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Consumer and
Corporate Affairs Canada

STRATEGIC OUTLOOK: CONSUMER BUREAU

1991 - 1994

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The purpose of this Strategic Outlook is to consider the implications for federal public policy of Canadian consumers in the domestic and international markets, leading into the years 2000. How will changes in consumer demographics, buyer behavior and organization, consumer values and lifestyle affect the marketplace and drive the federal response? What will be the new industrial structures, the markets, channels of distribution and factors to competition in Canada and the world, likely to most affect consumers and likewise prompt federal intervention? And, what are those pressures government can anticipate and how will government reasonably respond? In sum, what is that new mix of public and private good that government, from the perspective of the consumer, must fashion—and this, in consort with both business and the consumer?

While this Outlook is intended to focus on the next three years, and the MAJOR ISSUES and PRIORITIES clearly do, much of the text immediately following comments on trends and phenomena, some signs of which are already emerging. Others are now forecasted to occur over the next decade. Consumers, like consumer behaviour, like market behaviour in general evolve according to a variety of influences. If behavioural change is rarely revolutionary, it can nevertheless be said that in Canada all players in the marketplace are in a state of transition. These forces of change will have to be understood if they are to be managed.

In the Consumer Bureau, there are a certain number of assumptions or givens which we think should be stated at the outset: the first is that the Canadian market has, is and will continue to change dramatically, from a domestic to a global market and as such will be extremely volatile over the next three years; the second is that while CCA and the Bureau are committed to the functioning of the market, this Bureau has the unique federal mandate for protection of the consumer; the third is that in matters of consumer protection, the federal-provincial constitutional and legal framework has a major impact, if not limitation on the federal capacity to intervene. Federal and public expectations must be tempered accordingly.

CONSUMERS

Our experience in consumer regulation in the last years of the '80's, like the contemporary research, tell us that there are fundamental shifts in consumer interests, if not values, and that these shifts have the potential for changing the rules of the marketing game quite profoundly. The profile of the consumer in Canada is likewise changing. The challenge then for the Bureau will be to know who the Canadian consumers are.

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CONSUMER PROFILE

. Consumers are aging: in 20 years, people over the age of 50 will control 2/3rd's of the disposable income in Canada. Canada will have some of the most knowledgeable consumers in its history. Yet, statistics also show that functional illiteracy in Canada is growing--namely, one in five people. At least two very different classes of consumers will be present in the market: those demanding and using more information, and those increasingly unable to use the information in the form in which it traditionally has been presented. This situation calls into question the effectiveness of current labelling schemes as a means of informing consumers generally.

. An aging consumer population means changes to lifestyle, particularly where it relates to health, well-being, and the environment. Products and services will need to be tailored to different age groups in a maturing population.

. The Canadian consumer will increasingly derive through immigration, and from a more diversified ethnic background than from the predominantly European, with consequential effects on consumer demand.

. In addition to the predominance of seniors, the increase of women, the handicapped, visible minorities and the changing family unit will also influence the demand for new goods and particularly services: more specialized, short cuts in buying, the use of state of the art technology, convenience, reliability and the one-right-choice with no penalties.

CONSUMERS AS TRANSACTORS

. Efficiency, available technology and world wide market access will govern consumer buying: telemarketing, transborder advertising and selling, electronic crediting and debiting will promote armchair market transactions.

. Technological transaction will expose even greater and accelerated consumer concerns with privacy: the security of personal information held by financial institutions, retailers, marketers, and data-gathering and selling organizations, domestic and foreign.

. The traditional mechanisms for consumer redress will be challenged: toll-free product and service lines will proliferate, yet will there be changes to the guarantee and warranty provisions, including redress in cases of failure, such that governments will be called upon to intervene?

. Consumers will continue the more recent trend of association with issue-specific advocacy groups. Thusfar, some 135,000 Canadians continue to be members of the Consumers' Association of Canada (CAC), and reforms to the CAC indicate that it enjoys consumer support. As such, it should continue to be endorsed by the Bureau. The Grants and Contributions Program of the Bureau permits the identification of national, regional and local consumer issues, as well as the funding for their resolution independent of government. The Bureau must also encourage consumer representation in the regulatory, policy and program processes, and ensure their presence directly or through their associations.

. Will these changes in the marketplace and in the manner of consumer transaction create other vulnerable consumers or consumer groups? Apart from children and in the last year seniors, the Bureau has traditionally determined its regulatory and other program initiatives less from the perspective of identified vulnerable consumer groups than from known hazardous products or information requirements in specific sectors in the market. As such, its initiatives have largely been reactive: to existing market conditions, to influences from specific marketplace interest groups, to crises, or as incremental changes to existing legislation.

If the Bureau is to become less reactive and more anticipatory there should in principle be a link between its assessment of the most vulnerable consumers and the initiatives being planned. Children, the aging, the more illiterate, the more ethnic and women have already been mentioned as majority classes of new consumers. As majority consumers, one can expect new, representative product and service demands in the market; as majority, they may not necessarily be vulnerable, yet they will likely pose new challenges to our regulatory framework.

In addition then to these, the other largest group of consumers the Bureau should be more attentive to are those which some research have called the DEPENDENT CONSUMERS and the NON-DECISION MAKING CONSUMERS. These two groups are estimated to make up some 50% and 28% of the market respectively. They, collectively and individually, are not self reliant in their consumer decisions, are not and seek not to be informed and are unresourceful in seeking out consumer information. One can assume, therefore, that for 78% of the buying public, the traditional Bureau methods of consumer protection and information via labelling, packaging, notices, advisories, care and warning instructions, etc., all verbal and often highly technical, are not serving much purpose.

CONSUMER EXPECTATIONS

. Canadian consumers, like their US counterparts, are threatened by big business: banks, large corporations, major retail ownerships, developers etc. The "stateless corporation" will exacerbate this concern, and heighten traditional consumer expectations for public protection. And in the global market, bigness is really just beginning. Canadian consumers have traditionally sought protective regulation and enforcement. Even in periods

where public confidence in government as the protector failed, cf., Chilean grapes, mussels, prompt action by government invariably caused an almost immediate return of public confidence.

. Canadian historic, like contemporary values underlying expectations of public policy include a lesser concern with big government, especially where public health and safety are in question. If the natural focus in Canada, born of a long historical tradition, of collective social and political action has been government, it is and continues to be where government intervention is in the interests of health, security and public safety. Where the market economy fails, or risks failing, the expectation is that government will deliver the essential services. And there is no indication that Canadian expectations of government will change.

MARKET IN TRANSITION

At the same time that the Canadian consumer is changing, the market place is also undergoing phenomenal changes. The volume and value of global trade is increasing 3-4% annually. In Canada globalization can favor the consumer: more goods and services, better prices, more choice. Apart from the impact on the consumer market of the Canada/US regional trade agreement, the 1992 European common market and the new producers in the more recently industrialized countries will also boost exponentially consumer goods on Canadian markets.

Expansion in the Canadian services sector, both demand and supply, cannot be overestimated, particularly in the dynamic services area, such as in transportation and communications; in the traditional services areas, such as financial, travel, retail and personal services; and in the nonmarket services areas, such as health and social services generally. The role of CCA and the Bureau in these new service sectors will require clarification. Global corporations, strategic industrial alliances, the development of new Canadian niche markets, and transborder retailing and franchising can be expected to put new pressures on market transparency and consumer redress. For, purchasing by telephone, a product advertised on television in Ottawa, made in Bamako and distributed through France, franchised from Austin, Texas and paid for through EFT may well pose new redress challenges in the case of product failure!

And under these, quite typical market circumstances, what information can the consumer reasonably expect? Government has a role in protecting consumers from unsafe and fraudulent market practices. Further, it has had a role in promoting more than the minimal and in encouraging responsible behavior among the marketplace partners. As mentioned earlier, it is unlikely that Canadians will expect less in the future. And it is uncertain that the traditional methods will be effective. The issue becomes not only what will be the appropriate balance between consumer protection and consumer choice, but perhaps more importantly what will be the future instruments available to government for effecting protection.

From the consumer's perspective, pressures will increase for harmonization in product and service standards. A freer flow of goods ensures more consumer choice; balanced against the Canadian expectation of a zero-risk market. From industry's perspective, harmonization will promote access to export markets; balanced against a continued pressure for domestic standards, to reduce competition from imports and provide the time necessary for industrial restructuring and finding those new niche market opportunities.

One requirement of industry, as of the Bureau operating under these conditions, does seem clear: product and service standards, consumer information and protection initiatives, and new redress mechanisms must be increasingly developed, implemented and maintained through international fora, on an international basis. International standards do not negate the role for national standards, particularly in the areas of product safety, national interest, social objectives, etc. Public policy will, however, require a more coordinated, national approach to standards setting and standards direction within Canada than has been in the past.

As Canadian industry adjusts to the threat of global competition, consumer uncertainties with respect to products and services, in quality, in predictability, in availability and servicing will undoubtedly increase--as will complaints, inquiries and the demand for government assistance and intervention. Motivated also by the pressures of competition, industry will press government to enforce the existing regulatory requirements particularly with respect to imports. The Bureau can expect more pressure for sanctions and penalties, product seizures and bans, than the softer compliance approach pursued by the Bureau in recent years.

NEW CHALLENGES FOR GOVERNMENT

Government faces a market which summarily projects the following conditions: a business community in transition and often failing; a consumer, empowered with unprecedented choice yet vulnerable in new ways; an extraordinary proliferation of new and unregulated products and services; and the likely requirement of more crises management.

The major challenges for government and for the Bureau will be the reconciliation of a number of conflicting circumstances: the management of a more demanding legislative and financial agenda with little time and resources at hand; the management of an existing regulatory structure based on a domestic market, now turned global; the transformation of this regulatory structure, with an interested party at the end of every regulation, into one that is not in conflict with international standards yet is consistent with contemporary domestic policy; the transformation of domestic consultative processes into international; and the necessity for developing new regulatory responses, including the voluntary, in emerging sectors, e.g., the environment, leisure, privacy, financial services.

The complexity of the global market, the no-longer sustainable level of costs of traditional regulation, the difficulty of achieving legislative reform, and the magnitude of the Bureau's jurisdiction all suggest an accentuated favoring of voluntary codes of practice, guidelines, consensus standards etc., as alternatives to regulation.

Consensus standards require partnerships; partnerships of all the stakeholders: consumers, business and government. They require collective ownership of the problems in the marketplace as well as the development of solutions. Where the producers of goods and services are increasingly extra-territorial, the challenge then becomes to identify the stakeholders, and to get foreign stakeholders to the partnership table.

Canadian business, like consumers, have already indicated a concern with the costs of participation in the partnership role. Funding for this purpose will have to be examined.

It will undoubtedly be difficult, politically, to resist the pressure to regulate; it will be equally difficult to resist the pressure for hard enforcement, where other compliance methods would be more cost-effective but slower to effect. Again, resistance to quick fixes will be required, given the lengthier time frame predictably associated with the consensus process. And, as was mentioned earlier, consensus building will still require policies in those sectors for which the Bureau is responsible.

The Bureau's principal resource is its workforce. In recent years workload increases have demonstrably weakened our capacity to respond to, much less anticipate problem areas in the market. There will be new pressures in consumer products packaging and labelling, the environment, food and health claims areas, and with respect to standards in product safety, as well as in new service sectors.

To meet these challenges, it will be essential to manage our existing resources, such that our staff have access to the best training, professional development and technical opportunities. Equally important will be the further development and maintenance of our technical, scientific and information management facilities, if rationalized, as essential tools to our expertise and credibility in the market. For a more strategic, mobile, flexible program and inspection force cannot mean a dilution or diminution of our high quality professional capability. Paralleling the shift to the global market must be an increased exposure of our professional staff to international standards and market conditions.

More difficult to forecast is the extent to which certain of our existing statutes and regulations will become dysfunctional in the near future, and will, despite enlightened enforcement, necessitate amendment. For example, in light of the Canadian targets for solid waste disposal, will the Consumer Packaging and Labelling Act, like other CCA labelling acts, be deemed in direct contradiction? How seriously will the Hazardous Products Act conflict with a negotiated Partnership? Will the CP&LA and the marketing

practices provisions of the Competition Act conflict with the policy direction in environmental claims? What of future labelling directions, stimulated by federal environmental policy, vis-à-vis CCA responsibilities under the Food and Drugs Act? And what of consumers protection and its continuing regulatory dependency on the verbal text?

And finally, at the most aggregate level of future federal economic policy, a priority in economic reform suggests the need to articulate the position of the consumer vis-à-vis the market. What is the balance of consumer interests as they concern domestic competition, foreign ownership and competition, safety and consumer costs, protection and choice, public and private responsibility? The consumer and consumer confidence are essential to economic growth; their attitudes then cannot be other than central to an examination of economic reform.

CONCLUSIONS

Some important preparatory work has been done in the Department and in the Consumer Bureau, helpful to planning the management of the dynamic changes described above, namely: our Visions and Strategies papers on Legislative Renewal, Partnership and Consultation, and Compliance. Equally to the point are our initiatives in Management Challenge and PS 2000.

Notwithstanding what is probably a better management positioning within CCA than in many years for taking on new challenges, a number of difficult conclusions can be drawn from the above environmental forecast:

- . increased competition will force challenges to the validity of our existing regulatory system: the definition of what should be minimal protective regulation, our compliance and enforcement practices, the legitimacy of voluntary schemes under pressure etc.

- . internationalization of the firm, product and service will hinder ready identification of and access to the real marketplace partners, at time when they are most needed at the table

- . major consumer developments in the services sector in Canada will compel clarification on services within CCA vis-à-vis the provinces

- . much of the policy, legislative and management response required of the Bureau will be dependent on collaboration with other key federal departments, e.g., Environment, Health and Welfare, External Affairs, Communications, Justice, Agriculture, with the Provinces, and through international fora

. the resources available to the Bureau are extremely limited; policy and/or legislative requirements, including those in new sectors such as the environment, will have to be met from reallocated resources, now already struggling under the current workload; and related to resource difficulties, is the unlikelihood of any House time for legislative amendment or new legislative initiatives.

MAJOR ISSUES

The following may be described as the major issues facing the Consumer Bureau:

1. POLICY

a. the Government's focus on the Environmental Agenda touching both its Economic and Social themes will rebound most directly on the Bureau in the matter of environmental claims where challenges will be:

- stakeholder identification and participation
- whether it is possible to construct a policy framework and criteria for justifiable or non-justifiable product and packaging claims
- accompanying compliance approach
- infrastructure for management of a preferred voluntary code

It should be noted that while the environmental claims issue seems now the most critical of the environmentally related issues, others related to excessive packaging, environmental assessments on propellants, fire retardants, insulation, etc., are also potentials.

b. within or without the federal-provincial forum, the matter of privacy vis-à-vis the consumer should be examined: the trading and selling of consumer information, e.g., in financial matters; the consumer rights to protection against abuses of privacy, e.g., telemarketing etc.

The forecasted increase and growth in economic importance of the service sector, and the value now of the service industries to consumers will mean a major increase in consumer demand for assistance. Even now, the service industries generate the majority of complaints and enquiries from consumers. Almost all the service industry sectoral problems fall within provincial jurisdiction. Yet certain of these problems have or can expect to become national problems, e.g., automobile repairs, warranties, and as such will implicate the Minister and Bureau in a leadership function.

c. failing advancement of a federal policy in standards, domestic and international directions in areas of federal consumer responsibility need to be examined. The challenges will be:

- to ensure international standards negotiations derive from a clear domestic policy base
- to ensure domestic standards policy development takes cognizance of and is coherent with international standards development
- to encourage rationalization with a global outlook in overlapping jurisdictions where standards are involved

d. within the context of the federal Economic Reform priority, at issue is the development of the policy options vis-à-vis consumers in the market

e. regulatory reform policies will tilt the balance from traditional regulatory approach towards the voluntary. The challenges will be:

- to shift operational policies such that they lead to the development of more creative, co-sponsored communications and consumer education mechanisms
- to develop and implement a partnership strategy with the emphasis on shared responsibility
- to examine associated cost/funding implications for non-government participation

f. there is a debilitating consumer policy framework vacuum, valid for the 1990's, which policy should:

- reassess the existing consumer protection legislation and articulate the contemporary directions in product and service sectors, vis-à-vis specific groups of consumers; and this to include an assessment of the enforcement, sanctions, penalties provisions vis-à-vis a rebalancing of voluntary compliance, administrative penalties, criminal sanctions, etc.
- examine the consumer redress alternatives against the new market conditions described earlier, and this within the context of the federal-provincial jurisdiction
- articulate the contemporary shared responsibilities/partnerships among consumers, business and government
- reassess our traditional approaches to consumers for the purposes of informing and being informed, e.g., pamphlets, mail outs, advisories, labels and warnings

2. LEGISLATIVE

This section includes both legislation (Parliament), regulation (Governor-in-Council), and legislative policy activities:

a. legislative (primarily regulatory) implications arising from the FTA harmonization/equivalency provisions with respect to packaging and labelling vis-à-vis the Consumer Packaging and Labelling Act

b. legislative policy assessment and possible amendment of the Bureau's packaging and labelling legislation to meet policy and performance objectives established in the Packaging Protocol and Green Plan in respect of solid waste management and environmental conformity

c. after review of the exclusions from WHMIS by the Parliamentary Committee, it is anticipated that the Committee will call for changes to the Hazardous Products Act and regulations

d. legislative policy assessment of the HPA, related to Roles and Responsibilities, i.e., Partnerships with possible further amendment to the Act consonant with the WHMIS driven amendments

3. MANAGEMENT

a. integration and implementation of human resource management initiatives related to PS 2000 and our own Visions and Strategies Exercise in such a manner that:

- recognizes our human resources as the Bureau's greatest strength
- fosters an environment in which creativity, entrepreneurship, responsibility and initiative lead to productivity, results and rewards
- provides technical as well as developmental training, and the development opportunities necessary to carry out the responsibilities assigned
- considers career development and experience enhancement a joint management/employee endeavour
- through automation, technology, training, etc., keeps employees current with their working environment

b. assessment of the organizational, structural, resource allocation etc. of the Bureau in order to determine:

- changes appropriate to improved organizational readiness for the 1990's
- opportunities to enhance lateral, team building for project assignments

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- solutions to the management problems raised by the Auditor General
 - ways to develop and enhance the Bureau's public communication functions
- c. the balancing of human and financial resources in order to:
- maintain an appropriate level of service to the public
 - reinforce our policy/program capacity to respond to the new initiatives/challenges described earlier
 - manage the non-regulatory processes which are capable of delivering results traditionally obtained through a legislative/regulatory compliance framework.

CONSUMER BUREAU PRIORITIES

POLICY

. to develop a consumer policy framework, the most critical aspect of which is an assessment of the substance and administrative feasibility of the existing regulatory structure

LEGISLATIVE

- . the WHMIS exclusions review by the Parliamentary Committee, will undoubtedly require legislative amendment to the HPA
- . the policy assessment, vis-à-vis in particular, the implications of the Environmental Agenda, may require and/or promote further legislative amendment to existing consumer legislation

MANAGEMENT

- . implementation of corrective changes as a result of the AGO Report on legal metrology
- . rebalancing of human and financial resources

First Draft

**CCAC POLICY STATEMENT:
(THE CCAC "SPEECH FROM THE THRONE")**

July 3, 1990

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Introduction

As Canada's "Department of the Marketplace", the mission of Consumer and Corporate Affairs is "to promote the fair and efficient operation of the marketplace in Canada". This mission statement now informs and guides the day-to-day activities of CCAC. The purpose of this policy statement and the action plan contained in this document is to attempt to extend and broaden the mission's influence on government policy formulation and the decision-making of all marketplace participants in Canada. This CCAC policy statement focuses on four basic themes:

1. Need for a healthy marketplace in Canada.
2. Need to reorder the roles and responsibilities of Canadian marketplace participants in order to strengthen Canadian markets and the Canadian economic federation.
3. Importance of market-based framework law to a stronger Canadian marketplace and to promoting an entrepreneurial and innovative business culture in this country;
4. Role of market-based framework law in promoting not only greater economic efficiency but also greater fairness in the Canadian marketplace.

The statement begins with a few comments on the key factors and trends which are influencing governments together with other marketplace participants.

Factors Which Are Shaping Our Future

The 1990's will be characterized by: freer international trade; the globalization of markets for goods, services, capital and ideas; the emergence of three major trading blocs -- North America, Europe and Japan/Pacific Rim; and the efforts of large international companies (the so-called "stateless" corporations) to position themselves in the global marketplace.

Globalization is leading to increased competition among jurisdictions to keep and attract investment, as well as to demands for more compatible and better harmonized policies in trade, investment, intellectual property and

competition policy. After decades of being shielded from the full force of international competition, change will be the prevailing paradigm of the 1990's for Canada. Canadian corporations, like those in other countries, are restructuring their operations at an increasing rate in response to global developments. Similar to business, national governments will need to become internationally competitive, and will be judged more and more on the value and quality of their outputs not merely good governance.

During this period of intense structural adjustment and stronger competition in the domestic market, the Canadian economy likely will be growing at a much lower rate than in the recent past, placing further competitive pressures on marketplace participants in Canada.

Why a Healthy Marketplace Is Important

In a period of intense international competition and structural adjustment, a Canadian marketplace which functions fairly and efficiently for the benefit of all Canadians takes on critical importance. The marketplace is where the Canadian economy becomes a practical reality for the Canadian people, where we establish our standard of living and quality of life and where we generate the savings plus the physical and human capital needed to ensure Canada's future prosperity.

The marketplace is where business, labour and consumers come together to decide where to invest and work, what goods and services to produce and what products to buy. The domestic marketplace is also where many Canadian companies first encounter international competition and the place where they test their ability to compete in the global market. If the Canadian market is not functioning properly, Canadians will not develop the skills and practical experience or produce the products, services, ideas, technologies and marketing techniques needed to successfully penetrate foreign markets.

The marketplace is also the mechanism used by governments to influence the future direction of the Canadian economy, both in the near term through fiscal and monetary policies and the longer term through structural adjustment and longer-term framework policies. If markets are not functioning properly, the signals sent by governments will not have their intended effects.

A healthy marketplace can also be a strong force in unifying the Canadian economic federation. Healthy Canadian markets, supported by fair

and effective marketplace rules, encourage the flow of goods, services, investment and people among Canadian regions, and promote the development of voluntary, mutually beneficial strategic alliances and other business arrangements among Canadian companies, large and small, in all parts of the country. Just as global markets and economic interdependence are making obsolete the international political system of the post-war era, stronger markets and economic integration can help to reduce political and cultural barriers and frictions within Canada.

The Domestic Consequences of Neglecting the Marketplace

Over much of the past forty years, Canadian governments have neglected the health of the marketplace in pursuit of other economic and social goals. The domestic consequences have been:

- Interprovincial barriers to trade which have further fragmented Canada's small geographically dispersed market.
- Reduced mobility of labour, capital and other factors of production between Canadian regions.
- Fewer business links between firms in different parts of Canada.
- Lower productivity growth, greater government intervention, and a larger number of regulated sectors, than many of our trading partners.
- An inability to achieve the economies of scale in production, marketing and management needed to compete successfully with foreign producers.
- A corporate culture which prefers a "comfortable" market position over fierce competition for market share.

The ultimate consequence of these impediments has been a lower standard of living for all Canadians and probably greater disparities in income among Canadian regions and socioeconomic groups. The marketplace therefore has not been allowed to play its full role in unifying the Canadian economic federation and Canadian society.

The International Consequences of Neglecting the Marketplace

Neglecting the marketplace has also had serious international consequences for Canada. There is a growing body of evidence and consensus among economists (led by Michael Porter) that intense rivalry in the domestic marketplace is an essential condition for international competitiveness. Monopolies and oligopolies, which are protected from competition by international and internal barriers and by government regulation and subsidies, do not have the tools and entrepreneurial drive needed to compete in the international marketplace.

A competitive Canadian market is critical to Canada's international competitiveness. A competitive domestic market requires:

- Low (or non-existent) barriers to trade, internationally and domestically.
- Stable macro policy framework.
- "Internationally competitive" Canadian governments.
- Effective business framework legislation which provides a level playing field for all marketplace participants and a market environment which supports entrepreneurship, innovation and competition.

In short, Canadian international competitiveness requires a strong domestic marketplace. In this regard, Canada is at a competitive disadvantage. Except for those sectors which are under the direct discipline of the international marketplace, competition often is less intense and some industries are less efficient in Canada than in other countries.

Limited competition in protected domestic markets and industries hurts Canadian international competitiveness in at least three ways:

- Canadian exporters and companies which compete against imports in the domestic market, cannot be competitive against foreign producers when they are forced to purchase services and other intermediate inputs from Canadian suppliers at prices well above the norms in our trading partners.

- Non-tradeable sectors which are highly protected compete unfairly with Canada's international sectors for labour, capital, and other factors of production, further driving up the costs and lowering the productivity of Canadian exporters and of companies competing against imports in the Canadian market.
- Protected companies and industries do not develop the tools to compete successfully. Lack of experience and know-how with strong competition particularly hurts the service and other sectors which traditionally supplied protected local markets but now must face new competition as a result of the FTA and globalization.

Because of growing economic interdependence nationally and internationally Canada's international sectors can no longer afford the cost burden imposed by other economic activities which traditionally have been protected from the discipline of the marketplace.

Lack of intense competition at home may be one reason why Canadian exports continue to be dominated by primary commodities, resource based manufactured goods and managed trade products under the Canada-U.S. autopact. Without the stimulus provided by intense domestic competition, new export strengths have been slow to emerge in Canada.

Recent Progress and the Future Challenge

Since 1984, there has been considerable progress in improving the health of the Canadian marketplace through getting the macro framework right and removing barriers to growth.

The government also started the difficult process of reforming Canada's portfolio of business framework legislation through: the substantive amendments to the Competition, Copyright and Patent Acts; tabling intellectual property legislation to protect plant breeders' rights and integrated circuits; and launching the process of financial sector reform.

However, greater progress has been made on the international than on the domestic front and many businesses and sectors have been slow to adjust to global pressures and realities. Much remains to be done.

Accordingly, the development of a stronger marketplace within the Canadian economic federation is a major challenge facing Canadian governments and other marketplace participants in the coming years. Markets must work effectively for Canada's broader economic and social goals to be realized. As the Eastern European experience indicates, a strong, effectively functioning marketplace cannot be taken for granted. Once lost, it can take years and perhaps decades to rebuild.

A stronger domestic marketplace does not require a major change in policy direction. Rather, it requires that the federal government remain on the course established in 1984 and ensure the framework continues to be right in the areas of deficit reduction, international market access through the FTA and the GATT, reduced government intervention and privatization. At the same time, the focus should move from macroeconomic policy down to other parts of the framework, including the modernization of framework law and other measures to strengthen the market and support marketplace fairness. The latter measures include the establishment of a better "division of labour" among marketplace participants.

Develop New Consensus on Roles and Responsibilities

A stronger Canadian marketplace requires that the federal government increase its efforts to improve consultation mechanisms, develop partnerships, and reorder roles and responsibilities among marketplace participants. These efforts are needed in order to: build support behind the government's economic policy agenda; strengthen public trust in government institutions, and; promote cooperation, voluntary compliance, partnerships and consumer/business empowerment as a mutually beneficial alternative to government regulation.

A new consensus on marketplace roles and responsibilities is also needed to remove conflicts and duplication, and reallocate responsibilities in order to develop a better "division of labour" among, and achieve the shared objectives of, key marketplace participants: the federal government, provincial governments, the business community, consumers, labour unions, non-profit groups, etc.

Based on the need to reduce the federal deficit and the accumulated experience, both good and bad, of the past 40 years, it is now clear that the federal government can no longer be all things to all people. Some issues and concerns are better addressed at the provincial and local levels, using

resources which are supported in part by equalization payments and other federal transfers. Other concerns are better addressed by the private sector and by community groups working at the local level.

Because of CCAC's extensive experience with consultation processes and building effective alliances and partnerships with the private sector, this department is prepared to play a leading role in federal efforts to develop a new consensus on marketplace roles and responsibilities. However, the development of new partnerships, roles and responsibilities must be backed up by a strong legislative base and the resources needed to effectively enforce framework legislation when required.

Modernization of Framework Law

Modernizing framework law is another critical component to strengthening the Canadian marketplace. Legislative reform is badly needed to: foster a more "competitive" business culture in Canada; enhance Canadian international competitiveness; promote international harmonization of framework laws; and help to maintain Canada's position in international capital markets. Modernizing our framework laws will also better protect Canadians from unfair competition and unsafe products sourced both in Canada and other countries; and reduce the need for sector specific regulation and expensive support programs.

Market based framework law is an integral part of the "national infrastructure" which supports Canada's free market economy. Framework law places all marketplace participants in all regions of Canada on an equal footing, supports order, fairness and confidence in Canadian markets, and is an important unifying force in the Canadian economic federation. Business framework legislation supports the entrepreneurial efforts of all companies regardless of size, industry, product and location.

Market based framework law also has an important international dimension through promoting international economic integration and the development of the international trade routes of the future based on flows of capital, information, ideas, technologies and services. Canada is supporting the harmonization of framework law through our active participation in the TRIPs and WIPO negotiations and discussions at the OECD, and by discussing compatibility and cooperation regarding the structure and administration of competition, consumer, corporate and securities statutes with our international trading partners starting with the United States.

Framework laws which are transparent and are consistent with current business developments and commercial practices reduce the administrative costs of government as well as the compliance costs of the private sector. For all of these reasons, governments, legislatures and the business community need to invest the time and effort required to ensure that business framework laws stay up-to-date and consistent with current commercial practices.

Over the rest of the current mandate of the government, legislative reform should focus on:

- Completing financial sector reform.
- Reform of the Bankruptcy Act including wage earner protection and proposals to promote commercial organizations.
- Completion of Copyright reform.
- Intellectual Property Improvement Bill which would bring together in one bill needed changes for which there is agreement for early action, and which though important in themselves do not require separate major bills.
- Enabling legislation to respect Canada's international commitments arrived at through the TRIPs and WIPO negotiations.
- Amendments to the marketing practices provisions of the Competition Act.
- Substantive amendments to the Canada Business Corporations Act in the areas of insider trading and takeover bids.
- Development of amendments to the Hazardous Products Act, WHMIS, and other consumer legislation.

As well, greater consideration should be given to developing regulatory changes and policy/administrative guidelines in order to enhance the effectiveness of statutes while reducing the need for substantive legislative change.

Other Measures to Support a Stronger Marketplace

Legislative reform should be supported by other measures of the federal and provincial governments, needed to support a stronger domestic marketplace and reduce the protection now afforded to many Canadian sectors. These measures would include:

- Agricultural reform to help lower consumer prices and support the international competitiveness of Canada's food processing industries.
- Further harmonization of business and consumer law between the federal and provincial governments as well as among provincial governments.
- Stronger enforcement of the Competition Act and other statutes designed to promote a stronger Canadian market.
- Strengthened intellectual property awareness initiatives, including automation and patent information exploitation in order to: enable innovators to better protect their rights; encourage patented users to better exploit the available technologies; and improve public understanding of IP rights.
- Improved mechanisms for developing and implementing standards policies in Canada.

Federal and provincial governments should reduce and ultimately remove interprovincial barriers to flows of goods, services, capital and people. Particular emphasis should be placed on the beer industry, the professions and government procurement. Efforts to reduce interprovincial trade barriers should be supported by the further reduction of international trade barriers which traditionally have sheltered inefficient Canadian industries from foreign competition.

More generally, governments should remove regulatory and other barriers to the operation of fair and efficient Canadian markets, and apply market-driven instruments over direct regulation wherever possible, such as, in achieving the government's environmental objectives.

Support for Innovation, Entrepreneurship, and Technology Development and Diffusion

Market based framework laws have two additional dimensions which are the subject of the following sections. These laws not only support order and fairness in the marketplace but also support entrepreneurship, innovation and technology development and diffusion.

Modernization of patent, copyright and other intellectual property (IP) laws stimulates the development of new technologies, goods, services and cultural products for the marketplace and ensures that inventors and creators are adequately rewarded for their efforts. The Patent Information Exploitation Program and other IP information systems such as the NUANS data base of trademarks, tradenames and company names, make important technological and other business information readily available to individual inventors, big and small businesses, and to other IP users everywhere in the country and in all sectors of the economy. Patent information automation also facilitates Canadian access to similar information in other major industrialized countries.

The IP statutes and the Competition Act promote strategic alliances through licensing agreements, marketing agreements, specialization agreements, and other forms of business collaboration within Canada and between Canadian and foreign firms. Increasingly, these alliances involve smaller and larger enterprises and therefore provide opportunities for smaller firms to capitalize on the opportunities provided by freer trade and globalization.

After amendment, the Bankruptcy Act will provide an effective mechanism to support the commercial reorganization of businesses which find themselves in temporary financial difficulties. The Competition Act, consumer statutes, and standards legislation and policies promote the development of a level playing field which encourages new entrants into the marketplace and allows large and small companies to compete on more equal terms in the marketplace.

Many of the legislative reforms proposed earlier are designed to support the emergence of a more innovative and entrepreneurial business culture in Canada.

Support to More Vulnerable Groups

Market based framework laws also assist the more vulnerable groups in Canadian society by setting rights, standards, obligations and rules which are relevant to all marketplace participants.

Consumer legislation, such as the Hazardous Products Act and the labelling and packaging acts and regulations, are particularly geared to the needs of the young, the aged and people with limited literacy skills. In addition, consumer legislation and the marketing practices provisions of the Competition Act are available to protect consumers from fraudulent claims by vendors.

Bankruptcy law helps consumers and small businesses who are in financial difficulty and ensures that all creditors are treated fairly in accordance with well recognized rules. Intellectual property information programs make information on the newest technologies available to individual inventors and small businesses everywhere in the country. Corporate and securities laws provide protection to minority shareholders in the area of financial disclosure, voting procedures, takeover bids as well as insider trading and other trading abuses.

Proposed legislative reforms -- for example regarding wage earner protection and commercial reorganization under the Bankruptcy Act and insider trading under the Canada Business Corporations Act -- are particularly directed towards increasing the sensitivity of Canada's market based framework laws to the needs of Canada's more vulnerable citizens.

Better protection for the vulnerable is needed not only to achieve the government's fairness and equity goals but also to promote economic efficiency. If the vulnerable are not protected, public confidence in the integrity of the market will be undermined and dissatisfied parties will seek interventionist solutions to their problems, solutions which could do great harm to the efficient functioning of the marketplace.

Special Initiatives to Support Marketplace Fairness

In addition to legislative reform, other well targeted initiatives are needed to promote fairness in the Canadian marketplace.

Consumers will continue to place pressures on governments to protect them from unsafe products, misleading labelling and packaging and other fraudulent practices. Those demands could readily expand as globalization, freer international trade and structural adjustment bring new products, new participants and new ways of doing business into the Canadian marketplace. Concerns about the environmental claims on products, and the emergence of two very different types of consumer:

- the knowledgeable consumer demanding more product information, and
- the consumer with limited literacy skills who cannot absorb the currently available information;

further add to the volume and complexity of demands for consumer protection.

Governments will need to consider special measures to support marketplace fairness in a manner which also promotes marketplace efficiency and does not add to the compliance costs of industry and the administration costs of government. Measures could be considered in the following areas:

- Development of a comprehensive consumer policy framework, including a strategy for legislative reform, to be contained in a "Green Paper" on the consumer of the future which could lead to a national conference on the consumer.
- New mechanisms to promote the sharing of responsibilities among consumers, business and government and to better "empower" consumers to protect their rights through private actions.
- Mechanisms to better inform consumers:
- Better protection for the vulnerable consumer: the young, the aged and the functionally illiterate through improved information and other initiatives.

Two emerging issues will also need to be addressed: the growing concerns with privacy issues in consumer market transactions; and the better integration of environmental considerations and consumer/business concerns.

Links to Other Policies and Programs

Maintaining the right macro framework and strengthening the domestic marketplace facilitate selective interventions in priority sectors and policy areas. Because the framework is in place, these initiatives can be well targeted and are more likely to be cost-effective and to achieve their objectives. Areas for selective interventions include:

- Innovation, Industrial, and Science and Technology Policies: ISTC, Science Council
- Trade Development: EAIT, EDC
- Foreign Investment: Investment Canada, ISTC
- Regional Development: ISTC, WED, ACOA
- Human Resource Development and Labour Adjustment: CEIC, Labour Canada
- Environment: DOE
- Telecommunications: DOC
- Resource Sector Initiatives: Agriculture, DFO, EM&R, Forestry

These policy and program initiatives, and any new expenditure programs which are needed: should be consistent with and supportive of market trends, Canada's long term comparative advantage, and current commercial practices; should be driven by market not government imperatives; and should offer strong potential for success based on past program and policy performance. This approach will allow replacement of existing more "across the board" programs by fewer more targeted, higher profile initiatives in a manner consistent with the new roles and responsibilities and the better "division of labour" among marketplace participants.

The economic policy initiatives of CCAC and other federal departments should be complemented by better coordinated research and policy development. We have available to us a growing body of knowledge on Canadian international competitiveness, Canadian domestic markets, and the

forces of globalization, freer international trade and the growing prominence of the international ("stateless") corporation. This body of work includes the analysis conducted for the Macdonald Royal Commission, the current work of Investment Canada, the Economic Council, the Science Council, ISTC, CCAC and other federal and provincial agencies, and the expanding number of research reports produced by the Canadian academic community.

What is needed now is to update the Macdonald analysis, build on and better coordinate and disseminate the current work of federal and provincial agencies and the academic community, fill gaps in the analytical framework, and make a more concerted effort to develop the policy implications from this research.

Future research efforts could be focused on:

- Better developing the links between domestic competition and international competitiveness.
- Better understanding the links and the need for coordination between macro and microeconomic policy.
- Application of market instruments in place of regulation.
- Policy and other initiatives needed to increase competition and efficiency in Canada's traditionally protected sectors.
- Expanded research program in Law and Economics, focusing on the importance of a modern statutory framework of business laws for Canadian economic performance.
- Analysis of the implications and impacts of current business framework laws for: smaller versus larger firms; different Canadian regions; and various socioeconomic groups.
- Links between competition policy and other economic policy initiatives of government, for example: industrial, trade, intellectual property, innovation, science and technology, investment and regional development policies.

- Implications of the international, "stateless" corporation for Canadian competitiveness, investment and technology flows, corporate restructuring and domestic competition.

Federal agencies will want to explore both formal and informal mechanisms to facilitate the flow of information and to coordinate, share and participate in economic research and subsequent policy development and initiatives.

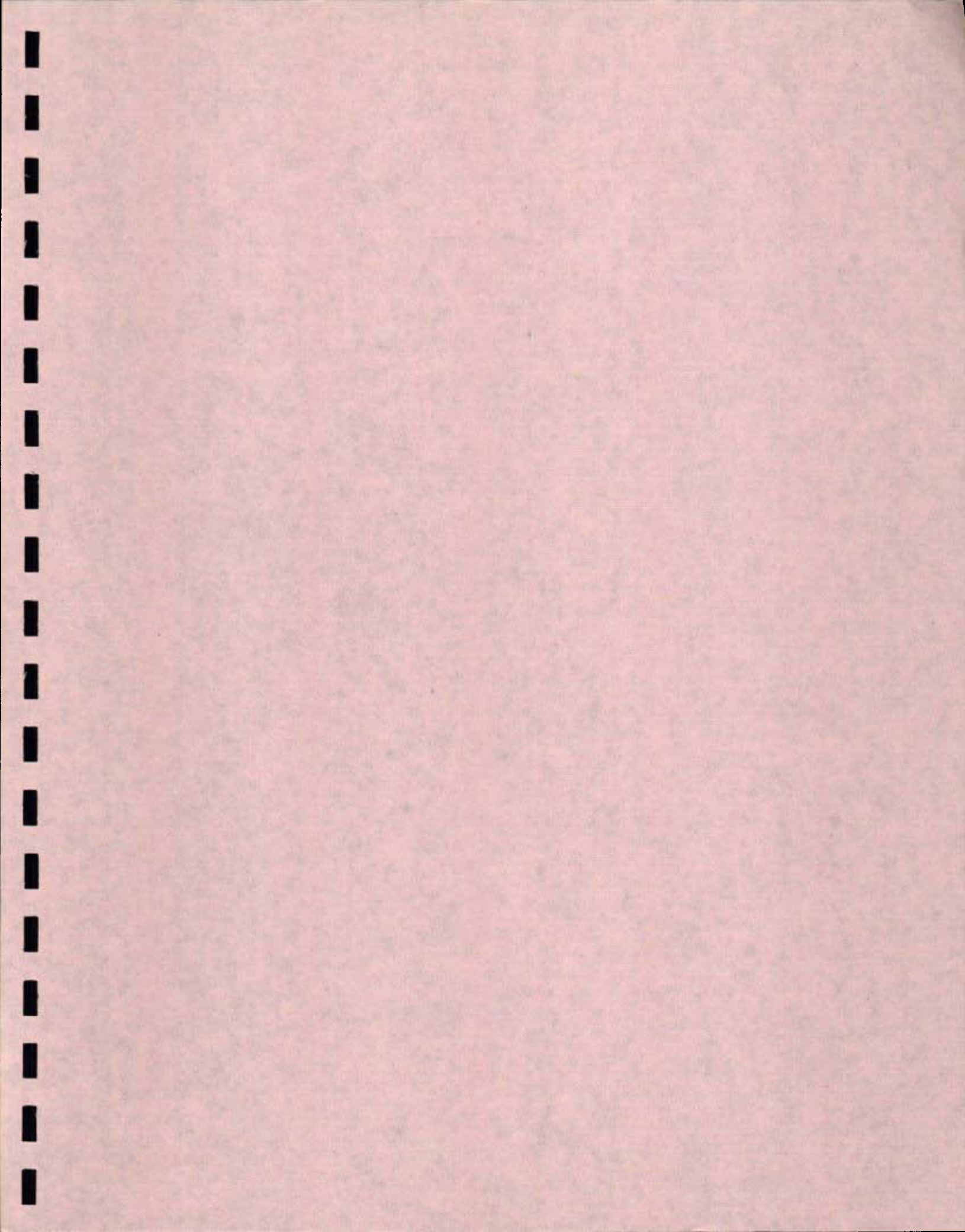
Concluding Comment

The plan of action proposed in this document encompasses an ambitious and multi-faceted set of policy and program initiatives designed to:

- strengthen the Canadian domestic marketplace;
- encourage Canadian innovation, risk-taking and international competitiveness;
- promote marketplace fairness;
- reorder marketplace roles and responsibilities;
- support the efforts of other federal departments, provincial governments, and other marketplace participants;
- build on the post-1984 successes in ensuring the macro framework is right.

The proposed plan of action supports equally the efficiency and fairness goals embodied in the April 1989 Speech from the Throne and the CCAC Mission Statement, and recognizes the importance of a healthy domestic marketplace as a powerful unifying force in the Canadian economic federation.

Implementing the plan of action will not require substantial financial resources. However, it will require that Canadian governments invest the time, effort and commitment needed to reform market based framework laws, remove impediments to a healthy domestic marketplace, and develop a new consensus on marketplace roles and responsibilities. Implementation will also require sustained support and informed contributions from all segments of Canadian society: business, labour and non-profit groups.



CONSUMER REDRESS IN THE MARKETPLACE

Consumer Policy and Services Branch
May 1990

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1.0 PURPOSE AND BACKGROUND

The paper will define problems in redress, draw conclusions and note some policy questions for this Department's role in redress in the marketplace.

The question of access to justice, i.e. consumer redress, was discussed in some detail in work carried out by Professor Belobaba for the Department¹. At the same time, the Standing Committee on Consumer and Corporate Affairs released its report on misleading advertising and recommended that the Department should be more active in the provision of various forms of redress including, for example, class actions and administrative remedies². The following review flows from the recommendations in these two reports.

The question of adequate redress also formed part of the early articulation of roles and responsibilities within a set of marketplace principles.

It should be noted that there have been two other reports undertaken in the Department relative to aspects of consumer redress³.

The subject of redress has also been studied within the OECD, specifically with reference to consumer transactions in financial markets and more recently in a more general context.

2.0 REDRESS DEFINED

Redress can be categorized into two broad areas - i.e. preventative and remedial.

In this paper, consumer redress refers to remedial measures provided to consumers for injury or loss, such as monetary compensation, recall and repair, replacement, and rescission of the contract. This is distinct from preventative actions directed towards business, which have as their goal the general public good, such as prosecution, administrative remedies (injunctions, affirmative disclosure), regulatory (mandatory standards, testing requirements) and voluntary agreements.

3.0 PREVENTATIVE AND REMEDIAL ACTIONS

The following table summarizes the form of remedies under each category.

PREVENTATIVE ACTIONS	REMEDIAL ACTIONS (CONSUMER REDRESS)
<p>(directed towards business)</p> <ul style="list-style-type: none"> - Prosecution - Administrative Remedies <ul style="list-style-type: none"> - injunctions (eg. cease & desist orders) - affirmative disclosure - public interest tests - Regulation <ul style="list-style-type: none"> - mandatory standards - testing requirements - mandatory notification - Voluntary Agreements <ul style="list-style-type: none"> - voluntary standards - pre-clearance for advertising 	<p>(directed towards consumers)</p> <ul style="list-style-type: none"> - Damages - Recall and repair - Replacement - Recision of contract - Others
<p><u>Options</u> (not exhaustive)</p> <ul style="list-style-type: none"> - Compliance Programs - Penal Sanctions - Educational and Information - Voluntary codes/standards 	<p><u>Options</u> (not exhaustive)</p> <ul style="list-style-type: none"> - Individual Court Actions <ul style="list-style-type: none"> - Small Claims Court - Class Actions <ul style="list-style-type: none"> - substitute actions - Legal Aid/Assistance - Administrative Tribunals - Ombudsman - Mediation <ul style="list-style-type: none"> - government - BBB - Arbitration Schemes - OMVAP - Business-operated complaint-handling - Insurance - Warranties - Media action lines - Others

The intent of this paper, then, is not to ignore the significance of preventative measures as documented in the compliance studies and the recent VAS exercise and the role that the Department can play in generating new and innovative procedures in a changing marketplace⁴. Rather, the focus is on the effectiveness of existing remedial actions (redress) available to consumers and to examine what role, if any, this Department might play in broadening the range of remedies appropriate to the changing marketplace.

4.0 OVERVIEW OF PROBLEMS WITH EXISTING REDRESS

The problems with existing consumer redress mechanisms are well-documented⁵. Generally consumers have rights to compensation founded in tort or contract liability and must pursue their remedies through the traditional court system. Small Claims Court systems were established to enhance accessibility by ordinary individuals without the necessity of legal representation or complicated rules of procedure. However, consumers have found the court system in general to be too expensive, too time-consuming and too complicated to be truly effective⁶. A great deal of criticism has been levelled at the lack of workable class action procedures, which are particularly suitable to consumer complaints⁷. Claims in individual consumer cases tend to be for small amounts of money, making the pursuit of a legal action by an individual cost inefficient.

Mediation and arbitration programs are available to some consumers but are limited to warranties offered by particular industries - for example, motor vehicles or housing warranties.

In the federal sphere, the establishment of effective consumer redress mechanisms has been complicated by the jurisdiction of the provinces over the administration of justice within the province and over property and civil rights. The Department has tended to rely on the criminal law power as the basis for enacting federal consumer legislation, and consequently the enforcement provisions have generally been through criminal prosecution for violations of the statutes. The Department's authority in law penalizes violations but does not compensate individual consumers (as illustrated in the left hand column of the table on page 2).

5.0 THE ROLE OF THE DEPARTMENT

The history of consumer redress in Canada is tied to the evolution of the consumer interest as expressed in the common law. One aspect of the consumer interest leading to the creation of the Department in 1967 was a role for the federal government in consumer redress. Subsequently, this need was reflected in the creation of provincial Ministries. At its inception, this Department functioned as a court of last resort for individual consumers who, at that time, lacked protection (preventative actions) in federal or provincial statutes. The remedial efforts of the Department (Bureau of Consumer Affairs) were expressed in

the promotion of its Box 99 complaint handling services and the resultant mediation of individual complaints⁸. The service has been characterized as "paternalistic" in that it operated on the assumption that consumer complaints had a de facto legitimacy and that business was de facto responsible for righting real and often unsubstantiated wrongs.

The Department, historically, has also played an effective, if infrequent, role in seeking redress by advocating the consumer interest under section 4 of the Department of Consumer and Corporate Affairs Act. For example, the Department was able to overcome the public statements of certain North American motor vehicle manufacturers and convince them to introduce extended durability guarantees in Canada that they had originally intended to introduce only in the United States.

In summary, the historical involvement of the Department in redress has focused on the elements of individual complaint mediation and on a limited number of broad based advocacy initiatives.

6.0 EXAMINATION OF REDRESS MECHANISMS

The mechanisms that provide current remedial actions can be categorized into four separate groupings, as they appear in the table on Page 2. These include the judicial system, the application of administrative remedies, a range of mechanisms less formal than the judicial system such as mediation or arbitration and finally a variety of disparate and unrelated actions involving guarantees of economic compensation, such as insurance, or resolution through various independent means of public pressure such as media attention.

6.1 The Judicial System

In general terms, redress is available through the pursuit of individual court actions, including Small Claims Courts, the use of class actions in Québec or, in the case of disadvantaged consumers, the use of the legal aid/assistance programs to gain access to the courts. Redress through the judicial system is increasingly characterized by escalating costs and lost time (opportunity costs). There is currently public pressure on the provinces rather than the federal government to alleviate delays in the existing judicial system.

Difficulties have arisen with the use of class actions in provinces where no detailed legislative scheme respecting their commencement and conduct exists (i.e. any province but Québec)⁹. The absence of an effective class action law has meant that people with small, perhaps uneconomical, claims have not brought them into the justice system¹⁰. In 1983, the Supreme Court of Canada interpreted the existing Ontario class action procedural rule in a manner which greatly reduced its scope. (Naken V. General Motors of Canada Ltd., the Firenza automobile case¹¹). The Court held that the case should never have come to trial on

the basis that the damages suffered by the Firenza owners were not truly identical and thus the plaintiffs did not constitute a class under existing rules of court¹².

Significant events of recent years have highlighted the utility of class action lawsuits; examples include the Mississauga train derailment, the Dalkeil shield case, and consumer losses resulting from health club bankruptcies¹³. In particular, it has been recognized that class actions would be appropriate in environmental cases¹⁴. The fact that class action remedies are theoretically but not practically available (outside Québec) creates a dilemma for consumers and results in an inadequate situation¹⁵.

With respect to class actions, Ontario has recently announced its intention to institute the necessary changes in court procedures to alter, fundamentally, the current narrow judicial definition of what constitutes a class of consumers and thus those matters the courts in Ontario and elsewhere will hear. Québec, under the Civil Code, has long accepted class actions. However, the process of altering current practices in Ontario, and elsewhere, is likely to arouse strong opposition from the manufacturing and services sector, as evidenced by previous discussions in the early 1980's arising from recommendations made by the Ontario Law Reform Commission on instituting provincial class action procedures.

The interest of the Department in the effectiveness of the judicial system has been academic with respect to class actions¹⁶. The Bureau of Competition Policy has previously given consideration to the inclusion of class actions under the then Combines Investigation Act utilizing the federal court system. The matter was dropped in light of concerns about the extent of federal authority in trade and commerce¹⁷. The Bureau of Consumer Affairs also developed a position paper on changes to class action in a review of consumer redress conducted in 1983. Further action was not undertaken¹⁸.

With respect to individual court actions the Department encourages individual consumers to seek redress, particularly when the matter in dispute has a monetary value that comes within the monetary limits established by individual provinces for awards in the Small Claims Court system.

In cases that potentially involve the use of other courts, the Department suggests that individual consumers seek advice on the cost of obtaining a settlement. It is all too likely that the cost may exceed the value of the matter in dispute and involve extensive delays.

Motor vehicles, which can represent the second most expensive purchase by consumers, constitute one of the most prevalent areas of consumer complaint. Complaints often need to be settled within the judicial system. The costs associated with a settlement may exceed the value of the vehicle, unless the court

awards costs. With the exceptions of Ontario and Alberta, where provincially sponsored motor vehicle arbitration programs are in place, effective redress for some important matters, such as the quality of motor vehicles and the quality of new homes, may not be available.

6.2 Alternatives to the Judicial System

There is, increasingly, an interest in alternatives to the judicial system as a means of providing redress. In other countries, such as the United States, there is a body of experience that has some applicability in Canada¹⁹. What follows is a review of alternatives and a summary of the Department's likely interests.

6.3 Administrative Tribunals

Administrative tribunals which function as quasi-judicial bodies can be empowered to grant remedies such as damages, refunds or repair, or replacement to individual consumers. Other remedies might include the provision in specific statutes administered by the Department of the right to private enforcement, whereby any consumer who has suffered damage for an action that was contrary to consumer legislation could sue and recover damages as well as the cost of investigation using the criminal conviction as evidence.

There has been some pressure/political interest directed at the Department to expand the means by which consumers receive redress²⁰. However, such remedial action does represent a shift away from what has been the Department's primary focus on preventative actions. It could also lead to accusations of ad hoc experimentation, and expose the tribunal/Department proceedings to constitutional challenges. There is also the possibility of increased costs to the Department in the operation of such tribunals.

