

# **CANADIAN TRANSPORTATION AGENCY**

## **Regulatory Modernization Initiative Submissions**

September 7, 2017



# Table of Contents

Introduction..... 3

Charters and Advance Payment Protection..... 4

## Introduction

The Canadian Association of Tour Operators (“CATO”) was incorporated in 1986 by the then eight major tour wholesalers primarily operating out of Ontario on risk programs. These operators were all independent of any air carrier or retail travel consortium. They operated significant Inclusive Tour and Advance Booking Packages on contracts with various air carriers on a risk basis, by either purchasing entire aircraft capacity, or blocks of seats on scheduled operations of air carriers, or on joint charter operations with other tour operators. These operations were primarily to Florida, Mexico, Dominican Republic and Caribbean destinations during the winter months, and to a lesser degree trans-atlantic operations during the summer months.

These companies were independently owned and were primarily held by distinctive entrepreneurs who had introduced these travel products primarily to the English speaking market in Eastern Canada. They had been exposed to these travel products by several experienced British travel entrepreneurs who had been employed in the British industry, offering similar travel products to the Mediterranean.

As a result of the significant growth in this package market in Eastern Canada, numerous companies arose intent on obtaining commercial air service authority in order to provide dedicated uplift to these operators, either on a single plane charter basis, or on a shared charter capacity basis. As a result of these numerous attempted upstarts, and unfortunately several failures before operations were initiated, two regulatory oversights were granted to the predecessor of the CTA.

The first was the advance payment protection now ensconced in Section 65 of the Air Transport Regulations (“ATR’s”) which will be the focus of this submission by CATO.

Also subsequently, the predecessor of the CTA was mandated oversight on a Financial Fitness Test for any new carriers pursuant to Section 8 of the same ATR’s. CATO would point out that the requirements under Section 8.1 were clearly enacted to address the financial fitness of **new** carriers. For the first decade plus, those requirements were only applied to ab initio carrier applications. It has only been in recent times that the CTA has expanded its interpretation of Section 8.1 to require Financial Fitness Test compliance in numerous applications by presently licensed carriers for any increase in authority.

## **Charters and Advance Payment Protection**

The business model for which Section 65 was enacted has almost totally disappeared from the marketplace. The Consultation Paper indicates that less than 1% of international movements are now conducted by the outmoded charter regime.

In addition, there are a few, if any, true risk products in the tour wholesale market today. That is not only due to the tour operator product being accommodated on scheduled services by carriers, but also due to significant vertical integration in the industry.

While operated by separate corporate entities, many of today's tour operators are part of a conglomerate which includes an air carrier, and often many travel retail outlets. Requiring advance payment protection for a tour operator controlled in one of these groups is merely the left hand protecting the right hand, even when they are required to operate on a charter regime due to Bilateral Air Service Agreement restrictions not allowing for operations to be conducted on a scheduled basis. One would question why a regulatory authority needs to protect passengers buying a charter product and not a scheduled product, when the passengers have no knowledge or recognition of the difference between those two products in the marketplace.

CATO would point out that even during the heyday of risk product being sold on independent air carriers, the tour operator industry could not trust the regulator under the Section 65 regime. The CTA and its predecessors exercised indirect control over the provincially regulated tour wholesale industry, by requiring the air carriers to obtain permits from the regulatory authority for all charter programs, and to require regulatory compliance to the federal regime by those tour operators in order to obtain operating permits. And part of that approval process was the Section 65 Advance Payment Protection to be provided by the air carrier to the tour operator.

However, those air carriers merely provided confirmation on a blanket basis to the tour operators and at no time, could the tour operators trust the regulator as to whether or not any of their specific programs were protected under those Letters of Credit or other security. Individual programs were never specified in those coverages.

All of the major risk tour operators completely discounted any reliance upon the Section 65 system even at its peak. While air carrier prepayment requirements under the ATR's were, and continue to be a statutory 7 day prepayment basis, tour operators were not willing to take that risk and either paid the air carriers on a per leg basis subsequent to performance, or on a rotation basis after completion of the operation. This was proven to the regulatory many times on the failure of several of the carriers, during the resolution of the repatriation of passengers at destination.

In addition, many of the coverages filed with the CTA in order to obtain permits were actually backed by the Canadian based tour wholesaler. That was due to the fact that many foreign carriers were utilized in both summer and winter markets. Those foreign carriers did not have Canadian establishments, nor Canadian banking facilities in order to produce the required Section 65 banking confirmation. As part of the contractual arrangement between the Canadian tour operator and the foreign carrier, the Canadian tour operator, through its Canadian banking facilities, was required to secure with its own financial backing the required a Letter of Credit.

In addition, there were very few claims under the Section 65 protection even as a result of these failures. Various other financial guarantees and consumer protections rose to the occasion on each situation. In my personal recollection, there was only one instance (Nationair) where any Section 65

protection actually resulted in consumers being protected, and my further recollection is that was due to the fact that it occurred prior to Quebec enacting its travel legislation.

Now that the vast majority of travel consumers make their bookings, even on charters, through their credit cards, which afford a significant level of protection, and with the vast majority of Canadian consumers booking through the three provinces that have travel industry protection in place, and with the insignificant volume of charters being protected pursuant to Section 65, it is time to eliminate this outmoded and unneeded regulatory oversight, which was never effective.

William F. Clark  
Legal Counsel  
Canadian Association of Tour Operators  
100 Richmond Street West  
Suite 330  
Toronto, Ontario  
M5H 3K6

Telephone: (416) 681-9900

Mobile: (647) 500-7115

Email: [clark@yyzlaw.com](mailto:clark@yyzlaw.com)