain more importance—sites of a well-known brand may have more credibility with consumers. In addition, several initiatives to monitor and regulate the Internet are being considered or are underway. The major initiatives involve the certification of web sites and the education of consumers. Another related development is that several organizations have developed, or are in the process of developing, web certification programs. One such initiative is the BBB On-line Program developed by the Council of Better Business Bureaus—this self-regulation initiative is supported by the Federal Trade Commission. Companies wishing to participate in the Program will have to commit to meet specific standards, have ownership and performance records verified and have a Better Business Bureau Executive visit the office. The Program will allow consumers to identify on-line businesses that have “agreed to adhere to truthful and accurate advertising claims, make meaningful commitments to customer satisfaction, and resolve, quickly and fairly, any complaints that may arise.”⁴ The Program is currently being tested by a handful of Better Business Bureaus and is expected to be rolled out to all North American Better Business Bureaus by mid-1998.

The other major initiative is the education of consumers. Project OPEN (The On-line Public Education Network) was launched in March 1996 by the Interactive Services Association (based in Silver Spring, Md.), National Consumers League (based in Washington, D.C.), and other on-line and internet service providers. The Program will develop educational tools and resources to encourage safe and responsible computing. Among the issues it will address is consumer protection—guidelines will be established for buying, selling and advertising products on-line, and how to recognize and report fraudulent activity. In addition, initiatives undertaken by other industry sectors (e.g., banking) to address security issues on the Internet will likely have a positive impact on the travel industry.

⁴ Council of Better Business Bureaus, Inc. BBB News “Better Business Bureau and FTC Commissioner encourage self-regulation in the online marketplace.” August 21, 1996.

3. Analysis of technological advances

Technological advances provide a useful case study within this report to test the validity and usefulness of the taxonomy of the consumer transaction issues developed above. The taxonomy helps to break down the transaction into its fundamental components and raises questions on how the new market could emerge to facilitate the transaction. A cursory analysis of each component is therefore attempted.

Pre-contractual problems:

- **Payment of funds in advance**—Transactions could be facilitated if the industry and suppliers would adopt a *quid pro quo* system of payment; otherwise a trust account agency could emerge in each jurisdiction to protect pre-payments.
- **Buying "sight unseen"**—Resorts could set up, for example, a real time video conference where prospective customers request more detailed information on facilities and amenities.
- **Packaging**—Search engines would allow individuals to compare the multitude of elements in each package.
- **Definition of terms**—No change.
- **Rate structure and conditions, Managing inventories and Marketing practices**—Search engines could make each of these easier for the consumer to identify.

Contractual Problems:

- **The preponderance of small businesses**—With the Internet, not only could agents become much smaller but consumers could decide to bypass this intermediary altogether. Alternatively, conglomerates or very large travel companies could emerge as the preferred booking agent based on their perceived accountability, brand loyalty and goodwill.
- **The preponderance of small transactions**—As the consumer takes on the role of the travel agent and possibly attempts to construct their own package of products, the number of transactions per trip and subsequently the amount of potential problems would increase.

- ▶ **A variety of pricing structures**—An interesting implication from this issues is the possible use of technology to conduct more effective yield-management on-line, where sellers are able to lower prices until all units are sold.
- ▶ **Business failure**—The issue is protection of pre-paid funds -- the bond or trust account function does not necessarily have to be attached to the travel agent. A trust account, bonding or insurance agency could emerge in each jurisdiction to protect travellers.

Post-contractual problems:

As electronic commerce develops, jurisdictional boundaries will dissipate thus challenging the current state of consumer protection measures. Which jurisdiction's laws would apply; the consumer's, the intermediary's or the supplier's?

The bricks and mortar (assets) of the agent located in the purchaser's jurisdiction brought credibility and responsibility to the consumer transaction. The travel agents, conceptually, were the original intermediaries for distance selling as they brought certainty and responsibility into the jurisdiction of the purchasers through licensing, compensation funds and assets against which judgments or sanctions could be made. As above, there is now room for other intermediaries to bring certainty to some of the elements of the transaction.

One possible assistance to consumers is the use of Internet complaints and referral mechanisms being devised by various agencies and governments. Historically, making consumers aware of their rights and obligations through education programs was always seen as prohibitively expensive. However, since the same people who book over the Internet are already on the Internet, these individuals are easily targeted for awareness campaigns and they would be familiar with the use of technology to help them if problems arise.

V.

The Regulatory Environment

A review of the laws pertaining to the regulation of travel and the travel industry in Canada is really a review of a sub-set of consumer law in Canada. Due to the nature of the Canadian constitution consumer law is a shared responsibility between federal and provincial governments. Only three of the provinces (Ontario, British Columbia and Quebec) have specific statutes that regulate the travel industry. In the remaining provinces reliance for regulating the travel industry remain with general consumer protection statutes. In the comments received at the workshop, it appeared plain that many of the "mischiefs" that occur in the travel marketplace arise from frauds or questionable practices in the sectors concerning travel certificates and travel clubs, telemarketing and timeshare. With the recent exception of telemarketing and timeshare in the western provinces, these segments of the industry are not regulated by specific statutes, and the regulation that exists will come from statutes of a more general nature.

A. Federal Role

The Federal Government is given certain powers under section 91 of the *Constitution Act, 1867*. Those powers which are relevant to regulation of the travel industry are in the areas of peace, order and good government, criminal law, trade and commerce, and banking. Evolving from those powers, the Federal Government has assumed responsibility in the areas of safety of transport, banking and interest rates, competition policy, misleading advertising and telecommunications.

1. The Competition Act

The statute which is most relevant to the travel industry is the Competition Act, R.S. 1985, C-34. The Competition Act is a broad - based statute not limited to a particular industry or sector. The Act has the stated purpose to maintain and encourage competition in Canada in order to:

- Promote the efficiency and adaptability of the Canadian economy.
- Expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada.

- Ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy.
- Provide consumers with competitive prices and product choices.

Part VI of the Competition Act is a code dealing with various offenses in relation to competition. Within this part is found regulation pertaining to illegal trade practices, discounts and rebates, misleading advertising, multi-level marketing, pyramid selling, referral selling, bait and switch selling and promotional contests. Many of the mischiefs in the travel industry identified by the panelists could be addressed under provisions of the Competition Act.

The sanctions provided to date by the Competition Act have been largely penal in nature; e.g. a fine up to \$25,000.00, imprisonment for a time ranging from a maximum of one year to a maximum of five years, or to both a fine and imprisonment. Additionally the Competition Act offers a form of civil remedy by allowing a person who has suffered loss or damage as a result of conduct that is contrary to any provision of Part VI of the Act to sue for and recover damages from the person who engaged in the conduct.

2. Amendments to the Act

In November of 1996, Industry Minister John Manley introduced amendments to the Competition Act in the House of Commons. The proposed amendments deal with misleading advertising and deceptive marketing practices, deceptive telemarketing and changes to the remedies provisions. While the criminal sanction for misleading advertising will remain in place to deal with the most serious cases of misleading advertising, a new regime is proposed whereby such practices will be seen as reviewable matters. The Director under the Competition Act could apply for review to a single judicial member of the Competition Tribunal, the Federal Court of Canada - Trial Division, or a provincial superior court. In order to ensure timely compliance, a variety of remedies will be made available to the adjudicator, including, cease and desist order, interim cease and desist orders, administrative monetary penalties and information notices.

The proposed amendments to the Competition Act also include amendments relating to deceptive telemarketing. The amendments make certain disclosure requirements mandatory during the course of the telephone call. The disclosures to be made are intended to alleviate deceptive telemarketing. Additionally, there are specific rules in respect of false or misleading representations and in respect of contests, lotteries or games of chance. The scope of the legislation is not as broad as the Federal Trade Commission Rule on Telemarketing, although the practices which are targeted appear to be the same. The F.T.C. Rule establishes more specific rules of conduct, while the Canadian amendments follow the more traditional approach of presenting general guidelines and allowing for judicial interpretation. The remedies for violation of these portions of the Competition Act

will be penal in nature and the Competition Act is to be amended to make it easier for courts to issue interim injunctions to stop the operations of alleged fraudulent telemarketers. An interesting aspect of the amendments is that in sentencing a person convicted of an offense, the court shall consider certain aggravating factors such as the use of "sucker" lists the characteristics of the persons who were the objects of the campaign, (especially if they were particularly vulnerable), the quantum of proceeds realized, previous convictions for similar conduct, and use of abusive tactics. While these are to be sentencing factors, many of these factors such as abusive tactics and the use of "sucker" lists are expressly prohibited under the F.T.C. Rule.

3. Fraudulent practices covered under the Act

The Federal Government has exclusive jurisdiction in the area of criminal law and Part X of the Criminal Code deals with "Fraudulent Transactions Relating to Contracts and Trade." Section 380 of the Criminal Code describes the general offence of fraud and creates the specific offence of fraudulently affecting the public market price of stocks, shares, merchandise or anything offered for sale to the public. Under the general offence the fraud must be committed by "deceit, falsehood or other fraudulent means" which must fit the definition of "false pretense" within section 361 of the Criminal Code. The mental test for this section requires proof of an intention to cause the external circumstances of the offence. The specific offence in section 380 (2) does not require that the deceit, falsehood or fraudulent means be a "false pretense" but in respect of the mental test does involve proof of an intent to defraud. Section 381 prohibits the use of the mails for fraudulent purposes. The prohibition is against use of the mail for the purpose of transmitting or delivering letters or circulars concerning schemes devised or intended to deceive or defraud the public. The tests for the mental element are the same as under Section 380. Although useful in combating the most blatant wrongs that could occur in the travel industry, the difficulty in proving the necessary components of criminal fraud make it a slow, ineffective and cumbersome tool for redress of wrongs in the travel industry.