6.4 Individual Complaint Handling

The business community, generally, developed a new attitude towards complaint handling during the 1980's. Recognition of the impact of effective complaint management on sales and profitability has been characterized by the growth of consumer affairs departments in large business organizations²¹. The Department has encouraged, and continues to encourage, business to recognize its self-interest in complaint handling and the importance of customer satisfaction linked to quality and service.

Since the late 1970's this Department has reduced its role in complaint handling as a result of an agreement with the provinces to withdraw from mediating matters that fall within provincial jurisdiction. In the early 1980's, the Department, the Better Business Bureau and the provinces were able to document a significant shift from complaints to enquiries in the individual

requests for assistance reaching the Department. A similar analysis cannot be undertaken today because we do not advertise or solicit and therefore it is mostly by chance that letters reach the Department. The consumers who complain to governments are not seen as representative of consumers generally and the Department no longer sees complaint data as a reliable basis for policy development and program activity²².

6.5 Ombudsman

Canada's experience in consumer redress with the ombudsman or referee concept is non-existent. Other jurisdictions, such as New Zealand and the United Kingdom have instituted the office with mixed success. New Zealand has eliminated the Office of the Ombudsman as the final arbiter in electronic funds transfer (EFT) disputes. Too few complaints were reaching the Ombudsman for settlement. The EFT Code of Practices has proven effective at providing effective consumer redress. This mechanism can be applied in, for instance, providing redress in federally regulated industries such as banks and transportation companies.

6.6 Mediation and Arbitration

Mediation and arbitration are two other models for consumer redress. Mediation involves the utilization of a trained neutral third party to assist the parties in arriving at a solution acceptable to both parties. The procedure is voluntary and confidential. Arbitration is more formal and more complicated as described below. Certain mechanisms often referred to as arbitration would not fall under a strict classical definition of that term (i.e. a private, confidential, binding procedure voluntarily entered into in which both sides present their case at an oral hearing). The following definition of arbitration appears useful:

...an adjudicatory process, whether private or public, by which parties either agree to submit or are compelled to submit any legal, factual, or potential dispute to a neutral person or persons, not directly connected to the courts, whose function is to receive submissions thereon and to resolve the dispute²³.

There may be an oral hearing or the procedure could be conducted entirely in writing. Arbitration mechanisms, or variations thereof, appear to have the best potential among alternatives to the judicial system for consumer redress.

The experience of the federal government in the use of mediation and arbitration is extremely limited. The matter is considered to fall within provincial jurisdiction. Arbitration exists in all provinces and could be applied to consumer disputes as in the case of Ontario in cases of motor vehicles and new home warranties.

The interest of this Department in mediation and arbitration has largely been academic. A 1983 review of redress mechanisms in Canada and the United States recognized the appropriateness of such procedures to the Canadian marketplace²⁴. Officials of the Bureau of Consumer Affairs have explored the adaptation of Ontario's motor vehicle arbitration with officials of other provinces. The matter of motor vehicle arbitration was included as an agenda item at a meeting of Ministers responsible for Consumer Affairs. There was no decision taken and the matter was dropped.

6.7 Other Redress Mechanisms

Other forms of redress are available to consumers. These mechanisms are intended to ensure redress should consumers encounter problems and include insurance, extended warranties, and warranties.

Consumers may also be able to obtain redress by involving the media in a public representation of the matter requiring, in the consumer's mind, some form of redress such as action-line columns.

The Department has no direct role with respect to insurance, extended warranties and warranties. On the other hand, the Department has advocated the consumer interest with the media and used this attention to secure redress in, for example, refunds for travel packages misrepresented by companies operating from the United States. Opportunities for similar activity in the media will occur from time to time.

7.0 CONCLUSIONS

Primary responsibility for instituting most aspects of consumer redress rests within provincial jurisdiction. This includes for example changes in class actions and the items described in the table under compensation remedies.

For the federal government, changing marketplace conditions, particularly the globalization of the marketplace raise questions of the need for extra-jurisdictional agreements that will assure the availability of redress on questions of safety and fairness.

In reviewing its legislation, the Department which has made preventative actions paramount, has the opportunity to consider the need for further innovative preventative and remedial actions.

8.0 POLICY QUESTIONS

- i) whether as we review Bureau legislation, consideration should be given to remedial as well as preventative remedies;
- ii) whether to exert leadership under the federal trade and commerce powers in pursuing the matter of class actions;
- iii) whether to exert leadership in pursuing alternative dispute resolution mechanisms such as the ombudsman concept, in federally regulated industries such as the chartered banks.
- iv) whether to advocate the development of business codes of conduct which would include provisions for effective and meaningful redress to be provided by business;
- v) whether to exert leadership in pursuing the negotiation and development of redress mechanisms to deal with inter-provincial and international problems such as credit card fraud and telemarketing practices.

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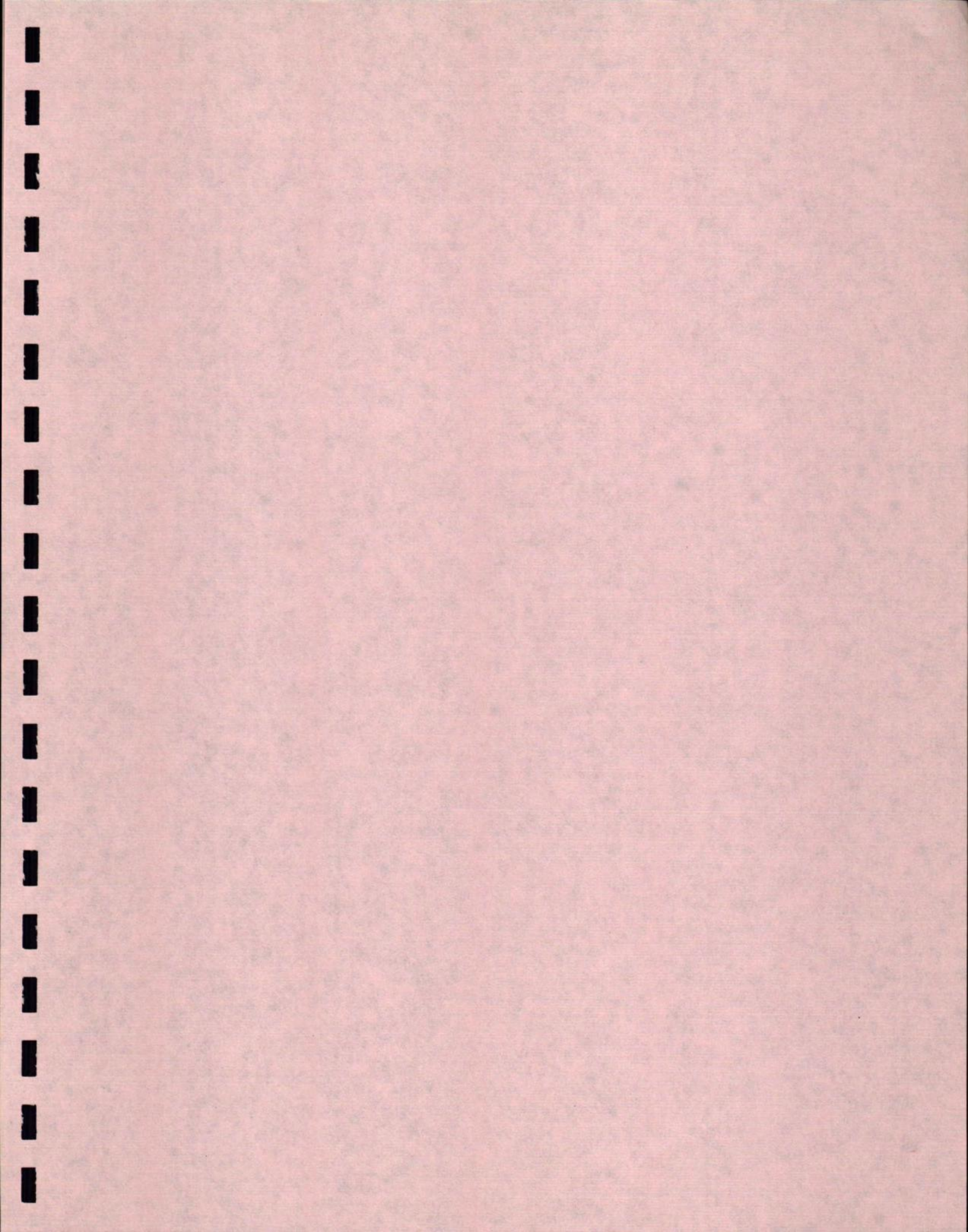
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MEMORANDUM

February 27, 1990
(Confidential with Attachments)

TO: Derek Ireland
George Redling
Maureen Wadsworth ✓
c.c. Ellen Carson
Doug Kuntze

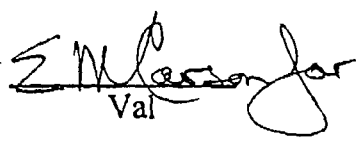
FROM: Val Traversy

SUBJECT: Policy Group Meeting: Thursday, March 1st; 24th Floor Boardroom; 10:00 a.m.- 12:00

In follow-up to the telephone message you will by now have received, the Deputy has asked me to convene the group to assist in developing a common policy paper (statement) consistent with the fairness and efficiency policy framework we have been discussing over the past couple of weeks.

Our objective is to outline a single departmental policy framework that integrates the papers and ideas that we in the group have prepared and discussed, and those which have been presented by Bureau Heads at Executive Committee. Following our discussion Thursday, a policy framework paper will be prepared for presentation by the Deputy at the Executive Committee meeting next Wednesday.

Although you will already have most or all of the appropriate background papers, I am attaching a full set for use at our Thursday meeting. Thanks,


Val



TO
A

Deputy Minister

CCRB
FEB 23 1990
LEGISLATIVE COUNCIL

SECURITY - CLASSIFICATION - DE SECURITE

OUR FILE - N / REFERENCE

YOUR FILE - V / REFERENCE

DATE

FEB 23 1990

FROM
DE

Morris Rosenberg
Assistant Deputy Minister - CALP

ORIGINAL SIGNED BY

M. ROSENBERG

ORIGINAL SIGNED BY

SUBJECT
OBJET

Assessment of How CCAC Intervenes in the Marketplace

As requested, attached is a proposal to assess how CCAC intervenes in the marketplace. I draw your particular attention to the first page which describes a proposed phased approach.

I have discussed this proposal with Wendy Porteous, and her comments are reflected in the attached document.

c.c. Wendy Porteous

Attachment

February 23, 1990

HOW CCAC INTERVENES IN THE MARKETPLACE

CAN YESTERDAY'S POLICIES MEET TOMORROW'S CHALLENGES?

As part of an interdepartmental process to evaluate Canada's competitiveness in an increasingly international marketplace, Consumer and Corporate Affairs Canada (CCAC) has identified a need to examine its policies, programs and laws (in other words, the way in which the Department intervenes in the marketplace) in order to assess the Department's effectiveness in resolving current and emerging problems in the marketplace.

This document describes generally the issues that would have to be addressed in order to conduct this assessment. While it is focused on CCAC, it could serve as a model for a government-wide assessment.

It is recognized that assessing the way in which even one department intervenes in the marketplace, and hence, the way in which a department affects Canada's competitiveness, is an extremely large task. It is probably not possible to conduct a detailed, comprehensive review without devoting significant resources and time to the project. For this reason, this document suggests a phased approach, beginning with an analysis of general trends and broad approaches. After this framework has been defined and analyzed, a series of more specific reviews (in terms of both programs and instruments) can be undertaken.

If this assessment is to result in changes to the way the Department operates, operational managers must be actively involved in this project.

HOW CCAC INTERVENES IN THE MARKETPLACE

ANNOTATED OUTLINE

PHASE ONE: OVERVIEW

I. **INTRODUCTION** (this is intended to be a brief summary of the Department's major responsibilities, general objectives and array of existing instruments. As part of the inter-departmental work on competitiveness, it could emphasize how the Department contributes to Canada's competitiveness.)

A. What is CCAC responsible for?

i.e. programs, policy and legislative sectors covered by consumer affairs, corporate affairs, competition policy, intellectual property. Description of the links among these -- i.e. that consumers, corporations, and users and creators of intellectual property are players in a common marketplace.

B. What triggers CCAC intervention in the marketplace?

→ What are the factors which cause CCAC to intervene (e.g. legal obligations, complaints, implementation of compliance policy, etc.)

C. What instruments are currently used by CCAC to intervene in the marketplace?

→ A brief, general overview of the mix of policies, programs and legislation at the Department's disposal. Note that CCAC is not responsible for the entire marketplace. Identify the areas where it has joint or overlapping jurisdiction with other departments and/or provincial governments.

II. OBJECTIVES

A. CCAC's General Objectives

What are the Department's general objectives (e.g. to promote the fair and efficient operation of the marketplace; to serve its client groups; etc.)

B. Direct Objectives

1. Consumer Law/Policy/Programs
2. Corporate Law/Policy/Programs
3. Competition Law/Policy/Programs
4. Intellectual Property Law/Policy/Programs

For each, describe the major objectives the Department is trying to achieve. These could be first assessed by talking to Bureau Heads and reviewing relevant current and historical documents.

C. Related Objectives

What other objectives affect the work of the Department? For example, deficit reduction, economic growth, competitiveness, freer international trade, "regulating smarter". Government objectives can be obtained from Throne Speeches, the 1984 Economic Agenda, budget speeches, and other such sources.

III. ENVIRONMENTAL TRENDS

What are the major changes in the environment that affect CCAC's ability to meet the objectives identified in Section II? Trends include changes in the domestic and international marketplace, changes in client group expectations, government objectives, market practices, etc.

Preliminary assessment can be made by reviewing operational experiences, client concerns expressed, relevant newspaper and journal articles, etc. Detailed issue/problem identification requiring further client consultation should be left to Phase II of the assessment.

Trends can be divided into general categories:

- A. Those which likely require a strong, interventionist approach by Government (i.e. legislation and programs designed to position Canadian industry to be efficient and competitive; regulatory system designed for an international, not merely domestic, market, etc.)
- B. Those best addressed through moral suasion, education, providing a framework for private action, etc. (i.e. high compliance costs requiring alternative enforcement methods).
- C. Those which are likely to be best left to self-regulation or market forces.

IV. ANALYSIS (What does this mean for CCAC?)

Considering the emerging trends, are CCAC policies, programs, laws, etc. adequate to deal with the needs of the marketplace in the 1990s?

Considering emerging trends and current objectives, how should the Department structure future intervention in the marketplace? For example, should CCAC:

- seek to re-balance roles and responsibilities among business, government and consumers (i.e. adopt a sharing of responsibility approach and reduce reliance on government regulation?
- broaden its range of intervention mechanisms? For example, make greater use of administrative remedies, moral suasion and/or other instruments?
- vacate some areas to provincial governments and/or market forces?
- etc.

At this time, some conclusions would be fairly broad, indicating general approaches and identifying areas requiring more in-depth analysis. Others might be more specific, where current market problems are known.

PHASE TWO: SPECIFIC POLICIES/PROGRAMS AND INSTRUMENTS

If the general overview in Phase I proves to be helpful in positioning the Department to better cope with emerging trends and the future needs of its clients, a second phase of analysis could be carried out which would target specific activities (for example, consumer redress) and conduct a more in-depth analysis.

Such analysis may include the following issues:

1. Are existing policies/programs/instruments adequate?
 - a. are they serving current CCAC/government objectives?
 - b. are they serving client needs?
2. If not:
 - a. what are the emerging trends/issues that require a change?
 - b. what kind of change best addresses those trends? In other words, which approach should the Department follow?
 - c. what instruments should be used to address identified inadequacies?

This more focused assessment would ideally be carried out by consulting with those directly affected by and administering the policies/programs under review. It is recommended that the Program Evaluation Unit be involved in planning, designing and conducting this second phase.



Consommation
et Corporations Canada

Consumer and
Corporate Affairs Canada

(0619)

Sous-ministre

Deputy Minister

Ottawa, Canada
K1A 0C9

February 23, 1990

MEMORANDUM TO WENDY PORTEOUS

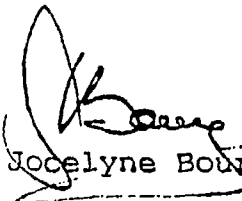
Proposal for Review of Consumer Policy

Thank you for the attached memo.

Following the Executive Committee meeting, where it was agreed that the major issues involved in consumer policy apply to the department's policy orientation generally, I have also asked Morris to prepare a brief note on how we should go about reviewing the "partnership of the marketplace" as a departmental contribution to the Speech from the Throne. I am expecting his note to describe the critical steps that would be required.

Having the benefit of your note and his should help us see our way clear in a discussion on:

- a) Marketplace - a partnership review;
- b) How to support (feed and shape the interdepartmental effort);
- c) What work program should be put in place in the department (working group, steering group, leader)?


Jocelyne Bourgon

Attach.

c.c. Morris Rosenberg
Howard Wetston
Val Traversy

Canada

Thanks you (c.c. Warren / Howard / Val)

TO A

Deputy Minister

FROM DE

WF Porteous
Wendy F. Porteous
Assistant Deputy Minister
Bureau of Consumer Affairs
22.2.90

SUBJECT
OBJET

Proposal for Review of Consumer Policy

*① Balancing the consumer's rights
& have also asked Warren
to propose a brief not on
how we should go about
clearly, the
following would
constitute that consumer
[Bureau] component
in the broader CGA,
& Gov't Agenda*

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/VOTRE RÉFÉRENCE Q 5012- <i>① Balancing the "national of the marketplace"</i>
YOUR FILE/VOTRE RÉFÉRENCE as a Departmental candidate <i>② to S. Dept of the Shop</i>
DATE FEB FEB 22 1990

② I am expecting her not to describe the critical steps that would be required

This is further to our discussions at our most recent Executive Committee concerning the need for an analytical paper demonstrating compelling reasons for a Consumer Policy Review and the attendant benefits. The Consumer Bureau has examined the work necessary to complete a "Proposal for Policy Review" for the Planning & Priorities Committee of the Cabinet. The process would be consistent with the Guidelines established for Planning & Priorities submissions and the substance would be consistent with the Government's priority themes. The following milestones are suggested:

- o a discussion paper by May 1990 *① Warren to benefit of gains not and his should help us see*
- o Memorandum to Cabinet by July 1990 *see way clear in a decrease on*
- o the final Proposal for the August 1990 meeting of the Planning & Priorities Committee. *② Marketplace - as part of the plan*

We envision that this will entail developing and/or completing the following small components:

- a. A Roles and Responsibilities paper;
- b. Preliminary Research on a series of issues, including:
 - definition of public good as it applies in the consumer field; *③ What are the key (need and shop) to enter to get market share*
 - changes in the marketplace that have/may affect the consumer public good; *④ What are the key (need and shop) to enter to get market share*
 - values, and expectations of the consuming public; *⑤ What are the key (need and shop) to enter to get market share*
 - effects of jurisdictional split in legislative authority for consumer affairs; *⑥ What are the key (need and shop) to enter to get market share*
 - compliance, enforcement, and regulatory development including an historical perspective, the perspectives of sub-activities engaged in these functions and the nature and extent of any "dysfunction".

- compliance, enforcement, and regulatory development including an historical perspective, the perspectives of sub-activities engaged in these functions and the nature and extent of any "dysfunction".
- an assessment of the accessibility and effectiveness of redress;
- Guiding Principles for the policy review.

The above components would yield the discussion paper for May 1990, which would form the basis for a Policy Review Proposal. It is worth noting that much of the work on these issues is already underway.

Following acceptance of the proposal by Planning & Priorities, we would proceed to examine in depth the following aspects of our consumer policy:

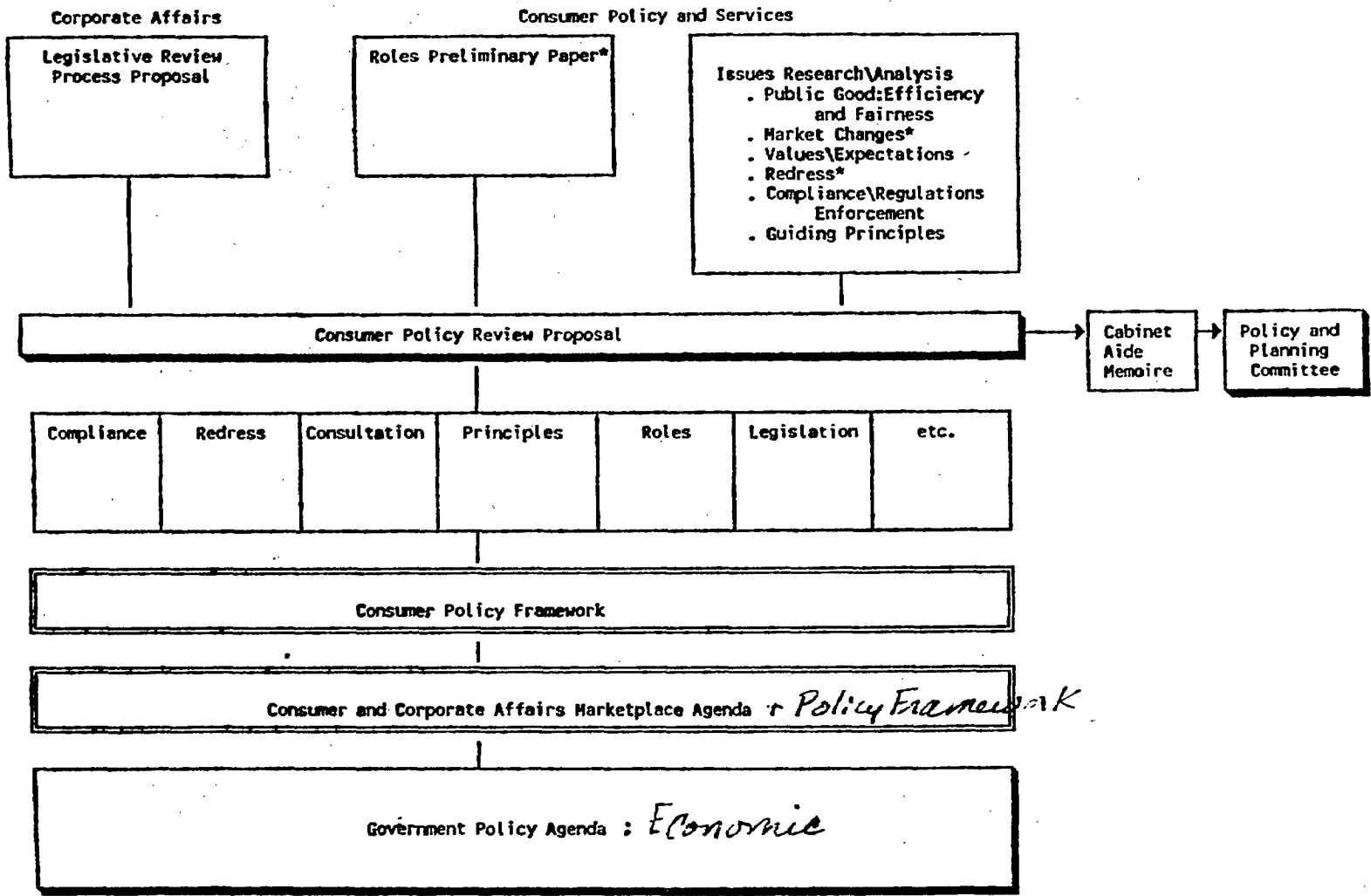
- roles and responsibilities;
- possible need for, and form of consultation for a Ministerial Advisory Committee;
- redress alternatives;
- legislative review;
- review of regulatory formulation by each subactivity;
- compliance and enforcement mechanisms that arise out of the review of legislation and regulation.

This would form the basis for a Consumer Policy Framework valid for the 21st century.

You will find attached a schematic outline of the four steps suggested above.

Att.

Consumer Policy Review



- Issues Research/Analysis**
- . Public Good: Efficiency and Fairness
 - . Market Changes*
 - . Values/Expectations
 - . Redress*
 - . Compliance/Regulations Enforcement
 - . Guiding Principles

Compliance	Redress	Consultation	Principles	Roles	Legislation	etc.
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* in progress

PROBLEMS

1. REGULATORY SYSTEM DESIGNED FOR A DOMESTIC, AS OPPOSED TO AN INTERNATIONAL MARKET
2. REGULATORY SYSTEM DIFFICULT TO ADMINISTER
3. JURISDICTIONAL COMPLEXITY OF CONSUMER-ORIENTED LEGISLATION

PROBLEMS

1. REGULATORY SYSTEM DESIGNED FOR A DOMESTIC, AS OPPOSED TO AN INTERNATIONAL MARKET

- protection of consumer vs. consumer access to goods and prices
- product and service standards not in harmony with international
- absence of Canadian direction in new standards development

PROBLEMS

2. REGULATORY SYSTEM DIFFICULT TO ADMINISTER

- over-reliant on government
- traditional compliance policies based on detection and prosecution
- increasingly resource heavy where resources shrinking

PROBLEMS

3. JURISDICTIONAL COMPLEXITY OF CONSUMER-ORIENTED LEGISLATION

- sectoral coverage uneven
- shared federally
- federal/provincial
jurisdictional split

PUBLIC EXPECTATIONS ABOUT CONSUMER PROTECTION

- Consumer protection is a public sector responsibility
- The federal government has a distinct legislative and moral responsibility irrespective of the responsibilities of the provinces
- Other departments are in the consumer protection business but CCAC has the primary and residual responsibility
- The federal government is more interested in the corporate sector than in protecting consumers

CCA INSTRUMENTS

Specific

Regulatory Law

Consensus Standards

Information
Initiatives

Financial Payments to
Third Parties

General

Framework Law

Voluntary Codes and
Agreements

Promotion of the
Consumer Interest:
Moral Suasion

PUBLIC POLICY PROBLEMS IN CONSUMER AFFAIRS

Gap Between Public Expectations and Consumer Protection by CCA

- Legislation - Not relevant, nor well focussed
- Enforcement - Unpredictable
- Lack of transparency
- Too broadly focussed
- Contemporary tools needed
- Standards - Rebalancing of national standards
- Globalization - pressure for harmonization and equivalency
- Anxiety of industry and consumers about commitment to maintain national standards
- Consultation - Government committed to communication/consultation/collaboration
- Partnership not understood
- Role of single issue groups
- Resources - Budget reductions require rationalized administration
- Resources need refocussing to develop voluntary arrangements

THE CONSUMER POLICY OF THE 90'S

COMPELLING REASONS FOR CHANGE

- CONSUMER POLICY AND FRAMEWORK NEEDS TO REFLECT SHARED RESPONSIBILITY AMONG BUSINESS, CONSUMERS, AS WELL AS GOVERNMENT
- GLOBAL MARKET PRESSURES FORCE RE-EXAMINATION OF CONSUMER PROTECTION GOALS AND STRATEGIES
- OBSOLESCENCE AND INEFFICIENCY OF OVER-RELIANCE ON REGULATION FOR PROVIDING REGULATORY PROVISION OF CONSUMER PROTECTION
- NEW ISSUES, E.G. SERVICE INDUSTRIES; ENVIRONMENT; VULNERABLE CONSUMERS; NEW TECHNOLOGY

GUIDING PRINCIPLES FOR THE 1990'S

- COMMITMENT TO SHARING OF RESPONSIBILITIES: Business, consumers and government
- NEW ARTICULATION OF ROLES
- MODERNIZED REGULATION, LEGISLATION: In light of the new partnership review, enforcement and compliance programs
- INCREASED ROLE FOR VOLUNTARY STANDARDS AND OTHER NON-REGULATORY ARRANGEMENTS FOR CONSUMER PROTECTION
- REDRESS MECHANISMS
- APPROPRIATE FORUM FOR PARTNERS TO SHARE ON THE ABOVE

CRITICAL STEPS

- MINISTER'S DIRECTION ON THE POLICY REVIEW
- DEVELOPMENT OF WORK PROGRAM FOR CCAC - 2 YEARS
 - e.g. legislative review/
standards policy/enforcement/
ways and means of forming
partnerships
- PREPARATION OF MEMORANDUM TO CABINET

CCAC POLICY FRAMEWORK

The Marketplace Environment: Assumptions

1. There is a concern, in both the public and private sectors, that legislative solutions to marketplace problems take too long, and that ad hoc market reforms result in an overly complex structure of marketplace rules and regulations.
2. The public sector response to changing needs and marketplace demands for new initiatives has entailed "selective" enforcement of existing framework legislation. At any point in time, portions of the legislative structure prescribing marketplace rules and regulations are outmoded or inappropriate to needs. As a consequence, emphasis on enforcement of, or compliance with laws and regulations is selectively de-emphasized. The legislative base continues to assign primary regulatory responsibility to the public sector, and a level of legal "comfort" is provided to the marketplace, but the strength of the legislative framework is illusory -- there is little or no public sector intent to act, or to commit new resources to support statutory requirements.
3. The fundamental policy issue CCAC faces, as a department, is how to respond to future demands for services and regulation. What philosophy of intervention and involvement is desirable and achievable? The options are:

Status Quo

- pursue legislative modernization and maintain a primary role for government as the marketplace referee of first resort;

Alternative Approach

- pursue selective modernization of the legislative framework consistent with adopting a posture oriented to devolution of responsibilities to other marketplace participants and a reduction in the reliance on government to assume primary responsibility for marketplace governance;
- more flexible instruments and shared responsibility for marketplace operation.
- retention of legal safety nets;

Alternative Approach:

Many of the measures undertaken by the Government, such as deregulation, privatization, the Competition Act and the removal of trade barriers, are viewed as initiatives to create a solid, constructive economic environment and base for the marketplace. They could, as well, be represented as a first phase of a Government economic agenda. Issues now in the economic forefront (monetary and fiscal policy, science and technology, the domestic and international governance of marketplaces, social and economic globalization, and so on) could be viewed in the context of a second phase, a guiding theme of which could be Canadian partnership in market and economic affairs. Increased attention to business, consumer and government partnership in the affairs of the market represents a next step toward perhaps a less interventionist, but more meaningful role for government.

CCAC could adopt an approach to marketplace policy that would be based on well-defined roles and responsibilities, a shared accountability for governing rules and regulations and one that would enhance marketplace participants' means to deal with their concerns and with each other. Preliminary discussions with leaders in the business community suggests there is support for a "partnership" approach to examining marketplace participants' roles and responsibilities, and to examining innovative means to achieve market reforms. The direction underlying this approach is to bring marketplace partners together to identify and resolve problems; to de-emphasize, as a first resort, the role of government as the regulator; and to assist Canadian consumers participation in this partnership.

Departmental Policy Framework:

Departmental policy issues can be grouped into two broad categories -- Marketplace Efficiency and Marketplace Fairness -- corresponding to the Government's priorities of caring society and competitiveness, and to the Department's mission statement:

- Marketplace Fairness (caring society) addresses the balancing of business/government/consumer interests;
- Marketplace Efficiency (competitiveness) addresses policy issues relating to corporate governance, structure and international stature.

Under the heading "Marketplace Fairness", business, government and consumer interests would be addressed simultaneously with the objective of achieving a balanced approach to a policy for the marketplace. Simultaneous consideration could be given to:

- federal/provincial government roles and responsibilities;
- consolidation of consumer legislation/regulations; and
- devolution/rationalization of business regulations.

The policy items under the heading Marketplace Efficiency relate directly to the regulation of corporate operations, i.e., the regulatory environment prescribed by the government. Each of these items impacts on the business sector's ability to compete successfully domestically and internationally.

An important policy area for CCAC, and one that spans both our fairness and efficiency themes, is that of standards harmonization. This subject is of particular interest to CCAC because of the balance which must be achieved between the security of Canadian consumers and the advancement of Canadian business. Present Canadian standards, whether legislative or voluntary, are often difficult to defend and increasingly subject to challenge from offshore. As an area of prime interest and concern to consumers, business and government, Canada's policies on standards may well be one of the most critical issues of the 1990s.

The immediate task is to define in detail the ongoing policy elements of the department and the new policy initiatives required under this departmental policy approach. The goal is to develop an outline of a policy agenda for discussion with business and consumer interest groups, as well as provincial governments, as a first step in pursuing a partnership approach to our respective marketplace roles and responsibilities.

CCAC POLICY FRAMEWORK

CCAC's mission is to promote the fair and efficient operation of the marketplace in Canada

PRINCIPAL CCAC POLICY THEMES

MARKETPLACE FAIRNESS

**Balancing the Roles and
Responsibilities of
Business, Government & Consumers**

MARKETPLACE EFFICIENCY

**Strategic Policy Interventions
to Enhance Canadian Businesses'
Competitiveness**

DEPUTY MINISTERS' WORKING GROUPS

Social Policy; Native and Northern Development; The Economy; Globalization; National Unity

THE GOVERNMENT'S PRIORITY THEMES

Reducing the Deficit; National Unity; Caring Society; Competitiveness; Foreign Policy

CCAC POLICY FRAMEWORK

CCAC's mission is to promote the fair and efficient operation of the marketplace in Canada

PRINCIPAL POLICY THEMES

MARKETPLACE FAIRNESS

POLICY ELEMENTS:

- (- Bankruptcy)
- Code of Marketplace Fairness
(Business/Govt./Consumer)
- Modernization/Devolution
of Corporate/Consumer
Laws & Regulation
 - Misleading Advertising
 - Dispute Resolution
- Co-Regulation
 - Consensus Standards
 - Voluntary Codes
 - Information Initiatives
- Standards Harmonization

MARKETPLACE EFFICIENCY

POLICY ELEMENTS:

- CBCA
- Strategic Alliances
 - Intellectual Property/Licensing
 - Trade Secrets
 - Competition Policy
 - Pricing Practices and Subsidies
(GATT/FTA/EEC-1992/East. Eur.)
- Standards Harmonization
(Domestic/NTBs/Trade Promotion
vs Consumer Protection)

CONFIDENTIAL

Dear Mr. Tellier,

Pursuant to the discussion at our meeting Wednesday morning, I am writing to outline for you the themes and direction we are taking to structure CCAC's policy agenda for the 1990s, and to identify how our departmental policy work could contribute to the efforts of the Deputy Ministers' working groups.

There is a concern, in both the public and private sectors, that legislative solutions to marketplace problems take too long, and that ad hoc market reforms result in an overly complex structure of marketplace rules and regulations. In early January, I had the opportunity to meet a number of key leaders of the business community and they reinforced this concern. In response, I outlined some thoughts on an approach to marketplace policy that would lead to balanced, well-defined roles and responsibilities, and a shared accountability for governing rules and regulations. It is clear that all marketplace participants desire more effective means to deal with their concerns and with each other. It is to this end that we at CCAC are now directing our policy effort.

I suggested that business, consumers and governments could work in concert to develop a mutually agreeable policy agenda for the Canadian marketplace of the 1990s. The reaction was, in my view, positive. There appears to be support for a "partnership" approach to examining marketplace participants' roles and responsibilities, and to examining innovative means to achieve market reforms.

The direction underlying this approach is to bring marketplace partners together to identify and resolve problems; to deemphasize, as a first resort, the role of government as the regulator; and to assist Canadian consumers participation in this partnership. By way of an example, I introduced the concept of a voluntary "code of business conduct" as a means of developing a blueprint for corporate responsibility in the market. This, in turn, could form one element of a broader "code of marketplace fairness" addressing the balancing of consumer, business and public sector policy responsibilities. As a first step in pursuing the partnership approach, our goal over the next several months is to develop a policy agenda for discussion with business and consumer groups, as well as with provincial governments.

We have begun restructuring our departmental policy efforts under the two headings of "marketplace fairness" and "marketplace efficiency". This two-part departmental policy framework provides a basis for focusing our work on achieving both a balance in the market among the interests and responsibilities of business, consumers and government (fairness), and a market environment which supports Canadian businesses' efforts to be competitive (efficiency).

An important policy area for CCAC, and one that spans both our fairness and efficiency themes, is that of standards harmonization. This subject is of particular interest to CCAC because of the balance which must be achieved between the security of Canadian consumers and the advancement of Canadian business. Present Canadian standards, whether legislative or voluntary, are often difficult to defend and increasingly subject to challenge from offshore. As an area of prime interest and concern to consumers, business and government, Canada's policies on standards may well be one of the most critical issues of the 1990s.

Many of the measures undertaken by the Government, such as deregulation, privatization, the Competition Act and the removal of trade barriers, are viewed as initiatives to create a solid, constructive economic environment and base for the marketplace. They could, as well, be represented as a first phase of a Government economic agenda. Issues now in the economic forefront (monetary and fiscal policy, science and technology, the domestic and international governance of marketplaces, social and economic globalization, and so on) could be viewed in the context of a second phase, a guiding theme of which could be Canadian partnership in market and economic affairs. Increased attention to business, consumer and government partnership in the affairs of the market represents a next step toward perhaps a less interventionist, but more meaningful role for government.

CCAC's policy concerns and interests closely align with, in particular, the Deputies' working groups on the economy and on globalization. In addition, there may be a role that we can play to assist the social policy review in addressing the marketplace needs of vulnerable and disadvantaged Canadians. CCAC's policy focus and willingness to contribute could, in my view, be most beneficial to the Deputies' working groups.

Over the next couple of weeks, we will be meeting with central agency officials to elaborate on our objectives and policy work. I will keep you informed of our progress.

Yours sincerely,

Jocelyne Bourgon



TO
A

Val Traversy
Director General
Executive Services

FROM
DE

Derek Ireland
A/Director, EIA
Bureau of Competition Policy

SUBJECT
OBJET

Departmental Policy Agenda

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/NOTRE RÉFÉRENCE
YOUR FILE/VOTRE RÉFÉRENCE
DATE February 23, 1990

In response to a request from Ellen Carson and Doug Kuntze for BCP projects and initiatives which could be added to the departmental policy agenda, I am attaching an initial list based on my review of BCP planning documents and discussions with EIA staff. However, please view this listing as tentative. I am sending a copy of this listing to the Deputy Directors requesting their views and possible revisions. As I noted at the meeting, my contributions to the departmental policy development process will need to be iterative as I come to better understand my new responsibilities at BCP and we search for the "right words" to link Bureau policy development activities to the departmental policy agenda.

Derek Ireland

Attachment

c.c.: Harry Chandler
Wayne Critchley
George Addy
Klaus Decker

**BCP Policy Elements
for Possible Incorporation in
CCAC Policy Framework**

Marketplace Fairness/Modernization/Co-Regulation

. Policy development leading to possible revisions to the Competition Act in the areas of merger review, misleading advertising, pyramid selling, price discrimination, private actions, as well as amendments to enhance the effective administration of the Act.

. Various initiatives to enhance compliance with limited BCP resources, promote voluntary compliance, and better delineate the roles and responsibilities of all parties, including:

- i) program of information bulletins and other public documents (eg. pertaining to major merger cases and the order of prohibition regarding the Canadian real estate industry);
- ii) identifying and developing cases of potential significance for referral to the Competition Tribunal and the courts (the resulting publicity and case law will make the operation of the Act more transparent to legal practitioners and the business community);
- iii) speeches by senior Bureau officers;
- iv) encouragement of private actions (supported by recent Supreme Court decisions);
- v) greater use of alternative case resolution instruments (following from the 1986 revisions).

Marketplace Efficiency/Competitiveness

. Consultations and joint work programs with other federal departments (ISTC, Investment Canada, Agriculture, Transport, etc.) and provincial governments to ensure their policies support competitive Canadian markets and Canadian business competitiveness.

. Interventions before federal and provincial boards, commissions and other regulatory agencies designed to support deregulation and make Canadian markets more competitive and efficient.

Marketplace Efficiency/Globalization/Harmonization

. BCP support to OECD work on franchising, intellectual property rights, deregulation/privatization, international trade and economic development, designed to harmonize competition policies across countries and enhance international understanding of the role of competition policy in supporting freer international trade, investment flows and flows of technology and know-how.

. BCP policy and technical support to the Canadian GATT negotiating teams on TRIMS, TRIPS and Anti-Dumping.

. BCP assistance and advice to CCAC and other departmental teams responsible for legislative development, eg. input to the Integrated Circuits bill and the Plant Breeders' Rights bill to ensure the legislation supports competitive and efficient markets.

. Bilateral discussions with the U.S. anti-trust authorities designed to: enhance cooperation in administering our respective statutes and evaluating the competitive effects of transnational mergers; international cartels, export consortia; further harmonize the administration of competition law in the two countries; and support the overall objectives of the Canada-U.S. FTA.



CCRB/R. Fenton/953-6758/s1

TO
A

Val Traversy

FROM
DE

George F. Redling
Director
Consumer & Corporate Review Branch

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N / RÉFÉRENCE

YOUR FILE - V / RÉFÉRENCE

DATE
February 26, 1990

SUBJECT
OBJET

CALP (LRD) Input Into CCAC Policy Framework

At the meeting of the group on February 19, I was asked to provide input into the CCAC Policy Framework. As you know, the Legislative Review Directorate is responsible for a number of initiatives which can be classified as falling within the Government's Priority Themes. In terms of the Principal Policy themes proposed in the CCAC Policy Framework, I would suggest the following additions with the proviso that many of the projects could fall under either heading. Bankruptcy and Canada Business Corporations Act, which appeared previously on the list are, of course, an example of this.

Marketplace Fairness

- Hazardous Products Act Review
- WHMIS Phase II

Marketplace Efficiency

- Integrated Circuit Topographies (C-57)
- TRIPs
- IP Policy Action Plan
- IPAC and IP consultation
- Federal Role in Securities Regulation

c.c. Morris Rosenberg
David B. Watters
Jim Keon

Morris Rosenberg
ADM
Corporate Affairs and
Legislative Policy
953-6701

GOVERNMENT'S ECONOMIC POLICY AGENDA

ISSUE

How CCAC can most effectively contribute to the government's overall economic policy agenda.

CURRENT STATUS

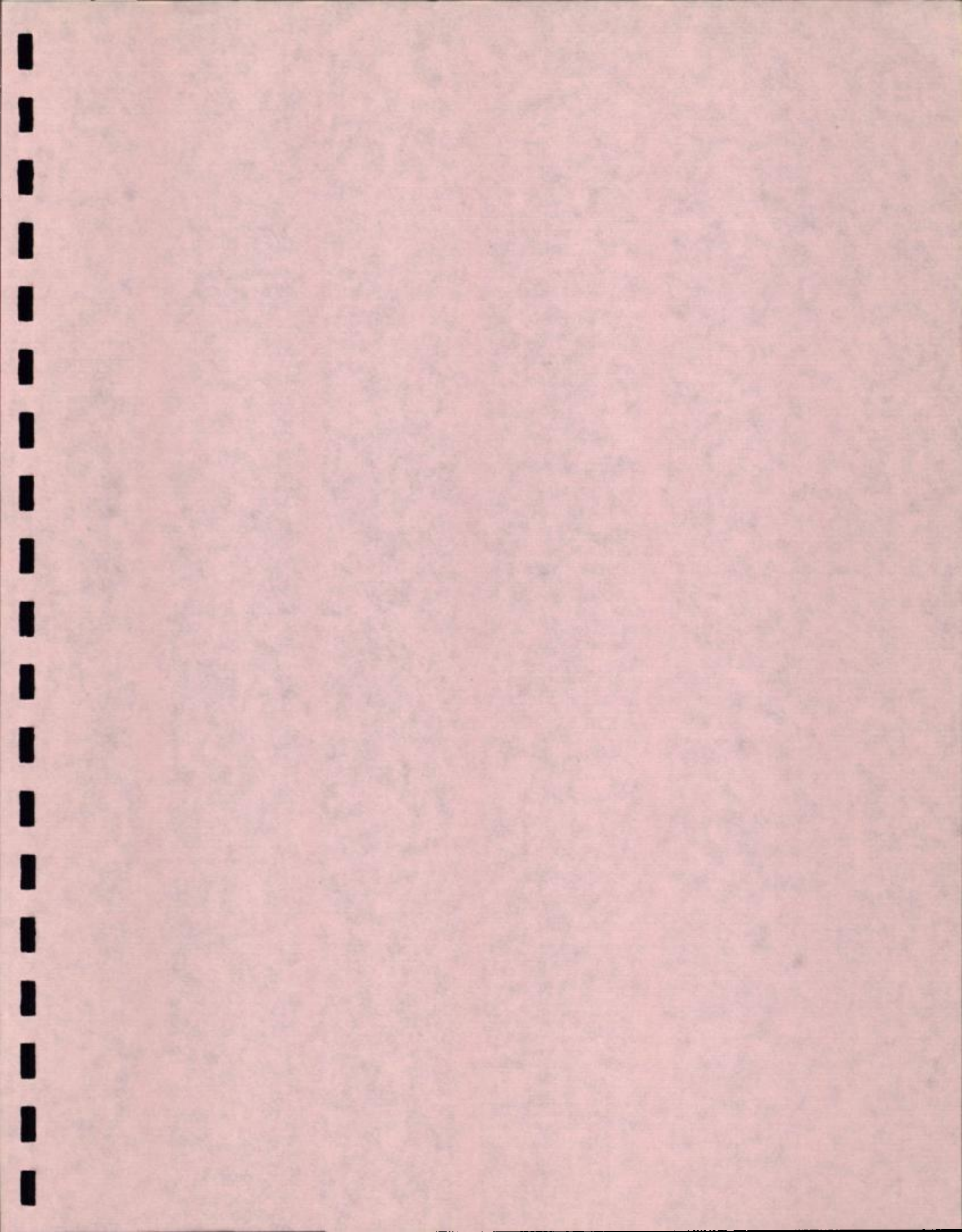
CCAC has developed a policy framework based on the two broad categories of marketplace fairness and marketplace efficiency. The major theme underlying work on marketplace fairness is to find the optimal balance of roles and responsibilities among business, government and consumers. The major theme underlying work on marketplace efficiency is to develop strategic policy interventions to enhance Canadian business competitiveness.

The Deputy Minister is a member of a Deputy Ministers working group which is examining the Government's economic agenda. The group is chaired by Harry Rogers, Deputy Minister of Industry, Science and Technology. As a first step, the group is conducting an assessment of how the Government has fulfilled the November, 1984 Economic Agenda developed by the Honourable Michael Wilson in order to determine whether that agenda should be reconfirmed. Subsequent work may involve assessing the way in which Government intervenes in the marketplace and developing a competitiveness agenda for the 1990s.

BACKGROUND

The mission of CCAC is to promote the fair and efficient operation of the marketplace in Canada. Hence, the Department has an important role to play in helping achieve the Government's priority themes such as: building a strong, fully competitive economy; creating, through economic prosperity, a caring society; and fostering a sense of Canada's cultural and national uniqueness.

Attached is a letter sent by the Deputy Minister to Paul Tellier which outlines the themes and direction the Department is taking to structure its policy agenda for the 1990s, and identifies how the department's policy work could contribute to the efforts of the Deputy Ministers working group on the economic agenda.





Consommation
et Corporations Canada

Consumer and
Corporate Affairs Canada

Sous-ministre

Deputy Minister

Ottawa, Canada
K1A 0C9

100 10
(619)

February 23, 1990

WP 27.2.90

Maureen
Wadsworth

MEMORANDUM TO WENDY PORTEOUS

Proposal for Review of Consumer Policy

Thank you for the attached memo.

Following the Executive Committee meeting, where it was agreed that the major issues involved in consumer policy apply to the department's policy orientation generally, I have also asked Morris to prepare a brief note on how we should go about reviewing the "partnership of the marketplace" as a departmental contribution to the Speech from the Throne. I am expecting his note to describe the critical steps that would be required.

Morris & I
have been
working on //
together.

Having the benefit of your note and his should help us see our way clear in a discussion on:

- a) Marketplace - a partnership review;
- b) How to support (feed and shape the interdepartmental effort);
- c) What work program should be put in place in the department (working group, steering group, leader)?

Jocelyne Bourgon

Attach.

c.c. Morris Rosenberg
Howard Wetston
Val Traversy

Canada

AW
1/3/90



FEB 23 1990 / 0619

MEMORANDUM

NOTE DE SERVICE

Thanks you (i.e. Warren / Howard / Val)

TO
A

Deputy Minister

*① Balancing the consumer cycle with
I have also asked Warren
to prepare a brief not on
how we should go about
clearly, the following would
constitute that consumer
[Warren] component
in the broader CGA,
& Gov't Agenda*

FROM
DE

WF Porteous
Wendy F. Porteous
Assistant Deputy Minister
Bureau of Consumer Affairs
22.2.90

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/NOTRE RÉFÉRENCE Q 5012 <i>Warren's "part 2" of the marketplace</i>
YOUR FILE/NOTRE RÉFÉRENCE as a report member and to the staff of the shop
DATE FEB FEV 22 1990

SUBJECT
OBJET

Proposal for Review of Consumer Policy

② I am expecting her note to describe the critical steps that would be required

This is further to our discussions at our most recent Executive Committee concerning the need for an analytical paper demonstrating compelling reasons for a Consumer Policy Review and the attendant benefits. The Consumer Bureau has examined the work necessary to complete a "Proposal for Policy Review" for the Planning & Priorities Committee of the Cabinet. The process would be consistent with the Guidelines established for Planning & Priorities submissions and the substance would be consistent with the Government's priority themes. The following milestones are suggested:

- o a discussion paper by May 1990 *③ Having to benefit of your not and his should help us see our way clear in a success on*
- o Memorandum to Cabinet by July 1990 *④ marketplace - as*
- o the final Proposal for the August 1990 meeting of the Planning & Priorities Committee. *⑤ what are the steps*

We envision that this will entail developing and/or completing the following components:

- a. A Roles and Responsibilities paper;
- b. Preliminary Research on a series of issues, including:
 - definition of public good as it applies in the consumer field; *⑥ How to support (red and shop de into to public effort)*
 - changes in the marketplace that have/may affect the consumer public good; *⑦ What's waiting for? Should be put in place into the shop (Working group - clearing group - border)*
 - values, and expectations of the consuming public;
 - effects of jurisdictional split in legislative authority for consumer affairs;
 - compliance, enforcement, and regulatory development including an historical perspective, the perspectives of sub-activities engaged in these functions and the nature and extent of any "dysfunction".

- compliance, enforcement, and regulatory development including an historical perspective, the perspectives of sub-activities engaged in these functions and the nature and extent of any "dysfunction".
- an assessment of the accessibility and effectiveness of redress;
- Guiding Principles for the policy review.

The above components would yield the discussion paper for May 1990, which would form the basis for a Policy Review Proposal. It is worth noting that much of the work on these issues is already underway.

Following acceptance of the proposal by Planning & Priorities, we would proceed to examine in depth the following aspects of our consumer policy:

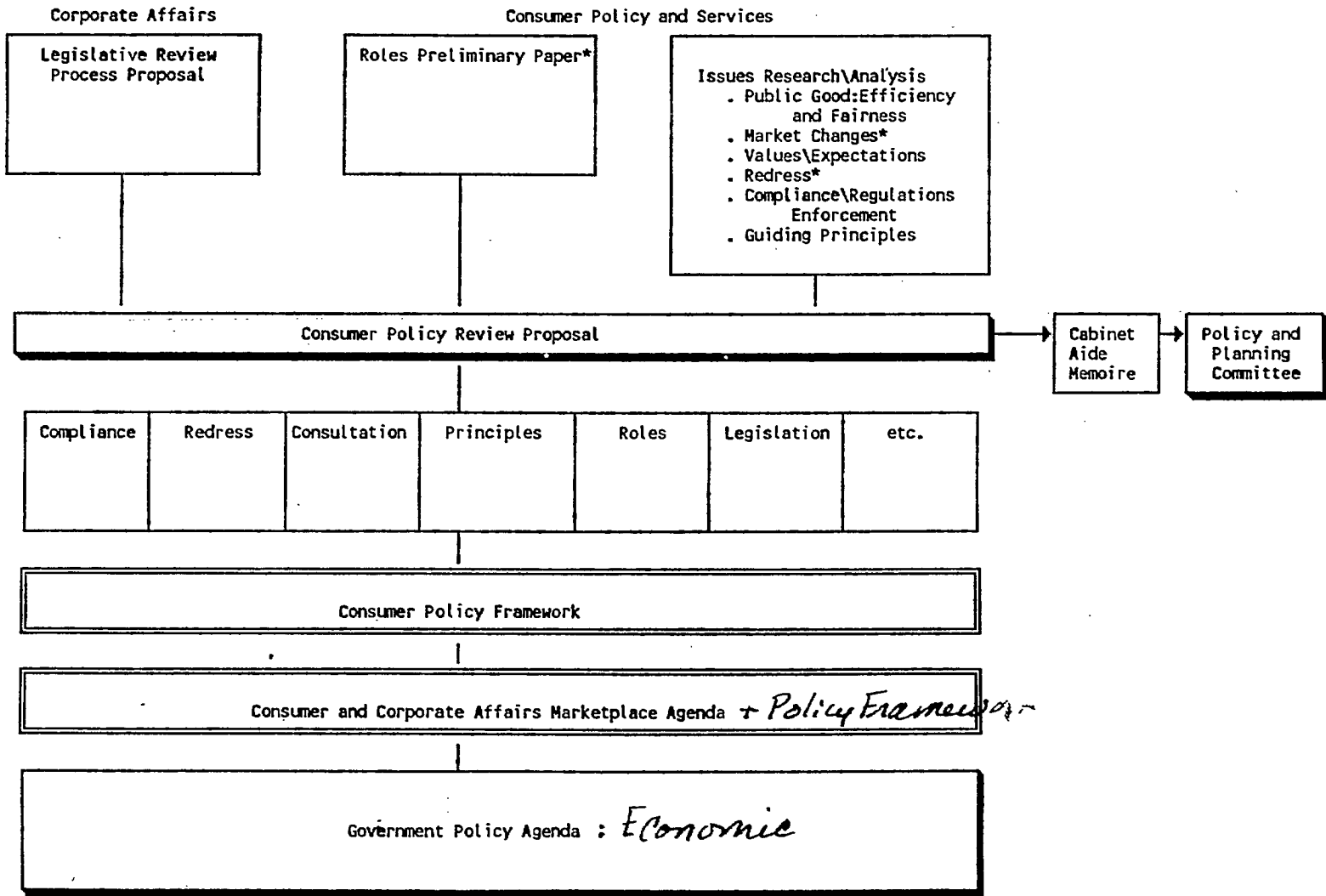
- roles and responsibilities;
- possible need for, and form of consultation for a Ministerial Advisory Committee;
- redress alternatives;
- legislative review;
- review of regulatory formulation by each subactivity;
- compliance and enforcement mechanisms that arise out of the review of legislation and regulation.

