

JUSTICE IN THE MARKET PLACE, THE OFFICE OF THE PUBLIC COUNSEL

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Trade liberalization, regionalism and the rights of the Barbadian consumer are essentially the motivating factors behind Governments legislative reform thrust in regard to consumer protection. The aim of government is to offer the consumer effective and relevant consumer protection in Barbados. The Office of the Public Counsel, together with the Fair Trading Commission, was established to ensure such protection.

Utility Regulation

The Office of the Public Counsel is provided for under sections of the Utilities Regulation Act 2000-30. Under the Act, the Public Counsel is responsible for carrying out the following functions:

- (a) to advise consumers on matters relating to the Act; and
- (b) to assist consumers in preparing for reviews and hearings, and presenting arguments before the Commission in relation to
 - (i) the setting of rates;
 - (ii) the determination of principles;
 - (iii) the setting of standards of service; and
 - (iv) complaints regarding billing and the standards of service supplied by service providers.

Recently, Cable & Wireless (B'dos) Ltd. filed an application for Rate Adjustments and the matter was heard before the Fair Trading Commission. There were 41 days of hearings. Public Counsel participated by representing one of the Interveners and also provided legal advice to a member of the other Interveners.

It is expected that there will be Applications to be considered by the Fair Trading Commission for the Barbados Light and Power Co. Ltd. and the Barbados Water Authority. Public Counsel is expected to participate in these matters to ensure that the rights of consumers are protected.

Consumer Guarantees Act

The Public Counsel also has responsibility for administering the Consumers Guarantees Act which became law in January 2003. Under this Act, Public Counsel is mandated to mediate disputes between consumers and suppliers of goods and services. The Act covers Goods and Services up to the value of \$10,000 that are used for personal, domestic and household use or consumption and applies to sellers in trade or business. The Consumer Guarantee Act supersedes all other relevant provisions in Acts such as the Hire Purchase Act and the Sale of Goods Act.

One of the immediate effects of the Consumers Guarantees Act is that it has brought justice to the marketplace; that is, it has levelled the playing field and consumers are more assured of receiving value for their money. Consumers now have meaningful rights, and as a consequence, suppliers have been forced to pay attention to the quality of their product. A significant indicator of this is that the Office of Public Counsel has found that it provides advice to business persons and individuals in trade with regard to the options available to them in respect of complaints from consumers, thus, technically reducing the number of complaints that are likely to be received by the Office. As a result the office has witnessed many aspects of the Act being incorporated into Customer Charters.

A spokesman for the Office has indicated that approximately 25% of complaints handled by the Office are actually referred from the Fair Trading Commission.

The Office of Public Counsel's primary concern under the Consumer Guarantees Act is ensuring that the statutory guarantees are complied with.

It seeks to ensure that goods:

- (1) are of 'acceptable quality' that is, that a good or service is fit for all the purposes it might be commonly used for, has an acceptable appearance and is safe and durable;
- (2) will do whatever the seller says it will and that the item is the same as any demonstration model, sample or description of it;
- (3) are new unless stated otherwise;
- (4) that spare parts and repair facilities will be reasonably available; and
- (5) that consumers will pay a reasonable price.

In regard to services the Act specifies that a service:

- (1) will be carried out with reasonable care and skill;
- (2) will be completed within a reasonable time; and
- (3) will be fit for the purpose; and that
- (4) the consumer will pay a reasonable price.

The Consumer Guarantees Act states that before a case can be brought to the Consumer Claims Tribunal, all attempts must be made to settle the matter. If these attempts fail the Act provides for the matter to be referred to the Consumer Claims Tribunal. The Tribunal operates like a Small Claims Court and has the powers of a Magistrate Court but is intended to be less rigid than a court, in that the strict rules of evidence are dispensed with, and a more flexible approach to the taking of evidence is used. Thus far, the Office has received over 840 complaints, of which over 700 have been successfully resolved. So far, 15 cases have been referred for the consideration of the Consumer Claims Tribunal and nine of these have already been resolved. An Official from the office has indicated that in some cases the Office of Public Counsel represents the consumer at the Tribunal, since on occasion suppliers are represented by attorneys.

However, before a complaint is brought before the Tribunal the Office of the Public Counsel gathers the facts and examines any relevant documentation. An assessment is also made regarding whether the good or service has breached any of the guarantees. The Office then issues correspondence with the aim of clarifying the area of dispute and makes an attempt to bring the parties together, to mediate the dispute.

After two full years in operation, the Office of Public Counsel has found that in countless cases many complaints can be avoided if business persons practiced better public relations. It has been observed that numerous business and trade persons and their representatives, show a lack of sensitivity to consumers' complaints. In some instances, complaints were made not so much relating to the breach of a guarantee, but how an individual was treated.