4. Inter-jurisdictional Issues

The Federal Government also plays a role in relation to the regulation of the travel industry arising from its treaty making status with other nations. For example, on August 3, 1995, the governments of Canada and the United States entered into an agreement regarding the application of their competition and deceptive marketing practices laws. The 1995 Agreement operates in addition to the Canada - U.S. treaty on mutual legal assistance in criminal matters which came into effect in 1990 which applies to criminal offenses under the Competition Act.

Under the 1995 Agreement "deceptive marketing practices laws" means in Canada sections 52 to 60 of the Competition Act which includes the sections on telemarketing, multi-level marketing, pyramid selling and promotional contests. For the United States it means those segments of the Federal Trade Commission Act which apply to unfair or deceptive acts or practices and would include the F.T.C. Rule on Telemarketing. The parties agree that conduct occurring in the territory of one may contribute to violations of the deceptive marketing practices laws of the other and that it is in their common interest to co-operate in the enforcement of these laws. The Agreement establishes a more formal framework for broadening cooperation and coordination with measures to enhance the effectiveness of information sharing, cooperation and coordination.

B. Provincial Role

The Constitution Act in Section 92 grants to the provinces jurisdiction in matters relating to consumer law under the powers of property and civil rights (which includes contracts), administration of justice and local works and undertakings. From these powers the provinces have assumed responsibility for the sale of goods and services, licensing of businesses, securities and certain trade practices.

1. Travel Industry acts

Three of the provinces have enacted specific legislation concerning the travel industry. These statutes are the *Travel Agents Act* (B.C.S. c-409) and the Travel Industry Act (R.S.O. CT-19) and the Travel Agents Act (Q.S. c A-10). The British Columbia and Ontario Statutes are extremely similar in their approach. There is a requirement for each travel agent and travel wholesaler operating in the province to be registered with a registrar to be appointed by the Crown. Conditions of registration, suspension and termination are established. Deposits are to be dealt with as trust funds. There are requirements for ongoing supervision including the filing of financial statements, and regulation of change in share structure. Both statutes establish a compensation fund and a method for claimants to make application and be reimbursed. Limits are established for payments per customer and for claims arising out of a major event. Both statutes provide for broad remedies, including conducting investigations and appointing a receiver-manager.

The Quebec legislation is different in style from the Ontario and British Columbia statutes, although the effects of the legislation may be similar. There is a similar requirement in Quebec for licensing of travel agents, and placing deposits in trust accounts. Quebec travel agents must as part of their licensing applications, post security which will act as compensation for a customer who has received a judgment against a licensee. In addition, each travel agent is to contribute to collective security. These funds appear to be for the purpose of providing security

for the obligations of travel agents and do not seem to have the same concept of a compensatory fund as found in the B.C. and Ontario statutes.

For example, under the Ontario regulations, the Director may order payments from the Compensation Fund to repatriate a registrant's customer who is outside of Ontario and who, because of a failure to provide travel services, is experiencing some hardship or inconvenience. This is a more pro-active approach than found in the Quebec regulations.

For the remaining provinces which do not have Travel Industry Acts, the consumers' remedies and protections would be founded in common law (e.g. the law of contract), or under statutes which regulate unfair trade practices (Alta, P.E.I., Newfoundland, Manitoba) or which provide consumer protection (Sask, N.S.). The thrust of these statutes are to regulate misrepresentations, undue pressure, and misleading advertising. Although helpful in regulating certain types of mischief, these statutes fall far short of the protections offered by the law in Ontario, British Columbia or Quebec. The anomalies are obvious. A group of Canadians at a foreign resort who may need to be repatriated due to a business failure may find that they have different remedies depending on their province of origin (e.g., a resident of a province without a travel fund may not have a clear remedy).

2. Timeshare

Timeshare is a unique product. It is neither truly real estate nor a security. Jurisdictions that have effectively regulated timeshare have done this as a product separate and apart from real estate and separate and apart from investment type offerings. By so doing such jurisdictions have recognized the unique issues to be addressed in regulating timeshare such as: a cooling off period, a method for protecting purchaser deposits during the cooling off period, a method of assuring occupancy and use, and a requirement that the seller make fair disclosure.

In Canada, regulation of time-share interests is a purely provincial responsibility. This regulation is complicated due to the varied nature that time-share interests may take. At one end of the spectrum, a timeshare interest that is related to fee simple ownership may be easily categorized as real estate and may be regulated under the appropriate real estate licensing statute of the applicable province. Many of the provinces have provisions in their real estate statutes regulating the sale of foreign (i.e. out of province) real estate in the province. At the other end of the spectrum, a club membership which relies on marketing or promotional services that somehow emphasize the economic benefits to be derived by purchasers from the managerial efforts of the developer - promoter may exhibit the characteristics of an "investment contract" and may be regulated by provincial securities legislation. To date, the various Securities Commissions have not exerted jurisdiction over timesharing. In the middle of the spectrum are the various right to use interests which may not be structured as an interest in real estate and so not fall under the real estate statutes

and yet not exhibit the appropriate characteristics to be categorized as a security. Such interests are in many provinces (e.g. Ont.) virtually unregulated.

British Columbia, Alberta and Saskatchewan have addressed this problem in their respective real estate statutes. In Saskatchewan, "real estate" is defined as including a "time-share plan." In British Columbia "developer" is defined as someone who sells "more than 4 timeshare interests in one timeshare plan" or sells more than one shared interest in land. In Alberta, "property user's licence" (which by definition is essentially a timeshare interest), is defined as real estate.

The effect of these definitions is to bring the sale of timeshare interests in these provinces within the prospectus and disclosure requirements of these statutes. For example, in British Columbia there is a requirement to file a prospectus, approval and licensing requirements, trust account requirements and a 7 day cooling off period. By clarifying the status of time-share interests, British Columbia, Alberta and Saskatchewan have clearly brought such interests within the regulatory framework. It is not surprising that in Ontario and Quebec, where such regulatory control has not been extended, that the greatest amount of recent fraudulent activity has occurred.

C. Other Jurisdictions

This study has done some overview analysis of the experience of other jurisdictions in developing a system of law relating to the travel industry. The greatest degree of emphasis has been placed on the United States, which is Canada's largest trading partner and the most frequent second country in cross-border jurisdictional disputes with Canadian jurisdictions. Additionally, certain experiences of Australia have been reviewed due to Australia's experience with federal-provincial type problems. This is contrasted with the United Kingdom which has a similar legal system and institutions in a unitary state, yet being within the European Union and so subject to EU legislation.

1. United States

The American constitutional structure results in regulation of travel agents, and sellers of travel services being a state responsibility as is the regulation of real estate and the timeshare industry. Nationally, the Federal Trade Commission has jurisdiction over inter-state trade and commerce.

Currently 13 of the United States have legislation regulating aspects of the travel industry. These range from fairly limited Acts regulating travel agents in the traditional approach of a licensing agency to statutes of broad construction which regulate "sellers of travel services" (e.g., Florida and Massachusetts). Many of the states have a concept of a compensation fund. The Canadian provinces which have travel industry statutes have generally by administrative policy determined that their

jurisdiction is broad enough to regulate vacation clubs, and sellers of travel certificates. It is interesting to note that the Florida and Massachusetts legislation specifically includes the sale of travel certificates and the operators of vacation clubs. In particular, California has recently amended its Business and Professions Code relating to travel to regulate the use of travel incentives and broaden the regulation of travel promoters to the regulation of the sellers of travel. In this legislation there is specific regulation of travel certificates. The California legislation now requires that a seller of travel having its principal place of business in California and having a passenger located outside California, make a clear and conspicuous disclosure both orally and in writing that the transaction is not covered by the Travel Consumer Restitution Fund.

The regulation of the timeshare industry again greatly varies by state. Some states remain unregulated, others have added timeshare regulation to real estate statutes, and some consider timeshare to be a security. In a number of the states, there is now specific timeshare legislation following the guidance of the model timeshare act developed by the American Resort Development Association. The ARDA model timeshare act takes the approach of requiring the filing of a securities-like public offering statement or prospectus type document with a regulatory body which must then be provided to the timeshare purchaser who will then have a period of time to review same and a "cooling-off" period during which the purchaser may rescind the contract. The model act provides for required disclosure, method of presentation (e.g. what must be on the front page, warnings to be stated in bold type), a requirement to maintain escrow accounts, the necessity of obtaining non-disturbance agreements from encumbrance holders and mortgages, and a right of rescission.