This would form the basis for a Consumer Policy Framework valid for the 21st century.

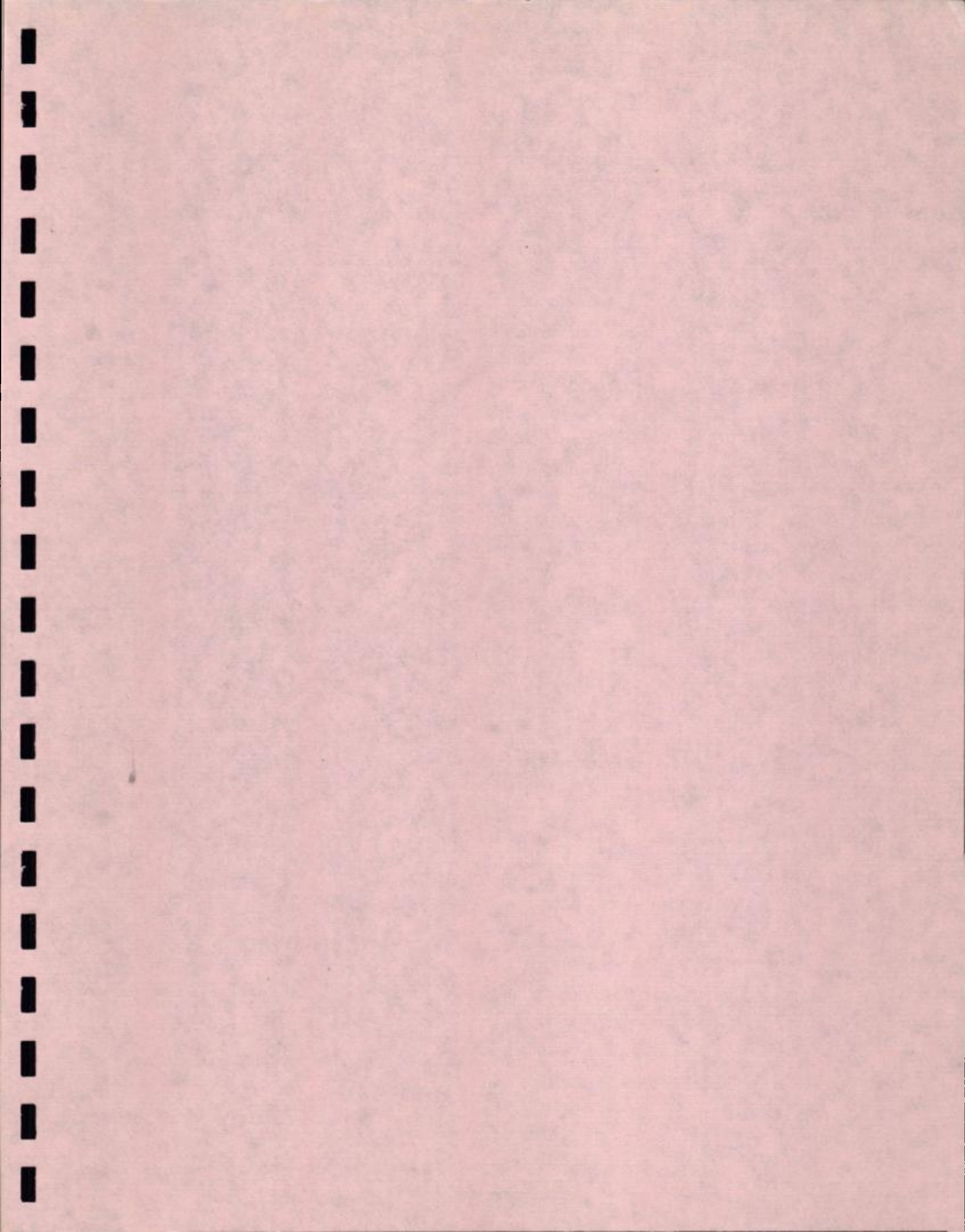
You will find attached a schematic outline of the four steps suggested above.

Att.

Consumer Policy Review



* in progress





To / À

Executive Committee Members

From / De

Mrs. Wendy Porteous
ADM Consumer Bureau

Wendy Porteous
12.2.90

Security Classification - Classification de sécurité
Our File - Notre référence
Your File - Votre référence
Date February 12, 1990

Subject / Objet

EXECUTIVE COMMITTEE AGENDA ITEM: CONSUMER POLICY AGENDA, February 14, 1990

We agreed that the next discussion on the above topic would be based on an initial draft Work Program, that is, those subjects which in the context of a comprehensive consumer policy framework would have to be examined.

Attached you will find an initial draft, which I hope will be helpful to our discussion on Wednesday. I have attached also the first slide presentation on the reasons for a consumer policy framework and suggest that you review the Slides Guiding Principles for the 1990s on, in the context of the direction of work being proposed.

I appreciate your thoughts on this topic. Thanks.

(attach)

CONSUMER POLICY FRAMEWORK

Feb 9/90

Work to be undertaken: Draft 3

(Reference: Guiding Principles for the 1990s)

1. re: sharing of responsibilities

- roles and responsibilities of govt, business and consumers in the Canadian and global market, vis-à-vis a regulatory framework valid for the 1990s, and a contemporary definition of public good in the consumer field; articulated, and rationalized in a descriptive, analytical paper against the current problems with the present balance of responsibility

- to deal also with the themes of caring society, e.g., empowerment of the consumer; competitiveness, e.g., economic efficiency and to examine the constitutional and federal/provincial powers relative to the consumer protection field; coordinated with the Code of Business Conduct

i.e., **MARKET PLACE PARTNERS: ROLES AND RESPONSIBILITIES IN THE 1990s**

2. re: articulation of responsibilities

- policy paper of 1. prepared into public document, for Minister keynote speech on philosophical direction: joint responsibility

3. a. re: legislation

- review of existing legislation: e.g., sectors covered and not; inadequacies vis-à-vis contemporary roles and responsibilities and 1990 definition of public good and consumer protection, etc.,

- HPA legislative review, in light of rebalancing of responsibilities

- packaging legislation reviewed for currency, consolidation and harmonization, and consistent with the environmental priority package and the agricultural-food sector issues

- legislative policy review of misleading advertising and pre-clearance on food and beverages, consistent with Roles and Responsibilities, and a devolution in this area to industry

- legislative policy development of alternative enforcement, sanctions and penalties appropriate to consumer legislation in the 1990s including the distinction between criminal and administrative penalties; and the examination of regulatory versus non-regulatory models of intervention and marketplace influence

- policy alternatives re: the potential for consumer legislative consolidation

b. re: regulation

It should be noted that while regulatory review is an ongoing activity of the regulatory Branches of the Bureau, what follows implies an enhanced and targetted review of specific regulations, dependent on the policy and legislative direction, and regulatory review priorities that are established.

- review by regulating Branches of regulatory plans vis-à-vis standards policy objectives; trade harmonization; obsolescence

4. re: voluntary standards

- descriptive analysis of Consumer Bureau (CCA ?) use of standards, i.e., in which areas, how selected, through which processes; problems with the system; impact on standards policy and direction domestically and internationally

- OPRA led federal standards policy for the Government of Canada, with Steering Group Participation of CCA, External/Trade

5. re: redress mechanisms

- policy paper identifying alternative federal level requirements; legislative and non- legislative means to effect redress mechanisms, including analysis of relationship to provincial and private sector redress mechanisms with a view to enhancing the power of the consumer to correct market deficiencies, e.g., Roles and Responsibilities for the consumer

6. re: federal forum

- policy paper and recommendations re: an appropriate Ministerial consultative forum: membership, purpose, functions, timing in relationship to the Roles and Responsibilities and the policy agenda established for the next 18 months

PUBLIC EXPECTATIONS ABOUT CONSUMER PROTECTION

- Consumer protection is a public sector responsibility
- The federal government has a distinct legislative and moral responsibility irrespective of the responsibilities of the provinces
- Other departments are in the consumer protection business but CCAC has the primary and residual responsibility
- The federal government is more interested in the corporate sector than in protecting consumers

CCA INSTRUMENTS

Specific

Regulatory Law

Consensus Standards

Information
Initiatives

Financial Payments to
Third Parties

General

Framework Law

Voluntary Codes and
Agreements

Promotion of the
Consumer Interest:
Moral Suasion

PUBLIC POLICY PROBLEMS IN CONSUMER AFFAIRS

Gap Between Public Expectations and Consumer Protection by CCA

- | | |
|--------------|--|
| Legislation | - Not relevant, nor well focussed |
| Enforcement | - Unpredictable
- Lack of transparency
- Too broadly focussed
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| Standards | - Rebalancing of national standards
- Globalization - pressure for harmonization and equivalency
- Anxiety of industry and consumers about commitment to maintain national standards |
| Consultation | - Government committed to communication/consultation/collaboration
- Partnership not understood
- Role of single issue groups |
| Resources | - Budget reductions require rationalized administration
- Resources need refocussing to develop voluntary arrangements |

THE CONSUMER POLICY OF THE 90'S

COMPELLING REASONS FOR CHANGE

- CONSUMER POLICY AND FRAMEWORK NEEDS TO REFLECT SHARED RESPONSIBILITY AMONG BUSINESS, CONSUMERS, AS WELL AS GOVERNMENT
- GLOBAL MARKET PRESSURES FORCE RE-EXAMINATION OF CONSUMER PROTECTION GOALS AND STRATEGIES
- OBSOLESCENCE AND INEFFICIENCY OF OVER-RELIANCE ON REGULATION FOR PROVIDING REGULATORY PROVISION OF CONSUMER PROTECTION
- NEW ISSUES, E.G. SERVICE INDUSTRIES; ENVIRONMENT; VULNERABLE CONSUMERS; NEW TECHNOLOGY

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- COMMITMENT TO SHARING OF RESPONSIBILITIES: Business, consumers and government
- NEW ARTICULATION OF ROLES
- MODERNIZED REGULATION, LEGISLATION: In light of the new partnership review, enforcement and compliance programs
- INCREASED ROLE FOR VOLUNTARY STANDARDS AND OTHER NON-REGULATORY ARRANGEMENTS FOR CONSUMER PROTECTION
- REDRESS MECHANISMS
- APPROPRIATE FORUM FOR PARTNERS TO SHARE ON THE ABOVE

CRITICAL STEPS

- MINISTER'S DIRECTION ON THE POLICY REVIEW
- DEVELOPMENT OF WORK PROGRAM FOR CCAC - 2 YEARS
 - e.g. legislative review/
standards policy/enforcement/
ways and means of forming
partnerships
- PREPARATION OF MEMORANDUM TO CABINET

NOTES FOR WFP FOR MEETING WITH THE MINISTER, JANUARY 22, 1990

FIRST DISCUSSION ON CONSUMER POLICY FRAMEWORK.

SLIDE 1

The purpose of this briefing is to review with you reasons for change to the current consumer policy and regulation, the principles which might guide consumer policy in the 1990s, and to suggest the Department prepare a Work Program to this effect, for your subsequent scrutiny.

Slide 1 describes the assumptions held by Canadians; they are not necessarily those of CCA.

Notwithstanding the major legislative activity in the late sixties and seventies in response to public concerns about product safety and transactional fairness, including the generation of most of the federal consumer protection legislation, Canadians believe markets will continue to fail and selective product and service protection and information is still required.

A more responsible and responsive business community has not and will not obviate the responsibility of the federal and provincial governments in their respective jurisdictions. Further, at the federal level, Section 4 of the CCA Act assigns the federal Minister responsible for all consumer matters not specifically assigned to another federal body.

SLIDE 2

The instruments employed by CCA to deliver its consumer-related activities are known to you. By far the most interventionist and widely used is regulation. Some 16 laws and attendant regulations are administered by the Consumer Bureau: directly, with other federal departments, and on behalf of the provinces. Most of the Department own legislation dates from the early 70s and none has been fundamentally reviewed to reflect contemporary market conditions. While described as consumer protection legislation, the fact is that industry has prompted and continues to prompt most of it, to ensure more certainty in the marketplace and to control competition.

In the last few years, the Bureau has increasingly used the more indirect approach of codes and voluntary agreements.

SLIDE 3

The market conditions of the 1990s, business responsiveness to consumer interests, the international trend away from regulation in favor of voluntary standards necessarily call into question the relevance of existing regulation and the traditional enforcement practices. Budget pressures on the public and private sectors should prompt more selective direct enforcement and rationalized administration.

Some of the questions we believe should be addressed include:

- does our regulation over encourage dependency on the federal government, by removing responsibility from industry to self-regulate and to be responsible for the production of safe products, of consumer information, of industry sponsored consumer redress systems? e.g., the HPA, pre-broadcast food advertising

- are the 4 packaging and labelling statutes redundant vis-à-vis the essential labelling requirements for the 1990s in a competitive trade environment?

- are the product standards implicit in our legislation unnecessarily inconsistent with international standards?

- are we regulating and enforcing where voluntary standards would be sufficient and more efficient?

- do we have the appropriate forums in place whereby both industry and consumers can take on a shared ownership and responsibility for consumer protection?

SLIDE 4

Clearly, business, consumers and governments recognize the changes afoot in the Canadian market, the need for adjustment to the definition of real public good, and that public policy cannot be left to government alone.

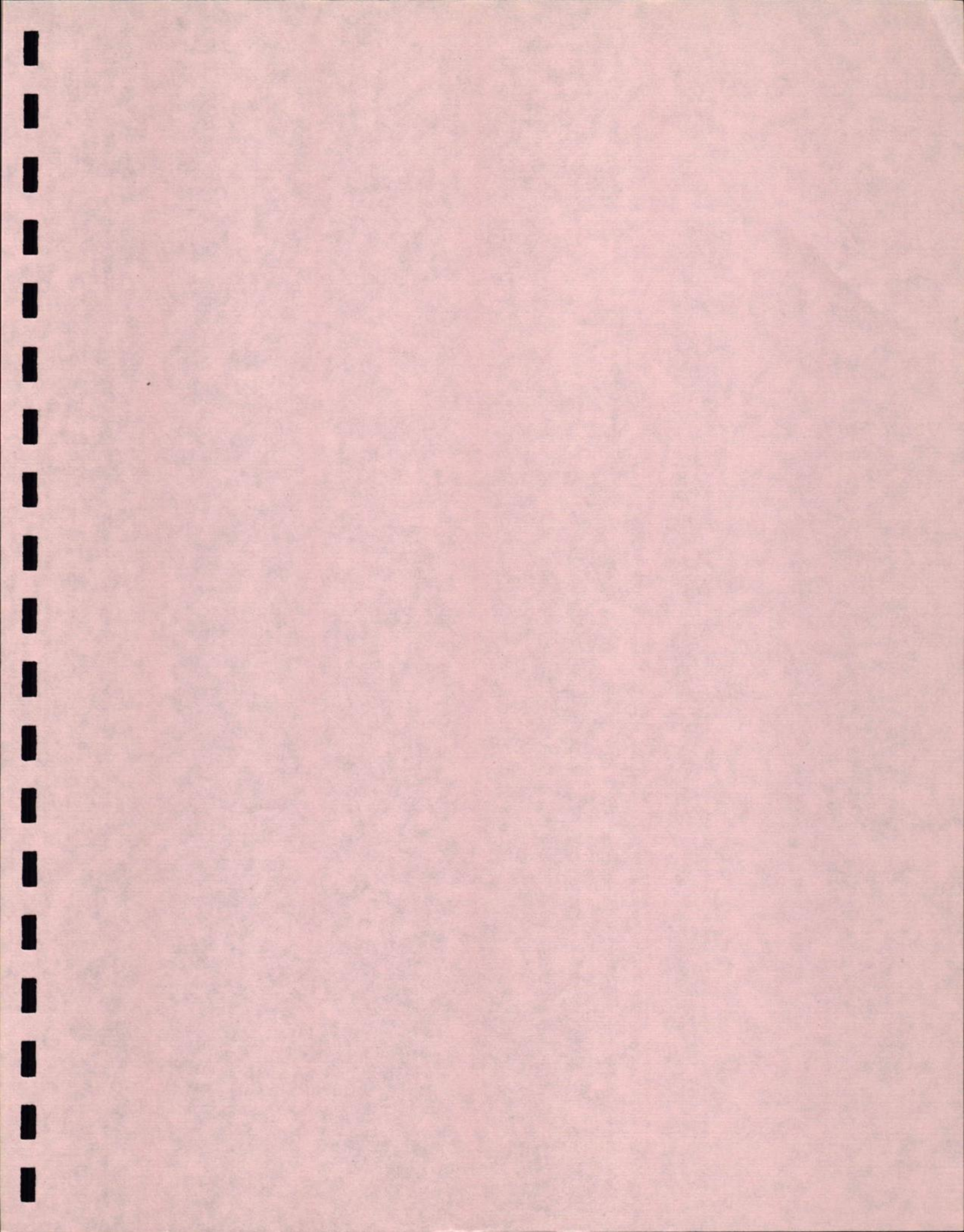
SLIDE 5

Key to what might be described as the principles for the 1990s, are:

- increased use of international standards and voluntary agreements over regulation
- encouragement to consumers to use redress mechanisms
- reassessment of existing consumer regulation
- contemporary compliance and enforcement practices
- shared responsibility for economic efficiency and public protection

SLIDE 6

With your agreement, we propose to develop a work plan for the next two years, and within the next few weeks to bring that back to you for discussion.



Background to slide 1

CURRENT ASSUMPTIONS ABOUT CONSUMER PROTECTION

Consumer protection is seen as a public sector responsibility as is market failure generally. Markets will continue to fail and a continuing responsibility for government exists.

- Historically, government has always intervened in the marketplace - for example, standards for measurement, (Weights and Measures 1871) protection from "hidden dangers" or "unknown hazards" such as the adulteration of food. (e.g. Adulterated Foods Act 1874.)
- In the mid 1960's to early 1970's, there was a widely shared popular consensus and confidence in government and government regulation which led to a flurry of legislative activity in order to respond to a mass consumption society and growing concerns about product safety and transactional fairness. (regulation of information re fraud and deception) (e.g. Hazardous Products Act, 1969; Textile Labelling Act, 1970; Consumer Packaging and Labelling Act, 1971).
- Business was seen as the adversary of the individual consumer based on an inequality of bargaining power. Consumers had fundamental rights; government took the paternalistic position of ensuring the provision of these rights (e.g. established Box 99 in 1970 and provided general information about products and services).

While consumer protection is shared jurisdictionally in Canada, the federal jurisdiction has a distinct legislative and moral responsibility in the field; provincial legislation has not relieved the federal government of its responsibilities.

- Much federal legislation acts as the invisible hand in protecting consumers such as Weights and Measures and the development of standards where the consumers would not be able to protect themselves.
- The provinces also began to enact major consumer protection legislation in the early 1970's relating to, for example, the regulation of business and consumer credit practices.
- Section 4 of the Consumer and Corporate Affairs Act makes the Minister responsible for all consumer matters under federal jurisdiction which are not specifically assigned to another federal body.

CCAC is not alone federally in protecting the consumer interest. It is there to pick up the consumer interest when there is a vacuum elsewhere. (government is still on the hook)

- Legislation affecting the consumer had been generated among a number of federal government departments relating to, for example, the Food and Drugs Act, the Fisheries Act and the Agricultural Products Standards Act. Government programs relating to consumer affairs lacked, in this period, effective coordination and hence the government reacted to the Economic Council's report and in 1967 established the Department.
- Under section 4 of the Consumer and Corporate Affairs Act, the Minister has residual responsibility in the area of consumer protection.

"The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to

• consumer affairs; standards of identity and performance in relation to consumer goods; and, legal metrology. R.S., c.C-27, s.5."

In recent years, the federal government has not shown leadership on behalf of the consumer in the marketplace, but has and is perceived to have tilted its interests towards the corporate sector.

- Academics hold that there has been a steady erosion of consumer protection in government. While the services sector is growing, consumer problems in the services sector have not been adequately studied.
- The Department has introduced some regulations affecting consumers such as under the Hazardous Products Act, but the major focus has been on legislation, such as the Competition Act, the Copyright Act, the Patent Act and the development of amendment proposals to the Bankruptcy Act.
- The Department's public profile is very low.

Background to slide 2

INSTRUMENTS USED BY CCA

Specific

Regulatory Law: 16

- some administered directly
- some jointly with other federal government departments
- some on behalf of the provinces
- at manufacturing/processing sector level
- direct effects on manufacturers/retailers/distributors/households
- standards such as Weights and Measures Act, labelling statutes, Hazardous Products Act (performance standards in toys, lead level in paint)
- disclosure requirements (Tax Rebate Discounting Act)

Consensus Standards

- developed by government, industry and consumers (Standards Boards) (in simplistic terms, standards define with technical parameters what a product is or how it should perform. Different types include uniformity standards (product compatibility), quality standards (product comparison), design standards (definition of inputs), performance standards (functional parameters)).
- can be referenced in law

Information Initiatives:

- (regulated to promotional)
- trade communiqués
- warning bulletins
- National Child Safety Week, National Consumer Week

Financial Payments to Third Parties

- Grants and Contributions Program for consumer groups for research, to advocate and represent the consumer interest
- other research contracts

General

Framework Law

- establishing rules for the marketplace including those in the interest of the consumer (Competition Act, Bankruptcy act, Free Trade Agreement)
- policy statements

Voluntary Codes and Agreements

- to effect change to product and service standards - e.g. upholstered furniture flammability
 - nutrition labelling
 - baby walkers
 - care labelling of textiles
- voluntary bans, e.g. 750ml soft drink bottles

- voluntary recalls, e.g. marginal toy performance

Promotion of the Consumer Interest

- s. 5 of Department of Consumer and Corporate Affairs Act - Minister has consumer advocacy role (based on an expert knowledge base)
- advocacy of the consumer interest with business and government e.g.- bank service charges and electronic funds transfer
 - transportation deregulation
 - credit card fraud
- general consultation with marketplace participants

Background to slide 3

Legislation

- The market expects the legislative instruments to be current, relevant and enforced, where in fact, none is the case.

Enforcement

- There are arbitrary enforcement priorities in effect within government that is negatively received by market interests, and increasingly difficult to sustain or defend, because of lack of transparency.
- A commitment to enforcement is neither profoundly contemplated nor made at the time of the introduction of new standards.
- Our enforcement is too broadly focussed.

Standards

- There is a need for rebalancing of national standards both from the perspective of the costs associated with any change to existing regulatory requirements and in order to protect the Canadian product against the imported.
- The Canadian standards system needs review and revision. Pressures on standards will increase: standards in place of regulation, Canadian standards compatible with international standards, better coordinated Canadian standards and representation of Canadian standards consistent with national policy, in Canada and abroad - currency in light of globalization.
- The majority of the consumer product and service standards and regulation are not directly related to health and safety; therefore, much of the consumer standards will be subject to pressures for harmonization and equivalency, e.g., packaging and labelling.

Consultation

- Government, CCA, believes more than do its affected industries and associations in consultation and in joint resolution of market problems by non regulatory means and in harmonization with international standards.
- The notion of the partnership among government, industry and consumers is not understood.

- Consumers are no longer organized in national association(s), around multi-issues; as single issue focus groups they are neither funded, supported nor available to assist in the resolution of new public policy nor the review of existing policies and instruments.

Resources

- Budgetary reductions require rationalized administration and enforcement of regulation, also increasingly evident.
- Increasingly, voluntary arrangements with the interested parties in the marketplace should be favored over direct regulation because of the costs associated with it, particularly, the costs to government. Pressures will increase to regulate.

Tendency of business to be less adversarial in its relationship with government and consumers.

- New attitude during the 1980's by business towards complaint handling, i.e. good complaint management recognized as improving the "bottom line".
- Growth of consumer affairs departments staffed by trained professionals within large business organizations.
- Similar increase in government relations personnel by business.
- Need to provide customer satisfaction by competing on quality and service with domestic and foreign producers.
- Some movement towards business seeking greater input to government policy development.

Globalization of the marketplace.

- Pressure for harmonization of Canadian consumer protection standards with foreign jurisdictions.
- The Canadian standards system needs review and revision to ensure that the standards are current and that there is compliance by business.
- The majority of Canadian consumer product and service standards are not directly related to health and safety e.g. packaging and labelling. Therefore, many of these standards will be subject to international pressures for harmonization and equivalency.
- Canadian industry is protectionist with respect to standards, desiring that Canadian products be protected against imports.
- The government is a supporter of harmonization with international standards, while the affected industries may not agree.

Obsolescence, inefficiency, ineffectiveness.

- Traditional regulatory provision of consumer protection not sustainable.
- There will be a need to deliver departmental programs with fewer resources. Increased productivity will be required, combined with greater emphasis on influencing the private sector, to assist in program delivery. Need for innovative thinking to devise new ways of accomplishing objectives at less cost. e.g. voluntary compliance, business codes of practice, strategic alliances.

New issues.

- Service industries
- Environment
- Vulnerable consumers
- New technology

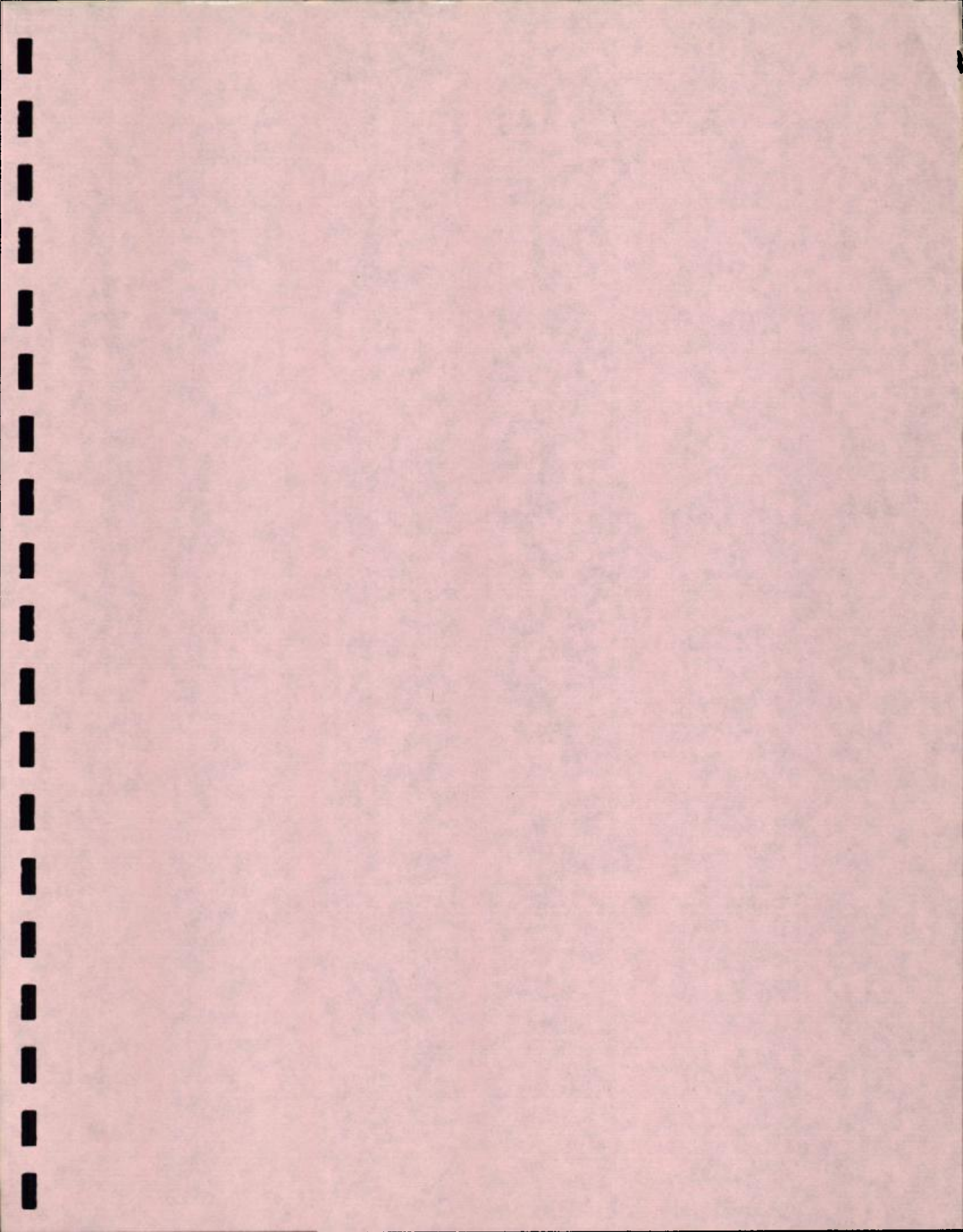
Background to slide 5

NEW GUIDING PRINCIPLES

The Department proposes to:

- Address the issue of shared responsibility for consumer protection among all marketplace partners and publicly announce the Roles and Responsibilities in the marketplace.
- As a priority, identify first the legislative and regulatory areas for review most subject to international standards pressures.
- Reassess and develop options for the Canadian Standards system -- now underway, with OPRA, CCA and External Affairs.
- In light of the new partnership, review, reassess and consolidate CCA consumer legislation under the following headings: Consumer Information and Services (e.g., financial services disclosure, plain language); Packaging and Labelling; Misleading Advertising; and, Product Safety, and eliminate regulations where compliance not essential.
- Revamp the penalties and sanctions provisions for non-compliance.
- Redress: promotion and setting up of more effective mechanisms.
- Establish appropriate forum for partners to share on the above.

- There is a growing awareness by business and consumers that government regulation alone cannot ensure marketplace fairness. With limited resources and growing marketplace complexity, government cannot be expected to regulate all aspects of health, safety and fairness, especially if there are acceptable alternatives to regulation.
- Responsibility for health, safety and fairness must be shared. To this end, the activities of government and business must complement each other. Similarly, consumers must assume responsibilities to parallel their legitimate expectations.
- But overall, there must be a collaborative effort among the three marketplace participants.
- In its Regulatory Reform Strategy, the Government of Canada sets out its commitment to limit future regulation. In the special context of consumer protection, this translates into the need for general protection of the integrity of the marketplace as a whole by the sharing of appropriate responsibilities. This has given rise to a new vision of marketplace principles that reflect a new sharing. By encouraging marketplace practices in accordance with these principles, government will have fulfilled its promise to "regulate smarter".
- It is anticipated that the New Guiding Principles will:
 - reflect, in a succinct, simple and direct form, this government's commitment to balancing economic efficiency and public protection
 - encourage increased participation by consumers and business in marketplace decision-making, while recognizing government's limited intervention
 - act as guidelines for future policy, regulation and other decisions of government, business and consumers in the marketplace
 - promote dialogue among the three marketplace participants during the consultation process to develop consensus about the future meaning of marketplace fairness.
- These new guiding principles will result in an articulation of roles and responsibilities to be shared by consumers, business and government.



PUBLIC EXPECTATIONS ABOUT CONSUMER PROTECTION

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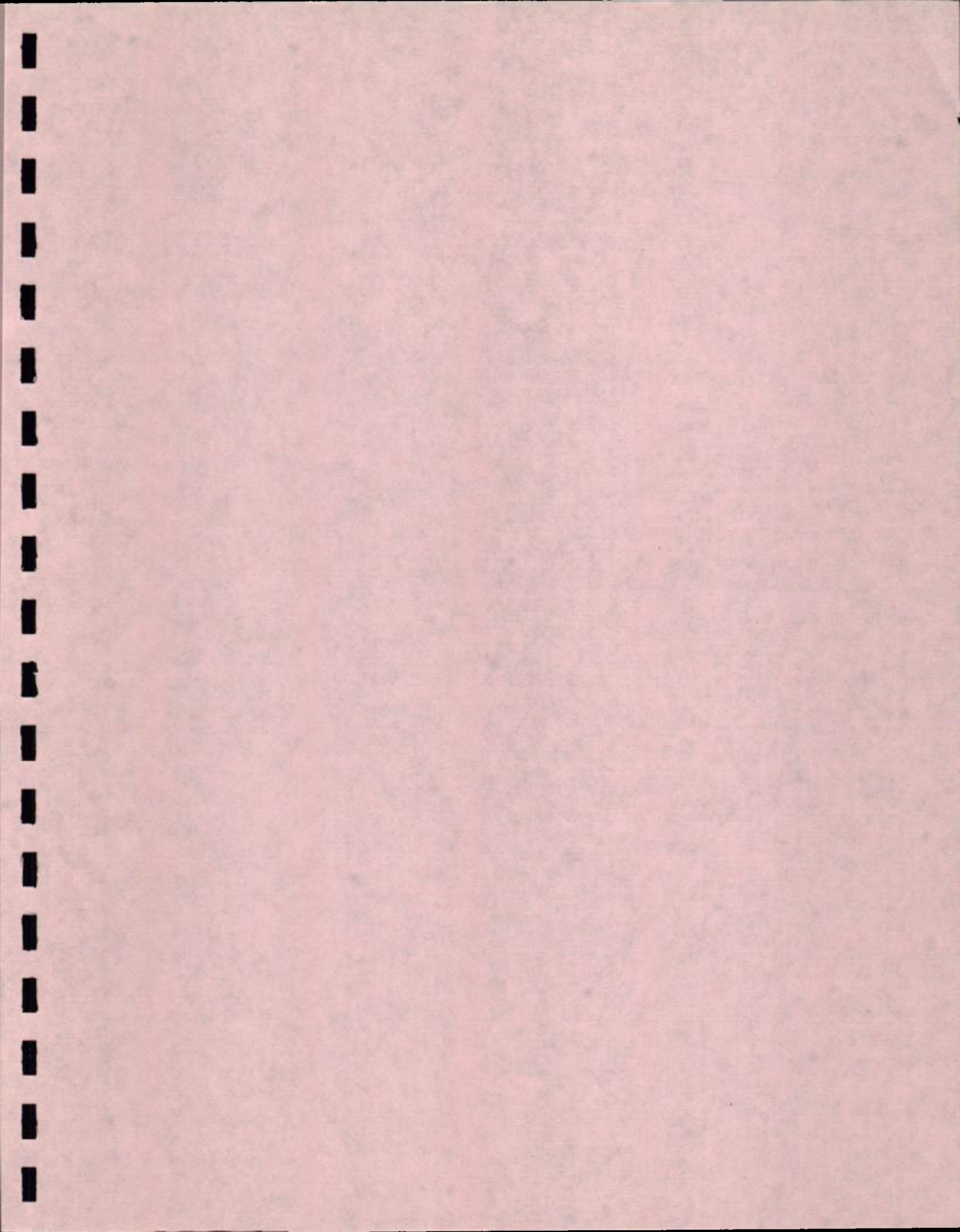
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- NEW ARTICULATION OF ROLES
- MODERNIZED REGULATION, LEGISLATION: In light of the new partnership review, enforcement and compliance programs
- INCREASED ROLE FOR VOLUNTARY STANDARDS AND OTHER NON-REGULATORY ARRANGEMENTS FOR CONSUMER PROTECTION
- REDRESS MECHANISMS
- APPROPRIATE FORUM FOR PARTNERS TO SHARE ON THE ABOVE

CRITICAL STEPS

- MINISTER'S DIRECTION ON THE POLICY REVIEW
- DEVELOPMENT OF WORK PROGRAM FOR CCAC - 2 YEARS
 - e.g. legislative review/
standards policy/enforcement/
ways and means of forming
partnerships
- PREPARATION OF MEMORANDUM TO CABINET



PROBLEMS

1. REGULATORY SYSTEM DESIGNED FOR A DOMESTIC, AS OPPOSED TO AN INTERNATIONAL MARKET
2. REGULATORY SYSTEM DIFFICULT TO ADMINISTER
3. JURISDICTIONAL COMPLEXITY OF CONSUMER-ORIENTED LEGISLATION

PROBLEMS

1. REGULATORY SYSTEM DESIGNED FOR A DOMESTIC, AS OPPOSED TO AN INTERNATIONAL MARKET

- protection of consumer vs. consumer access to goods and prices
- product and service standards not in harmony with international
- absence of Canadian direction in new standards development

PROBLEMS

2. REGULATORY SYSTEM DIFFICULT TO ADMINISTER

- over-reliant on government
- traditional compliance policies based on detection and prosecution
- increasingly resource heavy where resources shrinking

PROBLEMS

3. JURISDICTIONAL COMPLEXITY OF CONSUMER-ORIENTED LEGISLATION

- sectoral coverage uneven
- shared federally
- federal/provincial
jurisdictional split

A Rationale for a Consumer Policy

Framework for the 1990's

Consumer Policy and Services Branch
December, 1989

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A RATIONALE FOR A CONSUMER POLICY FRAMEWORK FOR THE 1990'S

1.0 PURPOSE OF THIS PAPER

This paper provides the rationale for a framework for modifying existing and initiating new consumer policy.

The rationale is based upon an analysis of changes that have occurred over the last two decades both in the participants in, and the environment of, the marketplace. The reliability of the knowledge of these changes and their significance will determine the need for new directions in consumer policy.

The changes that have been identified relate to the characteristics of the three important marketplace participants: the consumer; business and government.

In the simplest terms, consumers participate in the marketplace with a view to converting their limited resources as efficiently as possible into needed goods and services. Business participates in the marketplace to achieve maximum market share through maximizing the efficiency of producing its chosen goods and services. Government reluctantly participates in the marketplace and, when it does intervene, it is concerned with achieving the required effect at minimum total cost to society.

Over the last two decades, the following changes in the characteristics of the consumers' participation have been identified as candidates likely to impact consumer policy:

- significant social research has provided a more realistic understanding of the capability/capacity of the individual to function in the marketplace
- consumers have demonstrated a considerable decrease in direct interest in "consumerism"
- consumers have developed a greater awareness of environmental and other socio-economic problems
- consumers are showing a much increased awareness of personal health and wellbeing
- consumers, by resorting more to legal processes, confirm that we do now live in the "litigious" society
- the demographics of the Canadian consumer population have changed. There is a much larger percentage of an aging population and the ethnic composition has become more diversified.

The following changes in the characteristics of business participation in the marketplace have been identified as candidates likely to impact consumer policy:

- compared to two decades ago, business is displaying a marked tendency to reduce conflict with the consumer and with government
- compared to two decades ago, business is exploring new technology to increase the range of goods and services available to the consumer in the marketplace (including their packaging, marketing and distribution)
- business has become more sensitive to the threats and challenges of the globalization of the domestic marketplace.

The following changes in the characteristics of government participation have been identified as candidates likely to impact consumer policy:

- compared to two decades ago, government resources available for all social programs are now extremely limited
- it is now appreciated that the side-effects of government intervention (through regulation) in the marketplace can often be as serious as the problem the intervention was designed to solve
- the dynamics within the marketplace have increased to the extent that changes may occur faster than the rate at which needed policy adjustments can be implemented
- the provincial governments have assumed an increased responsibility for providing public services in the area of consumer affairs.

What follows below is a detailed analysis of each changed characteristic. First, evidence is presented to substantiate or disprove the changed characteristic. Second, the socio-economic implications of the change are examined. Third, the socio-economic implications are weighed so far as their likely impact upon existing and future consumer policy. Fourth, where considerable uncertainty exists, the need for further policy analysis has been identified.

The following qualifications have to be made at this stage. First, many of the changed characteristics are inter-related, some are complementary, others are in direct conflict with each other. For an instance where changed characteristics are complementary, globalization of the domestic market and the

exploitation of current technology mean that the limited ability of the average consumer to function effectively in the market will even be more burdened by the increased range and complexity of goods and services. For an instance where changed characteristics are in direct conflict, the increased dynamics of the marketplace require that policy changes be effected and implemented quickly. However, such rapid design and implementation of policy may incur costly side-effects to the marketplace because insufficient consideration was given to the total potential effect of the policy change.

2.0 CHANGES IN THE CHARACTERISTICS OF CONSUMERS' PARTICIPATION

2.1 The Capability/Capacity of the Individual to Function in the Marketplace

2.1.1 Evidence for change

Social research has provided a more realistic understanding of the capability of the individual to use information in the marketplace. The following evidence substantiates this change:

- The mere provision of product information in the marketplace does not ensure informed consumer decision-making. Consumer decision-making is a complex process involving such factors as the consumers' involvement in the purchase, the degree of differentiation between competing alternatives and the time available for deliberation.¹
- 4.5 million Canadians are functionally illiterate² - lack sufficient reading, writing and numeracy skills to get by in everyday life (but we know these people develop coping mechanisms - see "Illiteracy: The Consumer Issues".³

¹de Chernatony, L., "Consumers' Search, Processing and Use of Information", a study prepared for the Department of Consumer and Corporate Affairs, 1989.

²Southam Newspaper Group, Broken Words: Why Five Million Canadians are Illiterate: The Southam Literacy Report, 1987.

³Occasional Paper #1, prepared by Consumer and Corporate Affairs Canada, Atlantic Region, 1989.

- The "information seekers"⁴ in our society are small in number, but are the articulate complainers to business and government and have a "market-perfecting" effect - keep producers in line.⁵
- The majority of consumers may be characterized as unlikely to make any effort to use information relating to their day-to-day consumer decisions in the marketplace⁶

2.1.2 Implications

The following important social implications stem from this substantial change:

- The assumption made by government and business that consumers process and use a great deal of information to make purchase decisions must be questioned - the mere provision of information will not necessarily cure marketplace failures.
- Business and government need to focus more upon the quality of information and presenting it in a format that facilitates processing.

2.1.3 Impact upon consumer policy

The major impact on existing consumer policy is in the area of product labelling. It is self-suggesting that product labelling:

- Concentrate on how to maximize consumer benefits from labelling that do not depend on reading, understanding and using the information on the label.
- Focus more on the information seeker so that the label provides more sophisticated information.
- Seek to increase the communication efficiency/effectiveness of the label by taking into consideration the capabilities of different target audiences.
- Consider how to protect consumers from their own apathy.

⁴Thorelli, Hans. B., Becker, H., Engledow, J., The Information Seekers, Ballinger Publishing Co., Cambridge, Mass., 1975.

⁵Ramsay, I.D.C., "Rationales for Intervention in the Consumer Marketplace", an occasional paper prepared for the Office of Fair Trading, United Kingdom, 1984.

⁶Consumer Services Branch, "How Effective is Product Labelling?", February, 1989.

The major impact on consumer policy is the need to re-think the traditional remedy to correct marketplace problems by the provision of more information.

2.1.4 Need for policy analysis

- Effectiveness of symbols and print product labelling.
- Delineation of appropriate role for consumers in the marketplace, given limitations of information use.
- Finding innovative ways to reach consumers.

2.2 Lack of Direct Interest in Consumerism

2.2.1 Evidence for change

The following evidence seems to suggest that collective consumerism has given place to the articulate pursuance of short-lived differently labelled single issue concerns:

- Urgency of the 1960's and 1970's consumer movement has become diffused as consumerism became institutionalized across developed nations.⁷
- Market conditions and issues have changed and are more complex in 1980's than in the 1960's - conditions are similar worldwide.⁸
 - proliferation of new and complex problems
 - increasingly sophisticated marketing techniques
 - difficulty in obtaining speed, and satisfactory resolution
- Proliferation of other competing socio-economic conditions - employment, job security, environment.⁹
- Consumerism has fragmented in response to marketplace "niching"¹⁰
- Rise of single issue groups offering various "brands" of consumerism.¹¹

⁷Mayer, R.N., The Consumer Movement: Guardians of the Marketplace, Twayne Publishers, Boston, 1989, pp.134-154.

⁸ibid, p.52

⁹Decima Quarterly Report, vol. 10, no.2, (summer 1989) Executive Summary, p.9, Decima Research Ltd. and Public Affairs International Ltd.

¹⁰Bloom, P.N., Greyser, S.A., "The Maturing of Consumerism", Harvard Business Review, Nov./Dec. 1981, pp.130-131, pp.138-139.

¹¹ibid

- Consumerism has common characteristics and varies only by degree from country to country - reformist not revolutionary.¹²
- Proliferation of goods and services has diffused the focus on problems.
- Business interests are recognizing the bottom line value of retaining customer loyalty.
- Bottom line seems to be not diminished interest, but public focus on a range of matters including a more fragmented consumerism.
- Increasing trend by business to respond/anticipate changing values and trends.

2.2.2 Implications

The following important socio-economic implications stem from this substantiated change:

- Difficulties of getting attention of regulators/policy makers as the marketplace changes, where again other issues have their attention - deficit reduction, taxation, financial reregulation.
- Government mandated consumer protection may not keep pace with the changing marketplace.
- The Department may need to establish strategic alliances/partnerships to develop a range of responses to marketplace issues.
- Government/business need to deal with single issue groups.
- Economic recessions will focus attention/discontent on narrower range of "needed" products and services.

2.2.3 Impact upon consumer policy

The articulation of public policy issues where there is a need to advocate the consumer interest across government (under authority of Section V of the Department of Consumer and Consumer Affairs Act).

2.3 Consumer Awareness of Environmental and Other Socio-Economic Problems

2.3.1 Evidence for change

It appears that consumers have developed a greater awareness of some socio-economic problems especially the importance of preserving the environment. In a June 1989, survey, Decima has found that concern about the

¹²Mayer, op cit.

environment has become the number one concern of Canadians.¹³

There is a very strong link between environment and health issues. These seems to be a shift towards quality of life issues in general. Nevertheless, environment is expected to maintain its primacy, especially with the baby boom generation.

It may be, however, that part of this trend reflects a changed view of societal problems. Issues that were once viewed as consumer problems are now being characterized as environmental or health issues. For example, water quality (i.e. tap water from municipal systems) is a matter of concern. Fears that this water is unfit to drink have led to a booming bottled water industry. This in turn leads to a consumer issue with respect to accuracy of labelling, advertising and testing of bottled water.

This is an example of a trend in which formerly free (or very low-cost) universally available goods may no longer be as available or may be viewed by consumers as unsafe. In California, air quality concerns are leading to restrictions on the use of cars, gas-powered lawns mowers, etc. Ironically, quality of life considerations (i.e. the protection of the environment) result in restrictions on the use of modern technological conveniences which had been viewed previously as part of the quality of life.

The Decima survey also found that while Canadians continue to view the federal government as having the primary responsibility for protection of the environment, more Canadians than ever now perceive that there is an individual responsibility for environmental protection.¹⁴

2.3.2 Impact upon consumer policy

Although consumers appear willing to accept changes in lifestyle in order to protect the environment, the federal government will still be expected to take the lead. Specific impacts for this Bureau relate to hazardous products, packaging and labelling requirements, advertising, inspection and enforcement. More information will be required on basic consumer products

¹³Decima Quarterly Report, vol. 10, no. 2, (summer 1989) Executive Summary, p.9, Decima Research Ltd. and Public Affairs International Ltd.

¹⁴ibid, p.52

relating to their environmental effects and there will be an expectation that it is to be provided by government.

2.3.3 **Need for policy analysis**

- The conversion of wide ranging environmental effects into consumer issues will need new policy analysis as to how the Consumer Bureau will represent the consumer interest across government.
- The apparent willingness of Canadians to accept individual responsibility for environmental protection should be analysed for transferring similar individual responsibility to consumer issues in the marketplace.

2.4 Greater Interest in Personal Health and Well-Being

2.4.1 **Evidence for change**

The following evidence substantiates the greater interest of the consumer health and well-being:

- Proliferation of fitness clubs, exercise classes, sales of sports equipment and clothing, health magazines and lifestyles publications (Globe and Mail's insert "Today's Health"), media coverage of fitness and nutrition issues.
- A longitudinal survey of well-being in Canada (1981, 1988) points to substantial increases in an active lifestyle for Canadians, and that Canadians are eating more healthfully in 1988 than in 1981.¹⁵
- Interest in nutrition¹⁶
 - 67% said nutrition is very important
 - 53% changed diet because of nutritional concerns.
- Growing concern for food safety and quality¹⁷
- Use of pesticides, hormones and growth stimulants in food production - demand for organic foods.
- Consumers more concerned about use of food additives
- Reaction to irradiation of food - concern for personal safety.

¹⁵Campbell's survey on well-being in Canada (1988) conducted by the Canadian Fitness & Lifestyle Research Institute.

¹⁶"Grocery Attitudes of Canadians" (1988), a survey conducted for the Grocery Products Manufacturers of Canada by Dialogue Canada, p.83, 39.

¹⁷Agriculture Canada, "Growing Together: A Vision for Canada's Agri-food Industry" (1989), a discussion paper.

- Interest in nutritional labelling¹⁸ (GPMC survey, 69% referred to package label for nutritional information).
- Importance of freshness - main reason for choosing supermarket.
- Consumer/media reaction to "unsafe food"
 - mussels' problem
 - Alar
 - food terrorism - chilean grapes
 - baby food tampering
- Safety seals on packages to prevent tampering.
- More shoppers looking for allergy information.
- Interest in health claims in food.¹⁹
- Standards for fitness equipment and regulation of fitness clubs.

2.4.2 Implications

- Greater demand for inspection of food.
- Consumer demand for more regulation to ensure food safety.
- Continuing interest in nutritional labelling and health claims in foods; fewer food additives.

2.4.3 Impact upon consumer policy

- Need for interdepartmental response mechanisms to consumer concerns re food safety and quality (eg. CCAC, Agriculture, Health and Welfare, Fisheries).
- Flexible approach to policy development - to encompass and react quickly to new demands, products.

2.4.4 Need for policy analysis

There is a need for the following policy analysis for the Consumer Bureau to remain relevant to the marketplace:

- Proactive approach in areas which impact on food safety and quality, such as new food processes, biotechnology, food additives, materials used in food and agricultural production.
- There is a need to develop partnerships and alliances with other agencies and experts for the timely analysis of consumer hazards of fitness-related services and products, such as non-traditional medical treatments, fitness clubs, medical devices, etc.

¹⁸Grocery Attitudes of Canadians, op cit, p.39

¹⁹Findlay, Dr. C.J., "The Canadian Consumer Food Market in the 1990's" (1989), a report prepared for Consumer and Corporate Affairs.

2.5 Consumers Becoming More Litigious

2.5.1 **Evidence for change**

While the courts are undoubtedly becoming more crowded, with regard to the question of whether consumers, in particular, are becoming more litigious, the preliminary evidence is unclear. In British Columbia, the Report of the Justice Reform Committee recognized, as two of its major concerns, the problems of 1) overcrowding of the court calendar and 2) access to justice. However, there was no elaboration as to the types of cases that were involved.²⁰

The Zuber Report on the Ontario court system states that a serious problem in the civil courts is delay caused by a backlog of cases. This report also contains the following comment:

"...some people feel that the major problem with the justice system is our society's litigiousness. They argue that there is an unnecessary emphasis on the adversary process and that in some cases, alternative methods of dispute resolution would be more appropriate..."²¹

Part of the increase in litigation may be ascribed to the Canadian Charter of Rights and Freedoms. As well, the Canada-U.S. Free Trade Agreement and globalization of the economy may increase litigation as a result of the breakdown of the consensus approach of the past and increased U.S. influence.²²

In Ontario, the Small Claims Court has a heavy caseload with a long waiting list for trials.²³ It is assumed that most consumer matters would come to this court, although the maximum financial limitations would force claims regarding large ticket items elsewhere. At this

²⁰Access to Justice: The Report of the Justice Reform Committee, 1988, p. 181.

²¹The Honourable T.G. Zuber, Report of the Ontario Courts Inquiry, Queen's Printer for Ontario, 1967, pp.56-57.

²²Visions and Strategy, Legislative and Regulatory Renewal Strategies, CCAC, 1989, p.9.

²³The Law Society Gazette, Law Society of Upper Canada, March 1989, p.37.

time, we cannot determine what percentage of the caseload is consumer complaints. In England, the National Consumer Council has found that a very small percentage of consumer complaints find their way to the courts.²⁴

2.5.2 Implications

Because the courts are not functioning as an efficient, speedy and cheap means of resolving consumer disputes, perhaps alternatives to the courts should be explored, as well as new procedures such as class actions and substituted actions.

Another possibility is that American influence may result in increases in product liability litigation in Canada combined with the development of innovative legal arguments based on the Charter of Rights.

2.5.3 Impact upon consumer policy

If the consumer does not have adequate access to inexpensive, speedy redress, only the larger consumer disputes will be resolved. As government has limited resources, business will have to be encouraged to assist in providing redress mechanisms. At the same time, some means of publicly sponsored adjudication as a last resort must still be available.

