

October 1st, 1970.

## CONSUMER PROTECTION

The purpose of this memo is "to outline an approach to the breakdown and study of this topic." (Minutes of 15th September, p. 77, III C.).

I shall use four headings:

- I. Scope of Subject
- II. Alberta Statutes
- III. Statutes of the Other Provinces
- IV. Nature and Scope of Projected Study

### I

#### SCOPE OF SUBJECT

In spite of Professor Ziegel's view that the subject should be Consumer Credit rather than Consumer Protection, we can properly adhere to the latter title. Indeed it is wider than Consumer Credit and includes it. The subject matter of Consumer Protection is the overreaching and unfair practices by vendors of goods. Admittedly the border lines are hazy. For example some of the recent legislation deals solely with loans, and some with loans as well as sales. Loans must be considered because lending is closely tied in with the purchase of consumer goods.

## II

## ALBERTA STATUTES

The Conditional Sales Act for many years has put the vendor to his election between seizure and action (s. 19 as reenacted in 1965 c. 15, c. 13).

We have also had for many years the Debtors Assistance Act, R.S.A. 1955, c. 77, which is a vestige of the Old Debt Adjustment Act and survived the striking down of the Orderly Payment of Debts Act. It creates a Board to assist debtors in adjusting and settling their debts.

The rest of our Acts are new and of a type that most provinces have passed in the last five or six years. I now refer to them.

The Consumer Affairs Act sets up a consumer bureau to act as liaison between business groups and consumers; the Director can investigate and can require information (1969, c. 20).

The Credit and Loan Agreements Act requires the vendor in a time sale agreement and in a continuing deferred payment plan, and also the lender in a loan agreement, to provide to the debtor information as to the carrying costs (1967, c. 11).

The Direct Sales Cancellation Act allows buyers four days to terminate purchases of goods bought outside the seller's place of business (1966, c. 28).

The Unconscionable Transactions Act permits the court to relieve a borrower (not a purchaser) from unconscionable transactions (1964, c. 99). Its validity has been upheld.

Alberta has many other Acts designed to protect one of the parties to a transaction, e.g., the Securities Act and the Insurance Act. In my opinion they are outside the phrase "consumer protection" but there are Statutes which are within the phrase. The main ones are the Sale of Goods Act (in onnection with conditions and warranties), the Farm Implement Act 1967, c. 20, which was passed in Saskatchewan and Alberta at an early date because of the hard bargains which implement companies drove with farmers. Indeed s. 107 of the Land Titles Act, which says that a land mortgage cannot be included in a conditional sale agreement, is a product of the same era.

One might also include the Prearranged Funeral Services Act, 1960, c. 76, and even the Lightning Rod Act R.S.A. 1955, c. 176, and section 45 of the Alberta Pharmaceutical Association Act, 1962, c. 61, which permits a druggist to fill prescriptions by the generic name of the drug unless the prescription specifies otherwise.

The Seizures Act is also relevant for it applies to a conditional sale vendor who wants to repossess.

## III

STATUTES OF THE OTHER PROVINCES  
(excluding 1970)

British Columbia has a Consumer Protection Act 1967, c. 14, which includes direct sales cancellation, disclosure by lenders of cost of loan, and unconscionable transactions. There is also a Trading Stamps Act, R.S.B.C. 1960, c. 385.

Manitoba has long had a Trade Practices Inquiry Act R.S.M. 1954, c. 268. More recently Manitoba passed a Consumer Credit Act, 1965, c. 15, which combines our Conditional Sales Act election with direct sales cancellation. It seems that in 1969 Manitoba enacted a "Code" on the subject but we do not have it because the new revision has not arrived.

New Brunswick has four Statutes which seem to be much like Alberta's:

Consumer Bureau Act 1967, c. 5.

Cost of Credit Disclosure Act  
1967, c. 6.

Direct Sellers Act, 1967, c. 8.

Unconscionable Transactions Relief  
Act, 1964, c. 14.

Newfoundland has a Direct Sellers Act 1966, No. 86 and a Consumer Protection Act 1969, No. 36. The latter combines our Consumer Affairs Act with our Credit and Loan Agreements Act.

Nova Scotia has the following Acts:

Consumer Protection Act R.S.N.S 1967,  
c. 53.

Consumer Services Act 1968, c. 5.

Direct Sellers Act 1969, c. 5.

Installment Payment Contracts Act  
R.S.N.S. 1967, c. 47.

Unconscionable Transactions Relief  
Act R.S.N.S. 1967, c. 319.

Ontario has the usual list of recent Acts, namely:

Consumer Protection Act 1966, c. 23.

Consumer Protection Bureau Act 1966,  
c. 24.

Unconscionable Transactions Relief  
Act R.S.O. c. 410.

In addition Ontario has a Collection Agencies Act  
R.S.O. 1960, c. 58 and the Debt Collectors Act R.S.O. 1960,  
c. 89.

Prince Edward Island. I can find no Statutes.

Quebec. I can find no Statutes though I have not  
examined the Civil Code.

Saskatchewan has three of the modern Statutes, namely,

Direct Sellers Act R.S.S. 1965, c. 331.

Cost of Credit Disclosure Act 1967,  
c. 85.

Unconscionable Transactions Relief  
Act 1967, c. 86.

In addition Saskatchewan has an Agricultural Implements Act 1968, c. 1, and a Limitation of Civil Rights Act R.S.S. 1965, c. 103, which restricts the remedies of vendors under conditional sales agreements. Saskatchewan also has a Closing-out Sales Act R.S.S. 1965, c. 175.

#### IV

#### SCOPE OF STUDY

There must first be an examination of all Canadian legislation and also of the recent Uniform Consumer Credit Code in the United States. British and Commonwealth Legislation should also be examined though at the moment I know little about it.

The next step is more difficult, namely, to isolate areas which require legislation. We could perhaps get help from the government officials who administer our Acts but if we are to do a good job I think we would have to look into the practices of Loan Companies, and as Professor Ziegel suggests, the issuers of credit cards. My memory is that the McKenzie Report dealt with this subject in connection with service stations. Trading stamps which I believe are the subject of Regulations in Alberta are also relevant.

To sum up, we will have to enter on a study of the economic facts, and thus go far beyond Statutes, regulations and costs.

One factor that we cannot overlook is the Constitutional problem. I am not aware that Senator Croll's many years of work on disclosure of the costs of a loan has produced any regulation. The problem of promissory notes attached to conditional sales agreements and negotiated to a Finance Company has been much to the fore and my impression is that the Bills of Exchange Act may be amended. In the meantime the trickle of cases continues on the question as to whether the Finance Company is a holder in due course. Section 7 of the Trade Marks Act 1952-53, c. 49, is a wide prohibition of certain trade practices in connection with the sale of wares.

W. F. Bowker