Since the credibility of the timeshare industry was important to the state economy, the state of Florida was one of the first states promulgating specific timeshare legislation which includes disclosure obligations and rescission rights. Florida has also been in the lead in enacting vacation club legislation. The Florida statute has two parts; Part I being the Florida Vacation and Time-Sharing Act and Part II being the Florida Vacation Club Act. The Florida approach follows the format of a public offering statement and has the same basic requirements of the draft ARDA statute. The Florida statute enters into the regulation of marketing by providing rules concerning advertising materials and oral statements and prize and gift promotional offers. Further, the Florida legislation deals with post-closing issues such as management, liens for overdue assessments, insurance, and exchange programs. There is a licensing requirement for sellers of interests. The statute gives purchasers—regardless of place of residence—rights to an action for damages or an injunction in certain circumstances in addition to the rescission right. The combination of rigorous disclosure requirements, licensing and purchasers remedies has marked Florida as one of the most onerous states in which to sell time-shares, and has restored the Florida industry to one of stability.

On August 16, 1994, the Telemarketing Act was signed into law. Section 3 of that Act directed the FTC to prescribe regulations within 365 days of enactment of the

Act, prohibiting deception and abusive telemarketing acts or practices. On December 31, 1995, the Final Rule (being the said regulations) were made effective. As has been stated herein, the Telemarketing Sales Rule establishes conduct rules for telemarketing operators, including the prohibition of misrepresentations and the requirement of up-front disclosures. One of the most unique aspects of the Rule is that it is enforceable in Federal Court by each of the states' Attorneys General. Additionally, there is the ability to seek nationwide injunctions to stop telemarketing operators from operating anywhere in the United States. The co-operation between Canada and the U.S. as evidenced in the 1995 Canada - U.S. Agreement on Cooperation in the Enforcement of the Competition and Deceptive Marketing Practices Laws has been necessary to combat the move of telemarketers to Canada who then sell into the U.S. market.

2. Australia

Australia, in its constitutional format has similarities to Canada in that there are States and Territories with legislative abilities as well as a Federal level with legislative authority. However, Australia seems to have been uniquely successful in obtaining a high level of co-operation among the various legislative bodies. The approach that has been taken by Australia in respect to trade practices is indicative of this cooperation. The National Trade Practices Act establishes basic standards for honest and fair trading. The Federal Bureau of Consumer Affairs takes the lead role in the Trade Practices Act's administration. The Federal Australian Competition and Consumer Commission undertakes inquiries that relate to possible contraventions of the Trade Practices Act on issues of national importance, matters involving consumers in more than one state or territory, companies operating nationally, or advertising or other conduct that is carried out in more than one state or territory. The states and territories have enacted substantially similar fair trading provisions in their own legislation and have their own agencies responsible for investigating and acting on complaints.

In the area of travel legislation, Australia has a unique history. Initially four state governments (New South Wales, Western Australia, Victoria and South Australia) agreed to co-operate to provide a system of compensation to consumers who lost money when a travel agent ceased trading due to a financial collapse or for other reasons, and to have a back up system to licensing that would help regulate the travel industry. A Deed of Trust was settled in December, 1996, and that Deed of Trust was incorporated into the State Acts of Parliament governing the licensing and operation of travel agents in each of the four original participating states. The Trust Deed establishes three purposes of the trust, which are:

- to regulate travel agents;
- to provide compensation to consumers; and

- ▶ to insure that travel agents have sufficient financial resources and will continue to have sufficient financial resources to secure the right to trade.

It is a pre-condition of being a contributor to the fund that someone is able to have the financial resources to enable the person to carry on business as a travel agent. If an agent wants to obtain and hold a licence, he must first become a member of the fund and maintain that membership. Subsequent to the initiative taken by the original four states, the other states and the Australian Capital Territory joined the co-operative scheme for the uniform regulation of travel agents. All states, with the exception of one, and the territory, have enacted the pre-condition of becoming a member of the fund prior to obtaining and holding a travel agent licence. Through the development of the fund, the assets have continued to grow and the level of claims on the fund have fallen. From 1994 to 1995 the number of claims decreased by 1,447 and the value of claims received declined by \$2,104,106. Some of this improvement is also attributable to an improvement in the local economy. Costs to the existing participants have been contained and have been progressively reduced. The financial viability test seems to have been critical in this result. For example, applications for renewals of membership which do not satisfy the financial criteria upon presentation, are charged a penalty fee and risk this termination if remedial action is not undertaken. Additionally, from March 1, 1996, newer applicants for admission to the fund make a premium contribution based upon their financial points score with substantial reductions available to those structuring their businesses to achieve maximum points. The fee structure appears to be different than that used by the three relevant Canadian provinces which base the contribution to the fund on the volume of business sales.

It would seem that the Australian model has much to recommend it to the Canadian position. Australia has the dichotomy of state and federal legislation. Initially only some of the states agreed to come together to set up a common fund and a co-operative scheme to provide uniform regulation of travel agents. Enabling legislation had to be at both the state and national level. There are obvious advantages in having a uniformity of licensing and a broader base for the fund. The remaining states could choose to later adopt their own enabling legislation and be added to the scheme. However, one of the major differences appears to be that this approach was originated at the point that several of the states were first contemplating establishing compensation funds, rather than after such funds were established and functioning.

3. United Kingdom and European Union

The European Union refers to the entity created by the Maastricht Treaty. The treaties establishing the European Communities are considered to be the Constitution of the European Communities. They created, gave authority to, and imposed restrictions on the powers of the institutions. They imposed binding obligations on the signatory states, particularly with regard to the supremacy of the

Treaties and enacted European Community legislation over national laws, and included detailed direct legislation on a number of issues. The Treaty forms part of the national law of each member state. The Commission of European Communities consists of seventeen commissioners appointed by the member governments. They are supported by twenty-two directorate-generals, each responsible for an area of community policy. The Commission initiates most European Community legislation by issuing a proposal. There are several different procedures (depending on the policy area of the proposal) giving varying degrees of influence, up to the power to alter or veto proposals, to the European Parliament. There are three types of legislation: Regulations, which are binding in their entirety and are part of the national laws of member states, Directives, binding as to the result, but have to be implemented by national laws and Decisions which are binding in their entirety for the address of specific problems and apply only to specified states, corporations or individuals. The European Community has issued two Directives which affect the travel industry. There is a Directive on package travel and a Directive on timeshare regulation. Under European law, the member states (for example, the United Kingdom) have no option other than to implement the Directives as they are promulgated, with the effect that the Directive is intended to have. The only discretion, which a member state may have, is to make the legislation implementing it more protective of consumer's interests than the legislation already is.

The Timeshare Directive deals with matters relating to timeshare sale contracts, and the advertising and marketing of same. The Directive says that any advertising of the timeshare product must refer to the availability of a disclosure document. The Directive further provides a requirement to disclose to prospective purchasers certain information. The disclosure document will form an integral part of the contract. The Directive is also specific about the purchase contract and details information which it must include. It also provides that the contract must be in the language of the EU member state in which the purchaser is resident or of which he is a national. The Directive further deals with the issue of deposits and such deposits are now prohibited by the Directives. There is provision for a rescission period of ten days from the date of the last signatory to the contract. Further, there are provisions in respect of credit agreements.

The Directive on Package Travel arose from the European Community Commission's initiative in drawing attention to the importance of tourism. The preamble to the Directive states that since tourism plays an increasingly important role in the economics of the Member states, and the package system was seen as a fundamental part of EU tourism, it was felt that the package travel industry in the Member States would be stimulated to greater growth and productivity if at least a minimum of common rules were adopted. It was perceived that the disparities in rules protecting consumers in different Member States was a disincentive to consumers buying packages outside their own Member State.

The main features encompassed in the Directive may be summarized as follows. Information that is to be provided is not to be misleading. There are mandatory terms to be included in each contract so that the consumer has a record of the terms

of the contract. The consumer in certain circumstances can transfer the booking to a third party. The price under the contract is not to be revised except if the contract expressly contemplates this. In certain circumstances the consumer may withdraw before departure. Rights of the consumer are defined if the package is canceled, or if after departure there is a significant failure of performance of the services. Liability for damage to the consumer for failure to perform or improper performance is detailed and also the nature of limits to such liability in accordance with the international conventions governing such services. Arrangements for handling complaints are established and an obligation imposed on organizers/retailers to provide evidence of security in the event of insolvency.

The attempt at harmonization and creation of a level playing field by the Directive seems desirable. However, the original intent has not been completely realized as it was left to the individual Member States to introduce legislation implementing the Directive. BEUC, the European Consumers Organization, has come to the conclusion that the Package Directive had not been properly implemented.

From a Canadian perspective it would seem at first glance that there could be a similar concern with package travel operators operating under different rules as were the various operators in Member States in the European Community. However, in reality there is probably greater harmonization than was the case in Europe. Many of the packages are sold by travel agents who are regulated in the three most populous provinces. Each of these provincial statutes provides for many of the aspects of the Package Travel Directive. Additionally in Canada a national association (ACTA) is in place with a uniform set of guidelines for members across the country. Therefore the actual variance in terms of protection for consumers of package travel across Canada is probably less than the variance originally found with Europe.

The effect of the European legislation on United Kingdom domestic legislation is an interesting example of the benefits and problems arising from this method of legislation. The United Kingdom has an existing *Timeshare Act* and a *Consumer Credit Act* which regulates aspects of the timeshare industry which are sold pursuant to a credit arrangement. In July of 1995 the Unfair Terms in Consumer Contracts Regulations (European legislation), came into force in the United Kingdom. These regulations supplement but do not replace the existing U.K. legislation. The Regulations (as explained above) become a mandatory part of the member state law and impose a requirement of good faith on the contracting business. The core provision of the Regulations is that where the contract contains terms which are contrary to the requirement of good faith, or causes a significant imbalance in the parties rights and obligations, to the detriment of the consumer, then those terms are unfair. An unfair term will not be binding on the consumer. The consumer would then have a rescission right in respect to the contract. A term of a contract which binds the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract may be considered unfair.