2.5.4 Need for policy analysis

Further exploration of alternative dispute resolution mechanisms should be given. As well, greater use of administrative remedies should be considered. Consultation with the provinces would likely be required if experiments such as consumers courts or increased use of class actions are undertaken. However, with regard to class actions, it has been suggested that a federal consumer class action grounded in the federal "trade and commerce" power may be constitutionally acceptable and would provide effective redress for many consumers.²⁵ Another option that could be explored is negotiation of voluntary compliance with business codes of conduct for various business sectors.

²⁴Ordinary Justice, National Consumer Council, 1989. p.5.

²⁵Belobaba, Edward P., The 1990's and Beyond, an options paper for Consumer and Corporate Affairs, November 1988, pp. 35-36, pp.55-56.

See also the Report on Misleading Advertising, the Standing Committee on Consumer and Corporate Affairs, Mary Collins, M.P., Chairperson, House of Commons, June 1988, pp.35-39.

2.6 Changing Demographics

2.6.1 **Evidence for change**

The following evidence is presented to substantiate these changes:

- The aging of the Canadian population - A result of increases in life expectancy and a decline in birth rates, there has been considerable growth in both the elderly segments of the population and in the proportion of people who are in their prime working years.²⁶
- Canada's population is becoming more ethnically diverse At the turn of the century, the Canadian population consisted mainly of people from two major ethnic groups, the British and the French. From this time to the end of the Second World War, the majority of immigrants came from Western and Eastern Europe and Scandinavia. In the 1960's, a growing proportion of immigrants were from southern Europe and the United States. While in the last two decades, immigrants have primarily come from Asia, Africa, the Caribbean and Central and South America.²⁷
- The continual evolvement of the labour force - Changes in the labour force have included: the number of part-time jobs growing faster than the number of full-time jobs; a higher rate of employment growth among women than among men;²⁸ and, a growing number of dual-income families.²⁹
- Rate of change - Changes are occurring but the changes will not happen overnight. Immigration will not affect the age structure of society.³⁰

²⁶Devereaux, Mary Sue, "Aging of the Canadian Population", Canadian Social Trends, winter 1987, Statistics Canada, p.37.

²⁷White, Pamela M., "Ethnic Origins of the Canadian Population", Canadian Social Trends, summer 1989, Statistics Canada, p.13.

²⁸Gower, David, "Annual Update on Labour Force Trends", Canadian Social Trends, summer 1988, Statistics Canada, p.17.

²⁹Moore, Maureen, "Dual-Earner Families: The New Norm", Canadian Social Trends, spring 1989, Statistics Canada, p.24.

³⁰Fraser, Graham, "Population will grow until 2026, study says", Globe and Mail, December 13, 1989, p.A-5.

2.6.2 Implications

The demographic trends that have been identified will likely result in consumers of the future demanding a different mix of goods and services. Consumers will be bringing a different mix of "resources" to the marketplace and are likely to be more sophisticated.

2.6.3 Impact upon consumer policy

It is obvious that firms that sell goods and services will adapt their marketing strategies to meet the needs of a population that is composed of: an expanding proportion of older consumers in the population base; a population that is becoming increasingly ethnically diverse; and, has a labour force that contains a larger segment of working women than previously. However, it is not obvious how government policy should react to the changing marketplace. At this stage no clear impact can be discerned.

2.6.4 Need for policy analysis

Any future consumer policy analysis in this area needs to utilize the results of its marketplace surveillance process to monitor the demands of future consumers. Analysis must then be conducted to establish the impacts of changes in consumption profiles resulting from a shift in the age pyramid and changes to demand expectations including social services from governments.

We must throw out any pre-conceived ideas we have regarding the needs and capabilities of the segments we have discussed. Changing technology, lifestyles, education, income levels, etc. will make the elderly, immigrants and working women, different consumers in the future.

Any policy that is implemented should be based on building alliances and partnerships among business, consumers and government to allow for the smooth adaptation by all three parties to the marketplace of the future.

3.0 CHANGES IN THE CHARACTERISTICS OF BUSINESS PARTICIPATION

3.1 Tendency of Business to Reduce Conflict with the Consumer and Government

3.1.1 Evidence for change

The following evidence is presented to substantiate this change:

- Growth of consumer affairs functions/government relations functions to respond to consumer trends and customer satisfaction.³¹
- Business advantage comes from service/value added - greater emphasis on quality and service in successful companies.³²
- Quality goes up, costs go down.
- Complaint management - listening to consumers and profiting from dealing with dissatisfaction.³³
- Business facing unknown challenges in domestic markets from off-shore must compete on quality and service.³⁴
- Products needing to reflect new and changing values such as environmental implications.³⁵
- Business aware that traditional regulation cannot continue; therefore, many areas where consultation on policy will overcome skepticism about the role of government in consumer protection.³⁶
- Perception among Canadian CEO's that consumer organizations have gained influence since 1984.³⁷

³¹Bloom, P.N., Greyser, S.A., "The Maturing of Consumerism", Harvard Business Review, nov./dec. 1981, p.131.

³²Thriving on Chaos: A Handbook for a Management Revolution, T. Peters, Alfred A. Knopf, New York, 1987, pp.79-105.

³³Fornell, C., Wenerfelt, B., "Defensive Marketing Strategy by Customer Complaint Management: A Theoretical Analysis" Journal of Marketing Research, vol. XXIV, nov. 1987, p.337, 346.

Kidd, K., "Best Companies Thrive on Complaints", Globe and Mail, ROB, p.1

³⁴Peters, op cit, pp.79-105.

³⁵Thibault, L., Remarks to staff, Consumer and Corporate Affairs at departmental planning meeting Mont Ste Marie, sept. 1989.

³⁶Post, G., op cit.

³⁷C.E.O. Poll, Report on Business Magazine, p.44.

3.1.2 Implications

- Opportunity for increased business involvement in policy development where consumers/business/government are seeking a common goal.

3.1.3 Impact upon consumer policy

- Continuing to foster new alliances and partnerships.

3.1.4 Need for policy analysis

- How sharing responsibility benefits the three market participants.
- How consumer policy contributes to effective economic policy.

3.2 Exploring New Technology to Increase Range of Services Available

3.2.1 Evidence for change

- Broad application of new technology to, for example:
 - financial markets (ABM's, networking arrangements) and
 - the retailing of leisure "products" (travel packages).³⁸ Some evidence of consumer skepticism about the need for technology and its security in, for example, financial services.³⁹
- Convenience of technology encourages consumer use but business may have difficulty responding.
- Broader range of services available in remote geographic markets - inter-provincial, international as well as niche target marketing (the elderly, etc.).
- OECD is reviewing impacts of technology on a number of areas such as broadcasting.⁴⁰

3.2.2 Implications

- Technological innovation outstrips consumer protection eg. 1) Statute law governing financial transactions is paper based and does not reflect electronic banking. 2)

³⁸Peters, T., "Thriving on Chaos: A Handbook for a Management Revolution", Alfred A. Knopf, New York, 1987, pp.10-11.

³⁹McInnes, D., "... and Now - Consumerism", Canadian Banker, vol. 96, no. 4, July - August 1989, p.7.

⁴⁰Transborder Problems with Television Advertising, OECD, October 1989, DAFFE/CCP 89.9.

In banking, consumers may be forced to prove damage suffered, often without suitable evidence (electronic evidence is the property of the service provider). 3) In telemarketing, consumers cannot seek recourse where transaction originates in another jurisdiction.

- There is an increasing dependence by consumers on "goodwill" when entering into remote contracts where local consumer protection measures cannot be applied.
- Governments unable to apply local consumer protection measures in remote jurisdictions.

3.2.3 **Impact upon consumer policy**

- Probable need for inter-provincial/international codes of conduct within market sectors where, for example, responsibilities may be shared by a number of service providers (e.g. the creation of a single financial market with uniform rules of conduct⁴¹ (eg. International VISA to establish standards for member banks requiring the cancellation of merchant agreements that are the source of complaints from foreign jurisdictions).

3.2.4 **Need for policy analysis**

- Codes of practice/standards/redress in specific market sectors that are technologically driven.
- Review of federal role in consumer protection arising from fraudulent activity associated with telecommunications networks.

3.3 Exploring New Technology to Increase Range of Goods Available

Compared to two decades ago, business is exploring new technologies to increase the range of manufactured goods in the marketplace, including their production, packaging, marketing and distribution. The two significant technologies are computer-aided design (CAD) and computer-aided manufacture (CAM). Evidence for this change is provided below.

⁴¹"The Single Financial Market: Document by Commission of the European Communities", p.p. 18-25.

3.3.1 Evidence for change

- International trend (Japan, Korea, Germany) to use technology to produce quality products.⁴²
- Too often used in North American as tool to cut labour costs rather than as a tool to assist labour in adding value (some negative impact on quality)⁴³, also used only to close competitive gap, not get ahead.⁴⁴
- Technology benefits consumers where it yields new products choice or variation.⁴⁵
- Impact of technology demonstrated by some attempts to limit access of foreign made products that contain aspects of technological advantage. (Canadian import restrictions on Japanese cars.)⁴⁶

3.3.2 Implications

- Manufacturers can produce lower per unit product costs without the need for mass production, meaning that low or zero inventories are needed.
- Design changes can be made instantly, meaning that the product can be changed to meet new consumer requirements or correct consumer problems such as safety or non-performance.

3.3.3 Impact upon consumer policy

- Business capacity to respond to product problems will outpace government's capacity to intervene via voluntary standards and regulation in a timely manner.
- The economic burden will be reduced on both industry and government.
- It will facilitate and foster productive alliances

⁴²Edmondson, Wheelwright, op cit, pp.72-73.

⁴³Thriving on Chaos: A Handbook for Management Revolution, T. Peters, Alfred A. Knopf, New York, 1987, p.31.

⁴⁴Edmondson, Wheelwright, op cit, p.72.

⁴⁵Peters, op cit, p.53.

⁴⁶Consumer and Corporate Affairs, "An Analysis of the Report of the Federal Task Force of the Canadian Motor Vehicle and Automobile Parts Industries", September 1983, pp.1-5.

Dardis, R., Lin, J.Y., "Automobile Quotas Revisited: The Cost of Continued Protection", Journal of Consumer Affairs, winter 1985, vol. 19, no.2.

between business and government, since ease with which change and modification can be effected will reduce a potential adversarial relationship.

- It could have a major influence in the type of staff needed in the Consumer Bureau.
- It could potentially reduce the resources needed for compliance and enforcement, because of the ease of changing product lines.

3.3.4 Need for policy analysis

- Review and analysis of existing legislation.

3.4 Business Has Become More Sensitive to the Threats and Challenges of the Globalization of the Domestic Marketplace

3.4.1 Evidence

- Capital movements, rather than trade in goods and services, have become the driving force of the world and thus, the Canadian Economy.⁴⁷
- The Canadian view is that "domestic economic policies will succeed only if they strengthen, or at least do not impair" a country's international competitiveness.⁴⁸
- Companies can no longer assume their competition comes strictly or ever primarily from other domestic markets.⁴⁹
- Competition will come in services as well as goods since the term services has come to mean a wide range of activities including investment banking, social and personal services such as finance and insurance.⁵⁰
- Access by American business interests to Canada under the CUSTA is a major step towards further inroads from other economic regions.⁵¹
- Competition in goods will come primarily from Asian countries while competition in services will arise

⁴⁷Boudreau, M., Langsford, A., "The World Has Changed: Can the GATT?", Policy Options, May 1989, p.21.

⁴⁸Coyne, Andrew, "Globalization Changing the Ground Rules", The Financial Post, June 1, 1987, p.15, quoting Michael Wilson, Minister of Finance.

⁴⁹Coyne, A., *ibid.*

⁵⁰Hein, John, "Global Economic Trends: What Lies Ahead for the 1990's", The Conference Board Research Report, no. 932.

⁵¹Rugman, Alan M., "The Free Trade Agreement and the Global Economy", Business Quarterly, summer 1988.

- mainly from the United States.⁵²
- The financial services industry has been at the forefront of the changes in response to globalization. Innovation in the delivery of financial services is facilitating adjustments in other parts of the economy.⁵³
 - The Canadian Manufacturers' Association has analyzed the implications of globalization, and made recommendations to its members and governments on reinforcing Canada's competitive role in foreign and domestic markets.⁵⁴
 - Canada's corporate sector is undergoing a process of tremendous adjustment becoming more outward looking and more competitive than ever before. In the process, many Canadian firms are becoming bigger and others are finding places within the global framework of the planet's leading megafirms.⁵⁵

3.4.2 Implications

- Greater range of goods available.
- Higher quality of goods.
- Lower prices.
- International harmonization of standards.
- Reduced opportunity for redress.
- Increased propensity for hazards through misuse because of poorly translated explanatory product manuals.

3.4.3 Impact upon consumer policy

- Greater need for international information exchange, liaison and cooperation.
- Need for adequate Canadian representation in international fora relating to harmonization of standards; reduction of hazards relating to products and their use.

⁵²Zeidenberg, J., "Canada vs Goliath: Free Trade in Services", Small Business Magazine, July/August, 1988.

⁵³Handfield-Jones, S., Glorieux, G., "Adjustments to New Market Realities - The Canadian Financial Services Industry in Transition", The Conference Board of Canada. A financial services research program report, (31-88), p.5

⁵⁴"The Aggressive Economy: Daring to Compete", A report by the Canadian Manufacturers' Association, June 1989.

⁵⁵Rusk, James, Toronto Globe and Mail, December 15, 1989, p. B15, reporting on a study released by Pace University of New York of the impacts of the Canada-United States Trade Agreement.

- Unpredictability of changing international political structures could affect the extent and significance of globalization.

3.4.4 **Need for policy analysis**

- There is a need to monitor the many external policy analyses to determine with greater clarity the benefits/costs of globalization to the Canadian domestic market.

4.0 **CHANGES IN THE CHARACTERISTICS OF GOVERNMENT**

4.1 Limited Government Resources

4.1.1 **Evidence for change**

Federal cabinet ministers have been asked, in December 1989, to cut spending on government operations by up to \$1.5 billion. These spending cuts are to allow the G.S.T. rate to be set at 7% as opposed to the original proposal of 9%.⁵⁶

4.1.2 **Implications**

The demand for tax supported government programs has now far outstripped the availability of tax revenues. Government has consistently over the last decade provided more public services than could be supported by the tax base. This deficit spending situation has left the government with an enormous debt where more than twenty-five percent of the federal budget is consumed in just paying the interest on the outstanding public debt.

4.1.3 **Impact upon consumer policy**

Required programs will have to be delivered with fewer resources. This means, either innovation to increase efficiency and productivity, or influencing non-public resources through catalysis, leveraging and building new alliances and partnerships.

4.1.4 **Need for policy analysis**

There is a need to produce an inventory of delivery mechanisms that are essentially costless to the federal government.

⁵⁶Toulin, Alan, "Ministers told to cut \$1.5 billion to achieve 7% rate on G.S.T.", Financial Post, December 12, 1989, p.1.

4.2 Government Interventions - Potential Side-Effects

4.2.1 **Evidence for change**

Studies of the Consumer Product Safety Commission in the United States have suggested that the Commission has, in the past, targeted inappropriate hazards for regulation, downplayed the costs of its regulations and resisted flexible market-oriented strategies for hazard reduction.⁵⁷ This is an example of a regulatory agency that has intervened in the marketplace but has been consistently ineffectual and thus has created more problems.

Regulators are sometimes faced with the choice of enacting a regulation that can accomplish a specific goal either by legislating a change in technology or a change in consumer behaviour. However, the difficulty for the regulator arises because some consumers will respond only to the new technology, while others will respond only to a behaviour change. Automobile seat belts are an example. Regulators are faced with a choice between passive restraint devices or laws requiring motorists to use seat belts.⁵⁸ Whatever choice is made, some consumers won't be reached.

Another problem with regulations is that they may be too narrowly defined and thus may be ineffective. For example, in the workplace, a narrow legal concept of risk may ignore many potentially hazardous factors in the workplace.⁵⁹

The imposition of regulations to protect the public may have other side-effects. For example, laws in the U.S. which required the mandatory use of motorcycle helmets resulted in constitutional challenges as to whether or not the government had the right to limit the freedom of

⁵⁷Thomas, L.G., "Reveal Bureaucratic Preference: Priorities of the Consumer Product Safety Commission", The Rand Journal of Economics, vol. 19, no. 1, spring 1989, Lancaster Press, p. 102.

⁵⁸Zick, Cathleen D., and Mayer, Robert N., "Mandating Behaviour or Technological Change: The Case of Auto Safety:", The Journal of Consumer Affairs, vol. 20, no. 1, summer 1986, American Council on Consumer Interests, p.p. 1,3,9.

⁵⁹Sass, R., "The Need to Broaden the Legal Concept of Risk in Workplace Health and Safety", Canadian Public Policy, vol XII, no. 2, June 1986, University of Guelph, p.286.

choice of individuals. These types of challenges place a burden on the legal system.⁶⁰

There have been examples of the government intervening in the marketplace without fully investigating the potential problems associated with its action. The government may have decided to intervene because it is facing pressure from several competing interest groups and lets this pressure override its consumer protection objective. The case of UFFI⁶¹ is an example of this type of intervention. The product was introduced without a complete confirmation of its health effects because of industry pressure. Later, upon further review, it was decided that UFFI was unsafe and had to be pulled from the market at the insistence of single interest pressure groups. Since the product was not only approved by the government, but the government had encouraged its use, the government, at considerable expense, decided to make restitution to those homeowners who had installed UFFI. The resources that were spent for promoting UFFI and removing UFFI were an improper allocation of resources since the product should never have been approved in the first place.

4.2.3 Implications

Government intervention in the marketplace to correct a perceived problem is not just a simple matter of amending or implementing legislation. Careful consideration of the various implications of the action are also required including the possibility of making restitution for any damages that consumers have incurred.

4.2.3 Impact upon consumer policy

Adequate consideration must be given to the total effect of the proposed policy upon the marketplace, to include not only all benefits but all potential costs. It also means that the full range of available tools for market intervention, other than by legislation, should be given due consideration. This may be a time-consuming process.

⁶⁰Dardis, Rachel and Lefkowitz, Camille, "Motorcycle Helmet Laws: A Case Study of Consumer Protection", The Journal of Consumer Affairs, vol. 21, no. 2, winter 1987, American Council on Consumer Interests, p.216.

⁶¹Tataryn, Lloyd, "UFFI: The Acceptance of the Unacceptable Product", Canadian Consumer, vol. 14, no. 6, June 1984, Consumers' Association of Canada, p.41.

4.3 Market Dynamics Faster Than Policy Changes

4.3.1 **Evidence for change**

The impact of technological change and global competition (including the Free Trade Agreement and "Europe 1992") will continue to push business to develop and offer goods and services to the marketplace faster than in the last decade. Some examples include: the offering of completely new financial services and services not offered previously by financial institutions operating in a particular market, such as the entry of banks into the securities business; the development of new medical products made quicker by technology and bio-medical (eg. genetic) advances; the advent of alternative fuels such as natural gas for automobiles.

4.3.2 **Implications**

- Government may not be able to provide needed and timely protection for consumers.
- Business may not receive timely leadership to "Level the playing field" from government.
- Regulators catch-up may cause unintended side-effects.
- Pressure may mount, via interest groups, to do something (eg. credit cards) resulting in political solutions, which may not be optimal.
- Market corrections in an imperfect market may not allow adjustments which are economic or social efficient.
- Governments may have to look for non-traditional ways to respond, such as alliances and partnerships.

4.3.3 **Impact upon consumer policy**

- Consumer policy may be stifled unless quicker responses to marketplace issues can be found. Public confidence in government, and in the offerings of marketplace suppliers may be eroded if policies cannot adjust to meet the challenge of a dynamic marketplace.
- Recognition that there is a need for more proactive consumer policy.

4.3.4 **Need for policy analysis**

- The policy analysis is needed to determine how and where government can react to changed market conditions so that policies are timely and relevant. This means that there is a need to have in place a structured, managed process of marketplace surveillance and intelligence gathering. Such a surveillance has to be combined with a look-out function devoted to scanning for and interpreting developments in other countries.

4.4 Provincial Governments Have Assumed an Increased Responsibility in Consumer Affairs

4.4.1 **Evidence for change**

The following substantiates the evidence for change:

- Provinces assumed full responsibility for provincial consumer complaint mediation and inquiries in 1978 (as a result of a federal-provincial agreement).⁶²
- Information programs for consumers have been expanded (and are more accessible - e.g. Access Ontario and Communications Québec).
- Development of consumer studies curricula in some high schools (B.C., Sask., Ont.) and community TV consumer programs (Québec).
- Legislation - although the big burst in consumer protection legislation, both provincially and federally occurred in the late 60's and early 70's⁶³, there has been some legislative development provincially in the late 1970's and 1980's (most notably the comprehensive Consumer Protection Act in Québec). Other provinces passed trade practices laws, product warranty legislation and specific measures dealing with consumer credit reporting, collection practices, new home warranties, the travel industry and fitness clubs.

Recently (1987-88) Ontario undertook a major review of its consumer legislation and programs and is presently considering the enactment of a Consumer Protection Code and industry-specific legislation.⁶⁴ Other provinces (Québec and Alberta) are preparing to introduce financial sector legislation.

4.4.2 **Implications**

- Differences in legislation and programs among provinces add confusion to Canadians, operating in a global marketplace.
- Potential for overlap or conflict with federal laws, policies.

⁶²Remarks by Warren Allmand to delegates at the Consumer Assistance Conference, October 1978.

⁶³Belobaba, E., "The Development of Consumer Protection Regulation: 1945 to 1984" in Consumer Protection, Environmental Law and Corporate Power, (1985), vol. 50, Macdonald Royal Commission, pp.5-9.

⁶⁴Legislative Review Project Report, vol. 1-5, Ministry of Consumer and Commercial Relations (1988).

- Difficult for federal government to predict new areas for regulation as provinces tend to react to marketplace problems on a regional basis.
- Could also lead to policy competition where in order to attract business, a province reduces its consumer protection or other constraints.

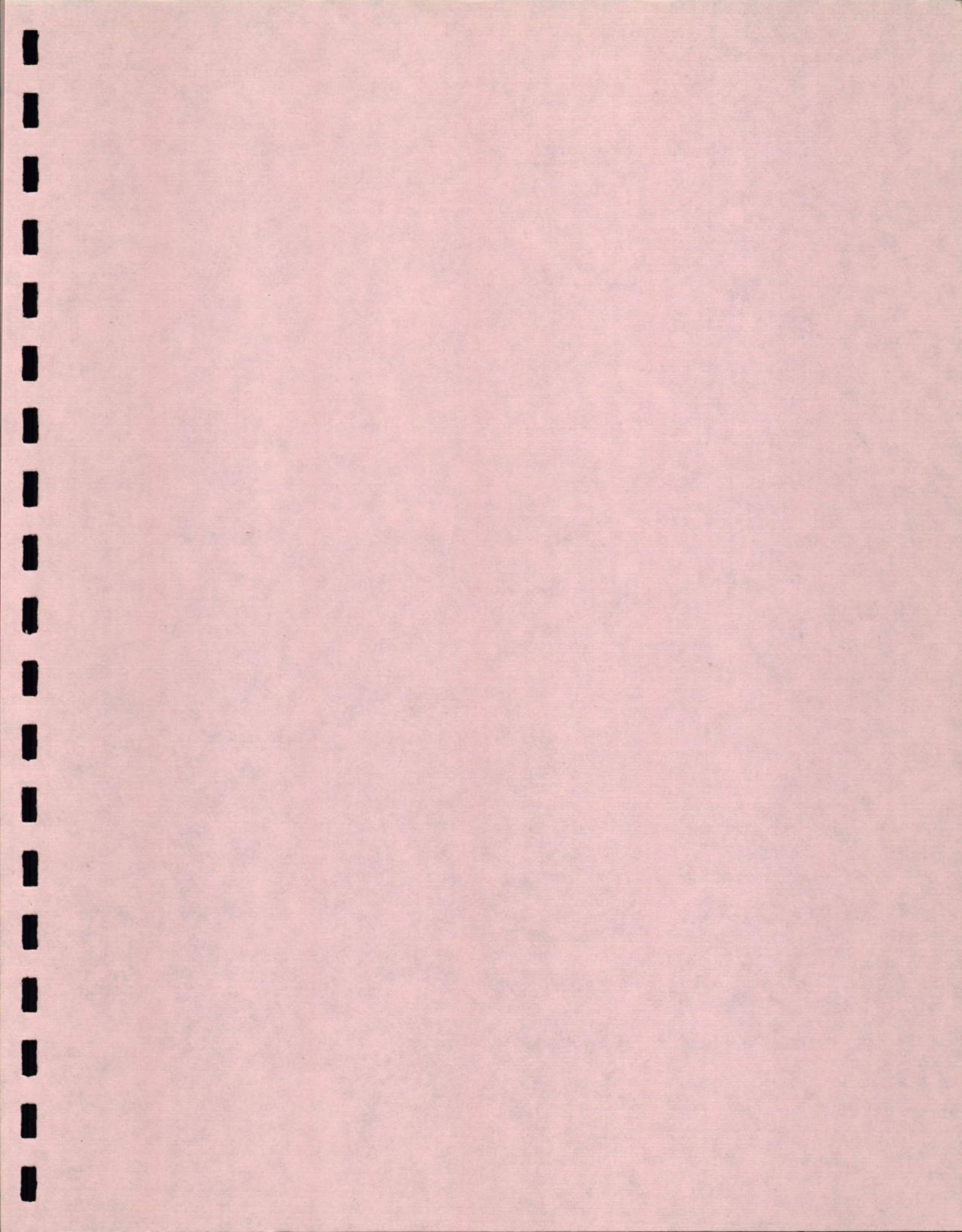
4.4.3 Impact upon consumer policy

- Shared jurisdiction, such as in financial services, may lead to compromise policies, not entirely in the direction desired by the government.
- Increased need to build partnerships among jurisdictions.

4.4.4 Need for policy analysis

- Given the global marketplace, there is a need to analyse how federal jurisdiction can be asserted in consumer problems of a national/international dimension by greater use of trade and commerce power.⁶⁵
- Need to assess impact of provincial initiatives on federal goals, and where necessary to seek a harmonization between federal and provincial interests. In Canada, we are not, for example, able to set comprehensive labelling regulations. Nationally yet, it would be efficient to provide uniform information for consumers at a relatively low cost. Policy analysis must seek ways to achieve national goals in a fragmented regulatory system.
- There will be a continuing need to assess provincial initiatives, where due to technology and globalization of markets, provincial boundaries in the marketplace tend to become irrelevant because for most consumer goods the market is a national one.

⁶⁵General Motors vs City National Leasing (1989) Supreme Court of Canada.



**CONSUMERS' SEARCH,
PROCESSING AND USE
OF INFORMATION**

A LITERATURE REVIEW

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INTRODUCTION

Background

In the tripartite relationship between government, business and consumers it is becoming increasingly apparent that consumers must take responsibility for promoting safety, fairness and efficiency in the market. However it is questioned whether consumers are able to assume their responsibilities and whether Consumer and Corporate Affairs Canada (CCAC) can develop strategies to facilitate consumer involvement in the market place. To understand what is currently known about the way consumers seek and use information, a literature review was commissioned.

Objectives

To provide a report showing the extent and processes by which consumers seek and evaluate information to make a purchase decision about products and services. It is anticipated that the literature review will be used to help address Canadian consumer problems (eg will the provision of information to consumers make them more effective decision makers) and aid CCAC develop a research programme to evaluate possible ways of making consumers better informed decision makers.

Research Methodology

Using a computer database search facility, publications focusing upon consumers' search, processing and use of information during purchasing were identified. Publications in consumer behaviour books, journals and conference proceedings were consulted which detailed research from Canada, the United States of America and Europe. It should be noted that this review considers consumer activity and has not considered organisational buying behaviour (ie the buying by firms, government offices, hospitals, etc).

SUMMARY

Chapter 1 reviews information processing models of consumer buying behaviour and explains the importance of the concept of involvement. In the much quoted Engel Kollat and Blackwell model, three factors are key to appreciating the decision process, ie consumers' involvement with the purchase, the degree of differentiation between competing alternatives and the time available for deliberation. Consumers' involvement when buying a product or service is a motivational state triggered by the importance, perceived risk, symbolic value and emotional appeal attributed to the purchase. When highly involved in the purchase, and the alternatives are well differentiated, complex decision making occurs, based upon active information search in order to evaluate alternatives prior to purchasing. When involved, but unable to appreciate differences between alternatives, dissonance reduction or attribution occurs. Consumer confusion leads to a purchase based on non-media sources or advice from friends/salesmen. After the purchase the brand will be evaluated and only then would brand beliefs be formed through selective attention to messages that support the purchase and dissonant messages being ignored. The most common decision process is thought to occur when the consumer is not particularly involved in the purchase, regardless of the degree of differentiation between alternatives. In this limited problem solving process, information is passively acquired, followed by a purchase, the result of which may or may not be evaluated. Involvement with different purchases is a consumer, rather than product/service characteristic, and different consumers may show differing levels of involvement with a particular purchase. It is much more meaningful to consider typologies of information search and processing using involvement rather than products or price levels (which are inherent within the involvement measure).

Chapter 2 explains consumers' limited cognitive capabilities in seeking and processing information and shows how consumers overcome this through "chunking" information and the perceptual process. Memory consists of long term store (with very large capacities) and short term store (of very restricted capacity, used for processing and short term storage). To overcome the short term memory constraint of an inability to process no more than 7 pieces of information simultaneously, the mind recodes small amounts of information (bits) into larger chunks which can be efficiently stored and recalled. The brand name appears to

be an information chunk and reduces the need for further attributes to be considered. A further way that consumers overcome cognitive limitations is through organising information into categories (perceptual organisation) and through filtering information (perceptual selectivity). This not only reduces the likelihood of a message being received, but the content of the original message may be distorted during this process.

Chapter 3 considers how information search occurs and shows that external information search tends not to be extensive. Reasons for limited external search are discussed. Increasing information availability may make the consumer feel more confident, but leads to less effective decision making. Communicators need to focus more upon the quality of information and presenting it in a format that facilitates processing.

Chapter 4 explores the reliance consumers place upon different informational sources. Based upon a model of products and services as arrays of informational cues, it shows consumers using a few cues with which they are confident in being able to predict the products capabilities. Of the two broad sources of information (marketing controlled and non-marketing controlled), consumers are more likely to consult non-marketing controlled sources (friends, relatives, etc) due to their greater credibility and impartiality. Marketing activity needs to be strongly associated with brand names, since of the marketing controlled information sources, brand names are far more sought than advertising or pricing information. Consumers perceive different people as being particularly knowledgeable about different product fields (eg early adopters) and approach different people according to the purchase being planned. They also abdicated some aspects of the decision/buying process to consumer surrogates, selected as being experts for a specific type of purchase.

Chapter 5 reviews how information search varies according to consumers' characteristics. Consumers perceive risk in each buying situation and if their level of risk exceeds their tolerance threshold they are then likely to reduce risk through either reducing the amount at stake (buy smaller size) or increasing their certainty (seek more information). For regularly purchased items, consumers' risk perceptions are unlikely to exceed a critical level. Where consumers' risk thresholds have been exceeded it is thought that information search will increase

with increasing perceptions risk. More educated consumers tend to be greater information searchers. According to the product field, there is evidence of differences between men and women when seeking information. For consumers aged between approximately 18 to 60, evidence indicates that increased age leads to less information search. Much younger and older consumers cannot cope with large amounts of information.

CHAPTER 1

MODELLING CONSUMER BEHAVIOUR

1.1 Introduction

A considerable volume of literature exists describing consumer behaviour in terms of information processing activity (eg Peter and Olson, 1987; Bettman, 1979), ie active or passive information search and processing being undertaken to facilitate a purchase decision. The nature and extent of information search varies between purchase situations and, by focusing on involvement and perceived differences between competing items, this chapter presents a review of the three types of decision processes undertaken by consumers. These provide an insight to the way information is used in buying. As involvement is an important concept to predict information search activity, a discussion of the interpretations of involvement are considered. The chapter concludes by summarising the currently held theory of consumer information processing models and draws implications about the way organisations can use marketing resources to more effectively communicate with consumers.

1.2 Modelling consumer behaviour as information processing

An inspection of the volumous literature on consumer behaviour shows that much of the current research is based upon an information processing paradigm. This posits the consumer as interacting with his or her environment, seeking information from various sources, processing it and then making a purchase decision. One of the reasons for adopting an information processing view of choice is that organisations are currently striving to influence market activity through the provision of more information about their products or services. In daily life consumers are literally being bombarded by considerable quantities of potentially relevant information for making choices. For example, Britt et al (1972) reported that men were exposed to between 117 and 285 advertisements per day and women came across between 161 and 484 advertisements in a day. The reality of the information era can be further appreciated by considering the fact that in a large grocery store, approximately 20,000

product lines would be stocked, each having a pack display that would convey numerous pieces of information. Thus researching consumer behaviour under the assumption of an information processing perspective reflects the activity of both government and commercial organisations to influence market behaviour.

Another reason for the increasing research into information processing is that other models of choice behaviour have been less successful in helping resolve issues such as how much and what type of information to provide to consumers. For example the earlier stimulus-response model assumed that behaviour resulted from the advent of stimuli (eg hunger or some event in the external environment). This though assumes consumers to be passive observers. While consumers passively acquire information in some circumstances (see section 1.4.3), the review by Bettman(1979) shows evidence of consumers actively seeking and processing information, negating the value of stimulus-response models. Another model of choice is the two component expectancy-value approach. The expectancy component refers to beliefs that actions lead to certain outcomes and the value component refers to the value of these outcomes. When faced with a choice situation, this model proposes that the consumer mentally assigns scores to these two components and then after a further mental calculation of the interaction of these two components for the different choice alternatives, the consumer selects that choice which produces the highest overall mental score. One of the weaknesses with this model is that it requires a significant level of mental processing activity, however as is later shown, consumers' processing capabilities are restricted.

Thus there is much research based upon the consumer as an information processing, problem solving individual (Ring et al, 1980) who faces a complex world with both limited economic resources and limited capacities to seek, store and process product information. The economists view of the consumer hypothesizes that buyers acquire information until the marginal value gained from this activity to equal to, or less than, the cost of securing that knowledge (eg Bucklin, 1969). However this model of consumer choice behaviour is less than ideal since as the review later in this report shows (eg Katona and Mueller, 1955; Olshavsky and Granbois, 1979), many consumers do not acquire perfect information.

1.3 Alternative cognitive models of consumer behaviour

Consumer choice behaviour is a complex process and is influenced by a myriad of factors. Recognising from section 1.2 that information provision is a prime factor used to influence market behaviour, organisations strive to understand the consumer choice process to best decide upon marketing strategies.

By modelling the consumer choice process, a simplified device is presented which highlights the consumer decision process and the way that several key (rather than all) variables impact upon the decision process.

From the mid-60s several models were developed, but there is still no consensus as to which information processing model best describes consumer behaviour. The landmark models, named after the individual researchers are the Nicosia model, the Howard-Sheth model, the Engel Kollat Blackwell model and Bettman's model. As this report later presents a synthesis of research on information processing models, a detailed review of each of these models is not presented. The reader interested though in learning more about these individual models should consult chapter 19 of Shiffman and Kanuk (1987). While there are differences between these models, (see Chapter 12 of Bettman, 1979) there are similarities that prove enlightening when appreciating how consumers use information in choice behaviour.

All of these models consider consumer choice as a process, rather than as a discrete act. While there are some differences in the conceptualised stages of the choice process, they show similarities in terms of the phases that consumers mentally progress through. For example, the Engel Kollat Blackwell model builds upon Deweys (1910) theory of decision processing and considers buyers passing through sequential stage in decision-making (as shown in sections 1.4.1).

The models describe choice behaviour as being purposive with the consumers acquiring and using information. As Ajzen and Fishbein (1980) summarised, consumer behaviour is rational and is founded upon consumers making systematic use of the information available to them. It

is the extent and intensity of active reasoning that varies from one decision to another.

Following from the premise that consumer behaviour is purposeful, models attempt to explain behaviour (eg the way that a knowledge of consumers' attitudes can help predict behavioural intention (Ajzen and Fishbein, 1980). There appears to be agreement that consumers limit the amount of information search (eg section 1.4.1) and progress from general appreciations of competing alternatives to more specific choice attributes over time. Consumers develop decisions based upon limited cognitive capabilities (Deshparde and Hoyer, 1983; Nakanishi, 1974) and in instances use surrogate variable to overcome these limitations (eg high price as an indicator of better quality (Wheatley and Chiu, 1977)).

These models describe the consumer as an efficient decider, since after a decision process the outcome is evaluated and fed back into memory. Particularly for regularly bought goods, purchased with short inter-purchase periods, consumers are able to reduce the burden of decision making by drawing up any experience held in memory.

Finally, while these models generally show the consumer as passing through similar decision stages, the way in which other factors interact to affect the decision outcome differs between the various models.

1.4 Towards a generalised model of consumer behaviour

The extent and type of information sought varies according to the purchase situation (eg Newman, 1977). In the much quoted comprehensive Engel Kollat Blackwell (1982) model three key factors are identified that influence information search, ie involvement, the degree of differentiation between alternatives and time pressure. They define involvement as "the level of perceived personal importance and/or interest evoked by a stimulus (or stimuli) within a specific situation" (p24). One of the problems though, that consumer researchers are working on, is that there are different interpretations of involvement (eg Zaichkowsky, 1985).

A consumer becomes involved in the purchase, for a variety of reasons, eg when the product or service is perceived as reflecting on their self-image (eg clothing, cars). Alternatively, they are likely to become

involved when they perceive a high risk in the purchase (due to such aspects as financial loss, fear of wasting time, etc.) Or when there is social pressure to behave in a certain way and the consumer feels motivated to comply then they become involved in the purchase. In a situation where the consumer feels involved, because the purchase is important to them and they feel that it matters buying the right brand, they are likely to be more concerned about getting information to help their choice. By contrast, for low involvement purchasing, the consumer does not feel anxious, the purchase is not as important and with the person wondering whether its worth the time and effort searching for information, there is less likely to be a detailed decision process.

The Engel Kollat Blackwell model predicts that when the consumers involvement with a purchase is high, when the alternatives in a product field are clearly differentiated and when there is no time pressure (eg buying a car), extensive information search will occur ("extended problem solving"). In this situation consumers actively seek information about competing items which they then evaluate prior to making a decision. In "limited problem solving" involvement is relatively low, the alternatives in the product field are not widely differentiated and time is short (eg buying a new type of snack food in a supermarket). Engel and Blackwell (1982) explain how external information search is minimal in the limited problem solving situation. External information is passively acquired and unlike the extended problem solving situation a purchase is made prior to the competing brands being evaluated. Finally for regularly bought items, the consumer's behaviour conforms to "routine problem solving" where routinised repurchase strategies are established and memory is the prime source for any information (eg buying regularly bought brand of breakfast cereal).

The importance of this model is that it highlights the fact that consumers' information search and processing strategies vary between purchase situations. To better appreciate how the buying behaviour process varies between situations (and hence how information usage strategies vary) a typology building upon that presented by Assael (1987) and expanded upon using the Engel Kollat Blackwell model (Engel and Blackwell, 1982) is presented in figure 1-1. This typology looks at consumer behaviour in terms of the degree of involvement and differentiation between brands.

SIGNIFICANT PERCEIVED BRAND DIFFERENCES	COMPLEX DECISION MAKING (EXTENDED PROBLEM SOLVING)	TENDENCY TO LIMITED PROBLEM SOLVING
MINOR PERCEIVED BRAND DIFFERENCES	DISSONANCE REDUCTION OR ATTRIBUTION	LIMITED PROBLEM SOLVING
	HIGH INVOLVEMENT	LOW INVOLVEMENT

Figure 1-1 : Typology of Consumer Decision Processes

Sections 1.4.1 to 1.4.3 clarifies these forms of the consumer decision process.

1.4.1 Complex Decision Making (Extended problem solving)

Complex decision making occurs when consumers are involved in the purchase and where they perceive significant differences between competing brands in the same product field. This type of decision process is likely for high priced products, when consumers perceive performance risk (eg medical products, cars) for complex products (stereo equipment, home computers) and those products that reflect the buyers self-image (clothing, cosmetics). It is characterised by the consumer actively searching different environments for information to evaluate the alternate brands in a particular product field. The buyer passes through the five stages shown in figure 1-2.

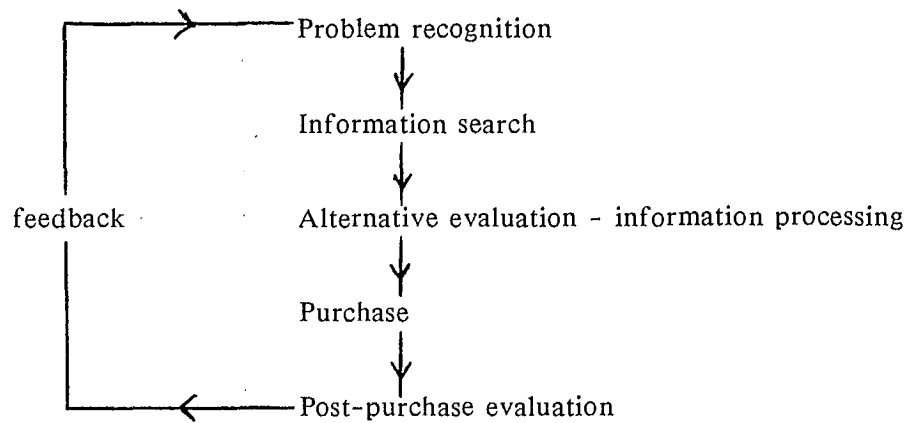


Fig. 1-2 ; Stages in complex decision making

A person may visit their friend and after hearing their new stereo system may become aware of how inferior their much older system sounds. Problem recognition (ie the consumers' awareness of a perceived difference between the current and ideal state) can occur for a variety of reasons. Besides the social influence, also encompassing family and cultural influences, problem recognition may be due to an individual's characteristics (eg desire for a car that reflects their lifestyle, motive activated by an advert, etc.) or from a situational influence (eg current hi-fi no longer works).

Once aware of a problem, the consumer then starts to seek information. This begins with an examination of memory (Bettman, 1979). Besides providing guidance as to whether sufficient is held in memory, the memory search directs external search on the basis of what is not known. This may then result in cycling between memory and the external environments until the consumer feels they have acquired sufficient information. However it should be noted that consumers rarely pursue information single-minded. They are continually receiving information and if something interests them, they will interrupt what they are doing and become attentive to the new source, a process Bettman (1979) refers to as "interrupts".

In Wilkie's (1986) consideration of consumer information processing, he presents a further perspective on information arriving from external environments. To cope with the vast array of continual information, consumers use sensory registers to filter out information. This perceptual

process enables them to protect their limited cognitive capabilities from information overload and yet means that only a proportion of the input information developed by a commercial communication will be used by consumers.

There are various theories about the structure and operation of memory (eg Bettman, 1979), however marketers often talk about consumers having short term and long term memories. Signals from sensory registers are processed in short term memory and are stored in long term memory. Long term memory holds the algorithms for the short term memory to call upon to process incoming signals. Most of the capacity limitations are found in short, rather than long term memory as is discussed in more detail in section 2.2.

Once the consumer feels they have enough information, they must then evaluate the competing offerings (ie progress to alternative evaluation - information processing stage). In their mind are evaluative criteria and by comparing the information from the search stage with these evaluative criteria, beliefs are formed. These then change attitudes ("positive or negative evaluation of the consequences of buying and using a particular product or brand" (Engel and Blackwell, 1982)). If a favourable attitude results, this leads to a greater likelihood of there being a positive intention to buy. It should be noted that in the other consumer behaviour typologies shown in figure 1-1, the order of belief leading to attitude then behavioural intention, is not necessarily followed. Ray et al (1973) contributed to our understanding of how consumers use information (in particular advertising) by showing that according to the consumer's level of involvement, so there is a changed order of the hierarchy: beliefs, evaluation, behaviour. In the complex decision making model the order is referred to as the "learning hierarchy", further clarified in figure 1-3. The other two versions of the hierarchical ordering are shown in sections 1.4.2 and 1.4.3.

Brand beliefs are formed by active learning from advertisements

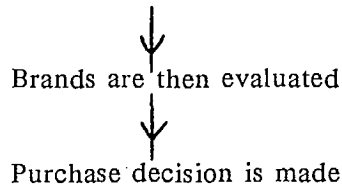


Figure 1-3 : The learning hierarchy seen in complex decision making

When evaluating alternatives, consumers need to process information. As Engel and Blackwell (1982) explain this first starts with the consumer being exposed to external information. Sensory receptors in the mind are activated and preliminary processing takes place. Attention may follow with information processing capacity being allocated - however due to the selective nature of the perceptual process, attention will not be automatic. The message is further processed in short term memory and given meaning during the comprehension stage. The processed message is compared against existing evaluative criteria and beliefs which are stored in long term memory. If the message is incompatible with existing beliefs during the yielding/acceptance stage, information processing terminates. Alternatively, existing beliefs will either be reinforced or changed, with the message retained in long term memory.

The consumer should feel sufficiently confident to make a purchase and during trial compares the product/service performance against expectations (post-purchase evaluation). Satisfaction will strengthen favourable brand beliefs and attitudes enhancing the likelihood of continued buying of a specific brand. Dissatisfaction may result in further information search to provide reassurance that the correct choice was made, or the buyer will be likely not to buy the same brand in the future.

In the event that the consumer is satisfied with the purchase and repeats it in a relatively short period of time, they are unlikely to undergo such a detailed process again and are likely to follow a more routine decision making process (routine problem solving behaviour). Problem recognition would be followed by memory search, which, with prior satisfaction, would reveal clear purchase intentions and hence purchase behaviour. Brand loyalty would ensue, which would be reinforced by continued

satisfaction (should quality be maintained). This process is shown in figure 1-4.

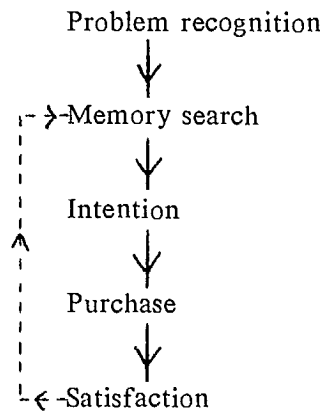


Fig. 1-4 : Routine decision making under high involvement

1.4.2 Dissonance reduction or attribution

This type of buying behaviour is seen when there is a high level of consumer involvement with the purchase, but consumers perceive only minor differences between competing brands. Carpet buying would follow this process. Involved but uncertain consumers may be confused by the lack of clear brand differences, or by their lack of confidence in making judgements. Without any firm beliefs about the advantages of any particular brand, a choice will be made based on some non-media or non-marketing communication source (eg friend's opinion). The consumer would be likely to feel insecure and shortly after the purchase, may receive information that conflicts with their original justification for the purchase. The consumer would experience psychological discomfort ("post purchase dissonance") and would attempt to reduce this state of mental unbalance. This would be done by either ignoring the dissonant information or by selectively interpreting those messages that confirm prior beliefs. Thus in this type of purchase decision the consumer makes a choice without firm beliefs, then changes her attitude after the purchase - often on the basis of experience with the chosen alternative. Finally learning occurs on a selective basis to support the original choice by being attentive to positive information and ignoring negative information. The hierarchy that reduces dissonance is shown in figure 1-5 (following Ray, 1973).

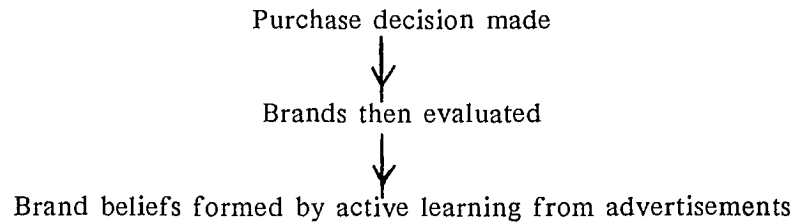


Figure 1-5 : Dissonance - attribution hierarchy

An explanation of this process can also be advanced using attribution theory (Bem, 1968). This states that consumers attribute certain motives to their actions after the event. There are no prior beliefs or evaluation, instead they evolve after the purchase and are attributed to the behaviour. A typical comment from a consumer showing this behaviour would be "since I bought it, it must be pretty good".

1.4.3 Limited Problem Solving

While the limited problem solving aspect of the Engel Kollat Blackwell model was proposed to account for low involvement purchasing with minimal differences between competing brands, I believe that this probably also describes low involvement purchasing when the consumer perceives significant brand differences. This is thought to be the case since, when a consumer feels minimal involvement, they are unlikely to be motivated to undergo extensive information search. Furthermore, while the marketer may regard the brand differences as important, because of the consumer's low involvement, the buyer is unlikely to regard the differences as important. Product trial would supplement any information in memory and, in an almost passive manner, the consumer would develop brand loyalty.

The review of consumers search for information by Olshavksy and Granbois (1979) shows that consumers tended to make purchase decisions with minimal reliance on external information. This would suggest that limited problem solving behaviour is the more common type of activity. In a much quoted study, Hupfer and Gardner (1971) show that generally products are regarded as being of less importance than issues (eg World peace). Kassarian and Kassarian (1979) forcefully note from this study that while issues can stir up people into action, products do not have the

same effect. It is thus thought more likely that when buying products and services, people more often tend to follow a limited problem solving decision process.

Problem recognition is likely to be straight forward, more often than not an out-of-stock situation. The consumer is not motivated to actively seek information from different sources, but passively acquires information and relies primarily upon what is held in memory. In this situation, the low involvement hierarchy (Ray et al, 1973) shows the consumer progressing through the stages shown in figure 1-6.

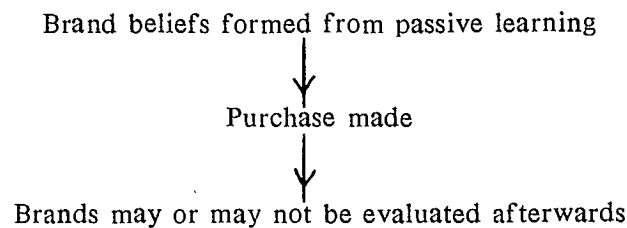


Figure 1-6 : Low involvement hierarchy

Alternative evaluation, if any, takes place after the purchase. In effect, fully formed beliefs, attitudes and intentions are the outcomes of purchase and not the cause. The consumer is likely to regard the cost of information search and evaluation as outweighing the benefits.

Information does have a role to play in low involvement purchasing. Consumers passively receive information (eg glancing at advertisements while reading newspapers). This is received and processed in such a way that it is stored in memory without making much of an impact on the existing cognitive structure. The information processing stage is similar to that in complex decision making, but there is no yielding/acceptance stage (ie the process is exposure leading to attention then comprehension then retention in memory). Having stored the message, no behavioural change occurs until the consumer comes across a purchase trigger (eg an in-store display of the brand). Thereinafter, if the consumer is running out of the brand a purchase will be made.

After trying the brand, the consumer can then decide how satisfactory it is. If the brand is satisfactory, there will be a weak belief, leading to a weakly held attitude.

Under conditions of regular purchasing, consumers would establish buying strategies that reduce decision making (routine problem solving).

Following a similar flow chart as that in figure 1-4 (in section 1.4.1), any further purchase decisions about the brand would be based on a memory scan, which if holding details about a satisfactory experience, would result in brand loyalty. It should be noted though that in complex decision making, because of the importance of the "right brand", due to high involvement, it would be more difficult to induce brand switching. By contrast, in low involvement buying, the "right brand" is less central to the consumer's lifestyle and brand switching may be more easily achieved (eg coupons, free trial incentives, etc.).

Finally, in low involvement purchasing, consumers occasionally show variety-seeking behaviour. There is little involvement with the product and therefore the consumer feels little risk in switching between brands. Over time, consumers feel bored buying the same brand and seek variety by switching (Venkatesan, 1973).

1.5 The importance of involvement

The review in section 1.4 has shown that the nature of information search and consequential processing varies according to the degree to which consumers are involved with a particular purchase. Involvement is consumer and not product defined (eg Lastovicka 1979; Laurent and Kapferer, 1985). Thus a particular product involvement classification is a result of consumers' perceptions and behaviours, rather than an objective characteristic of the product. For example, Zaichkowsky (1985) found evidence of the same product having different degrees of involvement across people. It should also be noted that involvement can vary by situation. For example a housewife may feel low involvement when buying rice for the family dinner, but for a dinner party may become more involved when buying rice. To be able to predict how consumers will use information in their decision process, a means is required to first assess how involved consumers are with the purchase. But the main problem being faced is the diverse interpretations of involvement.

Much of the marketing literature on involvement was boosted by the early work of Krugman (1965;1966), following an earlier exposition of ego involvement as a social psychological variable by Sherif and Cantril (1974). He explored how consumers have a low involvement with TV advertisements, but high involvement with press advertisements and considered how the impact of advertising differed between these two media. He defined (Krugman, 1966) involvement as "the number of "connections", conscious bridging experiences or personal references per minute, that the subject makes between the content of the persuasive stimulus and the content of his own life". (p584). This idea of involvement being concerned with the centrality of the object and the individual's life was built upon by Lastovicka (1979), who interpreted involvement as a function of normative importance and commitment. He found that as consumers' involvement with a product class increased, so their search for information became more active. His paper quoted consumers having high involvement when buying a bottle of wine as a gift for a friend, a car for personal use and a hi-fi system for use at home. Low involvement behaviour was seen when buying a bottle of wine for own consumption at home, toothpaste, bread and lightbulbs. Zaichkowsky (1985), defining involvement as "a person's perceived relevance of the object based on inherent needs, values and interests" (p342), developed a satisfactory measurement scale that found high rather than low involvement consumers to be more interested in information about particular product fields.

These papers conceptualise involvement as being influenced by product importance (amongst other factors). To gauge some measurement of relative product importance, Hupfer and Gardner (1971) asked college students to rate 20 products and 20 services on a 7 point scale (7 = very important, 1 = not important at all). The majority of products were rated as being of limited importance (except cars at 4.52 and houses at 4.17). Some of the results were beer 3.00, coffee 2.61, toothpaste 1.95, cigarettes 1.83, cola 1.81, combs 1.65, bicycles 1.39 and facial tissues 1.19. By contrast three quarters of the issues were rated greater than the scale mid-point (eg the draft 6.71, Vietnam war 6.28 and World peace 6.17). To gauge how involved consumers are when buying services, Webster (1988) found that generally consumers showed high involvement when selecting general physicians' services and specialists in medical and dental services.

Laurent and Kapferer (1985) point out the considerable value of looking at the antecedents of involvement. They argue that it is more meaningful to have an involvement profile of a consumer, showing variations on the different facets of involvement, rather than having a single involvement index. By understanding the sources of involvement, clues are available as to what appeals should be used when communicating with consumers. Based on a literature review and interviews with Marketing Managers they conceptualised involvement as an arousal or motivational state triggered by one or more of five antecedents. These five facets of involvement are:

- the perceived importance or interest of the product
- the perceived risk associated with the product purchase which in turn has two facets : risk importance (perceived importance of the negative consequences of a mispurchase) and risk probability (subjective probability of making a mispurchase).
- the symbolic or sign value attributed to the purchase (eg "you can really tell about a person by the car they own").
- the pleasure value of the product, its emotional appeal.

Based upon a large number of interviews they detailed the involvement profiles for 20 product categories (Kapferer and Laurent, 1986) some of which are shown in table 1-1 (presented as an index with 100 being an average score).

	Product Importance	Risk Importance	Risk Probability	Symbolic	Pleasure
Washing machine	130	136	102	104	111
Dress	123	129	99	166	147
Vacuum cleaner	108	130	111	78	94
Coffee	106	89	113	108	116
TV	102	133	101	84	139
Facial soap	88	78	85	99	91
Detergent	80	75	94	77	44
Champagne	75	123	119	123	128
Pasta	69	56	80	74	73
Batteries	36	65	98	59	39

Table 1-1 : Involvement facets for 10 products

This multidimensional assessment of involvement provides a greater insight as to why consumers feel involved with a product. For example women feel involved buying washing machines due to risk importance and product importance and when buying champagne this arises due to the pleasure, symbolism and risk importance. To therefore run a promotional campaign to communicate products' values, communicators should realise that consumers would more actively search (high involvement) information relating to risk and product importance for washing machines and for champagne pleasure, symbolism and again risk importance.

Thus a rich explanation of the extent of information search is provided from an understanding of consumers' involvement with the purchase. While the type and price of the product or service provides an insight into the extent of search, these are inherent within the concept of involvement.

1.6 Conclusions

This chapter has presented an overview of the way consumer behaviour could be modelled in terms of an information processing paradigm. In the information era, where organisations are striving to influence market

behaviour by providing considerable information, an information processing perspective reflects commercial activity. Since the mid 60's several models of consumer behaviour were developed which were based upon information processing. While there are differences between these models, the similarities provide insight into the purposeful and rational behaviour of consumers. These models describe consumers as efficient purchasers, since the results of the purchase are stored in memory, reducing the need for detailed information search on future occasions. Consumers have to take decisions using limited cognitive capabilities and surrogate variables are used to help overcome these limitations.

It was shown that the nature and extent of information search and processing varies between purchase situations, and one of the more useful ways of understanding the key determinant of this is to appreciate consumers' involvement and any perceived differentiation between competing items. Also if the consumer has a lot of time available they may be inclined to deliberate over information sources. A typology of consumer behaviour processes was developed, based upon involvement and perceived brand differences. Building upon the Engel Kollat Blackwell (1982) model, the different decision processes were described.

In complex decision making (extended problem solving) consumers are highly involved in the purchase and they perceive significant brand differences. Upon recognising a problem they seek information (first from memory then externally) which they then process to evaluate alternative brands. Due to their limited cognitive capabilities (in particular short term memory), only a proportion of the total information available is actively sought and processed, leading to a brand choice and subsequent post-purchase evaluation. In this high-involvement state, active information search enables brand beliefs to be formed which are used to evaluate brands and then a purchase decision can be made. Subsequent purchasing of the same product is less detailed, since from an interrogation of memory, clear purchase intentions guide any activity, based upon satisfaction or dissatisfaction from the previous purchase.

When the consumer is highly involved in the purchase, but they perceive only small differences between alternatives, dissonance reduction/attribution decision making is likely to occur. Without firm beliefs, the consumer is confused about the difference between brands

and makes a decision based upon non-media sources. Product trial leads to experience of the brand which can then be evaluated and brand beliefs are then later formed through selective attention to brand communications.

Finally, the most common decision process is thought to occur when the consumer has a low involvement with the purchase. In such a situation, regardless of perceived brand differences, limited problem solving activity occurs. The consumer does not regard the benefit from any time and effort on information search as worthwhile and by passively acquiring information, weak brand beliefs are formed, leading to a purchase which may be followed by a brief brand evaluation. As brand selection is less important to the consumer in limited problem solving, brand switching behaviour is more likely to occur with any marketing activity, unlike complex decision making where more marketing effort is needed.

From this typology of decision processes, one of the prime determinants showing the extent and nature of information search and processing is involvement, ie a consumer based concept. Products fall into involvement categories due to consumers' perceptions and behaviours, and while products can be ranked by the degree of consumer involvement, different consumers may not necessarily be as involved buying the same product. Different interpretations of the involvement concept appear in the consumer behaviour literature. While several approaches have been devised to produce a single measure of involvement, the recent work of Kapferer and Laurent (1986) captures the richness of this concept by showing consumers' profiles on the five components of involvement. Thus by appreciating the cause of involvement for a particular group of consumers with a specific product, communicators are able to develop more effective strategies.

1.7 Implications

When consumers are involved with the purchase, when there are large perceived differences between brands (complex decision making) and consumers are involved with communications medium (press), advertising could be used to present a relatively detailed message explaining the benefits of the brand. The advertising approach for an involved group of consumers who perceive minimal differences between brands, should be different. In this situation (dissonance reduction/attribution) advertising

should be used to reduce post purchase dissonance, by providing reassurance to the consumer after purchase. As the consumer is unaware of brand differences, an informational advertising campaign might not be as effective as a simple "you've chosen well" approach. As non-media sources are used in dissonance reduction/attribution, messages encouraging a brand purchase should be placed close to the point of purchase and well trained sales staff are required to provide trustworthy information.

In limited problem solving (low involvement) any advertising message should be kept simple as the consumer is paying little attention. The advertisement should feature symbols that can be positively associated with the brand at a later stage (eg in-store). A single discriminatory attribute should be featured in the advertisement and a frequent showing of the advertisement is probably more important than detailed information.

When consumers buy low involvement products or services, they are looking for acceptable, rather than optimal purchases. In these situations they are seeking to minimise problems, rather than maximise benefits. It may be more appropriate for low involvement products to be positioned as problem solvers (eg washing up liquid cleans greasy dishes) rather than as delivering benefits (eg washing up liquid smells fresh). By contrast high involvement products should be positioned as benefit providers.

For low involvement products in particular, product trial is an important way of enabling consumers to form favourable attitudes, which result after consumption. By providing samples, money off coupons and in-store testing, consumers are able to form beliefs after trial.

If a manufacturer of a low involvement product wishes to enhance the sales of his brand, he should ensure widespread availability, since consumers are not motivated to search out low involvement brands. Furthermore, an out of stock situation in-store would more likely result in a consumer switching to an alternative brand of the low involvement product, rather than going to another shop.

In-store, little evaluation will be made of low involvement competing brands and, as the consumer is seeking to minimise any search activity, those low involvement brands placed at eye level will be more likely to be

selected. Likewise any packaging designs for low involvement products should be simple and eye-catching, while for high involvement products more detailed information can be displayed on pack.

Assael (1987) argues that organisations should attempt to get consumers more involved with products or services, since this results in commitment and in the situation of competitive activity should make brand switching in a product field more unlikely. Two possible ways of achieving this may be through:

- linking the product or service to some involving issue (eg the way more companies are describing their products/services as being "environmentally friendly").
- linking the product or service to some involving situation (eg washing powder and the embarrassment of stains on clothes).

Finally, to gauge how consumers might use information, an understanding of consumers' involvement is essential. Rather than using a single scale measure, the involvement profile procedure, developed by Laurent and Kopferer (1985), provides greater insight. The five antecedents of involvement enable communicators to appreciate why consumers are involved and hence how a communication strategy might be developed.

CHAPTER 2LIMITATIONS CONSUMERS HAVE IN INFORMATION USAGE2.1 Introduction

There is an increasing emphasis by organisations upon supplying consumers with more information, no doubt based upon the assumption that this should help consumers become better decision makers. The reality is that consumers have limited cognitive capabilities and only use a small amount of the information presented. To overcome their limited capacity for information, consumers recode small items of information ("bits") into larger groups ("chunks") and thus more effectively process information. The barrier of limited cognitive capacity is also overcome by consumers being selective in terms of the information they use and developing categorisation procedures to minimise any processing activity.

This chapter opens by showing evidence of consumers limited cognitive capabilities. Based upon the seminal paper by Miller (1956) it shows how consumers recode bits of information into larger chunks and describes how brand names represent chunks. The way consumers limit information search, using perceptual selectivity, is described and then the role of perceptual categorisation is considered as a further means of consumers rapidly assessing products with minimal information processing. The chapter closes by exploring implication for communicators.

2.2 Consumers limited cognitive capabilities

There appears to be agreement amongst researchers of consumers' limited mental abilities. For example, Nakanishi (1974), when writing about information processing models, states that people have limited cognitive capabilities and to overcome this he believes they break complex problems into a series of smaller and more manageable subdecisions. Likewise, Deshpande and Hoyer (1983), when considering how decision strategies change as problems become more complex, state from their literature review that the information processing capacities of people are limited. They report that individuals develop rules of thumb (heuristics) to simplify choice and look for generalisations across similar purchase situations. Haines (1974) accompanied shoppers buying clothing and

asked them to talk about their decision strategy as they were buying. They appeared to reduce the amount of data processed by seeking patterns in the purchase environment. He portrays the consumer as an efficient shopper in the Principle of Information Processing Parsimony, stating that "consumers seek to process as little data as is necessary in order to make rational decisions" (p96).

The review of consumer information processing by Wilkie (1986) also shows evidence of consumers' mental limitations. To cope with such limitations, consumers have to allocate processing capacities and they use information filtering processes as well as developing heuristics to simplify decision rules. Memory is a central feature of consumer information processing models. One part of memory, short term memory, (a temporary working memory) is used to process incoming data and through scanning long term memory, other stored data as well as processing rules are brought into short term memory for processing. One of the more influential conceptualisations of the working of memory (Bettman, 1979) is that information passes through to sensory stores, which have a poor retention. If attention is allocated, the data passes through to short term memory for processing, aided by the retrieval of processing rules from long term memory. If adequately processed, the information in short term memory is transferred and stored in long term memory. It is thought that long term memory has an extremely large capacity (Neisser, 1976), but short term memory is very restricted.

The limited capacity of short term memory is seen by the number of items that can be processed at any one time. Miller (1956) reviewed evidence to show that short term memory could only process and hold no more than 7 pieces of information at the same time. Simon (1974), also reported that there is an upper limit on short term memory, and broadly concurred with Miller, believing that there is a limit of about 5 pieces of information that can be processed simultaneously in short term memory. While one may wonder how consumers make decisions, with this short term memory limitation, the next section shows how the chunking process partly overcomes this problem.

2.3 Increasing processing efficiency through chunking

Miller (1956) showed that the quantity of information in an environment can be measured in "bits", ie "the amount of information we need to make a decision between two equally likely alternatives" (p83). For the mind to overcome the limit of 7 pieces of information at any one time, Miller explains how the mind recodes bits of information into larger groups, "chunks", which contain more information. The example he gives is of a man learning radio-telegraphic codes. Initially he hears "dit" and "dah" as separate chunks. With learning he organises these sounds into letters, then deals with letters as chunks. The letters are then organised into words, which are larger chunks.

Simon (1974) also provides further examples of the way the mind recodes bits into chunks, into larger chunks, etc. He is critical of Miller for being vague about the term chunk and advances a view that "a chunk of any kind of stimulus material is the quantity that short term memory will hold five of" (p183). Buschke (1976) presents experimental results showing how respondents used chunking as an efficient way of recalling 40 unrelated items.

The concept of chunking offers an opportunity for communicators to help consumers process information. Marketing theory shows that the brand name represents many attributes (eg high quality, guaranteed consistency, R & D investment, advertising activity, etc.). Instead of consumers seeking out each of these attributes, which require processing, they can become more efficient by solely developing a strategy of looking for presence or absence of brand names. There is evidence of brand names representing informational chunks. Jacoby et al (1977) presented respondents with different informational material about toothpastes. Brand name was the most frequently selected piece of information and, when it was selected, respondents tended not to seek any other information. They also found that when respondents were presented with a large array of information, typically between 3 to 7 pieces of information were being used, further supporting Miller's (1956) views about short term memory limitations.

Thus the barrier of limited cognitive capability is overcome to some extent by consumers recoding small amounts of information into larger

chunks. In the market place there is evidence of the brand name representing an informational chunk. The other means consumers have of circumventing their limited mental capacity is to use the perceptual process to filter through only relevant information and use efficient ways of categorising this information. The remainder of this chapter considers how the perceptual process overcomes this barrier.

2.4 Overcoming cognitive limitations : the role of perception

There are two further ways in which consumers can overcome their cognitive limitations, ie to be selective in terms of information sought (section 2.5) and to develop efficient means of categorising objects (section 2.6).

These two functions are undertaken by the perceptual process. One of the early, eminent writers on perception (Bruner, 1957) provides quite an informative explanation of perception as "the construction of a set of organised categories in terms of which stimulus inputs may be sorted, given identity and given more elaborated, connotative meaning" (p148). While this does not include selectivity of information (which is better covered in Bruner, 1958), it shows how part of the perceptual process (categorisation) simplifies the processing of information. This is done by the consumer having mental categories and through rapidly assessing which category a new items belongs to, they are then able to draw inferences about the item without having to undergo elaborate processing. But as Bruner(1958) also notes, individuals cannot register all of the events around themselves, and with a limited span of attention, they have to be selective. This not only reduces their use of information but also results in some of the information being interpreted in a way the communicator had not intended. Thus to appreciate how perception enables consumers to overcome the barrier of limited cognitive capabilities, the selective and categorisation aspect of perception are reviewed.

2.5 Perceptual selectivity

To prevent the substantial cognitive effort needed to process each message, people are selective in their search for information (eg Foxall, 1980). Organisations may invest considerable effort promoting their

brands, yet due to perceptual selectivity, only a small proportion of the original information might be accepted and processed. During the alternative evaluation - information processing stage outlined in section 1.4.1, selective perception can occur at any of the stages: exposure, attention, comprehension and retention (Assael, 1987). For example selective exposure may occur due to the individual watching one TV channel, while on the other channel an advertisement was being shown. Selective attention is the filtering of information by an individual to ensure a greater awareness of supporting information about a brand and an avoidance of contradictory information. Selective comprehension is the interpreting of discrepant information so it becomes consistent with prior beliefs and attitudes. Thus a housewife unsure about the virtues of an automatic washing machine, after using a twin tub for years, may after product experience interpret the spin speed of the automatic machine (1,000 rpm compared with 3,000 rpm), as being "but its still a third though" (rather than "but its only a third"). Selective retention occurs as relevant information supporting existing beliefs and attitudes is retained in memory.

The purpose of selective perception is to ensure consumers have sufficient, relevant information (perceptual vigilance) to make a decision and also to maintain their prior beliefs and attitudes (perceptual defense). Information which does not concur with consumers' beliefs is distorted and supportive information more readily accepted (Chisnall, 1985). One of the classic examples of this is the study of Hastorf and Cantril (1954), who recorded different descriptions from opposing team supporters who all saw the same football match. This supports the view of selectivity as a positive process (Krugman, 1977), ie individuals actively decide upon information that they will be attentive to, or that they will reject.

Thus, as a consequence of perceptual selectivity consumers are unlikely to be attentive to all of the information supplied by manufacturers or distributors. Furthermore, in instances where consumers are considering two competing items, the degree of dissimilarity may be very apparent to the supplier, but if the difference (eg price, quality level, etc) is below a critical threshold, "the just noticeable difference", this difference will not register with the consumer. This is an example of Weber's Law, ie the size of the least detectable change to the consumer is a function of the initial stimulus they encountered. Thus to have an impact upon people's

awareness, a jewellery retailer would have to make a significantly larger reduction on a \$1,000 watch than a \$500 watch. Further examples of the just noticeable difference in marketing are presented by Britt (1975).

2.6 Perceptual organisation

To simplify the processing of information, perceptual organisation enables the consumer to use the selected information in a rapid recognition process. People group a large number of related items into a few categories since this reduces the complexity of interpretation (Berkowitz, 1980). By assessing which category in memory the new item is most similar to, the consumer rapidly groups an item into an existing group and hence is able to draw inferences without detailed search. For example, if a consumer places an item (eg Safeway own label washing powder) into a category they had previously identified (eg stores' own labels, rather than manufacturers' brands), then this new group member will achieve its meaning from the class that it joined. If the consumer has little experience of the newly categorised item, through the identity acquired by being grouped as stores' own labels, the consumer is able to use this perceptual process to predict certain characteristics of the new item (eg stores' own labels are inexpensive, thus this own label should be inexpensive).

But to categorise items learning must take place (as Bruner (1958) showed) and Neisser (1976) describes a cyclical model of the perceptual process which incorporates learning. In people's minds there are schema which are the attribute characteristics of categories. A person's schema directs the selective search for information. As experience of a product or service is gained over time the schema is modified and in turn redirects information search. Evidence of this can be seen in Allison and Uhl's (1964) research. In a blind beer product test (ie no brand names were present), respondents were unable to identify the brand of beer they drank most often and expressed no significant difference between the competing brands. When the test was repeated a week later with the same beers, but this time labelled, respondents consistently rated their regularly drunk brand as better than other brands. In the blind product test respondents would have sought information from each product's characteristics, given an identity to the different brands and categorised them. With the labels evident, other attributes of the brands, such as

advertising would be recalled and, through reliance upon earlier learning, respondents would have reassessed the categorisation of brands.

A category, as Zajonc (1968) observed, is a rule for identifying the attributes necessary for an item to belong to a particular class of items. The simplest example of a category is a group of items that have just one common attribute, but it is thought that most categories are characterised by several common attributes. Reed (1972) found, from experiments based upon respondents classifying types of faces into two groups, that subjects formed a mental prototype to represent each category and then classified new faces according to their similarity with either of the two category prototypes. Respondents categorised faces by using several attributes, rather than just one, and the most frequently used strategy to categorise each face was that of weighting the importance of the information displayed. Thus there is evidence of people using several attributes to form categories.

Further guidance as to how people organise items into groups is provided by the Gestalt psychologists' belief (eg. Rock, 1975) that people do not look at objects in terms of the sum of individual parts constituting the objects, but rather they see objects as integrated wholes. For example people listen to a short tune, rather than an individual collection of musical notes. Several principles based on a Gestalt approach are of value to communicators. Firstly the more similar items are to each other, the more likely consumers are to group them together. Stereotyping often reflects grouping by similarity. Secondly consumers tend to group items by their relative proximity. For example some press advertisements have a picture of a brand in a particular situation to encourage consumers to make an association (eg a colour advertisement of a man wearing a suit in a luxurious restaurant being used to associate the brand with a particular standard of living). Thirdly, on the basis of closure people have a tendency to form a complete mental picture by filling in any missing elements when a stimulus is not complete. Assael (1987) considers that when Kellogg's advertised on billboards with the last "g" cut off, people's desire to produce closure generated more attention to the advertisement.

2.7 Conclusions

People have limited cognitive capabilities, primarily due to short term memory, and to make purchase decisions in an environment where there are large quantities of information, they adopt several types of strategies. As their minds cannot cope with more than seven pieces of information at any one time, the items of information are bundled into larger chunks. Evidence shows that brand names represent informational chunks. Through searching for brand names consumers do not have to work hard accumulating and processing different product or service attributes.

Another way consumers overcome their limited cognitive capabilities is to use the perceptual process, ie filtering through only information that they consider to be relevant, then by allocating items to mental categories, rapidly evaluating items on the basis of their similarity with specific categories. During the alternative evaluation - information processing stage, perceptual selectivity filters out information at various phases (eg by restricting exposure to different media, by filtering out information that contradicts prior beliefs, by retaining only those pieces of information that confirm prior expectations, etc.). Furthermore even through a manufacturer is able to appreciate the differentiation they have tried to establish between their brand and other competing brands, because of the "just noticeable difference" consumers may not register any brand differentiation.

To form categories the consumer's mental schema needs to adapt to increasing experience and a cyclical process enables learning to up-date the schema. Neisser (1976) presented a model of the impact of learning on perception and interestingly Bettman (1979) also provides a learning model. He portrays the interpretative process as first starting with a feature analysis (eg angles, contours, etc) from which a rough classification of pattern is made. Based upon what the consumer has observed, and from a knowledge of context, expectations are developed about what should follow. These expectations are continually being constructed and changed, as more experience is gained. Thus due to the role of learning, experienced consumers are likely to have different schema compared with those of inexperienced consumers.

Guidance as to the way consumers form categories is provided from Gestalt psychology. For example the greater the similarity between items the more likely they are to be grouped together. Research indicates that when assessing similarity people tend to use several attributes and to weight the importance of each attribute. Other issues such as proximity and closure provide insight into the way people form mental groupings.

Thus even though organisations strive to give consumers more information, because of their limited cognitive capabilities they need to develop strategies to prevent information overload and consequently only a small proportion of the total information is used.

2.8 Implications

One of the main implications from this chapter is that organisations should not put emphasis upon quantity but rather quality of information. To overcome their limited capacity, consumers need help in processing information. Building upon the concept of branding, organisations could help consumers more, for example, by tying any product or service claims more strongly with the brand name during any advertising. When consumers are then faced with the brand at a later stage, limited cognitive processing would be required since a richer informational chunk might be held in memory. As Bettman (1979) observed, if advertisements pre-chunk information for consumers and, if these chunks are consistent with the consumers categorisations, then more information can be processed.

By understanding those conditions likely to stimulate consumers to obtain the most relevant information (perceptual vigilance) or to avoid information that conflicts with prior beliefs (perceptual defense), organisations may be better able to hold a more effective discourse with consumers. Assael (1987) presents a review of some of these conditions.

An appreciation of the "just noticeable difference" should make organisations aware of the fact that if they wish to make their brand "stand out" on a particular attribute, some account needs to be taken of the amount of activity that surrounds that particular attribute. From a low base, only a small change is required before consumers take more notice, however from a far more active base, more effort is needed before consumers register any change.

One of the simplifying heuristics used by consumers, is the mental categorisation of new items into existing categories. In any particular product or service sector, organisations should firm appreciate what types of categories consumers hold in their mind (eg perceptual mapping). Through such an exercise the basic rules for categorisation will be appreciated and hence any marketing investment behind a new launch can be more effectively used to reduce consumers' likelihood of mis-categorisation. If organisations do not fully appreciate consumers' categorisations, there is a danger of inappropriate activity resulting in the brand finding itself in competition with a group of brands for which the organisation had no competitive plans developed.

CHAPTER 3PROVIDING CONSIDERABLE INFORMATION UNDER THE
ASSUMPTION OF IT BEING USED TO ACHIEVE MORE
EFFECTIVE PURCHASING3.1 Introduction

Since the early 1970s there has been increased pressure on producers and distributors to provide more information about their products and services (Day, 1976). The underlying assumption appears to be that more information should better equip consumers to make better purchase decisions, however as this chapter shows, more information does not necessarily increase consumer buying effectiveness. The purpose of this chapter is to review the extent to which consumers seek and use information during the buying process.

The chapter opens by summarising how consumers gain information and then reviews the literature showing that information search tends not to be a detailed activity. Reasons for the limited search for information are suggested. The literature that describes the impact of increasing information availability on consumer activity is reviewed and the conclusions drawn that increasing the quantity, rather than quality of information, does not necessarily transform the consumer into a better shopper. More attention needs to be paid to the quality of information and the format in which information is presented. Implications from this chapter for communicators are explored.

3.2 The extent of consumers' information search

As was discussed in chapter 1, consumers' information search begins with an examination of memory. Depending upon the information retrieved and the purchase decision, information may then be sought from external sources. Figure 3.1, adapted from Beales et al (1981), summarises the sources from which consumers seek information.

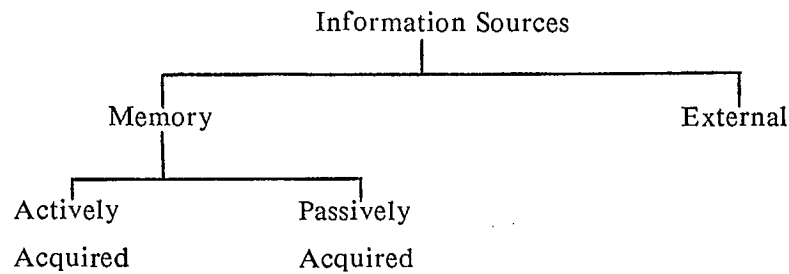


Figure 3.1 : Ways of gaining information

Information may be stored in memory due to an earlier active search process, for example assessment of a newly bought product based on personal experience. Alternatively information may be stored in memory as a result of a passive acquisition process. As section 1.4.1 explained, consumers rarely pursue a piece of information without being distracted. In the course of seeking information, they may be interested in a distracting communication and momentarily pay interest to such an unexpected source. Through this process of "interrupts" (Bettman, 1979) information is passively acquired. A further way in which information is passively acquired is through low involvement learning, as earlier discussed in section 1.4.3. While relaxing watching TV, advertisements are passively received and with minimal processing, are stored in memory (Krugman, 1965). There is little impact on beliefs or attitudes in low involvement learning.

Some of the factors influencing the extent of memory search are the amount of stored information and its suitability for the particular problem. Evidence of the importance of the suitability of stored information has been demonstrated by Bennett and Mandell (1969). Their study, amongst car purchasers, found that those repeatedly buying the same brand of car over time undertook less external search than those who had built up a similar history in terms of the number of cars bought, but who had switched between car brands over time. Repeatedly buying the same brand of car increased the quantity of suitable information in memory and limited the need for external search.

As section 1.4.1 and 1.4.3 showed, information search for a first time purchase is relatively more detailed when compared with repeat purchasing of the same product. The consumer's confidence in their use of different information sources increases and through learning,

generalisations are made about the value of some informational sources (eg price as an indicator of quality). With the experience of product trial, information is stored in memory and further purchasing is simplified by seeking that brand which satisfied earlier needs. Thus for repeat purchase items, memory plays a significant role in simplifying the purchase.

Memory search though, may indicate insufficient information, and if the purchase is thought to warrant it, external search is undertaken. The literature shows that external search is a relatively limited activity, albeit there are variations in search activity between different groups of consumers (eg Newman, 1977) and this is considered in chapter 5. One of the earlier studies showing minimal external search is that of Katona and Mueller (1955). Recent purchasers of sports shirts and major household goods (eg TVs, fridges, washing machines) were asked about their pre-purchase information search. Only 5% of electrical appliance buyers showed evidence of a very active information search process and by contrast a third claimed to seek virtually no pre-purchase information. Just under half (47%) of appliance purchasers visited only one store and only 35% considered another attribute in addition to brand name and price. A considerably reduced level of information search was found amongst purchasers of sports shirts. They concluded "that many purchases were made in a state of ignorance, or at least indifference" (p53). As they point out though, the apparent lack of deliberation does not indicate irrational decision behaviour. Some purchasers may have found it difficult to evaluate all the features of a product and instead, relied upon a limited number of predictive variables with which they were more confident (as was later shown by Cox (1967a) and is described in chapter 4).

Newman and Staelin's (1971, 1972, 1973) work amongst purchasers of cars and major household appliances reinforces Katona and Mueller's (1955) findings. Less than a half of the purchasers interviewed (44%) used no more than one information source, 49% experienced a deliberation time of less than two weeks and 49% visited only one retail outlet when making the purchase.

Arndt's (1972) study of the information search undertaken by newly married couples when looking for accommodation found that 46% looked for less than a month and 82% examined only one home before making a

decision. While these findings suffer from the influence of situational factors (eg urgency of need, limited availability of homes) it supports the evidence of limited external search.

Numerous other instances have been reported of consumers undertaking limited external search. While Kiel and Layton (1981) found some car purchasers engaging in considerable search activity, they reported that a third (36%) only made two or fewer trips to inspect cars. In a review of several product fields, including financial services, Olshavsky and Granbois (1979) found external search to be a limited activity. Similarly in furniture (Claxton et al, 1974) electrical goods (Capon and Burke, 1980) and clothing (Midgley, 1983) relatively restricted levels of external search were recorded.

For low cost, low risk items (eg groceries), external search activity is also restricted. No doubt due to the low level of involvement that these items engender, far more reliance is placed upon memory. This would probably explain why Schaninger and Sciglimpaglia (1981) reported a much lower level of external search for coffee, creamers and lemonade, than for electrical goods. Jacoby et al (1974a), investigating information used to select laundry detergents, report evidence of respondents simplifying purchasing by only considering one or two brands. They also found that consumers only use 3 to 5 product attributes. In a further study, focusing on breakfast cereals (Jacoby et al, 1978), they reported that the average proportion of available information used to make a decision was only 2%. While some might question whether the use of "artificial" shopping experiments, using information display boards to represent brands and their characteristics, affects consumers' use of information, in-store observations confirm the low level of external search. Wells and LoSciutio (1966) observing supermarket shoppers, found that in 55% of cases for breakfast cereals and 72% for detergents, there was no visible evidence of in-store pre-purchase choice process. Kendall and Fenwick's (1979) in-store observations showed that amongst shoppers buying rice, pasta, canned meat/fish and soups, 25% made a purchase decision without any time for deliberation and 56% spent up to 8 seconds examining and deciding which brand to buy. Cobb and Hoyer (1985) also show evidence of limited in-store information search. From observations they found tissue purchasers took only 12 seconds to make a purchase decision and examined on average only 1.6 competing brands. When observing in-store

purchasing of liquid detergent, Hoyer (1984) found minimal evidence of external search, with only 11% of shoppers bothering to examine two or more brands.

3.3 Reasons for limited external information search

Several reasons exist for this apparently limited external search. As was explained in section 2.2 consumers have limited cognitive capacities which are protected from information overload by perceptual selectivity. This focuses consumers' attention on those attributes considered important. Evidence of this is provided by Krugman (1975) who reported that because of perceptual selectivity only 35% of magazine readers exposed to a brand advertisement noticed the brand being advertised.

Information is continually bombarding consumers and thus information acquisition is a continual process, as was considered in section 3.2 using the concepts of interrupts and low involvement learning. Considerable use is being made of memory and generalisations are no doubt being used to help make decisions.

External information search represents a cost (the time and effort) and some consumers may not think the benefits are sufficient for detailed information search. This is particularly so for low involvement items.

A lot of emphasis has been placed upon measuring the number of sources consumers use, rather than considering the quality of each informational source. As section 2.3 showed, through the concept of chunking, there is evidence of consumers focusing upon highly informative pieces of data (eg brand names). Further evidence of consumers weighting data according to the data's predictive capabilities is shown in chapter 4, building on Cox's (1967a) work.

Those studies which relied upon questioning purchasers about their prior search activity (eg Katona and Mueller, 1955) are subject to respondents' memory limitations and this could be understating search activity. Newman and Lockeman (1975) found such evidence of understating when recording shoe buyers' information search from in-store observations and then later by asking them to recall any sources consulted.

The environment that consumers operate within also has an impact upon the level of external search. Consumers may feel time pressure (eg newly married couples seeking a home when there is a lack of rented accommodation) or they may not find the information easy to understand (eg food labels talking about KJoules). Information search is also affected by emotional state. Schwartz et al (1986), reviewing the way funeral services are marketed, note that due to emotional state, consumers pay little attention to information during this traumatic period.

3.4 Decision making during increasing information availability

Jacoby and his colleagues first showed how increasing the quantity of information affects consumers decision making. In one experiment, Jacoby et al (1974a) assigned respondents to particular choice situations and, after presenting information, asked respondents to select their most preferred brand of laundry detergent. Prior to the experiment respondents were asked to describe their best laundry detergent brand. They found that accuracy (ie correctly selecting one's best brand) was inversely related to the number of brands available. Accuracy of choice initially improved as information availability increased, but a point was reached early on, whereby further information reduced brand selection accuracy. With only a few brands to choose between, accuracy increased as information per brand increased. However with several brands to choose between, increasing the amount of information per brand had little or no effect on respondents. Even though at higher levels choice accuracy fell as more information was available, respondents said they were more certain they made the best decision, and did not want any additional information about any of their existing brands. Thus a point is quickly reached beyond which increasing information makes people feel better, but results in poorer purchase decisions.

Jacoby et al (1974b) showed further evidence of there being finite limits to consumers' cognitive capabilities. Housewives were given varying levels of information about different brands of rice and prepared dinners and were asked to choose the brand they like best. Again, prior to the experiment they were asked about their best brand. Confirming the previous experiment, increasing information availability from low levels appears to help decision making, but continuing provision of information reduces purchasing accuracy. More information resulted in longer

decision periods. Day (1976) also reports evidence of more information increasing buyers confidence, but not necessarily affecting the buying outcome. His view is that increased information enhances confidence almost by assuring buyers of the correctness of their choice.

Much debate was sparked by Jacoby's claims about having established that consumers suffer from information overload. A criticism of the work is "what is the best choice?" ie how do we determine the alternative a consumer would have chosen if the information environment were optimal. While there may be methodological weaknesses with their work, the supporting evidence from other researchers shows evidence for information overload. Keller and Staelin (1987) show from empirical work on a model of decision choice and decision effectiveness, that consumers do suffer from information overload. They clarify that information has at least two dimensions, ie quantity and quality. They regard the quality of information as being "the usefulness of the available attribute information in aiding a decision maker to evaluate his/her true utility associated with an alternative" (p202). Their research shows that decision effectiveness first increases then decreases as the amount of information available increases, holding constant the quality level. Also, when holding quantity levels constant, up to a point decision effectiveness is enhanced by increases in the quality level. While this more recent work shows clear support for consumers suffering from information overload, it implores researchers to better understand the concepts of information, quality and choice accuracy.

Thus communicators need to recognise that increasing the quantity of information will not necessarily increase decision effectiveness, but will make consumers more confident. Instead, communicators should put emphasis upon the quality of information presentation. To appreciate the type of information that best helps a purchase decision, the next section briefly reviews the way consumers process different information formats.

3.5 Processing by brand or attribute : information formats

There is evidence that the way information is presented influences consumers' decision processes. Russo et al (1986) displayed nutrition information posters in Jewel Food Stores and, while the effort-reducing formats improved both nutrition knowledge and attitude, these had no

effect on purchasing. They hypothesised that the absence of purchase change was caused by the low perceived benefits of helpful nutrients, such as vitamins and minerals, relative to the high cost of changing purchases. Consequently they erected posters displaying negative nutrient information, ie the amount of added sugar in breakfast cereals. This revised presentation had an effect on purchasing. Muller (1984) argued that in a supermarket there are many different formats in which information is displayed (eg on pack, shelf stickers, etc) which represents a search cost to consumers. By having posters displaying comparative nutritional information about 5 grocery products in Canadian grocery supermarkets, he showed that when faced with these effort-reducing formats there was a small increase in the buying of brands which were more nutritional. It should be noted that in Mullers study both positive and negative nutrient data was displayed and it may be the negative nutrients that caused this change.

Bettman and Kakkar (1977) explain that consumers follow two broad patterns of information search. Some people make a choice by examining one brand at a time, ie for the first brand they select information on several attributes, then for the second brand seek attribute information, etc. This strategy is "choice by processing brands". Another strategy is one where consumers have a particular attribute which they assess all of the brands on, followed by a second attribute against which all of the brands are assessed, etc. This is "choice by processing attributes". They found that the strategies used to acquire information are influenced by the way in which the information is presented and this was subsequently confirmed by others (eg Biehal and Chakravarti, 1982). In a further study (Bettman and Park, 1980) they showed that consumers with limited knowledge of a product or service tend to process information by attributes, while more experienced consumers process the information by brands.

Bettman (1979) proposes that attribute processing will tend to be found when there are few alternatives, when differences are easy to compute and when the task is in general easier.

3.6 Conclusions

Consumers place considerable reliance upon information held in memory. Information is stored in memory either through actively seeking it on an earlier occasion, or through passive processes (eg interrupts or low involvement learning). When there is sufficient suitable information in memory, consumers are more likely to call upon memory, rather than undertake external search.

Should consumers be unable to take a decision based on memory, external search may then ensue. While the level of search may vary between consumers (as is considered in Chapter 5), external search tends not to be very detailed. This is not indicative of irrational behaviour, but may be due to a variety of reasons, eg perceptual selectivity focusing attention on only those few attributes considered to be important, information search being a continual activity, consumers considering the cost of search versus any benefits to be gained, ignorance the quality aspect of a limited number of informational cues, etc.

When consumers are presented with more information, their decision effectiveness initially increases, but due to their limited cognitive capabilities a point is soon reached beyond which increasing information availability reduces decision accuracy. However, increasing levels of information make consumers feel more confident with their purchase decisions. Information has at least two dimensions, quality and quantity. When the quality level of information is held constant, increasing quantities first helps decision effectiveness and then reduces it.

The format in which information is presented appears to influence consumer activity. For example, displaying solely positive nutrient information changes knowledge and attitude, but does not affect buying behaviour. Displaying negative nutrient information affects buying behaviour. Less experienced consumers tend to evaluate brands through an attribute processing strategy, while more experienced consumers seek and process information through a brand processing strategy. Presenting information by brands or by attribute therefore enhances the effectiveness of different sorts of consumers.

3.7 Implications

Organisations need to recognise the importance of consumers' memories as a source of information, for example this reduces any incentive to actively seek new information. Consumers weigh the cost of information search against any perceived benefits. Thus, by placing information very close to the point of purchase and presenting it in a way that minimises processing effort, there may be a greater likelihood of use.

Communicators would benefit from regularly checking the accuracy of information consumers hold in memory about specific brands. Consumers might not search for external information since they believe they hold sufficient in memory which they regard as being reliable. Where consumer beliefs are inaccurate, corrective advertising would be needed.

Some of the information in memory is passively acquired and because much of this would come from advertisements, communicators should seek to ensure that consumers' interpretations of the message concur with the communications objective. Communicators should appreciate that as only a minority of their audience is likely to be actively seeking information for a planned purchase, use needs to be made of "interrupts" to get their message into memory. Creative ways (eg novelty) are required to gain attention for a message.

When seeking external information, many consumers appear to undertake a rather restricted search, due in part to the way that they perceive only a few informational cues as giving them sufficient confidence to be able to predict product performance. By researching how consumers rely upon certain cues, communicators could major upon these in advertisements. As some consumers do not undertake detailed external search, due to the cost-benefit trade off, where there are considerable gains to be achieved from external search (eg for a low income consumer needing the lowest cost loan), communicators need to major upon the benefits of search (eg government departments developing communication programmes that show there are differing interest rate loans).

Where there are environmental issues that affect external search, communicators need to tailor their message presentation appropriately. For example, where consumers are under time pressure (eg working

women shopping during their lunch break) information at point of sale need to prominently display a few key product features. Research is needed to appreciate whether consumers understand all the information describing a product or service and, where appropriate, develop explanations better suited to the target consumer.

In view of consumers suffering from information overload, more research is needed to appreciate how a few, high quality informational cues can be used to overcome the high quantity of low quality information currently being presented. Manufacturers need to work with retailers to devise better in-store displays summarising key attributes and to present on-pack information in a more helpful manner. Research needs to understand at what stages in the decision process consumers need information and then help tailor communication programmes for each of these stages.

More research is needed to understand how information formats affect consumers' decisions and hence help develop presentation strategies. In the case of foods there appears to be an effect on purchasing behaviour when information about negative nutrients is displayed. For new products or services recently launched, as many consumers will have little experience, comparative tabular information about different alternatives should be presented to facilitate processing by attributes.

CHAPTER 4THE RELIANCE CONSUMERS PLACE UPON DIFFERENT
EXTERNAL INFORMATION SOURCES4.1 Introduction

This chapter reviews the literature showing the use consumers make of different external sources when seeking information. It considers both marketing controlled sources, ie the product, promotion and pricing and also addresses the role of non-marketing controlled sources ie the role of friends and relatives.

To appreciate how consumer use marketing controlled informational sources, the chapter opens by presenting a model of a product as an array of informational cues. It shows how consumers assign informational values to these cues and hence clarifies why certain marketing controlled informational sources are more frequently consulted during information search. Specifically the chapter considers the importance of brand name, brand/store image, advertising and price information.

An important source of information frequently consulted by consumers is word of mouth advice from friends and relatives. The role played by this non-marketing controlled source is considered as well as the way consumers seek guidance from consumer surrogates. Implications for communicators are considered.

During the literature search for this chapter, no study was found which investigated how consumers' reliance upon different sources varied by consumers' socio-demographic attributes.

4.2 The product as an array of cues

Cox (1967a) developed a model of the way consumers evaluate products, based upon the proposition that a product can be conceived as an array of cues (eg price, colour, taste, feel, etc). Consumers form judgements based upon a sample of these cues that they believe are indicative of certain characteristics. Other researchers have reported consumers evaluating

products on the basis of surrogate cues. For example Hansen (1972) discusses consumers evaluating the freshness of bread based upon the feel of the packaging material and in a review by Murdock and Roe (1986), consumers were seen to evaluate the financial services of banks on the basis of banks' staff. Cox argues that consumers assign information values to the available cues and use the cues highest in information value. A cue's information value is a function of its predictive value (how accurately it predicts the attribute being evaluated) and its confidence value (how confident the consumer is about the predictive value she has assigned to the cue). His research showed that consumers based their decisions on only a few of the available cues and that the predictive value of a cue has a dominant effect on cue utilisation, with a moderating effect from the confidence value of the cue. For example he describes how identical nylon stockings were on a display counter in-store, but some of these had been sprayed with scent. Sales of the scented stockings were greater than the unscented ones since the presence of scent was a cue that women felt confident in predicting a higher quality standard. This perspective of a product offers a conceptual framework for understanding consumers' limited information search by indicating that if a few cues offer high predictive and high confidence values (eg brand name) these will be selected. Where none of the cues have high predictive and high confidence values more cues would need to be consulted. Learning, through product usage, would enable the consumer to internally adjust their predictive and confidence values, which would stabilise over time. The appeal of this model is its explanation of search behaviour which presents the purchaser as a rational decision maker. However, it does assume an involved consumer, making predictive and confidence value judgements for each item. In view of consumers' limited cognitive capacities it is thought more likely that generalisations will be made about cues across products.

Building upon this model, Olson (1972) added a third dimension. He postulated that consumers' cue utilisation depends upon whether the cues emanate from the physical product (eg colour, smell, texture, etc.), ie intrinsic cues, or whether they derive from related attributes which are not a part of the physical product (eg price, brand name, label, etc), ie extrinsic cues. Knowledge about the intrinsic - extrinsic nature of a cue provides insight into the order in which individuals select cues. There is evidence that indicates a preference amongst consumers for choosing

intrinsic cues. Both Valenzi and Andrews (1971) and Szybillo and Jacoby (1974) showed that for butter/margarine and ladies nylon hosiery, respondents placed greater emphasis on evaluating products using intrinsic rather than extrinsic cues. Park and Winter (1979) found that respondents placed more reliance on product sample cues, when evaluating cotton fabrics, than extrinsic cues. In-store though, consumers are rarely able to sample intrinsic cues and it is likely that because of memory limitations respondents would be reliant upon extrinsic cues to supplement memory recall of intrinsic cues.

4.3 The brand name as an informational cue

When evaluating products without being able to sample them, there are numerous studies showing that presence or absence of brand name serves consumers as a very important (possibly the main) informational cue. One of the early studies on the use of brand names as an indication of quality was presented by White (1966). When two calculators were correctly labelled, company A's calculator was rated as somewhat inferior to company B's. Under conditions of reversed brand labelling, company A's calculator was rated as far superior to company B's. Clearly the differentiating variable accounting for such varied acceptance was perceptions caused by brand names.

Jacoby et al (1977) showed that when respondents could choose any information from a board displaying packaging information about toothpastes, to help decide which of a variety of toothpastes to select, brand name was the most frequently acquired cue. Those respondents choosing brand names as cues sought less information when selecting a toothpaste and were more satisfied than others. The authors suggest, that the importance of brand name is evidence for chunking.

Kendall and Fenwick (1979) found by standing in two aisles in a grocery supermarket that 25% of shoppers selected items without any decision delay ("grabbers"), while the remainder spent some time examining packs before choosing ("lookers"). In store, when then showing respondents pack designs for a new bacon substitute, "grabbers" stated that the brand name was the most important information on the new pack, while "lookers" thought nutrition information was most important. This study suggests that for certain consumers brand name is an important cue.

Park and Winter (1979) showed that when respondents had to make a decision about product quality of cotton fabrics, and no intrinsic cues were available, brand name was the most frequently selected extrinsic cue. Jacoby et al (1971), investigating the way people use cues to evaluate beers, found that respondents placed more reliance upon brand name than price information when evaluating quality.

The presence of brand name information serves as a particularly useful informational cue to consumers and appears to be one of the more frequently sought marketing controlled informational sources, possibly due to it serving as a large chunk of information. People make quality judgements based on brand name information, for example the blind then branded product testing of different beers by Allison and Uhl (1964), as described earlier in section 2.6. In the coffee market Rigaux-Bricmont (1981) found that brand names and brand packaging influenced consumers evaluations of quality. Render and O'Connor (1976) reported that both manufacturer brand names and store names affected quality perceptions of shirts and after-shave lotions. When investigating the effect of brand name and price information on quality perceptions of toothpastes, shirts and suits, Gardner (1971) reported that quality perceptions were influenced more by brand name than price information.

Finally when considering the way consumers can reduce their perception of risk (discussed in more detail in section 5.2) in a purchase situation, there is again evidence of the importance of brand names. Zikmund (1973) reported that consumers use brand names as relevant cues in the evaluation of the riskiness of buying products.

Thus of the marketing controlled information sources, brand name appears to be more important than any other marketing source and has a key influence upon consumers' perceptions of quality.

4.4 Brand/Store image as an informational cue

The association of an image with a brand or a retailer is another cue used by consumers when evaluating products. Sheth and Venkatesan (1968) postulated that one way consumers could reduce uncertainty is through reliance on brand image, which may create brand loyalty. Investigation of

repeated selection of brands of hair spray confirmed the value of brand image as a risk reducer. It should be realised though that the regular weekly meetings with respondents may have heightened their awareness of any marketing activity for hairsprays. Roselius (1971) tested 11 risk relievers used by consumers across 4 types of loss (time, hazard, ego and money). The strategy of buying a major, well known brand and relying on its reputation, ie "major brand image", consistently emerged across all 4 kinds of loss as the second most preferred risk reducer after "brand loyalty".

Store image appears to have less reliance placed upon it than does brand image. Roselius (1971) found that respondents evaluated store image as a less useful risk reducer than major brand image. Confirming these findings, Taylor (1979) showed that while reliance on store reputation did act as a risk reliever, its importance was secondary to brand reputation.

Evidence exists of purchasers inferring quality perceptions of products from the retailer's image. Stafford and Enis (1969) investigating perceptions of carpets, and Szybillo and Jacoby (1974) investigating perceptions of ladies nylon hosiery, found that quality perceptions were being inferred from store image. A later study by Wheatley and Chiu (1977) also found quality perceptions of carpets being inferred from store image.

Thus brand/store image is used by consumers to infer product characteristics, however as an informational source it appears to be less often consulted than brand name.

4.5 Advertising as an informational cue

Research findings indicate that as an informational cue, advertisements are not as frequently utilised as other cues. Bucklin (1965) reported that across a wide range of products (excluding food, homes and cars) consumers consulted advertisements for only 24% of the products and concluded that advertisements served a limited role as an information source. He noted that advertising was more likely to be used for more expensive products (eg it was only consulted by 14% for 5 to 9 dollar goods, but 46% consulted it for goods worth more than 50 dollars). Katona and Mueller (1955) found that amongst durable goods purchasers,

the most commonly used source of information was consulting friends and relatives (50% doing this), while only 21% consulted advertisements and circulars. Arndt (1972) showed that among couples seeking a home, information was more frequently sought through word of mouth (54%) than through advertisements (37%). Thorelli (1971) found that amongst purchasers of large household items, the most frequently consulted sources were family (40%), friends (40%), consumer reports (34%) shopping (30%) and then advertisements (28%). Newman and Staelin (1973) reported that consumers of durable goods sought information most frequently by visiting retailers (41%), from friends and neighbours (25%), from pamphlets and articles (14%) and then from advertisements (6%). Confirming the lower importance of advertising as an information source, Kiel and Layton (1981) found car purchasers more frequently seeking information from personal sources than from advertisements.

In the case of groceries, Bucklin (1969), obtaining weekly data from housewife panel members, found they consulted a food advertisement about once every 5 shopping trips. This finding again shows limited claimed use of advertising, but is thought to underestimate the use of advertising by ignoring memory recall (a problem that many of these studies have not addressed).

Cox (1967b) provides an explanation of when people are likely to use advertisements and word of mouth. Little effort is required to watch a TV commercial but consumers may doubt the competence (predictive value) or reliability (confidence value) of this source. Hence advertisements are most likely to be consulted when perceived risk is relatively low and the effort to obtain information from other sources is not justified. Consumers therefore, would be more likely to use advertisements as information sources when buying low cost, regularly bought items (eg groceries). More effort is required to access word of mouth information which is perceived as being of high confidence value and high psycho-social predictive value but of a lower performance predictive value. On this basis, word of mouth information is more likely to be sought when psycho-social risk is high enough to justify the effort of using this channel and when consumers are anxious to avoid mistakes in a situation of high perceived risk.

In the case of low cost, frequently purchased groceries, consumers show awareness of advertisements for brands they have purchased and shoppers with a high level of advertising recognition show a low level of in-store information search (Cobb and Hoyer, 1985). These researchers also found that consumers' perceptions of the amount of advertising (for packaged groceries) reflected the actual advertising levels. Consumers' perceptions of brand quality has been shown to be influenced by their perceptions of the level of brand advertising. Woodside and Taylor (1977) report that the higher respondents' perceptions of advertising support behind brands of peanut butter, the higher was their perception of brand quality.

In summary, advertisements as a source of information are less commonly consulted than advice from friends or relatives. It should be realised that due to memory problems and low involvement learning from advertisements (sections 1.4.3 and 3.2) the extent to which consumers consult advertisements may have been understated by the studies reviewed.

4.6 Price as an informational cue

The literature reviewed in this section indicates that price^o is used as an informational cue, but generally not to the extent of brand name cues. In experiments where price was the only cue available, respondents used this to evaluate product quality (eg McConnell, 1968; Peterson, 1970). Such a finding is not surprising since respondents have little else to aid their decision. When price was presented with other cues, conflicting results were reported about the impact of price upon perceptions of quality (eg Enis and Stafford, 1969; Gardner, 1971; Szybillo and Jacoby, 1974). There are several reasons for these results, as will be shown.

The concept of chunking is one reason for the limited reliance upon price when assessing competing items. Amongst consumers familiar with a particular product, brand name will be used to access an information chunk in memory and hence, presence of price data adds little. Amongst consumers less familiar with the product, chunking from the brand name is less relevant and price may be a more important cue. Support for this is provided by Monroe (1976) who found for experienced consumers that memory played a more dominant role in brand evaluation than price information.

From Cox's (1967a) model of cue utilisation, it follows that in a multicue environment consumers place greater emphasis upon cues with high predictive and high confidence values. Less reliance is placed upon price and more importance is attached to both brand name (eg Jacoby et al, 1971) and intrinsic cues (eg Valenzi and Andrews, 1971; Szybillo and Jacoby 1974). Thus the importance of intrinsic cues and the high information value of brand names result in consumers placing more reliance on these cues than price information. The limited reliance upon price was also shown by Roselius (1971) who found that "buy the most expensive brand" was often evaluated by consumers as the least preferred method of relieving purchase risk.

It is thought that UK consumers are now less aware of grocery prices because of such factors as the abolition of resale price maintenance, inflation, changing pack sizes, increased price competition and special offers. For example Gabor and Granger (1961) found that across 7 packaged grocery products, 51% of respondents correctly recalled prices last paid and that price awareness varied by product (eg 79% correctly recalled tea prices, but only 35% correctly recalled breakfast cereal prices). More recently McGoldrick and Marks (1986) found that only 29% of shoppers were able to correctly recall grocery prices. However, 55% of consumers were able to recall the price last paid with an error band of 5% above or below the actual price. It is apparent that while there is poor accuracy of recall, consumers do show an appreciation of pricing. In view of the broad similarity of economic environments, it is thought that his finding should be not that dissimilar from Canada.