If one thinks of the typical detailed documents that are attendant to the purchase of a vacation club membership, it is not hard to see that under the Regulations, a consumer may be able to avoid the entire contract. Another interesting aspect of the Regulations is that not just the aggrieved individual can take action against the contract; rather, the Director General of Fair Trading must consider any complaints made about a contract. If the Director thinks that a term in a contract is unfair, the Director can apply to the Courts for an injunction preventing the use of that term and possibly the use of the entire contract until it has been amended to comply with the Regulations. The power that is thus granted to the Office of Fair Trading is very wide. Consumer's groups are aware of it and will have no hesitation in making complaints when they feel that they are justified. It is also open to self-regulatory bodies, such as the UK Timeshare Council to make referrals to the Office of Fair Trade when they feel that a particular timeshare company is in breach of the Regulations. Effectively, the policing power of the Timeshare Council in this limited sense has been expanded to the entire industry, not just their own members. Although, previously there had been a split in the United Kingdom with rival national associations vying for membership, it appears that since the passing of the 1992 Timeshare Act its position has stabilized with the Timeshare Council gaining recognition as the national self-regulatory body. Indeed, in light of the impending implementation of the Timeshare Directive some authorities are suggesting that the Timeshare Council might be established statutorily as the industry regulator.

The Timeshare Directive must by its terms become national law in the member states by the 29th of April, 1997. This particular Directive is not flexible in recognizing the number of schemes that are being offered to the consumer today. The Timeshare Directive defines that the rights which it regulates relate to intervals of not less than one week. At the point when the legislation was initially being proposed (more than four years ago) this was probably the case for most timeshares in Europe. However, since that time "points" systems have evolved where the points "currency" can be exchanged for a period as short as a week-end. The length of response in enacting European legislation can thus be seen as detrimental at times to the individual member states. Additionally, there are problems when member states do abide by the Directives and implement the necessary national laws, to regulate their industry, whereas other member states may lag in passing their laws implementing the Directives. This causes understandable industry concern that there is not a "level playing field." Another issue is that some member states may bring in legislation to enact the Directive, but in so doing, not follow the spirit of the Directive; this again causes industry concern if one country has far more lenient laws than another. At the Intergovernmental Conference of 1996 dealing with the revision of the Maastricht treaty, it was

conceded that the implementation and enforcement of consumer policy requirements is essential to the level of consumer protection in practice. Legislation not properly enforced will not bring the added value intended for consumers. It was generally recognized that there had been incorrect implementation of the package travel Directive. Additionally, there is need for quality assessment of the implementing legislation if obstacles to a genuine promotion of consumer interest are to be overcome. This highlights the legal complexities of transforming European Community Directives into national law.

VI

Remediation of Consumer Problems And Fraud

This Chapter outlines some approaches to remediating consumer issues. None of the approaches identified should be seen as recommendations. Rather, they are put forward to further discussion on the issue.

A. Setting the stage

A number of challenges could potentially have a negative impact on the effective remediation of consumer issues and fraud in the travel and tourism industry. Such challenges are a function of both the regulatory environment and the nature of the fraudulent practices and problems themselves. Some of the more significant challenges include:

- ▶ **Incomplete reporting**—For various reasons only a minority of fraudulent practices and consumer issues are reported. As a result, quantifying the size and scale of a problem has proven problematic.
- ▶ **Inability to enforce existing regulations**—The difficulty of gathering information, the size of the individual cases (i.e., the large number of small value transactions) and the priority given other matters by law enforcement agencies, result in limited attention being paid to travel-related consumer problems and even fraudulent acts.
- ▶ **Ineffective reporting mechanisms**—Confusion exists over the appropriate agency or body to which claims and/or complaints should be addressed. Options range from the Better Business Bureau to industry trade associations to law enforcement bodies.
- ▶ **The appeal of the scam**—The nature of certain fraudulent practices have such an underlying appeal that many consumers are too tempted to resist. The opportunity of receiving a valuable commodity for “free” is too attractive for some to pass up.
- ▶ **Reduced budgets**—Bureaucracies at all levels are faced with reduced financial and human resources making the development, implementation and monitoring of new policies and regulations difficult.

None of these challenges are seen as insurmountable. However a framework, against which efforts to remediate consumer issues can be evaluated, is necessary. While this study identified on a cursory level, the framework legislation in place in other jurisdictions, a detailed evaluation of legislation in place elsewhere (e.g., the European Community and Australia models) may prove useful on an issue-by-issue basis. Ultimately, responsibility for consumer protection should be shared among all parties including the consumer, government and the private sector interests selling travel and tourism products.

In an October 1996 report prepared by the Office of Consumer Affairs entitled *New Approaches to Consumer Law in Canada*, reference is made to a study undertaken by the Federal Trade Commission ("FTC"). The FTC study concluded that the crucial elements of an effective and balanced consumer protection program are:

- ▶ Co-ordinated law enforcement by state and federal agencies against fraud and deception.
- ▶ Self-regulation and private initiatives to protect consumers.
- ▶ Consumer education through the combined efforts of government, business and consumer groups.

The following sections address each of these elements. Approaches are drawn for the most part from the Advisory Panel workshop held in early January 1997.

B. Co-ordinated law enforcement and inter-jurisdictional co-operation

The focus on co-ordinated law enforcement and inter-jurisdictional co-operation recognizes the existence and suitability of legislation to deal with many of the consumer problems and frauds discussed earlier. The travel acts in British Columbia, Ontario and Quebec provide a mechanism for at least partially protecting the residents of these provinces, although consumer education is still required to differentiate what is covered and what is not. The Competition Act covers aspects of telemarketing fraud while some aspects of timeshare purchase are covered in specific provinces (i.e., British Columbia, Alberta, Saskatchewan) through real estate law. The sale of travel certificates is one area that does not appear to be covered under any existing legislation.

The travel industry, as represented by workshop participants and supplementary interviews, seems to believe that new legislation is not necessary to address many of the consumer issues addressed above. Specific suggestions that arose from the workshop include:

- ▶ **Information exchange**—focused on sharing experiences between jurisdictions (both inter-provincial and international) on the nature and type of

consumer issues as well as the successful approaches employed to curb these issues. An annual fraud conference similar to that held in the United States for the last eight years would also provide an opportunity to share information. Agendas for several past U.S. fraud conferences are included in Appendix C.

- ▶ **Joint initiatives**—encouraging joint efforts to address specific high-profile or high-volume activities. Ontario's Project Timeshare, described in a previous section, is such an initiative. The program has resulted not only in charges being laid but also a general consensus among law enforcement officials and the industry that the level of inappropriate activity has been reduced. The concern however, is that as the program is for only a fixed period of time such activity will eventually return unless more long-term measures are put in place.
- ▶ **Inter-provincial and international co-operation**—co-ordination of efforts focused on those consumer issues that extend across provincial and international borders. Priorities, penalties and the approaches to addressing these concerns need to be harmonized.
- ▶ **Using all available legislation**—consideration could be given to using municipal as well as provincial and federal legislation to address consumer issues. The workshop discussed the possibility for example, of using municipal by-laws to enforce disclosure guidelines for travel certificates distributed at consumer and trade shows.
- ▶ **Complaints Handling and Redress Mechanisms**—Jurisdictions with a high level of traffic (e.g., Canada/U.S.) could establish a more formal complaints tracking system as well as establishing a more formal route for consumers to seek redress when an injustice occurs in the other jurisdiction.

While existing legislation covers many of the areas of concern addressed in this analysis, the reliance on existing legislation may not be the fastest way to address all consumer problems. Some legislative "gaps" do exist, specifically:

- ▶ The lack of provincial travel industry acts in all provinces except British Columbia, Ontario and Quebec.
- ▶ The lack of legislation governing the sale of timeshare and vacation share products, except in British Columbia, Alberta and Saskatchewan, where timeshare is regulated under real estate legislation.
- ▶ The inability to regulate Internet-based and other forms of technology used for the sale of travel products and services.

To the extent new legislation is required, these three areas should be given the greatest attention. However, as reinforced in the Advisory Panel workshop, any use of new legislation to address these areas will likely face the same challenges affecting the

regulator's and law enforcement agencies' ability to use existing legislation, specifically limited resources to address what is generally thought of as a low priority area.

To address the concern of legislation applicable in one province and not others, common elements of consumer protection might be identified in a single compendium. This compendium would address several elements of the existing Travel Acts and set out some basic parameters of consumer protection regarding travel products. The Organization for Economic Co-operation and Development addressed voluntary standards for air package tours in a report prepared in 1990. This summary has been adapted for the Canadian environment and is contained in Appendix D.

C. Self-regulation

Within some areas of the travel industry, self-regulation may be an alternative to—or act as an alternative enforcement process for—existing and/or new legislation. Effective self-regulation requires an industry association that enjoys broad industry participation, respect from both existing and potential members, and a high degree of independence. Some uncertainty exists over whether or not mandatory legislation (e.g., membership) is necessary to make self-regulation workable.

Some of the functions that could be undertaken under self-regulation include:

- ▶ **Accreditation**—Members in good standing of the industry association in question, would likely be accredited and see value in promoting this accreditation to potential consumers.
- ▶ **Adoption of a code of conduct**—A code would govern the actions of member companies and have the flexibility to set certain guidelines and standards on a timely basis. Such a code could be in addition to specific guidelines set out by federal or provincial Acts.

Alternatively, consideration could be given to extending the travel acts in British Columbia, Ontario and Quebec to the other provinces, either through separate statutes in the other seven provinces, or through voluntary codes of practice established with each province at the industry level.

- ▶ **Staffing standards and certifications**—Travel industry staff, notably sales staff, could be certified based on industry-prepared standards for various job functions. Ideally these standards could be set on a national basis.
- ▶ **Voluntary standards of advertising**—The industry association could set out standards for advertising by product, contract requirements or other points of differentiation.

Self-regulation is seen as a more flexible and cost-effective means of regulating certain industries. Organizations in the Canadian travel industry likely to show the greatest interest in self-regulation include the Alliance of Canadian Travel Associations (ACTA) and the Canadian Resort Development Association (CRDA).

CRDA has been advocating self-regulation of the time share industry for several years, with a particular focus on those provinces (e.g., Ontario) where timeshare is not covered under any other legislation. While self-regulation may be seen as a means to limit competitors, a more realistic view is one of limiting access to only those organizations meeting certain standards. Previously CRDA approached the Ontario government to obtain mandatory regulation of the timeshare industry, in a manner similar to B.C. In B.C., timeshare comes under a regulatory regime requiring the filing of a disclosure document for each timeshare project with the result that all companies offering timeshare product in B.C. are regulated. However, at the time the CRDA overture was made to the Ontario government, the cost and time to develop such a structure was believed to be prohibitive. In 1996, CRDA made a second proposal, this time under Ontario's Bill 54, to seek self governance and the corresponding endorsement of CRDA by the government. The response by the Ontario government has been to request CRDA to continue in its own efforts to promote self-regulation, although without government endorsement at this time. CRDA is still actively attempting to improve the image of the industry. A recent initiative by CRDA has been to mandate that all members employ a 5-day rescission period for purchasers of timeshare interests.

CRDA believes that, similar to its American counterpart (ARDA), self-regulation provides a means of acknowledging quality participants while discouraging less reputable organizations from doing business. Membership in CRDA is limited to those organizations meeting certain standards. In ARDA however, membership is available to any organization although ARDA actively monitors member's actions and immediately reports unacceptable behavior to the respective state regulatory body. ARDA provides a good example of self-regulation and is seen to have been a catalyst for improving the industry's image among consumers.

D. Consumer education

Consumer education should be focused on the prevention of consumer problems through heightened awareness, recognizing that the consumer is not without responsibility in this area. Consumer education falls into several broad areas, specifically:

- **Awareness of key industry participants and the operating environment—**greater public awareness of the role of key agencies such as ACTA and of member agents. In addition, the nature of the protection provided by the Travel Acts in Ontario, Quebec and British Columbia need to be more widely communicated in addition to the lack of protection in other provinces.

- **Awareness of reporting procedures**—making the public aware of the options for reporting fraud and consumer problems.
- **Awareness of travel fraud schemes**—The focus in this area would be on making consumers aware of the existence of such schemes, the “approach” taken by perpetrators to attract victims and methods to avoid being duped. The Texas Attorney General’s office has developed a system of communications on various types of travel fraud and actively communicates to the general public. Examples are provided in Appendix E.
- **Co-operative service providers**—for example, working with direct mail associations in providing information on fraudulent practices through bulk mailings or other means.

Much information is available in a variety of jurisdictions and from (primarily) U.S.-based industry associations to assist with consumer education.

E. Lessons learned in other jurisdictions

In the area of legislation concerning telemarketing both Canada and the United States have implemented new legislation. The American legislation which is approximately one year older, is now being tested in litigation. The two pieces of legislation are similar in intent but quite different in style. The American rule is much more detailed and almost reads as a handbook of rules. It is too soon to say if the American legislative approach will be more successful in the courts than a broad-based principles approach as found in the Canadian legislation. Additionally, the American legislation allows for individual prosecutions by States’ Attorneys-General. In Canada, prosecution is only contemplated at the federal level. It is too soon to say if in the U.S. the States will avail themselves of this possibility, or essentially will continue to allow the F.T.C. to continue prosecutions. The F.T.C. representative made it clear that very few of the States had Attorney-General departments with the expertise or ability to take on any form of prosecution. Another lesson from the U.S. includes Florida’s full disclosure approach in the timeshare industry.

In the area of travel regulation we can compare the Australian model to that of the EU /U.K. The EU Directives at first glance appear very appealing with what appears to be clear statements of objectives, definitions, principles, standards, and redress mechanisms. However as has been discussed earlier, the original intent of a Directive may be changed or weakened through the process of local implementation.

It would appear that the Australian approach which contemplates a contemporaneous set of legislation at both the national and state level may have the best chance for eventual harmony and agreement. The Australian model has another feature that differs from the EU in that the EU Directives, theoretically, are all to be implemented according to a given timetable. However, in Australia, the process was incremental, in that initially four states were involved, with the balance of the states joining the legislation at their own

timing. Overall, this may lead to greater success. Another very interesting lesson from the Australian approach is how the fee structure has a built-in incentive to achieve a desired business structure as opposed to the Canadian fund contribution scheme based on volume of business. The Canadian approach could act as a disincentive to consumer protection.

Appendices

Appendix A

Contacts, Workshop Participants and Bibliography

Appendix A-1

Contacts

<u>Name</u>	<u>City</u>	<u>Phone Number</u>
Alliance Against Fraud in Telemarketing	Washington, DC	(202) 835-3323
Alliance of Canadian Travel Associations	Ottawa, Ont.	(613) 521-0474
American Association of Retired Persons	Washington, DC	(202) 434-2277
American Express (Canada)	Toronto, Ont.	(905) 474-8000
American Resort Development Association	Washington, DC	(202) 371-6700
American Society of Travel Agents	Alexandria, VA	(703) 739-2782
Better Business Bureau of Western Ontario	London, Ontario	(519) 673-3222
Calgary Commercial Crime —RCMP	Calgary, Alb.	(403) 292-5758
Canadian Association of Retail Travel Agents	Hamilton, Ont.	(905) 547-1324
Canadian Association of Travel Operators— (c/o Conquest Tours)	Toronto, Ont.	(416) 665-9255
Canadian Council of Better Business Bureaus	Calgary, Alberta	(403) 531-8686
Canadian Tourism Commission—Research Centre	Ottawa, Ont.	(613) 954-3943
Canadian Tourism Research Institute	Ottawa, Ont.	(613) 526-3280
Canadian Resort Development Association	Toronto, Ont.	(416) 960-4930

Consumer Reports Travel Letter	San Francisco, CA	(415) 239-6001
Cornell University	Ithaca, NY	(607) 254-4503
Council of Better Business Bureaus	Arlington, VA	(703) 276-0100
Corporate Travel Safety	Pasadena, CA	(818) 348-3309
Cruise Lines International Association	New York City, NY	(212) 921-0066
Edmonton Commercial Crime—RCMP	Edmonton, Alb.	(403) 945-5133
European Consumers Organization	Brussels, Belgium	32-2-743-15-90
Federal Bureau of Investigation	Various offices	-
Federal Trade Commission	Washington, DC	(202) 418-0200
Florida Timeshare Bureau	Tallahassee, FL	(904) 487-2753
Holiday Which (UK)	London, UK	44-171-830-7548
Hotel Association of Canada	Ottawa, Ont.	(613) 237-7149
Travel Technology Association	Pittsburgh, PA	(412) 781-3255
Interactive Services Association	Silver Spring, Md	(301) 495-4955
International Academy of Hospitality Research	Roanoke, VA	(540) 231-5515
International Air Transport Association	Montreal, Que.	(514) 844-6311
International Association of Convention & Visitors Bureaus	Washington, DC	(202) 296-7888
KPMG offices	Amsterdam, Brisbane, Cape Town, Houston, London, Miami, Melbourne, San Francisco, Tokyo	-
Law Enforcement Research Centre— Canadian Police College	Ottawa, Ont.	(613) 993-0220
MasterCard International (Canada)	Toronto, Ont.	(416) 863-6084

Ministry of Consumer & Commercial Relations	Various provinces	-
National Association of Attorney Generals	Washington, DC	(202) 326-3280
National Association of Business Travel Agents	Los Angeles, CA	(213) 382-3335
National Attorney's General	Washington, DC	(202) 434-8000
National Consumers League	Washington, DC	(202) 835-3323
National Fraud Information Centre—c/o National Consumers League	Washington, DC	(800) 876-7060
National Highway Traffic Safety Administration (U.S.)	Washington, DC	(202) 366-9550
Organization for Economic Co-Operation and Development	Paris, France	33-1-45-24-8200
Pacific Rim Institute for Tourism	Vancouver, BC	(604) 682-8000
PhoCus Wright Inc.	Bridgeport, CN	(203) 350-4084
Project Phonebusters	North Bay, Ont.	(705) 495-8501
Project Time Share	Toronto, Ont.	(905) 612-7042
Resort Condominiums International	Toronto, Ont.	(416) 966-8410
Royal Canadian Mounted Police—Economic Crime Branch	Ottawa, Ont.	(613) 998-6050
Royal Canadian Mounted Police	Various offices	-
Travel Registrars—Ontario, Quebec, British Columbia (including BC Travel Services)	Respective provinces	-
U.S. Attorney Generals (various states)	California, Connecticut, Texas	-
U.S. Bureau of Consumer Protection (National and various States)	Washington, DC	(202) 326-3128
U.S. Office of Consumers Affairs	Washington, DC	(202) 395-7915