Monroe (1977) provides further insight into how consumers use the price cue. When presented with price information, people judge it by comparing it against perceptual memory of a previous price or some product of which they have had experience. Some notion of a fair price is used and consumers have a perceived range of acceptable prices. Products whose prices are below the lower edge of this range, or which exceed the top end are ignored since there is concern about what was done to cheapen the product, or at the other extreme, about the excessive price.

Thus the literature reviewed shows evidence of consumers making use of price information, but with increased product familiarity they are more likely to search for brand names to access chunks in memory. As John et al (1986) report, consumers believe there to be a positive relationship between price and perceived quality. Their research though showed that consumers' prior beliefs have a systematic effect on information search patterns and thus individuals may be less likely to discover any contrary facts. Thus consumers may continue to believe that higher prices are associated with higher quality, even when they are not, in part because they seldom try lower-priced products that could provide disconfirmatory evidence. Bearing in mind consumers' uncertainty about prices, it is appropriate to raise the issue of price presentation. With the increasing use of laser scanning in stores, retailers may wish not to stamp prices on each product, but instead have a price label on the shelf. Zeithaml (1982) found that consumers notice the absence of individual price marking, feel less certain about their knowledge of prices and in the short-term spent more money on purchases.

4.7 Friends and relatives as informational sources

As was shown in section 4.5, consumers tend to rely more on advice from friends and relatives, rather than from advertising or other marketing controlled informational sources. This applies to both product and service purchases (eg Mangold, 1987). For the purchase of socially visible items (eg clothing), the advice of friends or family is an effective means of reducing uncertainty. Personal sources appear to consumers as more credible and impartial than commercial sources. The influence of reference groups (ie groups that serves as a reference point for the individual in the formation of their beliefs, attitudes and behaviour) reduces the consumers need for product evaluation - particularly when it may not be worth the time and effort to evaluate alternative brands (Moschis, 1976). Students were found to be more susceptible than housewives to group influence for a variety of products (Park and Lessig, 1977).

A better understanding of the importance of reference group influences can be gained using a framework suggested by Bearden and Etzel (1982). They explain that reference group influence on product and brand decisions is a function of two forms of "conspicuousness". The first

condition affecting product decisions is that the item must be exclusive in some way - if virtually everyone owns a particular item it is not conspicuous. Second, for reference group influence to affect brand decisions, the item must be seen or identified by others. Bearden and Etzel operationalised exclusiveness by using the dimension necessity - luxury, and operationalised "being seen by others" using the dimension public-private consumption. By then constructing a matrix around these two dimensions they were able to explore whether there were any weak or strong reference group influences on products and brands.

One of the earliest studies on the importance of word of mouth communication from friends and relatives was that of Katz and Lazarsfeld, reported in the mid '50s. They found word of mouth communication for food and household goods to be more effective than advertising and sales staff. Assael (1987) reviews numerous cases showing the importance of word of mouth communication and notes that it will be particularly important when:

- the product is socially visible
- the product is distinctive and can more easily be identified with style, taste and other personal norms
- the product has just been introduced
- the purchase of the product is seen as risky
- the consumer is involved in the purchase decision
- the product is important to the norms and belief system of the reference group.

If seeking advice from friends or relatives, consumers turn to opinion leaders who they perceive to be knowledgeable about a particular product or service. Opinion leaders act as information brokers, intervening between mass media sources and potential purchasers. There is a considerable literature on opinion leaders (eg Feick and Price, 1987) which indicates that opinion leadership is product/service specific. A further group of personal influencers is early purchasers. As with opinion leaders though, research indicates that early adopters are product specific.

Solomon's (1986) research shows how consumers do not just think about consulting traditional marketing controlled information sources or friends and relatives, but they widen their sphere of buying activity by delegating

some, or all, of the buying process to "surrogate consumers". A surrogate consumer can be defined as an agent retained by a consumer to guide, direct, and/or transact marketplace activity. They play a wide range of roles, for example tax consultants, wine stewards, interior decorators, or stockbrokers. Surrogate consumers either offer functional benefits (eg facilitating consumer purchasing of search items such as exclusive furniture) or psychic benefits (eg provide style guidance or reassurance). Solomon shows that surrogate consumers are more likely to be consulted when consumers have low shopping motivation, have limited product knowledge, perceive high risk, have low self confidence or they have a need for status reinforcing goods/services. Environmental conditions likely to encourage use of surrogate consumers are when there is limited product/service availability or inadequate access to channels or time constraints. Surrogate consumers can have an influence at all stages of the buying process. At the information search stage some consumers face too many choices and abdicate this to others perceived as experts (eg theatre critics, travel writers). At the evaluation stage the consumer may consult a surrogate if uncertain about the proper decision rule and the decision is considered important (eg dating services). Finally the consumer may not have the time, nor wish to undertake the purchase and this may be delegated to a surrogate consumer (eg "professional line-sitters" who, for a fee, queue at passport offices and with the necessary papers renew passports).

To some extent, the rise of the surrogate consumer is due to the partial disintegration of the traditional family structure. From an early age children learn to turn to their parents for advice, but as they grow older the influence of the parents wanes slightly as other peer groups are consulted (Assael, 1987).

4.8 Information needs for health care

There is a paucity of published sources considering consumers' information needs for health and safety issues, however generalisations could be drawn from current theory, which would need testing. The purchasing of services and products for health care is likely to be a high involvement activity. Consequently the stages of the buying process are likely to follow the model of complex decision making outlined in section 1.4.1. If the consumer is purchasing medical products on a repeated basis

(eg plasters) they are likely to simplify their information search and evaluation using memory (routine problem solving behaviour). As Varner and Christy (1986) note though, providing information about medical care may not necessarily help consumer decision making, since only a minority would have the specialist knowledge to understand it. Furthermore learning from experience of different medical problems is likely to be restricted and thus little relevant information will be stored in memory for serious medical conditions. It is therefore likely that consumers will relinquish their decision making to consumer surrogates, ie doctors and other medically qualified staff. This was confirmed in a survey reported by Johnson (1986) who found physicians had a greater influence on consumers' choice of health care providers than family, friends and insurers.

When deciding between different health maintenance organisations, Varner and Christy (1986) propose that as consumers may be overwhelmed by the volume of health care information, data on plan benefits should be reported on a uniform grid. They give suggestions as to what should be on such a grid.

4.9 Conclusions

In broad terms, consumers can place reliance upon marketing controlled information sources (eg brand names, images, advertising, pricing) or non-marketing controlled sources (eg friends, relatives) when seeking external information. Research shows that a greater reliance is placed upon non-marketing controlled information sources, due to the credibility and impartiality associated with personal sources.

When considering marketing controlled sources, a particularly helpful model for appreciating the reliance consumers place on only a few cues is that proposed by Cox (1967a) and extended by Olson (1972). Products are regarded by consumers as an array of informational cues and, through the use of predictive values and confidence values, consumers select those few cues with the highest informational values. There is a preference for intrinsic cues, but as these generally cannot be accessed until after purchasing, consumers use extrinsic cues. The most popular extrinsic cue is the presence of brand name information, due possibly to the large chunk of information this represents. Brand/store image, advertising and

price information is used to infer product/service characteristics, but for experienced consumers there is less reliance placed upon these cues. Consumers are aware of advertising activity, but due to the methodological limitation of consumers' self reporting, the exact impact of advertising is not clear (eg due to memory recall and low involvement learning). There appears to be evidence of a price-perceived quality relationship, but consumers recall of prices is subject to error.

Consumers place a lot of reliance upon information from friends and relatives. Word of mouth influential sources are product specific, as are those influential personal sources who are early purchasers.

Consumers cast their contact net wider than marketing controlled sources and their friends and relatives, by also approaching consumer surrogates. Due to their perceived expertise, consumers turn to these people for both functional and psychic benefits. Depending upon the purchase problem, these people simplify choice, undertake the evaluation process and may become delegated purchasers.

4.10 Implications

Of the diverse marketing controlled informational sources, consumers are more likely to search for brand/retailer names on products or services. Reinforcing some of the points made in earlier chapters, any marketing effort should strongly link the attributes of products/services to their brand names and, at the point of purchase, the packaging should be designed so that the brand/retailer name is very prominent.

Consumers prefer to base decisions on intrinsic, rather than extrinsic cues and thus where communication budgets allow, consumers should be able to try products in-store. While advertising was cited by respondents as a less commonly used source, it clearly is a further means of presenting information, albeit research is still being undertaken to better understand how it affects behaviour. What is apparent is that the role of advertising varies according to whether the purchase engenders low or high involvement (as discussed in section 1.5) and thus communicators need to assess whether their expectations of advertising are consonant with consumers' involvement.

Consumers have a broad appreciation of price levels, but there are inaccuracies when they try to recall precise prices. This would indicate that price information should be displayed at point of purchase and that while laser scanning may make pricing of individual products redundant from a distributor's perspective, it should still be shown to reinforce consumer purchasing confidence. There appears to be a belief that higher prices are associated with higher quality levels. In those product fields where independent assessors disagree with such a relationship, a decision needs to be taken about explaining that any price variance is not necessarily quality related.

Many studies have looked at the impact of one, or a few marketing variables, on consumers' perceptions. In reality though all of the marketing resources impinge upon consumer decision making and therefore more research is needed to explore how the interactions of these variables impact upon consumers.

In view of the way that consumers place more reliance on advice from friends and relatives, rather than marketing controlled sources, communicators need to consider more carefully who they target their messages to and how the information is presented. As a starting point, research needs to be undertaken, using the framework developed by Bearden and Etzel (1982) to appreciate the influence of reference groups.

By understanding the consumer decision process an organisation may find it appropriate to direct a communication strategy at the final consumer as well as a different campaign at opinion leaders. For example, the consumer directed strategy may simply be concerned with building awareness and communicating product acceptability, while the campaign directed at opinion leaders may be more detailed.

Communicators need to undertake research to identify the characteristics of key referents for their product/service (eg opinion leaders, innovative buyers) and ensure they are correctly targeting their messages to these influential groups. Furthermore research needs to be regularly undertaken amongst these key referents, to ensure that they comprehended the original message in the way it was originally intended.

CHAPTER 5

CONSUMER CHARACTERISTICS AFFECTING THE EXTENT OF EXTERNAL INFORMATION SEARCH

5.1 Introduction

Consumer information search is influenced, at the broadest level, by factors external to the consumer and by characteristics unique to the consumer. While chapters 1 and 4 looked at some of the external factors affecting information search, this chapter focuses upon the internal factors influencing search, ie reviewing what is known about those consumer characteristics associated with a greater propensity for information search.

It has been argued by some (eg Bauer, 1960), that buying activity can be viewed as instances of consumers being faced by risk (eg wasting money on buying the wrong brand, etc). One of the ways of reducing perceived risk is thought to be through seeking more information (ie increasing certainty) and thus an understanding of consumers' perceptions of risk might be associated with greater information search. The early part of this chapter reviews the influence of perceived risk on information search.

Three other consumer characteristics that may have an impact on information search are level of education, sex and age of the purchaser. Studies reporting any impact from these variables are reviewed. Little was found about the impact of income on search activity, albeit as a correlate of education, income has been found to be positively related to search (eg Thorelli, 1971). Furthermore, due to the operational difficulties of agreeing how to measure social class, the review by Hugstad et al (1987) shows conflicting findings from different surveys and any conclusions about the impact of social class are difficult to draw.

5.2 The influence of perceived risk

Bauer's (1960) seminal paper led to a considerable amount of consumer research focusing upon the concept of risk taking. He proposed that consumer behaviour be regarded as instances of risk taking in the sense that any action of a consumer will produce consequences which they

cannot be certain about and some of which may be unpleasant. In buying situations therefore consumers develop risk reducing strategies, for example buying only advertised brands. Bauer stressed that attention should be paid to consumers' perceptions of risk, rather than objective risk, since consumers react only as they perceive situations. Others then noted that until perceived risk (ie uncertainties about the consequences of a purchase) exceeds consumers tolerance levels for different purchase situations, they are unlikely to engage in any risk reducing behaviour.

Consumers' perceptions of risk vary according to different types of products or services. For example table 5-1 shows the risk induced buying different products and services (Jacoby and Kaplan, 1972).

	<u>Perceived risk value</u>
Foreign sports car	7.3
Life insurance	7.0
Colour TV	6.3
Suit	5.9
Winter coat	5.4
Pair of shoes	5.2
Deodorant	4.0
Razor blades	3.4
Toothpaste	3.0
Vitamins	2.9
Asprin	2.5
Playing cards	1.6

On a 1-9 scale, 9 = high perceived risk

Table 5-1 : Ranking of perceived risk by product

Consumers can reduce their perceptions of risk by either reducing the amount at stake (eg only buy when money back guarantees) or increase their certainty that no loss will occur (eg undertake information search). There is some doubt about whether consumers can frequently reduce the amount at stake since this will mean modifying their goals in the short term and any lowering of aspirational levels may decrease motivational drive. There are studies showing consumers following a "reduce amount

at stake" risk reduction strategy (eg Shoemaker and Shoaf (1975) saw consumers following "buy a small pack" for new grocery brands), and there are also a large number of studies focusing upon consumers need for more information (ie reduce uncertainty). The literature shows some evidence of consumers' preferences for a "certainty reliever" rather than a "consequences reliever" varying by product field (eg Derbaix, 1983), however more research is needed to clarify how this varies.

One of the main thrusts in risk research has been to understand how consumers reduce uncertainty (Gemunden, 1985). Unfortunately equivocal findings have resulted. It would appear logical that those high in perceived risk would be more likely to seek information than those low in perceived risk. Some have found evidence to support this (eg Hugstad et al, 1987; Desphande and Hoyer, 1983), but others have not found a positive relationship between perceived risk and information search (eg Jacoby et al, 1978; Ring et al, 1980). One of the reasons for this difference in findings is that there are numerous ways of measuring risk (Ross, 1975) and there are disagreements about methodological procedures. Gemunden (1985) reviewed 100 empirical studies and found that in 51 cases, no positive relationship was observed and in 49 cases there was either a tendency or a definite relation between perceived risk and information search. For routinised purchase decisions the falsification rate was particularly high (73%) indicating that respondents' risk perceptions had not exceeded the threshold of tolerance. Quite a high rate of falsification (47%) was seen in complex decision making instances, but this may be due to the higher costs of information search or difficulty in comprehending the information.

Thus there is evidence suggesting that once consumers' tolerance threshold for perceived risk has been exceeded, they are then more likely to undertake information search. For regularly purchased items it is unlikely that perceived risk exceeds a critical level and thus consumers' perceptions of risk are not likely to be a good indicator of information search.

5.3 The influence of level of education

To be an effective purchaser, information about competing items needs to be sought and evaluated, but as Newman and Staelin (1972) argued, information search and processing depend upon the consumer's ability,

interest and motivation to undertake such tasks. These factors may be more apparent amongst more educated consumers and several studies show evidence of more external information search being undertaken by more educated consumers. Evidence of more educated consumers seeking more information has been reported by studies investigating household appliances (Katona and Mueller, 1955) major household purchases (Thorelli, 1971), furniture and household appliances (Claxton et al, 1974), selecting a bank, hairdresser, doctor, pediatrician, service repairers, major appliances and household furniture (Andreasen and Ratchford, 1976), electrical appliances (Capon and Burke, 1980), creamers, lemonade, instant coffee and clothes dryers (Schaninger and Sciglimpaglia, 1981) and cars (Kiel and Layton, 1981). The broad range of product fields investigated indicates that more educated consumers tend to have sought out more information than less well educated consumers.

5.4 The influence of consumer's sex

Reflecting the increased frequency of grocery shopping activity amongst women, Alba and Chattopadhyay (1985) found brand recall of hair shampoos was greater amongst women than men, indicating more relevant information stored in memory. This would imply less external search by women when compared with men. Lastovicka (1979) found that men claimed they would be more likely than women to seek product information when grocery shopping. Crosby and Taylor (1981) observed that women did not use information on carpeting to the same extent as men did. They postulated that this may be due to the roles played by each party when buying a carpet, with women more concerned with the matching of colours and men more interested in durability.

Thus there appears to be evidence of differences in search activity between men and women, but no clear conclusions are apparent. It may be that because of different levels of product purchasing experience and trial there are differences in the reliance placed on the predictive capabilities of different informational cues.

5.5 The influence of consumer's age

Amongst adults there appears to be some evidence supporting the proposition that external information search decreases with age. Evidence

for this was found amongst car buyers (Kiel and Layton, 1981). In an experiment where respondents had to choose a brand within specified product fields (creamers, instant coffee, lemonade, electric clothes dryer), Schaninger and Sciglimpaglia (1981) noted that older respondents processed less information and examined fewer attributes and alternatives than younger participants. Presumably with increasing age consumers gain more experience and therefore are able to draw upon a more relevant array of information in memory.

A review by John and Cole (1986) summarising differences between young and elderly consumers indicated that young children recall less advertising information and use fewer sources and less information when selecting products than older children. Elderly adults use fewer informational aids such as unit pricing, process information at a slower rate and remember less product-related information than younger adults. They explain that young children and elderly adults have limitations in such areas as processing speed, use of memory strategies and knowledge bases. These cause information acquisition and processing problems when they are faced with a large amount of information, when the information is in a format that makes encoding difficult and when there are few prompts or instructions to guide processing. When one or more of these conditions is made less demanding these difficulties are reduced.

5.6 Conclusions

Consumer characteristics do appear to have an impact upon information search and processing. There appears to be some effect from perceived risk, education, sex and age on information search. When making purchasing decisions, consumers perceive risk in the sense that they are uncertain about the consequences of the purchase. Provided consumers' perceptions of risk exceed their tolerance threshold, they are likely to undertake risk reducing activities (eg. buy only small quantities or seek more information). For regularly purchased items, consumers' perceptions of risk are unlikely to be high and thus there is little need for risk reducing behaviour. However for more complex purchases (complex decision making) perceived risk is likely to be high and thus is more likely to lead to information search. Thus it is postulated that for more complex purchases, knowledge about consumers' perceptions of risk should provide insight about the extent of information search.

It has been argued that more educated consumers have the ability, interest and motivation to undertake greater information search than less educated consumers. A variety of studies has shown a positive relation between education and information search.

The extent of information search varies between men and women, according to the product field concerned. This may be due to different levels of experience resulting in varying levels of memory capability.

For shoppers aged between approximately 18 to 60 there is evidence of information search falling with age. Again this may be related to increasing experience enriching memory. Very young and elderly consumers cannot cope with large amounts of information and can best manage when information is presented in a format that makes it easier to evaluate.

5.7 Implications

An understanding of consumers' perceptions of perceived risk, particularly for complex decision making, should help communicators appreciate when more detailed information search is likely to occur. Information should be presented in such a way that it resolves consumers' concerns about specific facets of perceived risk. Thus research should first gauge what aspects of risk consumers perceive with a particular product or service (eg performance, financial, social, etc). From a knowledge of consumers' perceptions of risk, organisations should also start to consider how other resources can be used to supplement information as a means of reducing risk (eg clarifying the virtues of particular guarantees, offering smaller pack sizes for the early stages of a product launch, etc). One of the problems with the concept of perceived risk is that there is no consensus about how to measure it and therefore cross-study comparisons are restricted. More research is needed to move towards a unified measuring procedure, to better understand when consumers follow strategies of "certainty relievers" rather than "consequences relievers" and to clarify tolerance threshold levels for complex decision making. Finally it should be appreciated that when consumers perceive a high level of risk, presenting more information may possibly increase, rather than reduce risk, due to consumers becoming aware of a wider variety of attributes.

Well educated consumers are more likely to seek more information about products and services due to their abilities and motivations. A consideration of the distribution of education levels would indicate that a minority of consumers are more likely to actively seek information, particularly for important purchase decisions. Organisations need to consider the education profile of their target market and consider whether there are ways of directing more easily comprehensible messages (particularly for complex products and services) towards less educated consumers. The problem they also face though is trying to motivate less educated consumers to process relevant information

If the purchase decision is a joint husband-wife decision, organisations may benefit from developing communication strategies that reflect differing memory structures and informational needs. Research would need to be undertaken to assess whether men and women place differing emphasis on different attributes for a product or service and through the appropriate media, suitably tailored to either mens' or womens' activities, different communication strategies be displayed.

When communicating with mainstream consumers aged between approximately 18 to 60, younger consumers would have less relative experience than older consumers and may be a more attentive audience. For much younger or elderly consumers, different types of communication strategies would be needed. Media selection should be biased towards print for the elderly consumer, since they will not be disadvantaged by their slow processing speeds and visual formats could be employed. The content of any message would need to be simple to avoid information overload. This could be achieved through stressing only a few attributes and repeating important points with the brand name at the end of the message. As both of these groups perform better in recognition, rather than recall tasks, any testing of the messages should be done using recognition methods.

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CONSUMER POLICY FRAMEWORK

Consumer Policy and Services Branch
Bureau of Consumer Affairs
June 14, 1989

CONSUMER POLICY FRAMEWORK
 AN OVERVIEW
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CONSUMER POLICY FRAMEWORK - OVERVIEW

Purpose

The purpose of developing a Consumer Policy Framework is to give direction to federal and national consumer actions. The adoption of the Framework would:

- endorse cooperation among consumers, business and governments as a means for establishing safety, fairness, efficiency and competitiveness in the marketplace
- recognize the changing roles and responsibilities for consumers, business and governments
- promote consistency and improvements in consumer experience in the marketplace through the development of national objectives in consultation with consumers, business, federal departments and provincial/territorial governments
- rationalize and streamline legislation to maximize the effectiveness of the resources of government
- rationalize financial assistance to non-profit organizations acting in the consumer interest
- improve consumer understanding of marketplace function

Rationale

Canadians are concerned today about the impact of the emerging global economy as well as basic changes in the marketplace that affect them as individual consumers. They see consumer protection, as expressed in the concepts of safety, fairness and efficiency, as a basic right and expect that, ultimately, government will act to insure an orderly marketplace.

The increasing complexity of the marketplace and the new issues arising from it require the adoption of a contemporary Consumer Policy Framework which will demonstrate federal leadership and commitment. Society can no longer afford the costs associated with inefficiencies linked to consumer problems. Instead, a cooperative approach is required using a coherent and well defined set of roles and responsibilities for consumers, business and government which will allow for a greater emphasis on their prevention of consumer problems in a manner that is more cost-effective than taking corrective action.

The essential elements of the Consumer Policy Framework are: coordination of the shared responsibility for consumer matters at the federal level; a strong cooperative working relationship (partnership?) with provincial/territorial governments, consumer organizations and business; mechanisms for the improved integration of consumer and economic considerations; and, the establishment of priorities for national consumer issues.

The impact of a global economy on the Canadian marketplace is placing a strain on existing consumer protection mechanisms and is calling into question the effectiveness of traditional marketplace roles and responsibilities. A new delineation of the sharing of responsibility would give recognition to the mutual benefits to consumers, business and governments arising from cooperation and problem prevention. Cooperation and problem prevention could lead to improvements in efficiency in both the production, distribution and consumption of goods and services and help improve Canada's competitive position in international markets.

An important aspect of consumer problem prevention is to build on the interrelationship between consumer policy and the economy by including it early on in economic decision-making, and through cooperation among consumers, Canadian business and governments.

Consumer policy objectives and the articulation of normative values are required to promote understanding among consumers, business and governments and to provide overall direction. This can be achieved through the cooperation of federal, provincial and territorial governments and consumer and business organizations. At the federal level, the development of objectives of a consumer policy agenda can best be achieved through the participation of all Ministers having consumer-related responsibilities.

The provinces and territories have a significant role to play in the enhancement of cooperation and the sharing of marketplace responsibilities. Consultations would address the need for cooperative policy and program objectives, the establishment of common priorities and the endorsement of the concept of changing roles and responsibilities.

Improved measures to monitor marketplace changes and possible impacts on consumers would generate information critical to preventing consumer problems, as well as the active involvement of consumers, business and government in resolving problems.

Consumers and business expect a safe, fair and cost efficient marketplace and want to understand their roles and responsibilities in it. An effective leadership role on the part of government in delineating and communicating these roles and responsibilities would facilitate public understanding of marketplace conditions, emerging trends and issues and encourage cooperation for mutual benefit.

Acceptance of the proposed Consumer Policy Framework represents a foundation for federal action in the short and medium term. It is necessary to inform Canadian consumers of the various aspects of the federal consumer agenda. A communications plan, demonstrating federal leadership would fulfill this requirement. In addition, the continued support of non-profit organizations acting in the consumer interest would encourage their participation in the prevention and resolution of consumer problems and, thereby, foster improved consumer confidence in government decision-making.

Some work is currently underway on short and medium term initiatives which will reinforce the themes of cooperation and the changing nature of roles and responsibilities. These items include strategies for: the promotion of sharing responsibilities, effective marketplace communication, enhanced consumer redress, improvements to mechanisms for identification and tracking of issues, and reregulating for safety.

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THE FEDERAL CONSUMER POLICY FRAMEWORK

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1.0 INTRODUCTION

Consumer policy and derivative legislation and programs are essential to the orderly function of the marketplace and general social welfare.

The Federal Consumer Policy Framework is founded on the following eight guiding principles.

- Consumer Policy is of national importance.
- Effective consumer policy is essential to enhancing Canada's competitiveness.
- The Minister of Consumer and Corporate Affairs, on behalf of the federal government, assumes the leadership of the federal team responsible for delivering consumer policy and programs to Canadians.
- Federal Ministers are responsible to Canadians for delivering effective programs within their mandates arising from consumer policy and programs.
- Consultation and cooperation with consumers, business and other governments are crucial to the development of effective consumer policy.
- Consumers have a right to safety, fairness and the benefits of marketplace efficiency.
- Information and its timely application are critical to solving today's marketplace problems and preventing those of tomorrow.
- Canadians have a right to know about changing marketplace conditions and government policies which affect them as individual consumers.

2.0 THE FEDERAL CONSUMER AGENDA

2.1 Priorities

The credibility of federal consumer and consumer related policies and programs is tied to their effective coordination and management across the federal government and provincial governments. In addition to coordination and management, federal efforts must support the general goals of the

government on fiscal restraint and regulatory reform and, at the same time, respect the basic commitment to marketplace safety, fairness and efficiency.

To strengthen the coordination and management of consumer policy, the Department of Consumer and Corporate Affairs will undertake to:

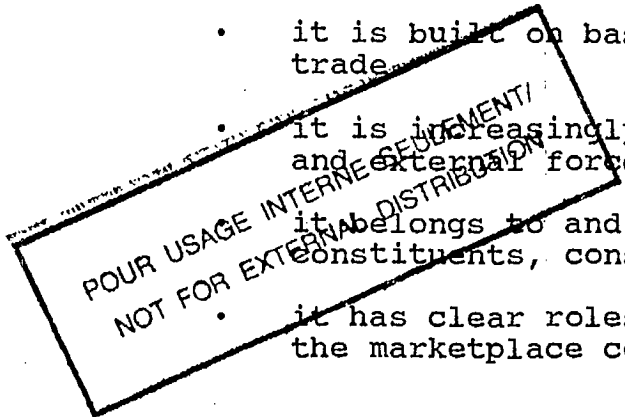
- develop clear statements of roles and responsibilities for communication with consumers, business, federal departments and provincial governments;
- improve public understanding of the roles and responsibilities and the mutual interest and mutual benefits that arise;
- develop proposals for rationalizing and streamlining legislation and regulations to meet changing marketplace conditions;
- develop proposals for the application of standards, as well as other voluntary means of self-regulation to more effectively promote safety and fairness in the marketplace;
- develop proposals that will enhance access to effective redress across areas of federal jurisdiction and in other marketplace sectors in consultation with provincial governments and the private sector;
- focus on problem prevention by making recommendations across government, as the need arises, on matters affecting consumer safety and fairness and where the welfare of consumers might be at risk because of marketplace inefficiencies;
- develop proposals in response to opportunities to harmonize complementary federal and provincial policies and programs as well as those of consumer and business organizations;
- develop proposals on how consumer policy can be more effectively integrated into socio-economic policy and decision-making.

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2.2 Marketplace Influences and Consumer Policy

There are four aspects of the Canadian marketplace that affect the development of a current consumer policy.

- it is built on basic values of competition and fair trade.
- it is increasingly changing and subject to internal and external forces
- it belongs to and is the concern of all constituents, consumers, business and government
- it has clear roles and responsibilities for each of the marketplace constituents.



2.2.1 The Role of Competition and Fair Trade

The Canadian marketplace has been built on the basic norms of competition and fair trade. These norms are understood and shared by all marketplace constituents, consumers, business and government.

Competition is fostered by the government to promote the efficiency and adaptability of the Canadian economy in order to expand opportunities of Canadian participation in world markets, while at the same time recognizing the role of foreign competition in Canada. It is fostered to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

Fairness is expressed in:

- the availability of timely and useful information
- the fairness in individual transactions
- the assurance of product safety
- the existence of effective redress

The acceptance of these norms will likely require the development of additional and more effective communication tools on the part of business and governments, adjustments to existing legislation and regulation pertaining to transactions by the federal government and provincial governments, the development of new standards and codes of conduct applicable to transaction/fairness and to product safety and the enhancement of effective redress, by business and governments.

2.2.2

The Changing Marketplace

The Canadian marketplace is undergoing changes arising from the impact of technology and international pressures to be competitive. Today, strategic ascendancy in the world is linked to competitiveness and consists of surplus capital combined with national self-discipline, advanced technology and superior education. In Canada, as in other nations, patterns of production and consumption are undergoing changes in this increasingly global economy as well as in response to world-wide consideration of environmental concerns.

Consumer policy in the 1960's and 1970's reflected the need to legislate basic consumer protection. The 1980's has been characterized, to an increasing degree, by improved cooperation between consumers and business. Both parties have accepted the need to change basic roles and responsibilities as they had previously existed. Business has demonstrated an increasing responsiveness to consumer concerns and to the bottom line benefits of doing so. Efficient consumption is becoming as important as efficient production, in reducing the general burden of government on business and consumers. Consumers have responded by relying less on government for direct assistance in complaint handling and the provision of information, and more on business from which they expect a satisfactory response. In these conditions, governments have sought to streamline legislation to maximize the resources available for direct intervention to provide for safety, fairness and marketplace efficiency. Basic protection, previously established in law, has not undergone fundamental modification.

The cooperation developed in the post-recession 1980's is likely to continue into the 1990's. The changing marketplace will, however, present new challenges and difficulties for consumers. Products and services and their marketing approaches will proliferate exponentially with both new and more widely dispersed technology and increasing business internationalism. This trend will continue and accelerate. Consumer purchase decisions will be increasingly reliant on packaging information and advertising. Business will rely on information disclosure as the focal point of selling products and services. Regulated standards of product design and composition will likely play a less important role in influencing consumer decision making. Given these examples, consumers could face new and hidden risks associated with imperfect information, safety and fairness, as traditional and/or local aspects of consumer protection, such as redress, are unable to address new problems.

2.2.3. Marketplace Participation in the 1990's

Consumers, business and governments are bringing new values, expectations and concerns to the changing marketplace which impact on consumer policy and programs.

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2.2.3.1 **Consumers**

For the later 1980's and 1990's, the values that are most likely to continue to affect consumer decision-making and consequently to influence business and governments are:

- the demand for simplification in products and services;
- the demand for tangible value and quality;
- the assumption of responsibility for some degree of risk management in marketplace transactions.

Simplification reflects an interest in conciseness, directness and in convenience, the known versus the new and the elimination of non-essentials. A desire for tangible value and quality implies a move away from fads and frills. Risk management implies an acceptance of existing risk, but recognizes that individual consumers need to assume responsibility for minimizing exposure and penalties.

It follows, therefore, that there is and will be a demand for competence and responsibility on the part of consumers for themselves and others.

These values affect the roles that consumers will play and responsibilities that they will accept into the 1990's. The likelihood remains that, in specific instances, consumers will demand more and better performance and interventions from business and government.

2.2.3.2 **Business**

Business will be driven by the need to be internationally competitive. This will increasingly affect the production of goods and services in Canada. As the globalization of markets increases, our goods and services must be competitive in price, in safety and quality, and match consumer preferences. Inefficiencies linked to both the production and the consumption of goods and services could impact negatively on Canada's ability to be internationally competitive. Inefficiencies might include, for example, problems of safety, quality and fairness in the domestic market, particularly in the face of imported goods, as well as the cost associated with attendant government regulation.

INTERNATIONAL AGREEMENTS
ON COMPETITION

As is now understood, Canada like other nations must make the necessary domestic improvements in order to be competitive in export and international markets. Business will look increasingly to consumers and governments for feedback on the quality of its products and services. In this sense, cooperation and sharing of responsibility can contribute to increased marketplace efficiency and to Canada's international competitiveness.

To satisfy domestic and international markets, business roles and responsibilities will need to include accountability for ensuring that safety and fairness, including redress, become integral to the production and consumption of goods and services. Business will also be required to communicate effectively at the point of sale and in the care and safe use of products and services.

2.2.3.3 Government

In meeting its commitment to consumer protection, government will continue to ensure compliance with existing law but consideration of new regulation will be characterized by minimum interference with individual freedom consistent with the protection of community interests. Thus, it follows that government will be more selective in its use of a range of approaches to marketplace problems available to it. This might include, for example, voluntary standards and/or information/communication, to support the fundamental marketplace values of safety, fairness and efficiency. The how, when and where government will use its tools will form the basis of regulatory policy in the 1990's.

For instance, it is likely that, in response to concerns about basic safety, classes rather than individual products will be subject to regulated standards. The encouragement by Government of voluntary compliance measures with these standards will become more widely practised and accepted by business.

In anticipation of the need to respond to broad marketplace issues affecting, for instance, the safety of consumers, the government will establish cooperative mechanisms across departments and agencies.

While consumers will continue to expect that business will be accountable for complying with existing regulations and standards, government, in turn, will expect consumers to employ all personal skills in using information for purchasing and using products and services. Government is likely to devote more of its regulatory resources to facilitating the development of voluntary compliance measures and to influencing business conduct through, for example, input to codes of business

practice that will include effective redress for consumers. will also continue to some degree to mediate between consumers and business.

International markets will also require a continuing emphasis on the development of international agreements on regulated and/or voluntary standards.

In the above context, the roles and responsibilities of government will include maximizing the effectiveness of resources devoted to regulation and pursuing the development of standards to classes of products and services and, ultimately, ensuring compliance with evolving regulation. It will need to promote safety, fairness and efficiency in the production and consumption of goods and services. It must also facilitate changes in consumer and business practices aimed at the sharing of responsibilities.

2.3 Roles and Responsibilities

As the 1990's approach, and given the changes that are unfolding, the following are summarized as the major roles and responsibilities that seem appropriate to consumers, business and government.

- Consumers will need to assume responsibility and accountability for developing and using all the personal skills necessary to understand, function and cope with the purchase and use of goods and services.
- Business will need to be responsible and accountable for ensuring that safety and fairness, including redress, become integral to the production and consumption of goods and services, as well as for communicating effectively at the point of sale and in the care and safe use of products and services.
- Government will need to promote safety, fairness and efficiency in the production and consumption of goods and services as well as ensure compliance with existing law and with evolving regulated standards. It must also facilitate changes in consumer and business practices aimed at the sharing of responsibilities.

Challenges arise for each sector from the delineation of new roles and responsibilities. For consumers, there will be challenges arising from enhanced choice requiring

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effective judgement and transactional skill. Consumer organizations can assume a new role in communicating the responsibilities to their constituents. Business will need to communicate in a timely and useful manner with an increased emphasis on quality and effective customer relations. There may be a requirement to preach more effectively this message. Governments will be challenged by the need to respond creatively to consumer problems without burdening the marketplace. Governments will face pressures to legislate/regulate in circumstances where the consumer interest will be better served by other responses. In addition, the challenges of communicating the mutual interest/mutual benefits of meeting new roles and responsibilities and facilitating change is likely to fall mainly to government.

2.4 Self Interest/Mutual Benefit

In creating a Consumer Policy Framework, the Minister and the Department will need to facilitate change through public communication and consultation with consumers and consumer organizations, business associations and some major businesses, with federal departments and with provincial governments. The responses of these various parties to consumer policy initiatives and marketplace problems that are current to the 1990's are likely to vary.

2.4.1 Self Interest

- Consumers and consumer organizations are likely to be threatened by policy initiatives that look beyond legislation and regulation as the only means for preventing or addressing consumer problems.
- Business and trade associations are likely to respond to opportunities for standards development, self regulation and voluntary codes and compliance, as opposed to regulation. However, governments may come under pressure from consumers because of the time required to negotiate the appropriate mechanisms.
- Federal departments will need to integrate further cooperative responsiveness that anticipate emerging issues. The provinces are likely to resist federal initiatives in areas of trans-border transactions that lie within provincial jurisdiction.

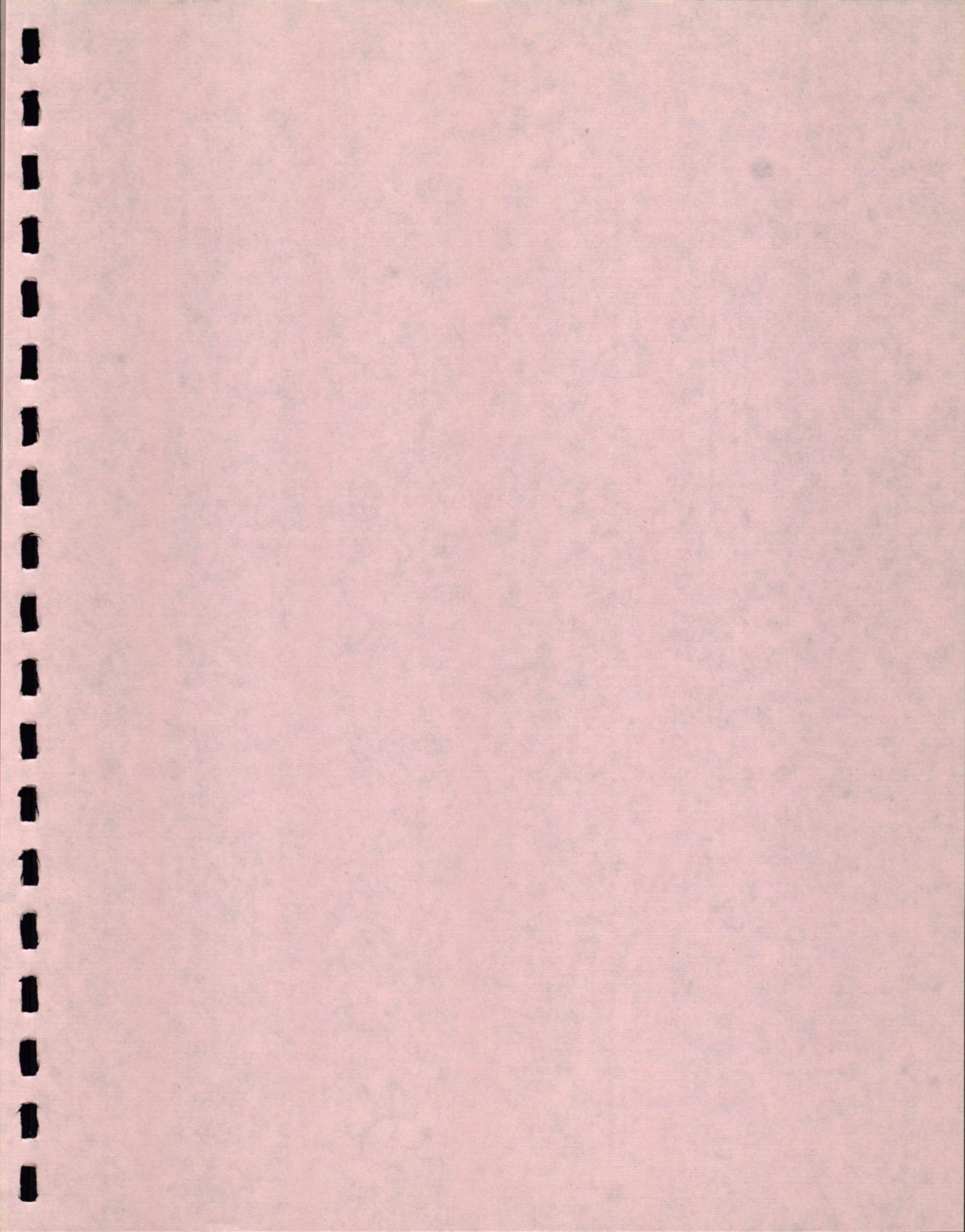
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2.4.2 Mutual Benefit

What will drive the marketplace actors to assume their roles and responsibilities will be an understanding of the mutual interests and mutual benefits arising from a sharing of responsibilities. Interests and benefits will often overlap reinforcing the value of the sharing concept. For instance, there will be a common interest in savings among all three marketplace actors arising from the reduction of costs associated with consumer complaints and redress actions.

The effective communication of the benefits arising from a sharing of responsibilities among consumers, business and government is likely one of the keys to the unfolding of an orderly marketplace in the 1990's.

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Wendy F. Porteous
Assistant Deputy Minister
Bureau of Consumer Affairs

Director
Consumer Services Branch

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The 1990's and Beyond: An Options Paper for CCAC by E. Belobaba

There is attached one page of highlights and the Belobaba paper, which I propose to circulate to all Bureau Directors prior to next week's BMT.

Part I supports the general direction of current Departmental consumer policy. Belobaba notes that we have taken constructive steps in this area by implementing innovative compliance techniques, by developing the Principles for the Marketplace, and by undertaking preliminary work on a consumer code. He states that there is no need for additional reassurance by external consultants - CCAC can implement reforms on its own, the need for many of which has been documented previously by researchers. Another important point in his introductory observations is that there are no radically new ideas in consumer protection policy-making. The trends today are toward flexible regulatory techniques and greater experimentation with alternative dispute resolution mechanisms.

In Part II, Belobaba's comments on our Principles for the Marketplace and his suggestion of a "Cornerstones" document are perhaps his most important contributions in this paper. As he notes, although our document at first looks like a statement of roles and responsibilities of marketplace participants, one discovers that the basic principles of reasonable information, transactional fairness, etc. are integrated in the bullets. However, we agree that conceptually a document with the four cornerstones he highlights (marketplace shared by business, consumers and government; changing nature of marketplace suggests national concerns and governmental regulation at the federal level; basic norms of Canadian marketplace are reasonable information, transactional fairness, product safety and effective consumer redress; marketplace participants have clear roles and responsibilities to help achieve the shared expectations of safety, efficiency and fairness), is an excellent way to fashion a principles document, and we will commence this work immediately.

The range of options presented in Part III of his paper require further study, particularly the major reform proposals involving major structural changes, including a new federal tribunal to oversee rule-making and

administrative enforcement of a federal Trade Practices Act. As Belobaba points out, there is a growing mistrust of government tribunals, and thus there would have to be a demonstration of actual need for such a tribunal.


There are however two areas which this Department could pursue immediately. These are an in-house study of "Informal Dispute Resolution Procedures" and the implementation of a federal-level Consumer Class Action law. As you know, we are actively carrying out work with respect to the former under our title of Redress Remedies.

Part IV of the Belobaba paper deals with a constitutional analysis of the basis for new federal consumer laws and also the constitutional basis of administrative or civil remedies. He makes the point early in his paper that "any discussion of consumer protection reform at the federal level has been totally preoccupied with the perceived obstacles of Canadian constitutional law". He also notes that given the decisions in the Labatt Breweries and Dominion Stores cases, this constitutional self-consciousness is understandable. However, there have been more positive signs from the courts recently in terms of upholding legitimate exercises of the federal trade and commerce power (the Rocois Construction and CN Transportation cases).

Belobaba is suggesting that we base any new federal consumer protection laws on both the trade and commerce power (the general regulation of trade affecting the whole country) and the criminal law power (under the long reach of the notion of "morality", which has already been used to uphold economic regulation in general). He concludes that any new federal law whose primary concern is health and safety, deception, or the prevention of deception should be supported first by the criminal law jurisdiction and secondarily on the basis of the federal trade and commerce power.

With respect to proposed administrative and civil remedies, and enforcement structures, Belobaba believes these will have to be supported on the basis of the trade and commerce power, as part of an overall "regulatory structure", which satisfies the five conditions set out in the CN Transportation case (see p. 54). We feel that Belobaba sets out some cogent arguments with which this Department could proceed in its legislative developments.

Finally, the paper sets out some short term and long term recommendations at pp. 57-59. All of these recommendations should be discussed. For the present, we would give priority to short term initiatives (i) the "Cornerstones" document and (ii) informal dispute resolution programs, particularly for the Consumer Bureau of the Department.


Maureen Wadsworth

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Highlights of The 1990's and Beyond: An Options Paper for CCAC by
E. Belobaba

A. The Need for a Principled Framework

Based on a review and analysis of the Department's "Principles for the Marketplace", a "Cornerstones of the Canadian Marketplace" document is proposed which would clarify our Principles by setting out the following cornerstones:

- 1) the Canadian market is a common market belonging to business, consumers and government
- 2) the Canadian market is an increasingly changing market, suggesting national concerns and governmental regulation at the federal level
- 3) the Canadian market is built on the basic norms of
 - reasonable information
 - transactional fairness
 - product safety
 - effective consumer redress
- 4) each of the marketplace participants, business, consumers and government have clear roles and responsibilities (as outlined in our "Principles")

B. The Range of Legislative and Policy Options

- 1) Minor Reform
 - undertake a major review of the Hazardous Products Act
 - study "informal dispute resolution procedures" to develop for use with two or three industry groups
- 2) Moderate Reform - New Laws, Remedies and Minor Structural Changes
 - amend Competition Act to include "misleading, deceptive and unfair trade practices" generally (or implement a federal Trade Practices Act to do the same)
 - expand administrative enforcement measures (cease and desist, consent orders, and substantiation, corrective advertising) available to Director upon application to court.
 - institute a federal-level consumer class action law, including a Director's "substituted action" to obtain compensation on behalf of others
- 3) Major Reform - New Laws, Remedies and Major Structural Changes
 - new laws as above, but with greater "rule-making" capability to the enforcing Director to issue binding policy statements and carry out administrative enforcement measures (courts used for criminal prosecutions only).
 - establishment of supervisory board, "Competition and Fair Trade Commission" to review rule-making procedures and deal with appeals from Director's orders.

THE 1990'S AND BEYOND

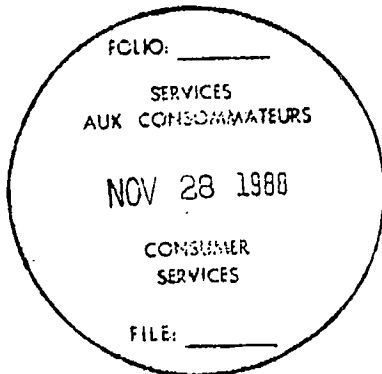
AN OPTIONS PAPER

FOR

CONSUMER AND CORPORATE AFFAIRS CANADA

BY

EDWARD P. BELOBABA



NOVEMBER 21, 1988

GOWLING & HENDERSON
TORONTO

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Preface

The terms of reference for this paper require that I "develop a future perspective on short and long term options to guide departmental consumer policy and legislative development, with a particular emphasis on consumer redress".¹

In meetings with departmental research staff and senior management officials, it became apparent that the essence of the mandate was to develop an "options paper" that would briefly summarize the present situation and then set out clearly and succinctly the various legislative and consumer policy options that might be pursued by C.C.A.C. in the years ahead.

This writer fully agrees with the observation that C.C.A.C., properly understood and described, is the "national department of the marketplace", and that aggressive and appropriate options have to be pursued immediately to focus attention on and develop further the role that C.C.A.C. should be playing in this regard in the 1990's and beyond.

Also included in the terms of reference is a request that I "evaluate and rearticulate, if necessary", the "principles for the marketplace", an important document that has been developed internally to help provide a more principled framework or foundation for the evolution of CCAC as the national department of the marketplace.

Two points about style. First, the options paper is written more as a briefing memo or an essay, than a long, heavily footnoted narrative. It assumes a sophisticated and informed audience, mainly CCAC staff and senior management. I have tried to keep the analysis brief and to the point. If any additional detail or further explanation is needed, I will of course be pleased to oblige.

Secondly, the emphasis in this paper is, strictly speaking, Consumer Affairs Canada, not the entire department. In my view, however, the Corporate Affairs dimension of CCAC will remain intact and will help to enhance the repositioning of CCAC as the national department of the marketplace. This is a matter that is touched on briefly in the paper and can be further developed in due course.

Finally, a word about organization. This paper is organized in four parts. Part I provides introduction and context, and presents a brief "snapshot" of CCAC today, by way of four key observations that in my view carry significance for future planning. Part II evaluates the "marketplace principles" proposal and suggests a number of revisions to this important foundation document. Part III canvasses the range of legislative options that, in my view, are realistically available in the years ahead, and does so under the rubric of legislative,

remedial and structural reform. Part IV attempts to answer what is probably the most important question in this entire exercise- whether any of the proposals to reposition and restructure CCAC in the ways suggested are within federal jurisdiction and constitutionally valid. Finally, although not strictly within my terms of reference, I provide a brief conclusion and suggest a number of recommendations for action in both the short and long term.

E.P.B.
November 21, 1988

THE 1990'S AND BEYOND

AN OPTIONS PAPER FOR CONSUMER AND CORPORATE AFFAIRS CANADA

I. INTRODUCTION: SOME OBSERVATIONS ABOUT CCAC TODAY

It may be useful at the outset to provide a context for the options analysis. The work leading up to this paper involved an extensive review of recent studies and research papers relating to the organizational and operational dimensions of CCAC today,² and of the policy and law-making initiatives that are presently being contemplated.³ In addition to this body of written information, I have had the opportunity to spend time discussing these questions with CCAC staff members and senior management. I set out below in capsule form what I believe are the four most important observations about CCAC today. Each of these observations, in my view, carries significance for future-planning. Each observation is briefly described and is then followed with a more normative comment on what it means for future development.

1. Complicated But Coherent

The first observation is in some respects self-evident. The nature and extent of consumer protection regulation at the federal level today is extraordinarily complicated, both organizationally and administratively. Even with the help of

briefing books and departmental organizational charts, it is still difficult to understand the mandates and interconnections of the various bureaux and their respective "sub-activities". It takes effort to discern the divisions of responsibility in the Bureau of Consumer Affairs, for example, and the distinct responsibilities of the Consumer Services, Product Safety, and Consumer Products sub-activities; the reach and relationship of the Marketing Practices branch of the Bureau of Competition Policy; and the separate and important role played by Legal Metrology - a resulting combination of bureaux and branches that together form a complicated inter-lock of consumer protection initiatives at the federal level.

Notwithstanding this complexity, the overall operation has been found to be coherent and cost effective. This is the main point of this first observation: namely, that studies recently commissioned to examine the presumed incoherence, overlap and confusion that was thought to stem from a departmental structure that has developed more by accident than by design, have found the reality to be otherwise. Studies of the Consumer Products and Marketing Practices programs have found that, by and large, "business and consumer interests are generally satisfied with the processes" and that there is "little or no evidence of overlap or duplication" between the various areas.⁴

Comment:

This first observation leads to an equally important corollary. The lesson here, in my view, is to resist reorganization or consolidation simply for the sake of organizational tidiness. As long as those that are affected by the admittedly complicated administrative structure - namely businesses and consumers - are not dissatisfied, and those involved in the actual workings of the department are knowledgeable about the divisions and the distinctions, there is no reason today to devote excessive attention to reorganization or "simplification".

The problem of complexity has to be addressed, but it should be addressed through the vehicle of information and education, as is now being done. Informational brochures can easily map out the various divisions and distinctions for the interested consumer or business person.

Another lesson that one may draw from this finding of "coherent complexity" relates to the recent CCAC initiative to rewrite and reduce the existing array of consumer protection statutes to one comprehensive federal Consumer Protection Code. It is difficult to disagree with any governmental initiative that

tries to make consumer protection law more accessible to average Canadians - indeed all of us in law and government must continue to strive for plainer language in legislation and for organizational simplicity wherever possible.

However, given the existing array of key federal consumer protection statutes, i.e. the Hazardous Products Act, the Consumer Packaging and Labelling Act, and the Textile Labelling Act, as well as the misleading advertising provisions in the Competition Act, and their differing regulatory designs, regulation-making procedures and remedial mechanisms, and the fact that there exist another sixty or so additional statutes that are enforced or administered at the primary or secondary level by CCAC, all with differing components, it becomes important to identify the purpose of the exercise.

If the purpose is to present a better understanding of this complicated but coherent array of legislation for both businesses and consumers, than the objective may be more easily achieved by a simple cosmetic initiative that would consolidate the existing legislation under the appropriate titles in one binder, a "Federal Consumer Protection Consolidation", with an easy-to-follow introduction.

In other words, there is operational coherence in the

existing intra-departmental complexity at CCAC today. Any effort to reduce this complexity in the absence of incoherence or demonstrated consumer confusion is an effort that will take away from more immediate and important tasks, and thus should be left for the longer term agenda.

2. Coverage That Is Surprisingly Comprehensive

The second observation is not as obvious as the first. Most informed observers of C.C.A.C. recognize almost immediately the organizational and operational complexities. They may even recognize the range of legislation that is presently enforced or administered by C.C.A.C. and, if generous-minded, will admit that the federal consumer protection mandate, even while burdened with real or perceived constitutional constraints, has yielded a sophisticated array of regulatory norms and standards as well as a wide range of enforcement techniques.