U.S. Department of Commerce—Office of Consumer Affairs	Washington, DC	(202) 482-5001
Council of Better Business Bureaus	Arlington, VA	(703) 276-0100
U.S. Department of Transportation— National Highway Traffic Safety Admin.	Washington, DC	(202) 366-9550
U.S. Postal Inspection Office	Washington, DC	(202) 268-5283
Uniglobe Travel International	Vancouver, BC	(604) 662-3800
Visa International (Canada)	Toronto, Ont.	(416) 367-8472
World Tourism Organization	Madrid, Spain	34-1-571-0628

Appendix A-2

Workshop Participants

Alliance of Canadian Travel Agents	Doug Crozier
American Society of Travel Agents	Mike McClarnon
Bell Global Solutions	Jim Betts
Canadian Bankers Association	Paul Facciol
Canadian Better Business Bureaus (London)	Jan Delaney
Canadian Tourism Commission	Louise Lefebvre (teleconference)
Canadian Tourism Research Institute	Janice Shewchuck (teleconference)
Conquest Holidays	Dennis Gill
Farano Green	Victoria Stuart
Federal Trade Commission	Patricia Howard
Industry Canada	Konstantinos Georgaras
KPMG—Hospitality & Tourism	Lyle Hall
KPMG—Hospitality & Tourism	Manlio Marescotti
KPMG—Investigation and Security Services	Doug Nash
Project Phonebusters (Ontario Provincial Police)	Sgt. Barry Elliott
Project Timeshare (Peel Region Police)	Det. Larry Green
Resorts Condominium International	Steven Marks

Appendix A-3

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Appendix A-4

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Federal - Canada

- ▶ Competition Act R.S.C 1985, c. C-34
- ▶ Criminal Code R.S.C. 1985, c. C-46
- ▶ Bill C-67, 45 Eliz II

British Columbia

- ▶ Travel Agents Act R.S.B.C. 1979, c. 409
- ▶ Real Estate Act R.S.B.C. 1979, c. 556
- ▶ Real Estate Amendment Act S.B.C. 1995, c. 14
- ▶ Trade Practices Act R.S.B.C. 1979, c. 406
- ▶ Consumer Protection Act R.S.B.C. 1979, c. 65

Alberta

- ▶ Real Estate Agents Act R.S.A. 1980, c. R-5
- ▶ Unfair Trade Practices Act R.S.A. 1980, c. U-3

Saskatchewan

- ▶ The Real Estate Act, S.S. 1995, c. R-1.3

Ontario

- ▶ Business Practices Act R.S.O. 1990, c. B. 18
- ▶ Consumer Protection Act R.S.O. 1990, c. C. 32
- ▶ Travel Industry, Act R.S.O. 1990, c.T. 19
- ▶ Bill 54, 45 Eliz II

Quebec

- ▶ Civil Code
- ▶ Consumer Protection Act R.S.Q. c. P-40.1
- ▶ Travel Agents Act R.S.Q. c. A-10

California

- ▶ An Act to Amend the Business and Professional Code Relating to Travel Chapter 1123

Florida

- ▶ Vacation and Time-Share Plans Chapter 721

U.S. Federal

- ▶ Federal Trade Commission, Prohibition of Deceptive and Abusive Telemarketing Acts; Final Rule, 16 CFR. Part 310

EEC

- ▶ Council Directive of 29 April 1994 on timeshare
- ▶ Council Directive of 13 June 1990 on package travel, package holidays and package tours.

Appendix B

***Alliance of Canadian Travel Associations—
Code of Conduct***



MEMBERSHIP INFORMATION

- Definitions
- Criteria
- Entitlements
- Code of Standards
- Code of Ethics

RETAIL/WHOLESALE MEMBERSHIP INFORMATION

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RETAIL/WHOLESALE CATEGORIES

1. TRAVEL AGENCY HEAD OFFICE

Definition:

An entity that carries on the business of selling, to the public, travel services provided by another.

Criteria:

Members, or applicants for such membership, must adhere to all of the Standards set forth in the Code of Standards, except for items (l), (m), (o), (p) and (q); and must abide with the relevant portions of the Code of Ethics, as established from time to time by the Board of Directors. *

Entitlements:

- a) May vote within the provincial association
- b) Will receive national mailings
- c) Will receive provincial mailings
- d) May use the ACTA logo on all advertising, etc.
- e) May attend national functions
- f) May attend provincial functions
- g) May have access to national membership benefits
- h) May have access to provincial membership benefits.

TRAVEL AGENCY BRANCH

Definition:

A travel agency that carries on business from a location other than its head office and whose head office is a Travel Agency member in the same province.

Criteria:

Same as Travel Agency head office, above. *

Entitlements:

Same as Travel Agency head office, above.

TRAVEL AGENCY ASSOCIATE

Definition:

An employee, officer or director of a Travel Agency head office, or Travel Agency Branch member.

Criteria:

Members, or applicants for such membership, must be at least eighteen (18) years of age, be without an unpardoned conviction within the preceeding five (5)

years, for an offence involving moral turpitude, and not have been in a position of control of an entity which, within the preceeding five (5) years, became insolvent or bankrupt, and pay the appropriate membership fee or dues as set forth from time to time, and must abide with the relevant portions of the Code of Ethics, as established from time to time by the Board of Directors *

Entitlements:

- a) Will receive national mailings
- b) Will receive provincial mailings
- c) May attend national functions
- d) May attend provincial functions
- e) May have access to national membership benefits
- f) May have access to provincial membership benefits.

2. TOUR OPERATOR/TRAVEL WHOLESALER HEAD OFFICE

Definition:

An entity that purchases or acquires from another rights to a travel service for the purpose of resale, or that carries on the business of dealing with travel agents or other tour operators/travel wholesalers for the sale of travel services provided by another.

Criteria:

Members, or applicants for such membership, must adhere to all of the Standards in the Code of Standards, except for item (i), and must abide with the relevant portions of the Code of Ethics, as established from time to time by the Board of Directors. *

Entitlements:

- a) May vote within the provincial association
- b) Will receive national mailings
- c) Will receive provincial mailings
- d) May use the ACTA logo on all advertising, etc.
- e) May exhibit at national functions
- f) May exhibit at provincial functions, subject to terms and conditions imposed by ACTA
- g) May attend national functions
- h) May attend provincial functions
- i) May have access to national membership benefits
- j) May have access to provincial membership benefits

TOUR OPERATOR/TRAVEL WHOLESALER BRANCH

Definition:

A Tour Operator/Travel Wholesaler that carries on business from a location other than its head office, and whose head office is a Tour Operator/Travel Wholesaler member in the same province

Criteria:

Same as Tour Operator/Travel Wholesaler head office, above. *

Entitlements:

Same as Tour Operator/Travel Wholesaler head office, above.

TOUR OPERATOR/TRAVEL WHOLESALER ASSOCIATE

Definition:

An employee, officer or director of a Tour Operator/Travel Wholesaler member, or of a Tour Operator/Travel Wholesaler Branch member.

Criteria:

Members, or applicants for such membership, must be at least eighteen (18) years of age, be without an unpardoned conviction within the preceeding five (5) years, for an offence involving moral turpitude, and not have been in a position of control of an entity which, within the preceeding five (5) years, became insolvent or bankrupt, and pay the appropriate membership fee or dues as set from time to time by the Board of Directors. *

Entitlements:

- a) Will receive national mailings
- b) Will receive provincial mailings
- c) May attend national functions
- d) May attend provincial functions
- e) May have access to national membership benefits
- f) May have access to provincial membership benefits.

3. INTERIM

Definition:

An entity that intends to join as a Retail/Wholesale member, who does not, at the time of application,

meet the necessary Standards with respect to time in business or employees, but who, in the opinion of the provincial or regional association's Board of Directors (following receipt of the recommendation of its Membership Committee) is honestly and diligently seeking to meet such criteria and to act in a manner consistent with ACTA's aims and objectives

Criteria:

Members, or applicants for such membership, must adhere to all of the Standards set forth in the relevant column of the Code of Standards as if it were a full member, except for items (a), and if it is a Tour Operator/Travel Wholesaler or a Tour Operator/Travel Wholesaler Branch, (i), and must abide with the relevant portions of the Code of Ethics, as established from time to time by the Board of Directors. *

Entitlements:

- a) Will receive provincial mailings
- b) May attend national functions, subject to terms and conditions imposed by ACTA
- c) May attend provincial functions, subject to terms and conditions imposed by the provincial association
- d) May have access to national membership benefits, subject to terms and conditions imposed by ACTA
- e) May have access to provincial membership benefits, subject to terms and conditions imposed by the provincial association

* Criteria may vary from province to province

CODE OF ETHICS

IN ORDER TO ASSIST IN THE PROVISION TO THE PUBLIC OF THE HIGHEST QUALITY TRAVEL SERVICES, AND TO PROMOTE THE MOST EFFICIENT AND AMICABLE RELATIONSHIP WITH OTHER MEMBERS, EACH ACTA MEMBER, THROUGH ITS MEMBERSHIP IN THE TRADE ASSOCIATION, AGREES TO THE FOLLOWING PRINCIPLES OF ETHICS.

RELATIONS BETWEEN ACTA MEMBERS AND THE PUBLIC

When dealing with the public, it is the duty of ACTA members to:

- a) train and inform in-office and outside sales staff on all phases of travel which they offer to the public in order to be in a position to provide professional travel advice, and to secure the most appropriate available travel services;

- b) make every effort to ensure the accurate information is provided to enable their clients to exercise an informed judgment in making their choice of travel services;
- c) advise clients of the necessary passport, visa and health requirements for the journey to be undertaken;
- d) at the time of initial payment for any booking, advise their clients of the existence and amount of any known cancellation fee, revision fee, supplier service charge or administration charges and, where available, inform clients of existence of cancellation protection and/or insurance.
- e) disclose in advance of counselling the existence of any service charges to be assessed by that member;
- f) ensure that all travel and other documents are checked before delivering them to their clients and that any points requiring clarification are explained to their clients;
- g) promote the services of other ACTA members, whenever consistent with the best interests of the client;
- h) refrain from disparaging the business practices of another member, transaction or service, and render any opinion with strict professional integrity and courtesy;
- i) refrain from carrying on business under a name and style or in a fashion that is intended to or is likely to or does, in fact, confuse the public or the industry as to identity, association, affiliation, or qualities of that member

RELATIONS BETWEEN ACTA MEMBERS

When dealing with another ACTA member, it is the duty of members to:

- a) treat as binding any accepted commitment for accommodations or services, be they written or oral, subject to the member's terms and conditions of sale;
- b) cancel immediately upon notification by the client commitment for accommodations or services;
- c) refrain from suggesting or making duplicate bookings;
- d) comply with all reasonable published rules and regulations of suppliers or licensing association;

- e) give to ACTA members an opportunity to make a full investigation of any complaint, grievance or claim by a client before taking action against them, process all complaints, grievances, claims and refunds due within thirty days of notification, or provide written reasons for any further delay;
- f) in the event of a controversy, employ the resolution processes of ACTA available both federally and provincially before resorting to litigation;
- g) submit all pertinent facts and evidence to assist in ACTA's resolution of a complaint;
- h) refrain from taking advantage of the former affiliation of a new employee through the use of unauthorized lists or records which may accompany the employee, nor shall they take advantage of bookings made prior to transfer.

CODE OF STANDARDS

TO OBTAIN AND TO MAINTAIN MEMBERSHIP IN ACTA OR ITS PROVINCIAL OR REGIONAL ASSOCIATIONS, AN APPLICANT OR MEMBER MUST:

- a) Have carried on business continuously in the travel industry for a period of not less than two (2) years; or have in a position of control a person who has, for at least three (3) of the previous five (5) years, been in a position of control of an entity that, at the time the person ceased to be associated with it, was a member of ACTA or its provincial associations in the same category of membership as is being sought or maintained.
- b) Carry on business from a permanent, commercial building or office, or a separate definable area within a permanent, commercial building or office, that is properly zoned and identified to the public as such by means of a sign or other indication;
- c) Be open for business during normal weekday business hours in the market(s) being served;
- d) Comply with all applicable federal and provincial laws and hold all valid and subsisting licenses as required by such legislation;
- e) Comply in all respects with the ACTA Code of Ethics;
- f) Meet such financial criteria as the Board of Directors of ACTA may set from time to time;

- g) Utilize or allow to be utilized brochures, pamphlets, or other literature or advertising which is factually accurate and not misleading, and shall disclose the following information, which shall be based on information that is available at the time of its publication;
 - i) name of the entity arranging or providing the travel services;
 - ii) its telephone number or address, if it is a Travel Agency or Travel Agency Branch (Note: number or address of an outside sales representative shall not be acceptable, but prohibited);
 - iii) validity data or travel dates;
 - iv) price;
 - v) currency in which the price is stated, if it is other than Canadian.
 - vi) cancellation procedures and penalties;
 - vii) major suppliers of travel services being offered;
 - viii) reasonable outline of the travel services being offered for the stated price;
 - ix) mandatory additional costs, in excess of the stated price;
 - x) absence of governmental approval to the travel services offered, if such is the case;
 - xi) round trip or return fares, where applicable, unless clearly stated to be otherwise;
 - xii) points and dates of origin and destination;
 - xiii) availability of insurance;
 - xiv) conditions that may arise that would lead to a variation, between the date of booking and the date of travel, in the stated price; and
 - xv) any other relevant terms and conditions of sale of the travel services.
- h) Enroll in ACTA Membership each Branch office in the appropriate category of Membership;
- i) Where the Member is a Travel Agency or a Travel Agency Branch, employ at least two (2) travel persons in each office or branch, one of whom must have travel counsellor experience;
 - i) acquired in a travel agency for a minimum of two (2) years, within the five (5) immediately preceding years, and;
 - ii) successfully completed ACTA-approved qualification examinations on or before a date to be set by ACTA, and
 - iii) have devoted directly to the affairs of a travel company during the previous year at least 65%

of the hours for which that entity was open during that year.

Where a Member or applicant operates a Branch office in a community with a population of less than 10,000 persons and the Branch office is under the supervision of an experienced person as set out in sub-sections (i) and (ii), but is located at another office of the Member or applicant, the Board of Directors may waive any part of the personnel requirements set out in this section upon a satisfactory representation being received from the Member or applicant that the experienced person is able to adequately supervise the operations of the Branch office.

- j) Pay the appropriate membership fee or dues, as set from time to time.
- k) Wherever reasonable, utilize the ACTA logo in its advertising, promotional material: (if it is entitled to use it), in the absence of overriding aesthetical considerations;
- l) Wherever reasonable, advertise the availability of its products and services through travel agencies.
- m) Support travel agencies as its primary system for the distribution of its products and services;
- n) Pay to travel agencies a reasonable remuneration upon the sale of its products and services, and encourage the payment of reasonable compensation to travel agencies in the event of cancellation by the passenger;
- o) Provide adequate training to reservations and telephone staff;
- p) Subject to Acts of God and force majeure, provide all travel services as advertised or as sold, or in a quality similar or superior thereto, or, in the alternative, provide to the passenger a series of reasonable options;
- q) Wherever possible, provide passenger documentation to the retail travel agency at least two (2) weeks prior to departure assuming contractual agreements have been met.

Appendix C

***American Society of Travel Agents—Fraud
Conference Agendas***



Integrity in Travel

**ASTA Conference on Travel Fraud
"New Solutions to an Old Problem"**

January 13, 1994

Westin St. Francis Hotel, San Francisco, CA

Morning Session - Colonial Room

- 10:00 am Welcoming Remarks
 Jeanne Epping, ASTA Senior Vice President
- Opening Remarks
 Earlene Causey, ASTA President and Chief Executive Officer
- Conference Preview
 Roslyn Crandus, Chairman, ASTA Consumer Affairs Committee
- 10:20 am **Art Weiss**, Assistant Attorney General, Missouri
- 10:40 am **Clinton Burr**, President, Resort Property Owners Association
- 11:00 am **Ed Perkins**, Editor, Consumer Reports Travel Letter
- 11:20 am **Mitch Demblin**, Assistant U.S. Attorney, San Diego
- 11:40 am **Hoyte Decker**, Director of Consumer Affairs,
 U.S. Department of Transportation
- 12:00 pm Luncheon - California East Room
 Sponsored by: American Express Travel Related Services, Co., Inc.
 Luncheon Speaker: **Mary Azcuenaga**
 Commissioner, Federal Trade Commission

Afternoon Session - Colonial Room

- 1:30 pm **Jeffrey Klurfeld**, Federal Trade Commission, San Francisco
- 1:50 pm Panel: Credit Card Fraud
 Dennis Flene, VISA, USA Security
 Richard Cataldo, American Express Security
- 2:30 pm Question and Answer Session (Most Speakers Included)
- 3:00 pm Conclusion
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-

**Mini-Conference on Consumer Issues
in preparation for
White House Conference on Travel and Tourism**

**White House Conference Center
July 10, 1995**

AGENDA

8:30 - 9:00 a.m. Registration

9:00 - 10:15 a.m. OPENING SESSION

PRESIDING: Bernice Friedlander
Acting Director
U.S. Office of Consumer Affairs

GREETINGS: Lorraine Ausley Ellis
Executive Director
White House Conference on
Travel and Tourism

OVERVIEW AND INTRODUCTION:

Linda F. Golodner
President
National Consumers League

SPEAKER: Ed Perkins
Editor
Consumer Reports Travel Letter

10:15 - 10:30 a.m. BREAK

10:30 - noon WORKING GROUPS

**SESSION I: PUTTING OUT AMERICA'S WELCOME MAT
LINCOLN ROOM**

In this session we will discuss, among other issues, advertising/promotion, multi-lingual signage, convenient money exchange locations, and emergency medical assistance.