Most of these observers could easily identify the work of the Marketing Practices branch and its regulation of misleading advertising, the Product Safety branch, or at least the existence of a Hazardous Products Act, and perhaps the role and some of the responsibilities of the Consumer Products branch in one or two of its main program areas, perhaps food and textile labelling.

But few observers, even those knowledgeable in Canadian consumer protection, would fully appreciate the extent to which consumer protection, or more aptly marketplace regulation, by C.C.A.C. today, provides a remarkably comprehensive range of regulatory scrutiny. To put the point more simply: C.C.A.C. today, even without further amendments or new legislation, is already positioned in the key areas of modern marketplace regulation: such as information and labelling (Consumer Products and Marketing Practices); trade practices (Consumer Products, Marketing Practices and Legal Metrology); product safety regulation (Product Safety); and consumer complaint and redress (Consumer Services and Marketing Practices).

To develop this point a bit more: the nature and extent of C.C.A.C.'s involvement in modern marketplace regulation is not limited to a few pockets of readily recognized but generally under-estimated regulatory activity - such as product safety, misleading advertising, and perhaps packaging and labelling. Rather, the range of coverage in actual fact, and certainly in terms of potential, extends across the full spectrum of marketplace competition and fair trade.

The Consumer Products subactivity, for example, is responsible for the development and administration (at all trade

levels) of four federal packaging, labelling and marking laws, is also responsible (at all trade levels) for those provisions of the Food and Drugs Act and Regulations that relate to economic fraud aspects in the packaging, labelling and advertising of foods, and through formal agreements with other federal departments such as Fisheries and Oceans, and Agriculture Canada, is responsible for the administration (at the retail level of trade) of the norms and standards imposed under federal fish and agricultural products legislation.

This coupled with responsibilities for some 21 provincial laws respecting the grading and sale of agricultural and fish products (at the retail level), results in a "subactivity" that on a daily and annual basis touches the concerns of more Canadian consumers than any other regulatory initiative in the country. The programs of the Consumer Products branch relate to a wide range of foods, textiles, precious metals and pre-packaged non-food consumer items that have an estimated annual consumption value in excess of \$50 billion.⁵ This is not a "pocket" of activity.

The trade practices component of C.C.A.C. today is also extensive and is evident in a number of areas: the "deceptive" and unfair trade practices dimensions of the various packaging and labelling laws described above, as enforced or

administered by the Consumer Products branch; the misleading advertising and other trade practices prohibitions relating to bait and switch, pyramid selling etc. that are the concern of Marketing Practices; and the pervasive and important accuracy in measurement function that is performed by the Legal Metrology branch. This is hardly a "pocket".

The Product Safety subactivity and its development and enforcement of the Hazardous Products Act and Regulations thereunder performs a consumer protection function at the federal level whose importance is self-evident, widely recognized, and nowhere else duplicated in either resources or sophistication at any other level of government or in any non-governmental organization. This too is no "pocket".

The positioning of C.C.A.C. today in the fourth category, consumer complaints and redress, is understandably less developed. But here again, C.C.A.C. has a toe-hold, in large part because of the consumer education and complaint resolution initiatives of the Consumer Services branch, and in part because of the recent amendments to the Competition Act that have established a civil remedy beach-head in s. 31.1.

When one adds to this legislative picture the Competition Act with its high-profile scrutiny of competition

practices generally, and when one positions the competition legislation as a necessary adjunct or overlay to these other more traditional consumer protection initiatives describes above, the reach of C.C.A.C. in the regulation of competition and fair trade in Canada today is much more extensive than first meets the eye.

Comment:

The lesson here is for more jurisdictional boldness. C.C.A.C. today, properly understood and described, can begin to make a legitimate claim for primary status in national consumer protection and market place regulation. Too often in Canadian legal and economic literature, the tendency has been to equate provincial-level initiatives with consumer importance or marketplace impact. In my view, on both a daily and annual basis, the work of the various bureaux and branches of C.C.A.C. today involve more products, in more areas and affect more consumers more often than any provincial-level business practices, regulation, consumer products warranty law, or small claims court reform.

Once C.C.A.C. can learn what it must already know - that, properly understood, C.C.A.C. can legitimately view itself as the department of the marketplace - bolder, and more effective initiatives can be taken, including those that are

being proposed in this paper.

3. Current Thinking That is Critical and Creative

This third observation may appear unnaturally complimentary. After all, for more than a decade consumer commentators, this writer included, have been relentless in their criticism of governmental inaction, particularly at the federal level. It was the rare consumer protection article in the 1970's or early 1980's that did not bemoan the perceived ineptitude, inefficiency or overall indifference on the part of federal and provincial policy-makers to such important consumer protection reforms, as products liability, trade practices and consumer product warranty laws, more effective enforcement techniques, and greater use of administrative and civil remedies, including class actions.⁶

Things seem to be changing as we approach the 1990's. Indeed in my view, it is important to observe that any suggestion of inaction or indifference on the part of the federal consumer protection department today is totally unfair. The last two years have seen a significant transformation in the attitudes and approaches at CCAC to its consumer protection mandate. The programme evaluation studies, the internal research papers and memoranda, the leadership of senior management - each of these

reveal a much more reflective, conscientious, and self-critical CCAC attempting to redefine and re-energize its mission as the department of the marketplace.

More than mere reflection and self-criticism, concrete steps are being taken and they are being taken in a constructive and creative fashion. The Consumer Products subactivity and the Bureau of Competition Policy have, for example, developed and implemented innovative and effective "compliance programmes". The compliance programme in the Bureau of Competition Policy as described in its recent Bulletin, describes a multi-faceted compliance initiative that includes not only education and information aspects, but also advisory opinions, person-to-person information contacts, advance ruling certificates and follow-up monitoring efforts.⁷

Thus, even within the existing legislative and constitutional constraints, a determined and progressive CCAC can on its own initiative develop creative compliance and enforcement techniques. As noted in this recent Bulletin of the Bureau of Competition Policy:

" The compliance oriented approach adopted by the Director will enable him to apply his resources more effectively in relation to the more significant cases, allowing for high quality case preparation aimed at obtaining the most appropriate

sanctions. The Director believes that this approach will both deter anti-competitive behaviour and encourage future compliance".⁸

This sense of departmental confidence, self-criticism and creativity is also evident in two recent and important internal initiatives at CCAC, the work on the "Principles for The Marketplace", and the preliminary research into a possible Federal Consumer Protection Code. The former builds on some of the initiatives undertaken by the Legislative Review Project in Ontario but develops the themes in a more sophisticated fashion. I will return to this "Marketplace Principles" document later in this paper and I will suggest some revisions. Here I simply note that the basic idea of a foundational framework reflecting mutually shared expectations of marketplace fairness is an idea that will play a key role in the continuing evolution of CCAC as the primary department of the Canadian marketplace.

The latter project, the Consumer Protection Code, is even more ambitious, and as noted earlier, perhaps a bit premature. Nonetheless, it too demonstrates a long overdue commitment at CCAC to progress and development.

Comments:

Whether the current, positive thinking at CCAC is the result of good work and good leadership, or simply a reaction to

the Collins Committee Report, matters less than the realization that major change is underway. Some of the ideas are relatively new, for example the Marketplace Principles document. Other ideas, such as the need for more administrative and civil remedies, such as cease and desist, ad substantiation, corrective advertising, substituted action, individual and class action damages etc. have been urged for more than a decade.

Indeed in 1976, in a study commissioned by CCAC, virtually every one of these administrative and civil enforcement remedies was recommended for adoption.⁹ Twelve years later, the Collins Committee rediscovered this Study, endorsed the same proposals, and urged their adoption yet again. The difference is that this time there is reason to believe that the administrative and civil reforms being proposed will actually be implemented - mainly because of the current thinking at CCAC.

My comment here is thus twofold. First, almost all of the ideas or directions for reform, particularly in the area of administrative and civil remedies, are ideas that have been known for years. The current thinking at CCAC is sufficiently focused and forward-looking that it can implement these ideas on its own, internally, and without the additional reassurance of external consultants.

The second and related point is this. There are no radically "new" ideas in modern consumer protection policy-making. Consumer research and policy-making is not like the discovery of penicillin. There are no moments of "eureka" or investigative epiphany. Rather, there is ongoing review of evolving, multi-jurisdictional trends that at various stages of development tend to suggest important changes in emphasis or direction.

The influential trends today are those that encourage the use of regulatory techniques that are more flexible and responsive - hence the almost-universal endorsement of administrative and civil enforcement techniques. As well, we are seeing greater experimentation with alternative dispute resolution mechanisms such as mediation and arbitration, to overcome long-standing financial and other barriers to consumer access to justice. These "new directions" are already more than 20 years old. They are being tried in some jurisdictions; they should be tried in all jurisdictions. To put it bluntly, there are no other "instant solutions" or "grand redesigns" that will simplify the extraordinarily complicated job of modern consumer protection regulation.

CCAC today, in many ways, is simply catching up to the recommendations of the C.C.A.C. study of 1976 and is finally

taking some initial steps to implement these familiar but important ideas.

4. A Continuing Constitutional Paralysis

The observation of constitutional paralysis may be over-stated. Some headway has been made, for example, in the recent addition of a civil remedies provision in the Competition Act. Even bolder administrative and civil remedy initiatives are presently being contemplated. However, it is also true that any discussion of consumer protection reform at the federal level is totally preoccupied with the perceived obstacles of Canadian constitutional law. The sense on the part of some of the policy-makers at CCAC today is that the constitutional barriers to worthwhile and progressive regulatory reform are virtually insurmountable. And this perspective continues to dominate, or at the very least, intimidate.

The proposal, for example, to provide for greater use of administrative and civil remedies is a proposal whose constitutional validity is seen to hang by the slender thread of the so-called "second branch of Parsons", i.e., the "general regulation of trade effecting the whole Dominion".¹⁰ And, given the decisions of the Supreme Court of Canada in Labatt Breweries¹¹ and Dominion Stores¹², where national-level norms and

standards ostensibly providing the very kind of general trade and commerce regulation suggested as permissible in Parsons, were given short shrift by a majority of the Supreme Court of Canada and held invalid, this constitutional self-consciousness is understandable.

The fall-out from Labatt and Dominion Stores, after all, was substantial and disheartening. Not only were important packaging, labelling and standard-setting powers of the federal government in the area of malt liquors and agriculture produce held invalid, but the very design and content of numerous other federal packaging, labelling and agricultural standards regulations were suddenly placed in jeopardy.

When the dust finally settled in the year or two following these 1979 decisions, Canadian constitutional commentators became even more pessimistic. Although heavily critical of the Court's decisions in Labatt Breweries and Dominion Stores, they were concluding that the long-awaited effort to resuscitate the second branch of Parsons and build a modern and effective trade and commerce regulation at the federal level was now doomed to fail.

The commentators of course would have preferred otherwise. Virtually to a person, they agreed with the general

observation that CCAC had an important role to play in the regulation of competition and national trade practices, and in particular that the majority of the Supreme Court of Canada was "wrong" to characterize the compositional standard provisions of the Food and Drug Act as having only local concerns and thus within exclusive provincial jurisdiction.¹³ As one commentator noted:

"The compositional standards provisions of the Food and Drugs Act apply to a vast array of products; many of these products are of great importance to the country; the products are produced in many parts of the country and consumed in all. The cost implications of handing jurisdiction over commodity standards to the provinces are immense. These standards do not emerge from thin air. They require sophisticated research facilities well beyond the current capacity of most provinces to develop. In addition, even if the provinces are able after a time to create the standards, there will be added costs to manufacturers trying to comply with potentially diverse provincial standards. Both of these costs, to provincial governments to move into the field and to manufacturers to comply with the legal regime, are new costs. There are also costs that will have to be borne, obviously, by the consumer both levels of government are happy with federal commodities standards the Labatt decision is the rare case in which the losers vastly out-number the winners".¹⁴

Nonetheless, the same commentator articulated a widely shared concern: that following Labatt Breweries and Dominion Stores, "the death knell has probably sounded for the second branch of Parsons".¹⁵

Fortunately, the nature of Canadian constitutional law is more teleological than Talmudic. It is more result-oriented than reason-driven. It is thus not surprising to find examples of cases in our constitutional jurisprudence where the same justices who decide cases A and B can come to a very different conclusion three years later in case D, with only a passing reference to C and no mention at all of A or B.¹⁶

To his credit, the present Chief Justice has reflected on this reality and has tactfully observed that:

" The limits of s.91(2) are not fixed, ... questions of constitutional balance play a crucial role in determining its extent in any given case at any given time".¹⁷

Yet this candid and refreshing perspective on judicial pragmatism continues to escape the attention of most CCAC advisors. There is an altogether inordinate pre-occupation with a Labatt Breweries-driven assessment of constitutional viability. For one thing, too much has happened in the nine years since Mr. Justice Estey wrote for the majority in Labatt Breweries. Estey J. himself has resigned, as have Martland and Ritchie, JJ. and most recently, Beetz, J. Indeed, by the summer of 1989, with last week's resignation of Mr. Justice Beetz, the unlikely return of Mr. Justice LeDain, and the anticipated resignation of

Mr. Justice McIntyre, the only justice remaining on the Court who took part in the Labatt Breweries decision will be Chief Justice Dickson. The other eight will be totally new to the question. As for the Chief Justice, it was Dickson J. himself who, three years after agreeing with Estey J. in Labatt, revisited the federal trade and commerce question and suggested a much more positive role for federal-level competition and trade practices regulation.¹⁸

Furthermore, in addition to these important personnel and doctrinal changes in the Supreme Court of Canada, a growing number of lower courts have begun to recognize the legitimacy and desirability of a 91(2)-driven competition and trade practices presence at the federal level.¹⁹

Comment:

All of these points will of course be developed in more detail in Part IV below. The point here is to stress, first, that the constitutional concerns are real but vastly overstated; and secondly, that a properly designed regulatory structure using the much-needed administrative and civil remedy provisions proposed herein can probably withstand constitutional attack.

The challenge, in my view, will be to formulate a constitutional position that uses both the federal Trade and Commerce and Criminal Law powers and builds on the strengths of both of these jurisdictions as the basis for national marketplace regulation. In my view this can be done or, at least, it should be tried.

The general overall objective is to give substance to the thought expressed by Linden J., the trial court judge in Regina v. Hoffmann-LaRoche Ltd.,²⁰ that 91(2)-based consumer protection initiatives at the federal level, properly understood, are simply "part of a legislative scheme aimed at deterring a wide range of unfair competitive practices that effect trade and commerce generally across Canada" and are thus valid. The steps involved in this constitutional analysis are developed in Part IV below.

II. THE NEED FOR A PRINCIPLED FRAMEWORK

1. The "Principles for the Marketplace" Proposal

The "Marketplace Principles" document, as noted earlier, was inspired, at least in part, by the work of the Ontario Legislative Review Project. In my view, there is no question that consumer protection regulation in the 1990's and beyond will require a foundational framework such as the one being proposed. Both federal and provincial policy-makers will need a focused frame of reference with the following essential attributes:

- (1) A workable, foundational perspective that will set out in reasonably precise language the key "principles" for determining governmental action, marketplace intervention, and forward-planning generally;
- (2) The "principles" should reflect the changing perception, if not reality, of the modern marketplace - an essential arena of modern living that is on-going and ever-changing, in terms of players, products, sales and distribution methods

and post-purchase procedures, but one that is nonetheless constant in terms of the shared expectations of the participants and the roles and responsibilities of each to help ensure the continuing viability of a common forum whose success depends, in essence, on a combination of enlightened self-interest and overall fair play;

- (3) The "principles" should attempt to set out in simple language these shared expectations, and the roles and responsibilities of each of the participants to help maintain a competitive marketplace environment that values useful information, transactional fairness and product safety, and provides effective redress procedures when disputes arise.

The most recent draft of the C.C.A.C. "Marketplace Principles" document attempts to achieve most of these objectives. In my view, the draft document is a good start. But it still needs some redesign and revision. Before suggesting some points for improvement, let me set out the plain language version of the "Marketplace Principles" document:

Draft Principles for the Marketplace

Governments, businesses and consumers share a mutual interest in health, safety, fairness and efficiency in the marketplace. That mutual interest is best served when each recognizes its own area of responsibility.

Government is responsible:

to ensure that information for consumers is available and to regulate that information;

to promote fairness in the marketplace by developing and monitoring policies;

to develop and regulate policies which ensure that health and safety are respected in the manufacture, distribution and use of products;

to encourage businesses to adopt codes and standards for products and services;

to assist consumers in finding help and compensation;

to help businesses and consumers to understand regulations.

Business is responsible:

to be accurate in all product information about the composition, quantity, functioning and purpose of their products;

to represent their services accurately;

to ensure that products and services are safe for normal use;

to notify government and, where appropriate, consumers, of health or safety hazards in the marketplace and to recall unsafe products when necessary;

to conduct business transactions in a fair manner;

to give reasonable compensation to consumers who have problems with products or services;

Consumers are responsible:

to seek information that allows them to make reasonable marketplace choices;

to use products and services safely and in the way they were intended to be used;

to inform businesses about problems with their products or services and ask for compensation;

to notify government about marketplace problems that may affect the public good.

2. Evaluation and Critique

As noted earlier, part of my terms of reference require that I "evaluate and rearticulate if necessary the "Principles for The Marketplace".²¹ I am pleased to do so. This "Principles" document is important and deserves further and careful work. A full "rearticulation" on my part at this stage would be premature and would be beyond the scope of this paper. Nevertheless, I believe I can state my main concerns and criticisms under five points as follows:

- (1) The draft principles as presently framed are not really "principles of the marketplace" as commonly understood. The document seems to be more concerned with "the roles and responsibilities of marketplace participants". It is only after a careful reading that one discovers that most, if not all, of the basic

principles of reasonable information, transactional fairness, product safety etc. are integrated into the bullets that set out the particular responsibilities of the government, business and consumer participants. In my view, both conceptual and educational objectives are better served if the "marketplace principles", are set out separately and apart from the related "roles and responsibilities" of the marketplace participants;

- (2) The preamble of the draft document sets out the important realization of modern consumer protection regulation as we approach the 1990's, a realization that differentiates present policy-making from that attempted or even achieved in the 1960's: that the pro-consumer/anti-business bias in marketplace regulation is no longer either accurate or effective.

The preamble captures this point nicely by noting that "all marketplace participants share a mutual interest in health, safety, fairness and efficiency in the marketplace" (although I would probably reduce the four items to three, namely,

safety, fairness and efficiency).

However, the brevity of this preamble misses the important dimensions of this realization. I would prefer to see the "shared expectations" idea developed in a bit more detail both for conceptual and educational purposes. The basic realization that no one marketplace participant has any prior claim to the modern consumer market, and that consumers, business and government can indeed identify and articulate shared expectations of what competition and fair trade in the marketplace means, and, further, that the shared expectations can be stated in neutrally acceptable language, is a realization or theme that deserves more than four or five words;

- (3) These "shared expectations" should not be unduly abbreviated as simply "safety, fairness and efficiency in the marketplace" as now appears in the preamble, but should themselves form a separate part of the "principles" document. This part of the document has already been discussed in some detail by CCAC staff researchers in their "Discussion Paper on the CCAC Consumer Policy

Framework". This analysis, when combined with the work in this area by the Ontario Legislative Review Project, yields four principal areas of "shared expectation", namely:

- (i) the reasonable provision of useful information;
- (ii) transactional fairness;
- (iii) product safety; and
- (iv) effective consumer redress when disputes arise.

These four general headings can be amplified slightly by utilizing the paraphrases that appear in these two recent studies;

- (4) An important goal of the "principles" document, in my view, is the re-positioning of CCAC as the national department of the marketplace. One way to serve notice in this regard to both business and consumers (as well as provincial governments) is to set out in yet a separate part of the "principles" document a further principle—namely, the increasingly national and international dimensions of Canadian marketplace transactions, as well as changing technologies

(e.g. electronic shopping etc.), all of which point to the need for regulation at the federal level;

- (5) Finally, the present draft of the "principles" document, especially the plain language version, may strike an uninformed reader as being overly "fuzzy" or "mushy". Sprinkled throughout the various bullets are open-textured words such as "reasonable", "fair", "appropriate" etc. An informed reader will understand that words like "reasonable" or "fair" are both unavoidable and analytically defensible. They are not a public relations cop-out but a very real criterion in modern consumer protection regulation, an area of policy-making where there is unavoidable variability and contingency simply because of the nature of a case-specific, product-specific focus. However, because the "principles" document is meant to serve important educational purposes, there should be some explanation in the document of the need for such open-textured principles so that the uninformed, average Canadian business person or consumer could begin to understand that these are indeed real principles that form a real

framework and for this reason are set out in this fashion.

3. Recommended Approach: A "Cornerstones" Document

I offer the following as a suggestion. One way to achieve the four-cornered concept developed above, namely, (1) that the modern market is a common market, (2) that is undergoing increasing change, (3) but still holds to commonly shared expectations about marketplace fairness, (4) with clear roles and responsibilities for each of the marketplace participants to help achieve these objectives, is to change the "principles" document into a "cornerstones" document.

The idea would be to draft a document that might be titled "The Cornerstones of the Canadian Marketplace", and would on its face indicate that it was drafted and is being distributed by CCAC. The face of the document could than be organized under the following four cornerstones:

- (1) The Canadian market is a common market, that is, it belongs to and is the concern of everyone, business, consumers and government;
- (2) The Canadian market is an increasingly changing

market not only because of national and international forces, and the changing nature of the supply and servicing of consumer products, but also because of changing technologies and trading routes even within Canada, all of which suggests national concerns and governmental regulation at the federal level;

- (3) The Canadian market is built upon the basic norms of competition and fair trade, norms that are shared by all marketplace participants, whether business consumers or government; norms that can be articulated in neutral language under the following heads:
 - (i) reasonable information;
 - (ii) transactional fairness;
 - (iii) product safety;
 - (iv) effective consumer redress;

- (4) Each of the marketplace participants, whether business, consumers or government, have clear roles and responsibilities to help the commonly shared marketplace adjust as effectively as possible to the changing times, products and sales methods, and help achieve the shared expectations

of safety, efficiency and fairness. This last cornerstone should describe the responsibilities of the three marketplace participants, in the order of business, consumers, government, and should use the appropriate bullets from the present draft.

This is one possible design. There are, undoubtedly, a number of different ways to organize these basic points into a well-crafted principles-type document. My contribution here is to stress the value of a "cornerstones" approach that would deal with each of the four important building blocks separately, and yet tie the four corners of the foundation together into one principled framework.²²

III. THE RANGE OF OPTIONS

Assuming that the foundational framework suggested above is accepted, and that the constitutional analysis developed in Part IV below is cogent, the range of options that, in my view, can be realistically pursued by CCAC into the 1990's and beyond can be reduced to three basic choices. They are set out below.

1. Minor Reform - Some Tinkering with the Status Quo

The Product Safety branch is presently completing a major review and revision of the Hazardous Products Act. The new "Consumer Products Safety Act" will be organized around a new and important principle that imposes upon product manufacturers the obligation to produce a safe consumer product. This is hardly "tinkering with the status quo", but it is an initiative that falls within the first option - pursuing one or two new legislative initiatives, and engaging in some minor reforms in the remedial area.

With regard to the latter, the kinds of remedial initiatives that could easily be pursued over the next two or three years without constitutional vulnerability include greater

experimentation by the Consumer Services branch with voluntary mediation or arbitration mechanisms. For example, CCAC would be well advised to commission an in-house study of the success of the "informal dispute resolution procedures", known more popularly as IDRPs that were fashioned by the FTC under the auspices of the Magnusson-Moss Warranty Act.²³

If the American experience with the various IDRPs that have been established on a voluntary basis by, for example, the "white goods" industry, has proven to be positive, as I believe it has, a similar CCAC initiative could be attempted. The role of the governmental department, whether Consumer Services, or in the U.S., the FTC, is one of organization and quality control. Working in conjunction with the Marketing Practices Branch, or with the Consumer Products subactivity, the Consumer Services branch could develop a set of acceptable criteria drawing in part on the experience of the IDRPs in the U.S., and then encourage and negotiate with interested industry groups to help them establish experimental dispute resolutions mechanisms in compliance with these federally suggested standards.²⁴

It would be important to identify two or three immediate clusters of "clients" or industry groups that would be able to establish these informal arbitration mechanisms and then begin the experiment in those two or three areas.

2. Moderate Reform - New Laws, Remedies and
Minor Structural Changes

The second option, although described as moderate reform, is for some a giant step forward. In the area of possible new legislation, CCAC should consider immediate amendments to the Competition Act to extend the coverage presently limited to misleading advertising and certain prohibited trade practices, to "misleading, deceptive and unfair trade practices" generally. Whether this kind of legislative initiative is best accommodated under the rubric of the present Competition Act, or deserves a separate and free standing federal Trade Practices Act is something that will have to be addressed in due course.

The point here is that CCAC already has an impressive range of laws that proscribe unfair and deceptive trade practices, and that are presently being administered not only by Marketing Practices but also by the Consumer Products subactivity.²⁵ It would be sensible to recognize that the logical next step is the development of a comprehensive Trade Practices enactment. In deciding on the shape and content of such a federal-level fair trade law, it may be worthwhile to consider the extent to which a general duty to trade fairly, such as that being proposed in the United Kingdom,²⁶ should be included.

This moderate reform option would also involve a substantial change in the nature and extent of the administrative and civil enforcement techniques. With regard to the administrative enforcement measures, the moderate reform option would envisage the adoption and implementation of the recommendations first set out in 1976 in the CCAC Study, and again confirmed in the Collins Committee Report this year. Administrative measures such as cease and desist, consent orders, ad substantiation and corrective advertising could be added as additional measures available to the enforcing Director upon application to the court.²⁷

It should be noted that the moderate reform option would retain the basic design premise of both the 1976 CCAC Study and the Collins Committee Report (as well as the preferences of senior officials in Marketing Practices today) that jurisdiction over these additional administrative enforcement measures should remain with a court rather than be given directly to the enforcing Director.²⁸

With regard to civil remedy reform, the moderate option would urge passage of a federal-level Consumer Class Action law. The class action law would provide a class action damages remedy for losses sustained by two or more consumers

arising from violation of any federal legislative standard or norm. It would also allow the enforcing Director to undertake a "substituted action" in the appropriate circumstances. The 1976 C.C.A.C. Study found that "the advantages of the substituted action are self-evident".²⁹ The Collins Committee similarly concluded that:

"a substitute action provision...would benefit consumers, especially where the amount claimed was relatively small and the costs involved in pursuing an action exceeded the amount claimed. Moreover, it would enable the Director to pursue, on behalf of consumers, cases which might have important implications for the development of the law or might be of significant deterrent value. The Director could thus combine the goals of enforcement and consumer redress"³⁰

Recently, a concern has been voiced by one or two senior officials at C.C.A.C. that a "substituted action" capability on the part of the enforcing Director could compromise the "neutrality" of the office and make it appear that the Director was "taking sides".³¹ This concern is not without merit and deserves to be explored further. In my view, however, the provision of substituted action capacity to be used by the enforcing Director to recover losses sustained as a result of contraventions of federal law may be one of the best ways to ensure the continuing neutrality of legislative enforcement. That is, the enforcing Director would be able to intervene where the normal class action remedy fails or proves otherwise

inappropriate, to ensure that all of the costs or harms flowing from anti-competitive conduct or unfair trade practices were properly "internalized" and made part of the price of doing business in Canada.

In principle, the "substituted action" facility would be available to the enforcing Director in any situation where a normal class action damages claim proves to be unmanageable or otherwise unavailable. The "substituted action" could in principle allow the Director to act on behalf of any victim or group of victims, whether consumers or other businesses. Properly designed, a substituted action vehicle should thus not result in any real or perceived loss of "neutrality". If anything it should add force to the perception that the enforcing Director is truly concerned about all marketplace losses, including those that elude the grasp of the traditional class action vehicle. The general rationale for the class action is canvassed in the 1976 CCAC Study and summarized in the Collins Committee Report as well.³²

As noted earlier, the moderate reform option involves a number of fairly substantial legislative and remedial initiatives. What differentiates this option from the third option, major reform, is the fact that the basic jurisdictional foundation, i.e., the need to apply to a court of law to use

these additional administrative or civil remedies, is preserved. No new commissions, boards or tribunals have to be created to accommodate the reforms proposed herein.

3. Major Reform - New Laws, Remedies and Major Structural Changes

The major reform option would envisage not only the legislative and remedial initiatives proposed above but also, and more importantly, the basic re-design of the law-making and enforcement structure.

The "law-making" dimension comes out of the proposals, found especially in the 1976 CCAC Study, that a greater "rule-making" capability be accorded to the enforcing Director.³³ In order to deal in a timely, expeditious and fair-minded manner with emerging problems in a constantly changing marketplace, it is thought that a more immediate rule-making or binding policy-making power would be appropriate and desirable. It would probably need, however, an administrative reviewing mechanism, such as a board or commission, to ensure that values of fair hearing and due process are preserved.

The major reform option would provide the additional administrative enforcement measures described above - that is, cease and desist, ad substantiation, corrective advertising

orders, rule-making, etc. - directly to the enforcing Director who could on his or her own initiative issue such legally binding directives. The courts would still be available but only for criminal prosecutions and only in those cases where the enforcing Director determined that administrative regulation alone was inappropriate or insufficient.

Giving rule-making or administrative enforcement powers such as those described above directly to the enforcing Director necessarily requires a supervisory board or tribunal.

The major reform option is thus more long range and ultimately envisages the establishment of a "Competition and Fair Trade Commission" that would approve any "policy directives", review the rule-making procedures, and deal with appeals from the Director's imposition of administrative directives or orders. The basic model here might be the Ontario Securities Commission or the American FTC.

The policy decision to establish such an omnibus Competition and Fair Trade Commission is one that will require careful deliberation. It will also need a supportive political environment. In my view, the present political environment would not be sympathetic to such an initiative. Most North American consumers rank "big government" ahead of "big business" or "big

labour" as their greatest concern. ³⁴ Even "ordinary Canadians" are becoming skeptical of omnibus governmental tribunals. There is a growing sense that on balance most people would rather have the due process protections of a "day in court", however expensive or inaccessible the general court system may be, to more accessible, more efficient but ultimately "institutionalized" treatment at the hands of a governmental tribunal. ³⁵

However uninformed this view may be, there is a growing mistrust of governmental tribunals. One example of this is the much maligned Worker's Compensation Commission. There are of course examples of Commissions that have retained the confidence of the community they serve: for example, the Ontario Securities Commission. But these comparisons only fuel the controversy.

Suffice it to say that the decision to establish a Competition and Fair Trade Commission will require a great deal of thought, ^{And,} at the very least, a demonstration of need. Even though I am presently of the view that a CFTC is a desirable long-term objective, the actual need for such an omnibus tribunal has not yet been demonstrated.

After all, less complicated alternatives have not yet been tried or tested. In my view, C.C.A.C should first implement the "moderate reform option" and evaluate the success of the administrative and civil enforcement measures that are being proposed. It may well be that positive results can be achieved without the need for a new enforcement tribunal.

For all of these reasons, the idea of a Competition and Fair Trade Commission remains on the long-term agenda. Nonetheless, preliminary research can be commenced. It would be useful for the research team to begin to explore a number of questions relating to the shape and content of a CFTC, such as:

- (1) The need for specialist enforcing Directors in each of the main areas of activity - product safety, consumer products and market practices;
- (2) Their respective roles, responsibilities and powers;
- (3) Their relationship to a CFTC;
- (4) The jurisdiction of the CFTC, generally; and
- (5) The jurisdiction of the CFTC to impose "administrative fines" or hear and rule on individual or class action claims for injunctive relief or monetary damages, arising from contraventions of federal competition or consumer protection laws.

Because the essence of the major reform option is the proposal for something akin to a "Competition and Fair Trade

Commission", one of the most important questions will be the constitutional capacity of the federal government to establish such a structure. The constitutional implications of the proposals for reform contained in the "moderate reform option" are also substantial. The time has thus come to turn to the constitutional analysis.

IV. THE CONSTITUTIONAL ANALYSIS

In assessing the constitutional validity of the options described above, there are two distinct lines of analysis. The first relates to the enactment of new laws, such as a federal-level Trade Practices Act, that appear to go beyond the traditional confines of criminal law, ie. health, safety and public morality, and seem to extend their reach into areas of "commercial unfairness" - areas that are thought to be more the concern of trade and commerce than criminal law. The first question then is whether a new federal legislative initiative (even without administrative or civil enforcement techniques) that goes beyond health, safety or misleading advertising, is constitutionally valid.

The second line of analysis relates to the new remedies, whether administrative or civil, and the new regulatory structure, whether Director alone or Commission. Here the non-availability of the criminal law basis is more evident, and the question is whether the Supreme Court of Canada will support these remedial and structural initiatives as a legitimate exercise of the federal trade and commerce power.

I deal with each of these questions in turn.

1. Using Both 91(2) and 91(27) For New Federal Laws

Most commentators when asked about the constitutionality of federal-level trade practices or consumer product warranties legislation, assume that the only basis is s.91(2), the federal trade and commerce trade jurisdiction. Fortunately in the last several years, the Supreme Court of Canada has removed some of the doubt in this area, and has suggested that 91(2) may indeed be available in some circumstances to support certain federal competition and even trade practices initiatives.³⁶ Also, as noted earlier, a growing number of lower courts are becoming even bolder and are explicitly finding that the regulation of competition, for instance, should be at the federal level and can be supported constitutionally by the second branch of Parsons as "general regulation of trade affecting the whole Dominion".³⁷

In Hoffmann-LaRoche, for example, the Ontario Court of Appeal found that "the central purpose of the Combines Investigation Act is to protect the public interest in competition [and can] be supported under the trade and commerce power as well as under s.91(27)".³⁸ And, in Rocois Construction Inc. v. Quebec Ready Mix,³⁹ and a number of other lower court decisions,⁴⁰ various provisions of the Competition

Act have been upheld as legitimate exercises of the federal trade and commerce power, being considered as "part of a complex regulatory scheme, not aimed at a particular business or industry but at the general regulation of trade and commerce throughout Canada for the benefit of Canadians in general".⁴¹

Even though Rocois Construction is presently under appeal in the Supreme Court of Canada, these doctrinal developments as a whole appear promising. Indeed for many writers, whether commentators or judges, these developments are long overdue. As Chief Justice Dickson noted in CN Transportation, "if competition is to be regulated at all, it must be regulated federally".⁴²

The problem however is twofold: first, Labatt Breweries and Dominion Stores were decided less than a decade ago, and notwithstanding my own belief that the present Court will turn its back on these doctrinal distortions, they have not done so as yet. Secondly, two decisions that are presently under reserve at the Supreme Court of Canada, Rocois Construction and a companion case, City National Leasing, may shortly be released.⁴³ Although every expectation is that the decisions will be positive and s.31.1 of the Competition Act will be upheld, there is no guarantee, and the implications of a contrary decision, although not fatal, would be profound.

The fact is that in this first area of concern, new federal laws, s.91(2) alone may not necessarily be the best foundation.

My contribution is to remind the reader that the future of new federal consumer protection laws that go beyond traditional notions of health or safety, or public morality, and deal with "unfairness" generally, need not hang solely on the nail of 91(2). In my view a more powerful and more appropriate constitutional basis may well be the traditional one: the federal criminal law power.

An analysis in support of a new federal Trade Practices Act, relying primarily on a federal criminal law jurisdiction would proceed as follows:

. A federal trade practices law would in essence consist of certain proscribed commercial practices either via general prohibitions or specific "shopping lists". The prohibited practices would relate, one way or another, to deception, the prevention of deception, or the prevention of certain immoral or unfair sales practices. The legislation would be enforced in large measure by

use of the various administrative and civil remedies discussed earlier. But the law would still retain penal sanctions to be used whenever the Director decided that the administrative approach was insufficient and criminal prosecution was more appropriate.

The jurisprudence that has developed around 91(27) suggests a wide reach for the criminal law power.⁴⁴ "Public peace, order, security, health and morality" have been described by the Supreme Court of Canada as "the ordinary though not the exclusive ends served by that law".⁴⁵ And given the understandable reach of the notion of "morality", it was not long before economic regulation in general and competition law in particular was being upheld as a valid exercise of the federal criminal law power.⁴⁶ Put briefly, there is now ample support for Laskin's statement that:

"resort to the criminal law power to proscribe undesirable commercial practices is today as characteristic of its exercise as has been resort thereto to curb violence or immoral conduct".⁴⁷

And even if "deception" was the boundary-line that marked the outer limit of the federal criminal law power in the area of trade practices regulation, the related and jurisdictionally legitimate basis of "preventing deception" (ie. preventing crime) would not only provide support for almost every provision of a trade practices law, but would also satisfy the legitimate crime-prevention reach of 91(27).⁴⁸ Indeed this very point was made by a number of commentators in their criticism of Estey J.'s decision in Labatt Breweries and his failure to recognize that section 6 of the Food and Drugs Act could have been supported as a 91(27) measure on this very basis:

"Estey J. had no difficulty holding that a federal law intended to prevent mislabelling was valid; what he did not realize is that full disclosure of contents coupled with consumer ignorance of the nature of those contents is likely to result in just as much deception as blatant mislabelling ... it really is puzzling that the Court did not uphold section 6 of the Food and Drugs Act under the criminal law power if section 6 is intended to prevent deception and fraud by manufacturers and sellers and to promote intelligent

consumer reliance on the quality of goods, then, it seems to me, the "morality" component of the criminal law power is appropriate support for this section".⁴⁹

Thus, in my view, any new federal law whose primary concern is health and safety (such as the new "Consumer Product Safety Act"), or deception or the prevention of deception (which would include virtually any reasonable information labelling or disclosure regulation, or unfair trade practices statute) should probably be supported first by recourse to the broadly developed federal criminal law jurisdiction and secondarily on the basis of 91(2). The analysis of the federal trade and commerce jurisdiction is set out in more detail below. But the key to success in the area of new federal legislation per se, in my view, is a constitutional basis that is twofold: primary basis criminal law, secondary basis trade and commerce.

2. Using 91(2) For The New Remedies and Structures

The second line of constitutional analysis concerns the validity of the proposed administrative and civil remedies, and the new enforcement structures, particularly the establishment, in the long-term, of a federal Competition and Fair Trade Commission. Here, some would say, the question of constitutional validity_z hangs by a thread, and depends completely on the federal trade and commerce power. Others, this writer included, believe that this thread is quickly becoming a cable_z with sufficient strength to support virtually any consumer protection initiative at the federal level, provided the measures are part of the larger "regulatory structure" and in good faith are intended to deal with general matters of trade and commerce that affect the entire Canadian marketplace and go beyond "merely local concerns".

The irony here is that the more "regulatory structure" there is, ie. a federal CFTC, the easier it will be to establish constitutional validity on the basis of 91(2). But one thing is probably clear, _z the proposed administrative and civil remedies, and enforcement structures, discussed in this paper, will indeed have to pin their constitutional future to the Supreme Court of Canada's developing understanding of the federal trade and commerce power.

The reason for this is as follows: "as Canadian competition law becomes more sophisticated, it becomes harder to support it under the criminal law power".⁵⁰ This is because the federal criminal law power, although sufficiently comprehensive in its "prevention of deception" dimension to support new legislative initiatives such a federal-level Trade Practices Act, becomes less viable as a basis of support the more elaborate the regulatory structure, and the more the enforcement structure emphasizes administrative and civil regulation, and de-emphasizes criminal prosecution. As Professor Hogg has observed:

"The question to be considered here is whether the criminal law power will sustain the establishment of a regulatory scheme in which an administrative agency or official exercises discretionary authority. Criminal law ordinarily consists of a prohibition which is to be self-applied by the persons to whom it is addressed. There is not normally any intervention by an administrative agency or official prior to the application of the law. The law is "administered" by law enforcement officials and courts of criminal jurisdiction only in the sense that they can bring to bear the machinery of punishment after the prohibited conduct has occurred... the combines and insurance cases encourage the view that the criminal law power will not sustain a regulatory scheme which relies upon more sophisticated tools than a simple prohibition and penalty... the more elaborate the regulatory scheme, the more likely it is that the Court will classify [it] as being regulatory rather than criminal."⁵¹

That is why in Rocois Construction, a case that is presently under reserve in the Supreme Court of Canada, the civil

damages provision in the Competition Act was attacked and defended in terms of 91(2) and the appropriate reach of the federal trade and commerce power. It is my view that s. 31.1 of the Competition Act will be upheld as an exercise of the federal trade and commerce power on one of two bases: either that it is "an integral part of an overall legislative and regulatory scheme... for the general regulation of trade and commerce throughout Canada", and has a "rational functional connection with the overall federal economic plan manifested in the Competition Act",⁵² or more simply on the basis that it is necessarily and legitimately incidental to the exercise of the federal trade and commerce power.⁵³

Why do I believe that the Supreme Court of Canada will indeed continue the resuscitation of the second-branch of 91(2) and find these and other administrative and civil remedies constitutionally valid? A proper explanation would have to trace the extraordinary judicial development of the federal trade and commerce power, from Confederation to the present day and is beyond the scope of this paper. The three most important points, however, can be made simply and quickly as follows:

1. The history of the federal trade and commerce power over the last 121 years of judicial development has been nothing short of farcical. It has been expanded and contracted,

interpreted and misinterpreted, massaged and mangled in ways and means that defy description. No other federal or provincial power has had such a turbulent, unpredictable and unfortunate history.⁵⁴

2. The good news, however, is that the chaos of the past has yielded a judicial environment today that is ready for a modern, mature re-evaluation of this important federal jurisdiction, a re-evaluation that, 121 years after Confederation, will necessarily have to proceed from first principles. The decisions of the Supreme Court in Vapor Canada⁵⁵ and CN Transportation,⁵⁶ as well as recent developments in the lower courts⁵⁷, suggest that a principled and positive resuscitation of the "second branch of Parsons" may be possible.

3. Supporting these judicial developments is the growing commentary of leading Canadian constitutional scholars that are adding their voice to the effort to re-establish the federal trade and commerce power as an important basis for much-needed economic regulation at the national level.⁵⁸ Scholarly analysis alone may do little, but when coupled with points one and two, it may well prove crucial.

The time for a bolder constitutional posture is now. The specific analysis that in my view can now be used to support

the constitutional validity of the proposed administrative enforcement measures would be as follows:

. Building on the language of Chief Justice Laskin in Vapor Canada and Dickson J. (as he then was) in CN Transportation, the new administrative remedies and enforcement structures would be characterized as part of an overall "regulatory structure" that satisfies the five conditions for 91(2) validity set out by Dickson J. in CN Transportation, namely,

1. The presence of a national regulatory scheme;
2. The oversight of regulatory agency;
3. A concern with trade in general rather than with an aspect of a particular business;
4. That the provinces jointly and severally would be constitutionally incapable of passing such an enactment; and
5. That the failure to include one or more provinces or localities would jeopardize successful operation in other parts of the country.⁵⁹

. The regulatory complexity of C.C.A.C. today, as described earlier, will add important force to the submission that extensive and coherent regulatory systems are already in place and, that the addition of the new administrative

enforcement measures discussed in this paper, easily satisfy most of these pre-requisites. Dickson J. (as he then was) stressed that no one pre-requisite was determinative and further, that all five did not have to be satisfied - rather it was the overall evaluation of the regulatory and structural context and its legitimacy under 91(2).⁶⁰

The Vapor Canada/CN Transportation analysis would be augmented by reference to the doctrinal developments in lower courts referred to earlier, especially those noted by the Federal Court of Appeal in Rocois Construction.⁶¹

As for the civil remedy provision such as s. 31.1, or even a free-standing Class Actions Act for the recovery of consumer losses sustained as a result of violations of federally imposed norms or standards, the analysis would be similar but would tap more directly into the "rational, functional connection" analysis that was approved and adopted by Laskin J. (as he then was) in Papp v. Papp⁶², and then used by Dickson J. to support a civil insider trading provision in Multiple Access v. McCutcheon.⁶³ The suggestion that a civil damages remedy can be constitutional, provided that it is rationally and functionally connected with the exercise of the federal power in question, has been used to support a civil remedy in a number of areas: armed forces

legislation⁶⁴, federal election laws⁶⁵, federal railway enactments⁶⁶, and, as noted earlier, federal insider trading regulations.⁶⁷

In sum, although each of these analytical points will have to be developed more fully and carefully in preparation for litigation, it is my considered submission to C.C.A.C. today that the new federal legislative initiatives and the remedial and structural reforms that are being proposed in this paper, are constitutionally valid and can be supported through a careful blending of the federal Criminal, and Trade and Commerce powers.

CONCLUSIONS AND RECOMMENDATIONS

Although not strictly within my terms of reference, it may be useful to set out my own perspectives on the choices available and the options that should be pursued. These views will be brief and can be organized under two heads, short term initiatives and long term planning.

1. In the Short Term

With the election of a new Parliament and, we hope, the continuing commitment of the new Minister to the initiatives that have been undertaken by CCAC to date, departmental energy should be focused on one basic objective: to further position CCAC as the Ministry of the Marketplace. In my view the following matters should be pursued over the next two to five years:

- (i) The preparation, distribution and promotion of the "Cornerstones of the Canadian Marketplace" document. Related to this will be extensive business, consumer and provincial-level contact and consultation, as well as community and student-level educational efforts;
- (ii) Begin work on the voluntary informal dispute resolution initiative, studying and then implementing on an industry by industry basis the IDRP experiment;
- (iii) Begin work on a federal Consumer Class Actions Act;

- (iv) Pursue new legislative initiatives, such as the present revision of the Hazardous Products Act, and the enactment of a new federal-level Trade Practices Act, the latter either by extensive amendments to the Competition Act, or preferably, via a stand-alone statute;
- (v) Begin immediately to commission the necessary internal research to give effect to the recommendations of the 1976 CCAC Study and 1988 Collins Committee Report for greater use of administrative enforcement techniques such as cease and desist, consent decrees, ad substantiation, corrective advertising, etc., retaining however the jurisdictional premise that the empowered Director would still have to apply to a court of law for permission to use the administrative enforcement measure;
- (vi) Continue to work on the "simplification" of federal consumer protection law, but confine departmental efforts in the short term to a cosmetic "consolidation of statutes" rather than a complete rewriting of all federal consumer protection legislation.

2. In The Long Term

Over the next five to ten years, CCAC should have established itself as the Ministry of the Canadian Marketplace. To assist in this longer-range objective, at least three further matters should be pursued:

- (i) Explore the extent to which CCAC can be reorganized and renamed to better reflect the marketplace or trade and commerce focus, and in doing so, explore the possibility of repositioning those portions of other federal departments that are presently engaging in "consumer protection" or "marketplace" regulation, as the term is understood at CCAC today, under the single roof of the new Ministry;

- (ii) Begin research on whether a "Competition and Fair Trade Commission" is necessary or desirable, and if so, to what extent this new Commission can build upon the existing foundations of the Competition Tribunal or other federal administrative bodies. If the notion of a CFTC is acceptable in principle, further work will of course be necessary to interrelate the relevant legislation, the responsibilities of the various Directors, and the jurisdiction of the Competition and Fair Trade Commission;

- (iii) Begin work on a modern, plain language, unitary "consumer protection" or "trade and commerce" code that simply and systematically sets out all relevant federal law in one portable, readable and understandable Federal Code. But recognize that this is a long-term, lower-priority project.

...

FOOTNOTES

- 1 The terms of reference as set in the "Statement of Work" (Appendix D to the Articles of Agreement dated July 28, 1988), were as follows:

"The contractor agrees to perform the following work on behalf of Her Majesty:

To develop a future perspective on short and long term options to guide departmental consumer policy and legislative developments, with a particular emphasis on consumer redress.

In view of the short time-frame, the analysis should draw primarily on the background and expertise of Edward P. Belobaba, the available research and analysis within the department, and assistance of departmental research staff.

In doing so, the contractor agrees:

To apprise himself of ongoing departmental research on consumer policy and consumer legislation under review,

To evaluate and re-articulate if necessary, the principles for the marketplace, including the revision of the backgrounder.

To submit a paper by..."

- 2 I had excellent co-operation from staff and senior officials at C.C.A.C. I met with senior-level officials from Consumer Services, Product Safety, Consumer Products and Marketing Practices, and I was provided with numerous studies, research papers, briefing books and memoranda relating to developments at C.C.A.C. I found the various studies of the Program Evaluation Division of the Bureau of Policy Co-ordination, as well as the Neilson Task Force Study on Options for Consolidation of Consumer Products and Marketing Practices Programs particularly helpful.
- 3 For example, the revision of the Hazardous Products Act, the work to date on a federal consumer protection code, and the proposed draft of a "Principles of the Marketplace" document.

4. See Report of the Program Evaluation Division, Evaluation of the Regulation Review and Amendment Process in the Consumer Products Area (1986) at (i); and Neilson Task Force Study, supra note 2, at 1.
5. See the Consumer Products Sub-activity's, Operational Work Plan: 1988-89, at 2-3.
6. See for example Belobaba "Unfair Trade Practices Legislation: Symbolism and Substance in Consumer Protection" (1977) 15 Osgoode Hall L.J. 327; also see Belobaba "The Development of Consumer Protection Regulation: 1945-1984 in Consumer Protection, Environmental Law and Corporate Power (1985), known also as Volume 50 in the series of studies commissioned as part of the research program of the Royal Commission on the Economic Union and Development Prospects for Canada [Macdonald Royal Commission], and the various articles cited therein, especially at 36-40.
7. See the Information Bulletin released by the Director of Investigation and Research of the Bureau of Competition Policy (October, 1988).
8. Id at 10.
9. Trebilcock et al, A Study on Consumer Misleading and Unfair Trade Practices (1976), subtitled "Proposed Policy Directions and the Reform of the Regulation of Unfair Trade Practices in Canada", a study prepared as part of the second stage revision of the Combines Investigations Act. [hereinafter referred to as the C.C.A.C. Study].
10. Citizens Insurance Co. v. Parsons (1981) 7 A.C. 96.
11. Labatt Breweries of Canada Ltd. v. A. G. Canada [1980] 1 SCR 914.
12. Dominion Stores Ltd. v. The Queen [1980] 1 SCR 844.
13. See, for example, Hogg, Constitutional Law of Canada (2nd ed., 1985) [hereinafter Hogg 2nd ed.] at 446 and 447; also see MacPherson, "Economic Regulation and the British North America Act: Labatt Breweries and Other Constitutional Imbroglis" (1981) 5 Canadian Business L.J. 172.
14. MacPherson, supra note 13, at 193-94
15. MacPherson, supra note 13, at 192

- 16 This phenomenon was particularly apparent in Estey J.'s decision in Labatt Breweries, supra note 11. See the critical analysis in MacPherson, supra note 13.
- 17 A. G. Canada v. CN Transportation [1983] 2 SCR 206, per Dickson J. (as he then was) at 259.
- 18 In CN Transportation, supra, note 17, as discussed further in Part IV of the paper.
- 19 A number of lower court decision have upheld the validity of four different competition and trade practices provisions of the federal Competition Act on the basis of s. 91(2): see for example R. v. Hoffmann - LaRoche Ltd. (1981) 125 DLR (3rd) 607 (upholding the s. 32(1)(c) "lessening competition" provision; R. v. Miracle Mart Inc. (1982) 68 CCC. (2nd) 242 (upholding the s. 37.1 misleading advertising provision); BBM Bureau of Management v. Director of Investigation and Research (1984) 52 N.R. 137 (upholding the s. 31.4 "tied selling provision") and, of course, Henuset Brothers Ltd. v. Syncrude Canada Limited [1980] 6 WWR 218, and Rocois Contruction Inc. v. Quebec Ready Mix Inc. (1985) 64 N.R. 209 (upholding the s. 31.1 civil damages provision). Rocois Constuction is currently under reserve at the Supreme Court of Canada.
- 20 R. v. Hoffmann - LaRoche Ltd. (1979) 109 DLR (3rd) 5 at 32-33, per Linden J.
- 21 Supra, note 1
- 22 Perhaps a creative draftsman could design the face of the "Cornerstones Document" so that the role of C.C.A.C. is visually apparent: for example, the first letters of each of the four "Cornerstones" could be graphically designed to emphasize C.C.A.C. when read vertically, that is:
1. Common market.
 2. Changing market.
 3. A set of shared expectations.
 4. Clear roles and responsibilities of the marketplace participants.
- 23 15 U.S.C. 2103 et seq. (1976)
- 24 These "IDRP"'s, or more accurately "informal disputes settlement procedures", and the experience under the Magnusson-Moss Warranty Act, are discussed in Belobaba, Consumer Product Warranty Reform: Regulation in Search of Rationality (1983) at 121-124

25 See, for example, the Consumer Packaging and Labelling Act, ss. 7(1) and 9(1); the Textile Labelling Act ss. 5(1) and (2); the Precious Metals Marking Act, s. 10(1); and the Food and Drugs Act, s. 5(1). Consider, for example, the "trade practices" coverage inherent in the statutory language of the Food and Drugs Act s. 5(1):

"No person shall label, package, treat, process, sell, or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety."