FACILITATOR: Debra Howard
Internal Consultant, Human Resources and
Management Services
American Association of Retired Persons

RECORDER: Hal Norvell
Liaison, Business Community Relations
American Association of Retired Persons

SESSION II:

**PROTECTING TRAVELERS
TRUMAN ROOM**

Session II will include safety and security, fraud, and complaint handling and redress, as well as other issues.

FACILITATOR:

William Leibovici
Chief, Consumer Protection Division
Office of the Attorney General
Maryland

RECORDER:

Stephen D. Hannan
Administrator
Howard County (Md.) Office of
Consumer Affairs

SESSION III:

**DELIVERING QUALITY SERVICE
EISENHOWER ROOM**

We will discuss, among other consumer concerns, the need for better service, workforce education and training, and the utilization of technology, including the Internet.

FACILITATOR:

Shirley Rooker
President
Call for Action

RECORDER:

Anna Flores
Director, Office of Consumer Services
D.C. Public Service Commission

12:00 - 12:30 p.m.

WRAP-UP SESSION

MODERATOR:

Hal Norvell
Liaison, Business Community Relations
American Association of Retired Persons

WORKING GROUP REPORTS

OPEN DISCUSSION

12:30 - 12:35 p.m.

CLOSING REMARKS

Lajuan M. Johnson
Director
Office of Consumer Affairs
U.S. Department of Commerce



Integrity in Travel

ASTA Conference on Evaluating Travel Offers: "What You Don't Know Can Cost You!"

October 19, 1995

Hyatt Regency Hotel, Miami, FL

Morning Session - Erickell Ballroom

- 9:00 am Welcoming Remarks
Norma Torello Chair ASTA Consumer Affairs And Ethics Committee
- Opening Remarks
Jeanne Epping ASTA President and Chief Executive Officer
- 9:15 am Ed Perkins, Editor, Consumer Reports Travel Letter
- 9:40 am Art Weiss, Assistant Attorney General, Texas
- 10:00 am Break
- 10:15am Panel - "Buying Travel 101 - What You Don't Know Can Cost You!"
Gerry Jung, President, Vacations Plus, New Berlin, WI
Betsy Wade, New York Times "Practical Traveler" columnist
Hoyte Decker, Director of Consumer Affairs, US
Department of Transportation
- 11:15 am Clinton Burr, Travel Author and Director, Resort Property Owners
Association
- 11:35 am Jim Oleksa, Manager, Security, American Express Travel Related
Services Co., Inc.
- 12:00 noon Luncheon - Flagler Room
Sponsored by: American Express Travel Related Services, Co., Inc
Luncheon Speaker: Gloria Van Treese - Bureau Chief, Florida State
Office of Agriculture and Consumer Services

Afternoon Session

- 1:30 pm Breakout Sessions
Technology - Orchid Room A,B
Government Issues - Orchid Room C
Travel 101 - Orchid Room D
- 3:00 pm Conference Recap - Erickell Ballroom
"one-on-one" with the speakers
- 3:30 pm Conclusion
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Nancy Gravatt
Steve Loucks
Chris Privett

ASTA TRAVEL SCAM CONFERENCE HIGHLIGHTS

American Society of Travel Agents Annual Conference on Travel Fraud
Convened on August 1, 1996
National Press Club
Washington, D.C.

Guest Speakers included:

Arthur C. Weiss, Assistant Attorney General for the state of Texas

Eileen Harrington, Associate Director for Marketing Practices of the Federal Trade Commission

Hugh Nathaniel Halpern, U.S. House of Representatives Committee on Commerce professional staff member

Kevin Coffey, Detective Sergeant with the Los Angeles Police Department

Phillip C. Wolf, President of PhoCusWright, Inc., editor-at-large of the Interactive Travel Report newsletter

Robert L. Smith, Jr., Executive Director of the Interactive Services Association

Dennis T. Brosan, Director of Fraud Control and Security of Visa International

Robert T. Curran, Manager of Security for American Express Travel Related Services

Janice Lieberman, host of CNBC's *Steals and Deals*

The conference was opened by ASTA Consumer Affairs and Ethics Committee Chair Norma Torello. Torello greeted the assembled and introduced ASTA President and CEO Jeanne Epping.

The proceedings continued with a welcoming address by Jeanne Epping, who talked about the importance of the conference and stressed ASTA's consumer-oriented safeguards in protecting travelers against fraud. Epping also cited ASTA's recent strengthening of its member code of ethics to require full disclosure of all travel costs and additional fees upon request.

- MORE -



Integrity in Travel

**ASTA's 1997 CONFERENCE ON TRAVEL FRAUD
"GO ON VACATION - BUT DON'T GET TAKEN!"**

March 13, 1997

Westin Bonaventure Hotel, Los Angeles, CA.

404 S. Figueroa Street, Los Angeles, CA 90071

Morning Session

- 9:15 am Welcoming Remarks
Norma Torello, Chair, ASTA's National Consumer Affairs and Ethics Committee
- Opening Remarks
Mike Spinelli, ASTA President and Chief Executive Officer
- 9:30 am **Ed Perkins**, Editor, *Consumer Reports Travel Letter*
- 9:50 am **Art Weiss**, Assistant Attorney General, Texas
- 10:10 am **Patricia Howard**, Federal Trade Commission (*scheduled*)
- 10:30 am *Coffee Break*
- 10:45 am **Panel: Credit Card Fraud and Securities**
Featuring: William F. Johnson, United States Secret Service
Gwen Rogers-Lee, American Express Travel Related Services
- 11:25 am **Martin Biegelman**, Postal Inspector, U.S. Postal Service
- 12:00 noon Luncheon - *Sponsored by American Express Travel Related Services*
Presentation of ASTA's Traveler's Advocate Award

Afternoon Session

- 1:15 pm **Susan Henrichsen**, State of California, Department of Justice
- 1:35 pm **PANEL: Buying Travel Agent I.D. Cards - Myths and Realities"**
Featuring: Ed Perkins, *Consumer Reports Travel letter*
Ritz Carlton Hotels
Patricia Howard, Federal Trade Commission
Marla Dickerson, Reporter, *Los Angeles Times*
- 2:35 pm **REPORTER FROM SAN FRANCISCO CHANNEL 7 (Tentative)**
- 3:00 pm **Questions and Answers**
-

Appendix D

Example of a Harmonized Legislative Framework

In 1990, the Organization for Economic Co-operation and Development (OECD) prepared a report of consumer protection concerning air package tours. While specific to this one travel product, and now seven years old, the report does have some application to the Canadian situation, particularly from the viewpoint of harmonized legislation across provinces. The OECD report identified a summary of common standards. A sample framework for the Canadian situation, based on these standards, is presented below.

A. Contractual rights of the traveler

Contracts for travel products should:

- Be in written form and easily understood by the consumer. Any limiting conditions should be clearly identified and reviewed with the consumer.
- Reference the brochure or other sales material and incorporate the key features of the product or service being purchased.
- Provide a receipt for all funds paid either in advance and at time of travel.
- Identify the process for redress or complaint should the travel product or service not be consistent with the consumer's expectation based on marketing materials.

With respect to the pricing and logistics of travel products and services, the consumer should have the right to:

- A complete summary of the total cost of the travel product or service, including all service charges, mandatory add-on charges (e.g., insurance), supplements and fees.
- Immediate notification of changes to any material aspect of the travel product or service (e.g., change in itinerary, substitution of travel components).
- Either a full refund or substitution of an acceptable alternative travel product or service, should the travel product or service originally sold becomes unavailable or is cancelled

Clear communication of the terms and conditions of a travel contract should be the ultimate goal of any legislation

B. Advertising and promotion

The advertising and promotion of travel product and services should be done in such a fashion that does not limit creativity of the supplier but ensures a complete and accurate understanding of the product and/or service on the part of the consumer. Ultimately this understanding will enable the consumer to make an informed decision between various options. At a minimum the following information should be provided:

- ▶ The legal identity of the entity dealing with the end consumer and the relationship of this entity with the various travel product or service providers. For example, if the consumer is dealing with a tour operator, the relationship (e.g., cross ownership) between the tour operator and the air, accommodation, recreation or other travel components being sold should be provided.
- ▶ All details of the product or service offered for sale including: names of providers (e.g., air carrier, hotel), itinerary, destination and logistics .
- ▶ The total price including any additional charges and potential charges.
- ▶ Limiting conditions, cancellation charges, processes for cancellation and penalties.
- ▶ Clear description of facilities offered. For example, description of accommodation consistent with expectations of accommodation within a Canadian context.

Practices governing advertising and promoting all forms of travel products and services should seek to provide clear, easily understood information.

C. Complaint handling and redress

Two issues are of particular concern in this regard, specifically:

- ▶ Communication of the steps required for a consumer of lodge a complaint.
- ▶ An assurance that once lodged, the consumer has a reasonable chance of redress, provided the claim is fair.

Legal remedies, in particular small claims court, are available in all provinces. However, given an assumption that some complaints go unreported due to a lack of awareness of who to report to , the relatively small amount of the claim or a degree of reluctance to

admit to making a poor purchase decision, another forum might see the incidence of complaints increase.

D. Regulation of the profession

The Travel Acts in British Columbia, Ontario and Quebec require the existence of a fund used to repatriate tourists from international jurisdictions and provide for repayment in the event of successful claims against members. Similar frameworks should be considered in all Canadian provinces. In addition, consumers should be made aware of the nature of the coverage offered through these Acts.