26 As discussed, for example, in Ramsay, Text and Materials on Consumer Regulation (1988), chap V.

27 C.C.A.C. Study, supra note 9 at 113 (affirmative disclosure, corrective advertising, ad substantiation), at 148 (rule making), at 164 (preclearance and advance rulings), at 173 (substituted actions). Also see Report of the Standing Committee on Consumer and Corporate Affairs on the Subject of Misleading Advertising [hereinafter Collins Committee Report], chap. 4.

28 C.C.A.C. Study at 305; Collins Committee Report, chap. 4

29 C.C.A.C. Study at 268

30 Collins Committee Report at 40

31 Discussions with officials of the Marketing Practices Branch

32 C.C.A.C. Study at 269-74 and 280; Collins Committee Report at 36-39; also see Belobaba, supra note 6 at 26-30

33 See C.C.A.C. Study, supra note 9, at 148-64 for a detailed discussion of the "rule making" power

34 See discussion in Belobaba, supra note 6, at 7-8

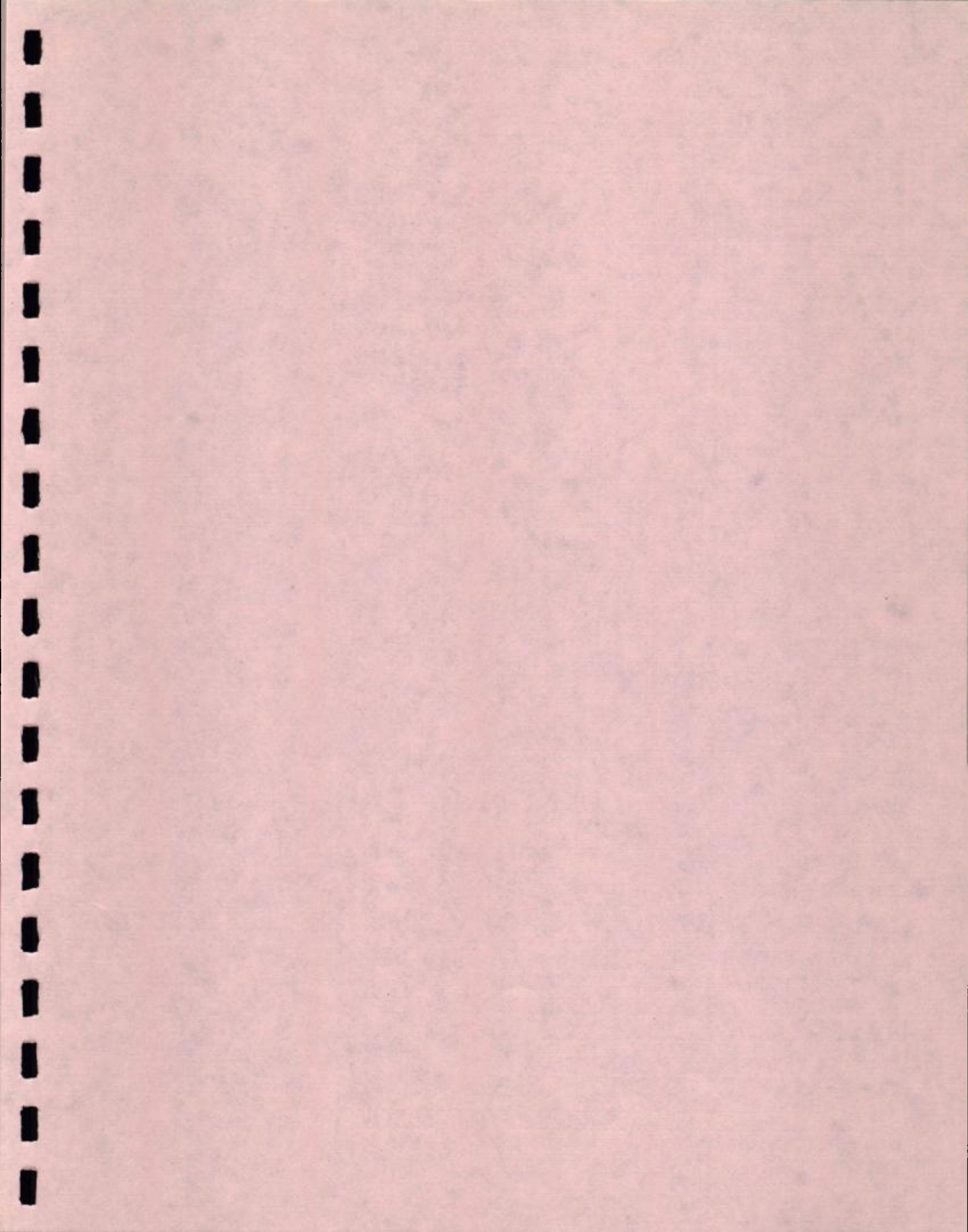
35 As evidenced in the various responses of Bar Associations and some Consumer Groups to the recommendations for a comprehensive "no fault insurance" system in Ontario, as proposed by the Ontario Task Force on Insurance (1986) [the Slater Commission]. Also see Report of Inquiry into Motor Vehicle Accident Compensation in Ontario (1988) [known as the Osborne Commission]. The concerns here were with regard to the "meat chart" approach of a governmental body administering a no-fault accident compensation scheme versus

the more individualized approach of tort litigation. These same concerns about governmental bureaucracy and over-institutionalization extend (in view improperly) to any new proposal for yet another governmental tribunal

- 36 See, for example, the decision of Laskin J. (as he then was) in MacDonald v. Vapor Canada Ltd. [1977] 2 SCR 134, and Dickson J. (as he then was) in CN Transportation, supra, note 17. For a good general discussion of these developments see Finkelstein, "Constitutional Law and Competition Legislation" (1984) 62 Can. Bar Rev. 182
- 37 See cases collected, supra, note 19
- 38 Supra, note 19, at 647 and 649
- 39 Supra, note 19
- 40 Supra, note 19
- 41 This is the basic rationale in all of the cases cited supra, note 19: see, for example, BBM, supra, note 19 at 147 per Urie J.
- 42 CN Transportation, supra, note 17, per Dickson J. (as he then was) at 278
- 43 Racois Construction, supra, note 19; City National Leasing v. GM of Canada (1984) 47 OR 2nd 653. These cases were argued in the Supreme Court of Canada on May 17 and 18, 1988. Judgment has been reserved.
- 44 The development of the Criminal Law Power is discussed in detail in Hogg (2nd ed.) at 397-417
- 45 Canadian Federation of Agriculture v. AG Quebec (The Margarine Reference) [1949] SCR 1 per Rand J. at 50
- 46 See Hogg (2nd ed.) supra, note 13, at 406-409. Also see McDonald, "Criminality and the Canadian Anti-Combines Laws" (1965) 4 Alta. L.R. 67 at 69-71, and the discussion in Finkelstein, supra, note 36
- 47 Laskin, Canadian Constitutional Law (4th ed. rev. 1975), at 824, as cited in Hogg (2nd ed.) supra, note 13 at 401
- 48 See Hogg (2nd ed.), supra, note 13, at 411; also see MacPherson, supra, note 13, at 195-197
- 49 MacPherson, supra, note 13, at 196 and 195

- 50 Hogg, Constitutional Law of Canada (1st ed. 1977) at 284, as cited in MacPherson, supra, note 13, at 212
- 51 Hogg (2nd ed. 1985), supra, note 13, at 415-416 and 417
- 52 Racois Construction, supra, note 19, per MacGuigan J. at 227
- 53 Racois Construction, supra, note 19, per Ryan J. at 231
- 54 For a good historical treatment, see Smith, The Trade and Commerce Power (1963). Also see Hogg (2nd ed. 1985) supra, note 13, at 439-452, Finkelstein, supra, note 36, and MacPherson, supra, note 13.
- 55 Supra, note 36
- 56 Supra, note 18
- 57 Supra, note 19
- 58 See, for example, Economic Council of Canada, Interim Report on Competition Policy (1969) at 8-9 and 195-196, as cited in Rocois Construction, supra, note 19, per MacGuigan J. at 213; also see Hogg (2nd ed. 1985), supra, note 13 at 406-409; Finkelstein, supra, note 36; and MacPherson, supra, note 13. Also see discussion in Belobaba supra, note 6, at 48-51
- 59 CN Transportation, supra, note 17; per Dickson J. (as he then was) at 266-268
- 60 Id. The basic question is whether what is being addressed in the federal enactment is "genuinely a national economic concern and not just a collection of local ones": per Dickson J. at 268
- 61 This decision canvasses the relevant lower court development to date and the various cases noted supra, note 19
- 62 [1970] 1 OR 331
- 63 [1982] 2 SCR 161.
- 64 Nykorak v. AG Canada [1962] SCR 331
- 65 Doyle v. Bell [1884] 11 OAR 326

- 66 Curran v. Grand Trunk Railway Co. (1898) 25 OAR 407; Grand Trunk Railway Co. v. AG Canada [1907] AC 65; and Greer v. CPR (1915) 51 SCR 338. See the discussion in Hogg (2nd ed. 1985), supra, note 13, at 413.
- 67 Multiple Access v. McCutcheon, supra, note 63



DISCUSSION PAPER
CONSUMER POLICY FRAMEWORK

June 1988
CSRB

27 July

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DISCUSSION PAPER: CONSUMER POLICY FRAMEWORK

1. PURPOSE AND SCOPE

This paper is intended to contribute to departmental discussion on the formulation of a consumer policy framework. The draft framework presented in the chart on the following page is based on the three basic rationales for intervention in consumer affairs; market failure; equity/fairness; and safety. The framework is in large part a formal expression of policy development processes already in use. It is intended to facilitate assessment of appropriate public and private sector intervention in consumer affairs.

The paper expands on the information provided in the chart, deals with problems for consumer policy formulation and suggests broad policy priorities.

3. RATIONALES FOR INTERVENTION

Consumer issues comprise in varying combinations, questions of marketplace efficiency, fairness and sometimes public health. This section addresses these rationales and corresponding circumstances for intervention. It also examines the link between fairness and efficiency, suggesting that fairness begets efficiency and vice-versa.

Market Failure Rationale - Efficiency Rationale

In practical terms, market failure can be said to exist when levels of competition, information, or rationality are insufficient to discipline unsatisfactory suppliers. Under these circumstances intervention is justified in order to correct distributional inefficiencies.

The rationale is based on two essential premises:

- That a competitive market will resolve its own problems when all participants are perfectly informed and act rationally in their own interests i.e. that unsatisfactory suppliers will quickly be disciplined by a fall in demand for their products or services.
- And that a market which is efficient in the above sense will distribute resources optimally i.e. to the greatest possible benefit of all participants.

The rationale is therefore grounded in the notion of distributional justice and the prevention of social and physical (as well as economic) problems associated with unsatisfactory products and services.

The following sources of failure in markets comprise the possible circumstances for intervention by government and by other marketplace actors.

1. Where the costs of obtaining and or processing information are prohibitive. This tends to be the case where products, services or transactions are complex. Individuals cannot usually make realistic advance assessments, for example, of the competence of experts or the reliability of electronic devices.

By extension - where the threshold at which costs become prohibitive for certain special needs groups (e.g. the poor, the illiterate) is lower than for the general population, intervention directed specifically at the disadvantaged groups may be justified.

2. Where the marketplace is itself unable to correct for information deficiencies (eg through sale of product test information or expert opinion). It is difficult for information providers to prevent use of their product by free riders, and their operations tend therefore to become uneconomic.
3. Where costs are hidden, i.e. where costs to the buyer associated with a product are not obvious to him - for example products with carcinogenic properties whose effects may not be apparent until many years after use.
4. Where sellers are not concerned with good-will, i.e. where because of market conditions or marketing practices, repeat sales are unlikely (e.g. certain types of door to door sales, or cases of deliberate fraud), or where oligopolistic conditions restrict choice to products with similar defects (e.g. bank service charges or North American cars before Asian competition).
5. Where costs due to irrational behaviour become too high. Individuals for example, tend to ignore small probability risks including the potential for product related accidents (eg the tendency not to wear seat-belts or motorcycle helmets unless co-erced).
6. Where costs of obtaining redress become prohibitive (eg the psychological and monetary costs of redress through the courts). Actions for redress are regarded, for the purposes of the market failure rationale, as secondary mechanisms for disciplining suppliers in the absence of adequate pre-purchase information or rational behaviour.

Equity/Fairness Rationale

One of the earlier arguments for government intervention, based on the common law doctrine of inequality of bargaining power, suggested that consumers are at a disadvantage in the marketplace because their informational, monetary and organizational resources are generally smaller than those of suppliers. Expressed in these terms the equity rationale is not very different from that of market failure. In both cases, the costs of access to and processing of information, and of redress are key elements. In both cases too, government decisions about remedies, whether regulatory or informational, can reasonably be based on cost-benefit analyses.

The unequal resources argument does not, however, address a central dilemma implicit in the equity/fairness rationale. The problem is that the rationale puts regulators in the

position of being arbiters of moral questions in a society which is far removed from moral consensus.

Because definitions of fairness vary among social groups and individuals, there is a temptation to become sidetracked by questions like; "what precisely is fairness?", or "fairness for whom?". These questions need not be addressed if one assumes intuitive understanding of the concept and deals instead with its social and marketplace importance.

The concept is clearly important at both individual and social levels. Fair treatment of individuals is a central expectation in Canadian society, entrenched in the constitution and the justice system. At the same time it is obvious that a sufficiently complex society or marketplace, functions efficiently only on the assumption of a basic level of fairness. (One need only visualize the operation of a supermarket where no customer trusted package-weights or ingredient-labels, to test the truth of this statement). By extension, the more buyers are able to take for granted the fairness of a market, the greater its capacity for complex and/or efficient operation.

The mainstream of Canadian society clearly operates on the basis of implicit working assumptions about the nature of fairness in the marketplace. It follows that an operational (i.e. imperfect but working) definition of fairness will be a listing of those assumptions.

Circumstances for intervention in the interests of individual fairness are for practical purposes defined by the following list.* Intervention would be appropriate where any of the following did not exist, or needed improvement.

1. Disclosure of accurate, understandable information which is adequate for comparison and informed decision-making.
2. Transactional fairness which includes:
 - clear understanding of the deal by the consumer;
 - reasonable time free from pressure in which to make informed decisions; and
 - reasonable expectations of consumer behaviour and knowledge.
3. Fair value, which includes elements of fitness for purpose and price:
4. Access to just remedies and redress which includes:
 - reimbursement of individuals who have been treated unfairly

* Based on the work of E. P. Belobaba with the Ontario Ministry of Consumer and Commercial Relations.

- resolution of disputes in which the issue of fairness is unclear i.e. negotiated settlements.

Circumstances for intervention due to market or social level failures in fairness are more difficult to pin down. Given an inevitable level of unfairness in any society, the central concern must be the point at which the accumulation of small injustices becomes a significant impediment to the functioning of social and economic systems. Indicators of such a condition where the problem is readily and narrowly defined are:

5. social protest, political lobbying and media attention, and failure of market confidence demonstrable in falling demand.

However where fairness problems are broadly diffused across the marketplace, useful indicators are likely to be harder to find. Under these circumstances, costs might be incurred in the form of:

6. a gradual but accumulating erosion of fair behaviour causing a return to the conditions which underlay consumer activism in the 1960s; and in the absence of adequate redress mechanisms, erosion of confidence in the justice system.

The Health and Safety Rationale

Intervention to preserve health and safety in the face of product or service hazards is an extension of other preventative health practices. Where product hazards cause problems for the individual, the issue becomes one of redress and is subsumed under the heading of fairness.

In the case of known product hazards intervention is appropriate where:

- 1) there is a general lack of information about the hazard;
- 2) where specific groups lack access to information (e.g. children or the illiterate); and
- 3) where public propensity for irrational behaviour poses a public health problem (e.g. non use of seat-belts or motorcycle helmets).

In the case of potential hazards, intervention is appropriate where:

- 4) experience with a class of products suggests the need for caution with regard to a new product. (Hence new product testing for drugs or children's toys);
- 5) there is general lack of knowledge about long term effects of a new class of products or a new technology. In this case there will likely be no obligatory testing programs, and adequate methods of testing may not exist.

4. OPTIONS FOR INTERVENTION

The list of possible interventions can be summarized as:

- information/education provision;
- advocacy and moral suasion;
- product testing and approval or banning;
- voluntary and mandatory standards creation;
- regulation and enforcement;
- dispute settlement;
- market structure modification (increasing competition, reducing trade barriers, creating new redress mechanisms); and
- compensation for extraordinary losses (as with Western bank failures).

Government is in a position to adopt these measures itself, or to influence other actors in the marketplace to adopt some of them.

The majority of the circumstances for intervention described previously suggest obvious options for intervention. Discussion below is therefore confined to significant problem areas which include: the limits to the effectiveness of information provision; the boundary between government regulation and industry self-regulation; and appropriate options for dealing with diffuse problems.

Limitations of Information as a Useful Form of Intervention

The attractive aspects of information provision are its relatively low costs, minimal interference with marketplace operations and tendency to enhance efficiency. Its limitations stem from the restricted information processing capacity of consumers, who are clearly incapable of taking all relevant information into account in their purchasing decisions. The operation of the supermarket is cited above as a microcosm of the current marketplace which would not function, without consumers being able to take much for granted about the safety of products accuracy of labelling and of measuring devices, and the honesty of traders.

Information ceases to be useful as a means of effecting safety, fairness and efficiency at the point where it becomes too complex, voluminous or obscure for consumers to use under the circumstances for which it was intended. While establishing this threshold is both a matter of common sense and empirical testing, research suggests that for the average consumer the threshold is low.

Information provision is therefore most likely to be useful where consumers' information collection costs would otherwise be high, and where the information can be presented

simply, briefly and preferably at point of sale. Where this is not the case information provision may become a waste of resources. (An important exception to this will be where relatively small groups of sophisticated consumers are in a position to alter demand sufficiently to discipline suppliers).

It is worth noting that current consumer information tends to focus on the comparative merits of products and services and on wise shopping techniques. Given the average consumer's problem of information overload, and consequent need to assume fairness, this may be an overvalued approach. It may be much more efficient and relevant to provide supplier-satisfaction and honesty ratings to consumers, equivalent to the consumer credit ratings now available to suppliers.

Self Regulation and Government Regulation

It is worth making the distinction between voluntary regulations or standards which are developed individually to deal with specific issues or products within an industry, and more general self-regulation which involves development of a set of rules governing broad areas of behaviour. CCAC's generally positive experience in transferring regulatory responsibility to businesses, has been with the former approach. While it is possible to catalogue the theoretical advantages and disadvantages of self-regulation, there are few guidelines for determining when the practice will be more or less effective than regulation by government. The minimum requirements for effective self-regulation are an influential domestic industry association whose membership is sufficiently broad, and a capacity for control over relevant imports.

Experience has shown that a pragmatic blend of government and self regulation is often required, in which government retains the powers and capacity to step in where the relevant industry or association is unwilling or unable to correct problems. In the absence of more comprehensive guidelines, assessment of whether a self-regulatory approach will be effective, must depend on a case by case assessment of the willingness of industry members to participate and comply.

Diffuse Problems

Levels of fairness or safety in the marketplace may be unacceptably low, without being concentrated on readily-identified product or service areas or groups of consumers. Under these circumstances, the emphasis will shift from

reactive issue-specific interventions to a proactive approach directed at improving the functioning of the marketplace as a whole. The appropriate options for intervention should improve the capacity of consumers to secure fair deals, and raise general trading standards. They would include measures: to clarify and enforce expectations with regard to the components of fair trading; to improve the quality and availability of information to consumers identifying unfair or questionable traders; and to improve the ability of consumers to obtain redress both in the interests of individual fairness, and of disciplining unsatisfactory suppliers.

5. DECISION MECHANISMS (FILTERS)

Decisions as to the nature and scope of CCAC intervention in consumer affairs will take into account:

- the social costs of issues;
- government policies and priorities;
- available resources;
- current and projected marketplace conditions;
- the scope and intensity of general public opinion;
- lobbying;
- the applicability of an issue to the Department's mandate;
- the state of development of useful techniques for intervention (the state of the art); and
- cost-benefit analysis of the options for intervention.

Questions of cost assessment, marketplace conditions and state of the art are discussed further below.

Cost Assessment

Common sense suggests that when social costs associated with an issue are sufficiently high, government priorities and lobby group opposition become secondary considerations. (Compensation of Western bank depositors provides a convenient example). However, there are likely to be instances where aggregate social costs are high, but easily ignored because they are hidden or diffuse, and conversely occasions when issues with negligible social costs (exploding pop bottles) obtain high profile.

In view of this it seems a basic requirement that consideration of any issue, be underpinned by an assessment of its social costs.

Marketplace Conditions

From a consumer viewpoint, current marketplace conditions are characterized by: a proliferation of new products, and more importantly new services; increased attention to product quality by business; fewer high profile consumer issues, but no fall in the numbers of problems; increasing complexity of transactions; and information overload. From the Department's perspective, the important aspect of this scenario is the falling incidence of high profile issues, but a persistent level of perceived problems, suggesting a broad diffusion of problems across the marketplace.

State of the Art

Since the late 1970's consumer policies among Canada's OECD partners have tended towards the transfer of consumer protection costs away from government and into the marketplace. Increased emphasis has been placed on voluntary or self-regulation of industries, and governments have attempted to make consumers more self-reliant.

EEC countries are moving to place a general responsibility on industries to produce safe goods, and Britain is further considering the creation of a general duty to trade fairly. This broad approach is based in an understanding that: the marketplace can create individual problems faster than government can solve them; that a responsive issue-specific approach is therefore not adequate to the task; and that a pro-active approach should be aimed where practical at enabling the marketplace to solve its own problems.

6. POLICY PRIORITIES

CCAC intervention in consumer affairs will inevitably include pragmatic, issue by issue responses to problems generated by an innovative marketplace. Equally the Department's efforts must continue to be directed to managing the basic rules which underpin Canadians' expectations of a fair and efficient marketplace. However, the diffuse nature of present consumer problems, and international evidence that the marketplace can create individual problems faster than government can solve them, suggest that government efforts should be directed towards improving the capacity of the marketplace to correct its own problems and to ensure its own safety, efficiency and fairness.

There should be two broad aims:

- The provision of improved tools for consumers to obtain fair treatment in the marketplace; and
- The promotion of general standards of acceptable business and consumer behaviour (as opposed to prohibition of undesirable behaviour).

In practical terms these aims may be addressed by the following policy priorities.

Improvement of Redress Mechanisms

Existing redress and dispute settlement mechanisms are widely recognized as unsatisfactory for consumers, being generally costly, slow and uncertain.

The creation of better redress mechanisms would improve the fairness of the marketplace for individual consumers. Such an initiative would also encourage more consumers to press legitimate claims and create a more effective general discipline on the activities of unsatisfactory suppliers. In view of shared responsibilities, the initiative should be undertaken in co-operation with provincial ministries.

Improvement of Information Provision

The availability of useful and usable information is clearly pivotal to the efficient functioning of the marketplace. Evidence that the average consumer suffers information overload, suggests a requirement to review the field of consumer information provision with a view to promoting the availability of concise and accurate information more relevant to consumers' needs. While informatics have dramatically improved suppliers' access to information about individual consumers, the reverse is not the case. In general

Canadians are not well informed about their consumer rights and the consumer laws that protect them, and Canada lags behind the United States in the provision of plain language versions of those laws.

Clarification of Expectations

The Canadian marketplace functions on the basis of broad assumptions held by marketplace participants about fairness and about the degree of protection afforded them. However, clearly there are instances where differences of interpretation leave large numbers of individual consumers and traders feeling aggrieved.

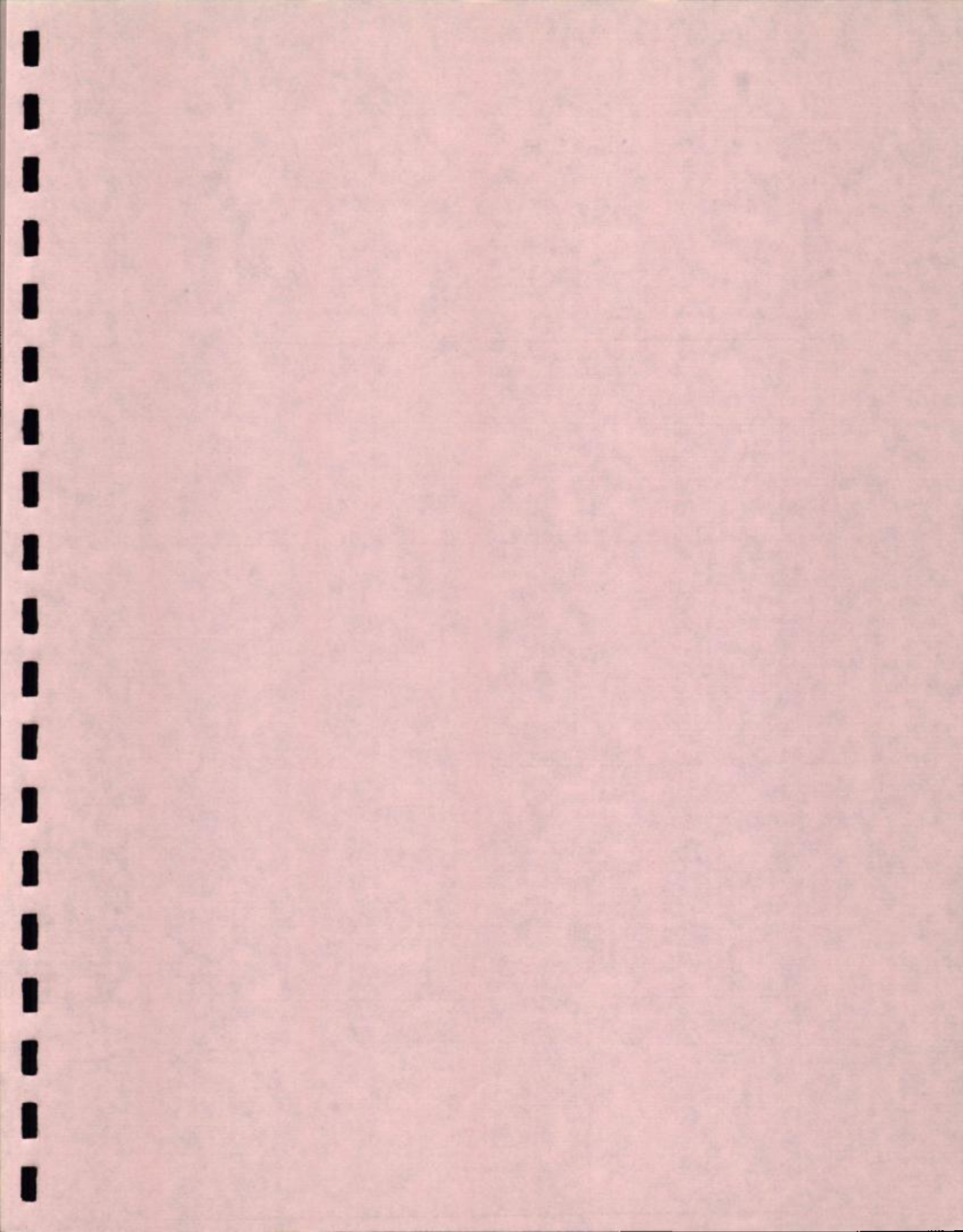
Any remedy must involve the development of broad social consensus on a more precise working definition of fair behaviour in the marketplace. Other OECD countries have taken steps in this direction by promoting codes of ethics for individual business sectors. More recently Britain has explored the possibility of establishing a general duty to trade fairly.

The option to promote industry level ethical codes is applicable in the Canadian context. However, it has the disadvantage of being a long term, piecemeal initiative whose end result might be a patchwork of inconsistent codes.

A more effective approach would involve a national level definition of fair market behaviour developed through consultation among business, consumers and government. The "Principles of Marketplace Fairness" already developed by CCAC, and definition of transactional fairness developed by the Province of Ontario, together form the basis of such a definition. The final version of this definition might equally underpin development of federal level trade practices legislation, or act as a guiding principle in the revision of existing laws.

TAXONOMY OF FACTORS AFFECTING CONSUMER POLICY FORMULATION

RATIONALES	POSSIBLE CIRCUMSTANCES FOR INTERVENTION	OPTIONS FOR INTERVENTION	DECISION MECHANISMS (FILTER'S)	CURRENT POLICY PRIORITIES
<p>MARKET FAILURE (EFFICIENCY)</p> <p>Exists where levels of competition information, or rationality in the marketplace, are insufficient to discipline unsatisfactory suppliers.</p>	<ol style="list-style-type: none"> 1. Prohibitive information collection and/or processing costs for individuals 2. Market fails to provide adequate information 3. Hidden costs 4. Sellers not concerned with good will 5. High costs due to irrationality 6. Prohibitive costs of redress. 	<ol style="list-style-type: none"> 1. Information/education provision 2. Advocacy and moral suasion 3. Product testing and approval/banning/modification/restriction 	<p>Factors taken into account will be:</p> <ol style="list-style-type: none"> 1. Social costs 2. Government policies and priorities 3. Departmental mandate 	
<p>FAIRNESS</p> <p>Fairness for individuals, a social expectation entrenched in the constitution and in law.</p> <p>Fairness facilitates the efficient functioning of complex markets and a complex society.</p>	<p align="center"><u>Individual Aspects</u></p> <ol style="list-style-type: none"> 1. Suppliers do not provide adequate/accurate/understandable/appropriate information. 2. Consumers do not understand the deal. 3. Consumers do not have reasonable time free from pressure to understand the deal. 4. Fair value is not provided. 5. Redress or dispute settlement mechanisms do not meet reasonable consumer expectations. <p align="center"><u>Social Aspects</u></p> <ol style="list-style-type: none"> 6. Unmet consumer expectations result in social protest lobbying/media attention. 7. Residual levels of unfairness significantly impair market/social functioning. 	<ol style="list-style-type: none"> 4. Standards creation 5. Regulation and enforcement 6. Dispute settlement 	<ol style="list-style-type: none"> 4. Available resources 5. Prevailing marketplace conditions 6. Public opinion 7. Lobby group activity 8. Techniques available for intervention 	
<p>HEALTH AND SAFETY</p> <p>Promotion of safety against marketplace hazards an extension of other public health measures.</p>	<ol style="list-style-type: none"> 1. Lack of public information about known hazards. 2. Specific groups lack access to info on known hazards. 3. Irrational behaviour poses public health problem. 4. Where products are deemed potential but unproven hazards. 	<ol style="list-style-type: none"> 7. Market structure modification e.g. increasing competition; reduction of trade barriers; creation/improvement of redress mechanisms. 	<ol style="list-style-type: none"> 9. Cost benefit evaluation of possible techniques for intervention. 	



PRINCIPLES OF MARKETPLACE FAIRNESS

As the "Department of the Marketplace", the role of Consumer and Corporate Affairs Canada is to contribute to fairness and efficiency in the marketplace. To this end, a clear statement of principles affecting the operation of the marketplace is presented to promote mutual confidence among consumers, business and government.

(a) Mutuality of Interest

It has long been recognized that the operation of the marketplace is dependent on both the producing and consuming sectors. Both consumers and business benefit from a competitive and efficient marketplace. Competition encourages business to produce high quality goods and services at a reasonable price, thus providing a wide choice to consumers. As well, competition for market share often involves the implementation of effective complaint-handling mechanisms which is of benefit to both business and consumers. The resolution of consumer problems also serves the interests of business by providing ideas for product improvement, ideas for new products as well as marketing and demographic information.

Standards, both voluntary and mandated, provide guideposts to business from which it can efficiently produce safe, uniform products and fair services. Businesses which meet or exceed such standards often gain an advantage in the marketplace. Such standards are of benefit in that they allow consumers to evaluate products and services on a uniform basis.

Similarly the provision of information encourages rational choices in the marketplace by providing enough facts upon which consumers may make an informed choice. Consumer satisfaction is served. Business assures itself of repeat customers. In addition, if information effectively informs consumers about how best to use a product, it can diminish injury or health risks and, consequently, potential liability to business.

(b) Consumers still need Protection

The marketplace of the 80's is an increasingly complex one. Accelerating technological advances, a deluge of information, together with growing international trade and a proliferation of multinational corporations contribute to the complexity. Consumers alone cannot be expected to detect latent health or safety hazards or unforeseen economic risk in products and services. For example, a consumer cannot detect lead in hand-painted pottery. Social norms in Canadian society will not tolerate risk of serious injury or death associated with the use of products and services and demand that government step in. In other situations, there is a need for business and/or government to play an interpretive role in assisting consumers to understand the complexity of information, such as in the case of credit card interest rates.

(c) There are limits to the Role Government can play

There is a growing awareness by business and consumers that government regulation alone cannot ensure marketplace fairness. With limited resources and growing marketplace complexity, government cannot be expected to regulate all aspects of health, safety and fairness, especially if there are acceptable alternatives to regulation. Responsibility for health, safety and fairness must be shared. To this end, the activities of government and business must complement each other. Similarly, consumers must assume responsibilities to parallel their legitimate expectations. But overall, there must be a collaborative effort among the three marketplace participants.

In its Regulatory Reform Strategy, the Government of Canada sets out its commitment to limit future regulation. In the special context of consumer protection, this translates into the need for general protection of the integrity of the marketplace as a whole by the sharing of appropriate responsibilities. This has given rise to the attached statement of principles. By encouraging marketplace practices in accordance with these principles, government will have fulfilled its promise to "regulate smarter".

It is anticipated that the Principles will:

- reflect, in a succinct, simple and direct form, this government's commitment to balancing economic efficiency and public protection
- encourage increased participation by consumers and business in marketplace decision-making, while recognizing government's limited intervention
- act as guidelines for future policy, regulation and other decisions of government, business and consumers in the marketplace
- promote dialogue among the three marketplace participants during the consultation process to develop consensus about the future meaning of marketplace fairness.

DRAFT PRINCIPLES OF MARKETPLACE FAIRNESS

Recognizing that all marketplace participants share a mutual interest in health, safety, fairness and efficiency in the marketplace, the purpose of these Principles is to contribute to that mutual interest by recognizing an appropriate sharing of responsibilities among government, business, and consumers.

It is recognized that the responsibilities of government include:

- . providing, promoting and regulating the provision of information for consumers;
- . developing, implementing, and monitoring policies promoting health, safety and fairness, and regulating where appropriate;
- . promoting a marketplace free of unreasonable risk of product or service-related safety hazards;
- . promoting the adoption of appropriate voluntary codes and standards relating to products and services;
- . promoting methods for consumer assistance and redress;
- . promoting better understanding of regulation by business and consumers;

It is recognized that the responsibilities of business include:

- . ensuring that products are accurately represented in terms of composition, functioning, quantity and purpose;
- . ensuring that services are accurately represented;
- . ensuring that products and services are safe for normal use;
- . notifying government, and where appropriate, consumers, of health or safety hazards in the marketplace and recalling unsafe products when necessary;
- . ensuring transactional fairness;
- . ensuring reasonable redress in the case of product or service problems.

It is recognized that the responsibilities of consumers include:

- . informing themselves in order to make reasonable marketplace choices;
- . exercising appropriate attention and care to the safety and intended use of products and services;
- . informing and seeking appropriate redress from the responsible business in the case of problems with products or services;
- . informing government where marketplace problems may affect the public good.

DRAFT PRINCIPLES FOR THE MARKETPLACE

Recognizing that all marketplace participants share a mutual interest in health, safety, fairness and efficiency in the marketplace, the purpose of these principles is to contribute to that mutual interest by recognizing an appropriate sharing of responsibilities among government, business, and consumers.

It is recognized that the responsibilities of government include:

- . providing, promoting and regulating the provision of information for consumers;
- . developing, implementing, and monitoring policies to promote marketplace fairness and product-related health and safety, and regulating where appropriate;
- . promoting the adoption of appropriate voluntary codes and standards relating to products and services;
- . promoting methods for consumer assistance and redress;
- . promoting better understanding of regulation by business and consumers;

It is recognized that the responsibilities of business include:

- . ensuring that products are accurately represented in terms of composition, functioning, quantity and purpose;
- . ensuring that services are accurately represented;
- . ensuring that products and services are safe for normal use;
- . notifying government, and where appropriate, consumers, of health or safety hazards in the marketplace and recalling unsafe products when necessary;
- . ensuring transactional fairness;
- . ensuring reasonable redress in the case of product or service problems.

It is recognized that the responsibilities of consumers include:

- . informing themselves in order to make reasonable marketplace choices;
- . exercising appropriate attention and care to the safety and intended use of products and services;
- . informing and seeking appropriate redress from the responsible business in the case of problems with products or services;
- . informing government where marketplace problems may affect the public good.

ÉBAUCHE SUR LES PRINCIPES DU MARCHÉ

Étant donné que tous les participants au marché partagent un intérêt commun pour la santé, la sécurité, l'équité et l'efficacité sur le marché, les présents principes visent à contribuer à cet intérêt commun en reconnaissant un partage approprié des responsabilités entre le gouvernement, les entreprises et les consommateurs.

Il est reconnu que les responsabilités du gouvernement sont les suivantes:

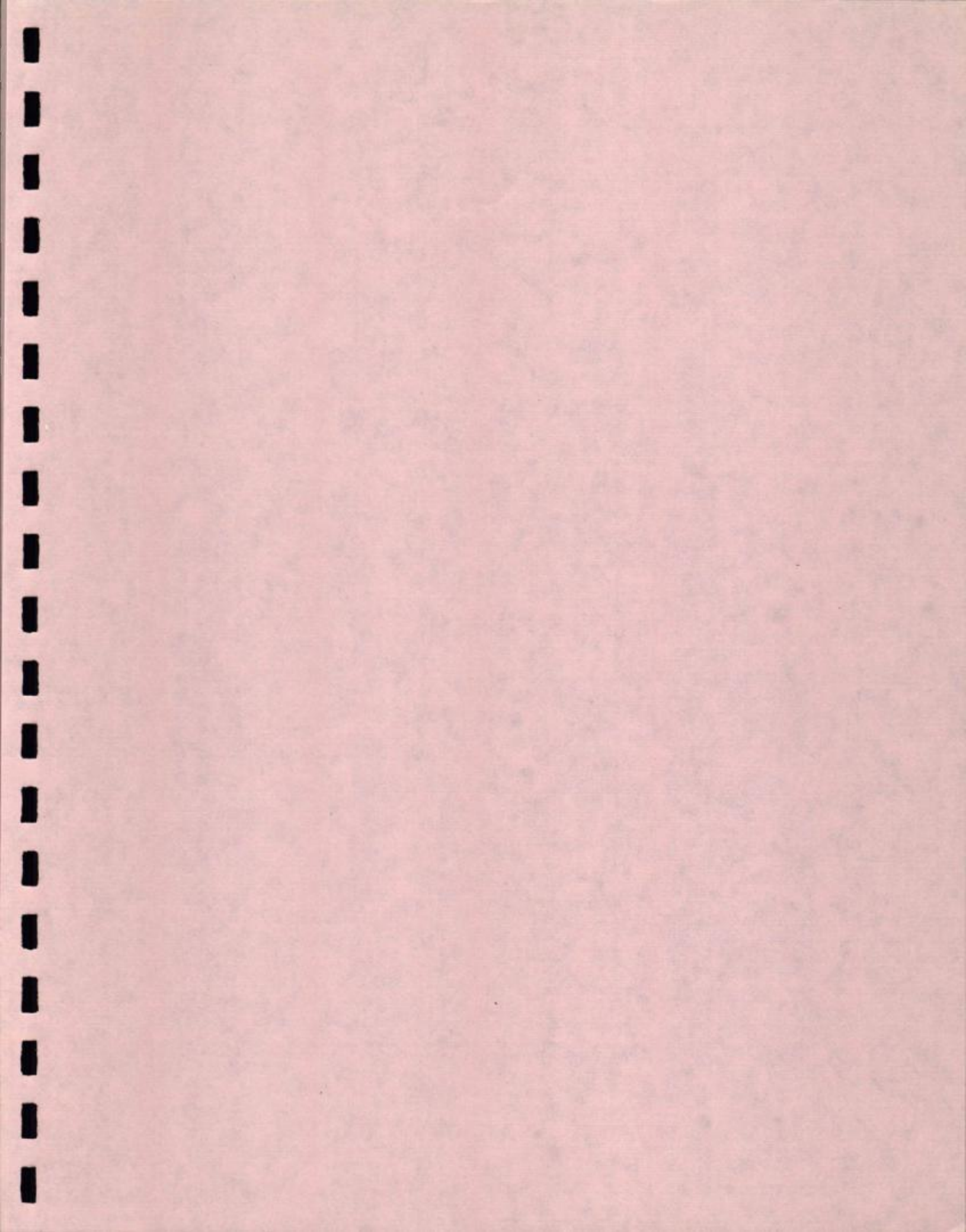
- . fournir, promouvoir et réglementer les informations à l'intention des consommateurs;
- . élaborer, mettre en oeuvre et suivre de près les politiques en faveur de l'équité du marché, de la santé et de la sécurité reliés aux produits et les réglementer au besoin;
- . faciliter l'adoption de codes et normes volontaires appropriés relatifs aux produits et services;
- . encourager les méthodes d'aide et les recours pour les consommateurs;
- . promouvoir la compréhension de la réglementation chez les entreprises et les consommateurs;

Il est reconnu que les responsabilités des entreprises sont les suivantes:

- . s'assurer que les produits portent des renseignements exacts quant à la composition, à la fonction, à la quantité et à l'usage;
- . veiller à ce que les services portent des renseignements exacts;
- . faire en sorte que les produits et services soient sûrs en utilisation normale;
- . aviser le gouvernement et, s'il y a lieu, les consommateurs des dangers pour la santé ou la sécurité sur le marché et rappeler les produits dangereux, au besoin;
- . veiller à l'équité dans les transactions;
- . assurer la possibilité de recours raisonnables en cas de problèmes causés par des produits ou services.

Il est reconnu que les responsabilités des consommateurs sont les suivantes:

- . s'informer afin de faire des choix raisonnables sur le marché;
- . porter une attention appropriée à la sécurité et à l'usage prévu des produits et services;
- . s'informer et se prévaloir des recours appropriés auprès des entreprises responsables en cas de problèmes causés par les produits ou services;
- . informer le gouvernement lorsque des problèmes sur le marché risquent de toucher l'intérêt public.



DISCUSSION PAPER: CCAC CONSUMER POLICY FRAMEWORK

CSRB, December 1987
First Draft

DISCUSSION PAPER: CCAC CONSUMER POLICY FRAMEWORK

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Discussion Paper: CCAC Consumer Policy Framework

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Purpose and Scope

This paper is intended to contribute to departmental discussion on the formulation of a consumer policy framework. The draft framework outlined in Section VI, is based on analysis of four issue areas: the problem of restricted departmental resources in an increasingly complex marketplace; the government priority for minimal intervention in the marketplace consistent with the public interest; the promotion of marketplace fairness; and promotion of marketplace safety. To facilitate analysis of these areas, the paper examines recent changes in the Canadian marketplace, theoretical rationales for government intervention in consumer affairs, developments in the Canadian consumer protection apparatus, and recent developments in consumer affairs in other OECD countries.

I. Marketplace Change

Despite solid and widely acknowledged improvements in Canadian consumer protection over the last twenty years the number of reported consumer problems continues to rise. The phenomenon is not unique to Canada, and governments in the developed economies have come to accept that an innovative marketplace will inevitably outflank the most comprehensive of consumer protection regimes. Full awareness among OECD governments of this version of the familiar limited resources and unlimited demand problem coincided with the global economic problems of the late seventies and early eighties. Other countries' approaches to the problem are explored more fully in the section on international developments.

As a starting point for analysis of CCAC's future consumer policy priorities the effects on Canadian consumers of marketplace developments during the last decade are described below. The general picture, is one of the widespread change, increased competition for consumer dollars, and growing complexity associated with new technology, changes in the global economy and demographic change in Canada. This section deals with: consumer gains deriving from marketplace change; related problem areas; and implications for the next decade.

Consumer Gains

During the last ten years Canadian business began to compete harder for its share of the domestic market, under pressure from foreign imports, slowed population growth and falling incomes.

During the 1970s, the dollar value of North American and European exports grew to five times its level of ten years earlier.¹ In the same ten years exports from South East Asia grew tenfold, placing largely unforeseen competitive pressure on North American manufacturers.

At about the same time as domestic industry began to experience serious effects from this competition, it became clear that domestic markets would no longer continue to expand under the pressure of growing population. In the early eighties the last baby boomers moved into the work force and it became apparent that the generation was

¹ International Financial Statistics IMF January 1982 Yearbook.

unenthusiastic about having children. Statistics Canada projections suggest that the Canadian population will grow only slowly for the foreseeable future and that immigration will hold it above replacement level.

Consumers also began to lose earning power for the first time in a generation. Earned income, which began to decline in the years of high inflation, continued to slide throughout the 80s. Average weekly employment earnings in 1986 were 2% less in real terms than 1980.² Consumers have become correspondingly more conscious of the value of their earnings.

North American manufacturers have responded to these trends by attempting to improve quality, variety and complaints handling. They have become aware that quality assurance wins repeat customers, and lowers costs by reducing recalls, warranty claims and dispute settlement proceedings.³ Staff at the Canadian Consumers' Association attest to the success of manufacturers' efforts. The Association reports much smaller variations in quality among the products which it tests.

The growth in membership of the Society of Consumer Affairs Professionals since its inception in 1973 reflects business commitment to improve customer complaint handling to procedures. Larger companies have also begun to install toll free phone lines providing more direct access and an immediate and personal response to their complaints.

Finally, the number and variety of products and services has increased markedly as business has attempted to cater to the specialized tastes of smaller groups of consumers. The process has been facilitated and is likely to persist under the influence of technological advance and of deregulation. Concerns of the sixties and seventies about increasingly bland and indistinguishable products serving mass markets, have proven unfounded in the 80s and are likely to be irrelevant to the next decade.⁴

Paralleling these improvements, a significant portion of Canadian consumers have become more sophisticated in

² The Labour Force - Statistics Canada August 1987.

³ Quality Means a Whole New Approach to Manufacturing.
Businessweek June 8, 1987.

⁴ CCAC Environment Assessment 1985 p. 42.

their approach to marketplace transactions. These consumers carefully research purchases in advance, consider life cycle costs of products, and have apparently become more wary of advertising claims.¹ Provincial consumer ministries report that when handling complaints, they find consumers more aware of their rights and more determined to obtain them.

Problem Areas

Despite the very real gains described above, provincial ministries report that increasing numbers of consumer problems are being directed to them. Consumers' Association staff also see no evidence of a decline in problems. Rather they report a shift away from product-related to service-related issues. Rising numbers of consumer problems can be explained by the same increase in competition which underlies the consumer gains described above, by Canada's continued movement away from manufacturing toward a service economy, and by the growing complexity of the marketplace.

Competition As a Source of Problems

The pressures which have caused some firms to compete for satisfied customers have inevitably caused others to cut corners in order to reduce costs, to try new and risky products and services, or to be less than scrupulous in their business conduct. Questionable practices by failed Western Banks, the monthly review of misleading advertising claims (often by major U.S. companies) in Consumer Reports, health clubs with long term memberships and short lives, and credit card fraud involved in telephone sales of phony vacation packages, provide ready examples of problems caused by companies which are in trouble, are competing too hard or are engaged in outright fraud.

Service Sector Growth

Growth in the service sector at the expense of manufacturing is apparent in employment patterns following the 82 recession. By the end of 1984, employment in the service sector already exceeded its pre-recession level and by 1986 had exceeded it by 590,000.² In contrast in 1986 employment in the goods producing sector remained 9.6% below its 1981 high.

¹ Ibid. p.104-105.

² The Labour Force - Statistics Canada, August 1985.

While consumer problems appear to cover the spectrum of available services, particular concern has been expressed about services aimed at older Canadians. For example there has been a rise in the marketing of health and home care services for the elderly, often involving long term financial commitments in return for services which are not clearly defined. There is also concern that the elderly have been targeted for special attention, as a group with available funds which is particularly vulnerable to direct and telephone sales techniques.

Increased Complexity

The growing array of products and services has presented consumers with greater complexity. New methods of doing business may serve consumers better by creating more useful and convenient services and at the same time impose new and unclear responsibilities or create pitfalls for the unwary. Electronic bank teller machines represent a significant increase in convenience for the vast majority of their users, but pose hazards for those who find themselves in dispute with the bank over transactions conducted through them. Consumers are often not aware that among the conditions of use for these machines, is agreement on the part of the customer to the bank's record of any transaction. For the first time the customer is bound to a banking transaction in which he is identified neither in person by a bank official nor by his signature, but by a quickly memorised four digit code.

The financial services industry provides abundant examples of complexity, from the array of new financial planning and investment services, to the difficulties involved in calculating which credit card under what circumstances provides the best effective interest rate. Data on Canadian consumer problems in this area are not readily available, however a recent survey of consumers conducted by the American Association of Retired Persons, showed that half of the 1500 people (25 and older) who were interviewed, found it more confusing to select a bank account and other financial services in 1987 than five years earlier.⁷

Increased international trade, which sharpened competition and brought new products to the Canadian market, has also introduced complications in the form of uneven quality associated with trade mark franchising, warranty problems

⁷ Deregulation = Confusion For Many Bank Customers.
Consumers' Union News Digest. February 1982.

associated with grey market goods, and poor quality and occasionally unsafe counterfeit products.

That very few consumers are at risk of injury from products embodying new technology (most product related injuries involve very familiar objects like motorcycles, and cars, or stairs) is a strong endorsement of existing consumer protection measures from industry testing through to government regulation. Exceptions like A.H. Robbin's Dalkon Shield or less dramatically Urea Formaldehyde Foam Insulation are reminders of the system's fallibility, but not indicators of general inadequacy. Consumer advocates try to avoid overdramatizing potential hazards which may be inherent in new technology. However, they do point to the increased complexity it introduces into consumer decision-making.

Food processing technology provides a useful example. Consumers are supplied with a stream of information and opinion on the long-term health effects of trace quantities of food additives and organic and inorganic chemicals accumulated during the production process. Even those who have turned to "health" and "natural" foods have to be sure of their definitions to know what they're getting.

Information Overload

When asked whether they require additional information on given topic, consumers tend to answer in the affirmative. A recent Decima survey conducted for the Consumers Association of Canada indicated once again that the public does feel in need of more information on consumer topics.¹

Other studies show that consumers tend not to seek out or use the sources of information available to them. Consumer information handling strategies are discussed in the following section. However, the evidence suggests that to be an informed consumer probably implies an unreasonable state of information overload. This analysis is not new. Linder² arrived at the conclusion that consumers suffered information overload in 1970. In 1987 the situation is simply exacerbated by a more complex marketplace.

¹ A Study of Attitudes Towards the Consumer Environment in Canada. Decima Research, March 1987.

² The Married Leisure Class. Staffan B. Linder. Columbia University Press, 1970.

Implications for the 1990s

A recent study for the Ontario Ministry of Consumer and Commercial Relations¹⁰, projected a series of new areas of consumer demand for the 1990s and beyond, and some potential related problems. The core of the analysis was based on the premise of a growing elderly population, and on the increasing affluence of the baby boom generation as they move into their highest earning period.

Among the changes predicted were a build up of savings among baby boomers, a corresponding flood of money in search of investment opportunities and therefore a proliferation of investment services.

Among the elderly the study predicted growing demand for health related products and services and for services to counter isolation.

Generally, in view of a continued rise in crimes against property and particularly home break-ins, it anticipated growing demand for crime protection services and products.

The study also foresaw a growing need for services which will enable consumers to rationalise the volume of information available to them and suggested a growing market for information brokers. It predicted advances in the psychology of selling based on the use of the relatively recent technique of psycho-linguistics.

The study did not deal with the likely impact of free trade between Canada and the United States, which will incrementally, both lower consumer prices and result in a wider variety of products and services becoming available in Canada.

It seems likely that consumer affairs in the 1990s will continue to be low profile. Much of business will continue to compete for customers by innovating and attempting to provide a changing array of good quality products and services, with obvious benefits for the majority of consumers.

At the same time, the marketplace will continue to change and to throw up new problems at a consistent rate.

¹⁰ Report for Ontario Ministry of Consumer and Commercial Relations. Arthur D. Little of Canada - March 1987.

As a matter of statistical probability, individual consumers will remain at risk of problems stemming from human fallibility, error, overenthusiasm, dishonesty and from the unanticipated effects of innovation. Most vulnerable will be the elderly and those who lack the capacity to understand and respond to complex information.

The elderly will be particularly at risk because their numbers are growing and their needs for specialized health and support services will increase correspondingly. As readily available and often socially isolated customers they have apparently already become identified as a target for high pressure direct marketing techniques. In the second group, the functionally illiterate are an obvious case in point. Estimates of their numbers have risen since 1980 from around twelve percent of the adult population to in excess of twenty percent. In a marketplace reliant on the printed word, illiteracy of one fifth of the adult population represents a major disability to the individuals concerned and a significant impediment to market functioning.

II. Rationales For Government Intervention

Commonly accepted rationales for government intervention in consumer affairs are: the economic, market failure theory; the question of fairness or equity based on common law principles; and health and safety or the public health rationale. Government's role in public health regulation is a longstanding and relatively uncontroversial one. This section examines the other rationales and some policy implications.¹

Market Failure

The market failure rationale is based on the premise that, if all participants in the marketplace were perfectly informed and acted rationally in their own self-interests, unsatisfactory suppliers would lose custom and either go out of business or mend their ways. Society's economic resources would thereby be distributed to the optimum benefit of all concerned. Government it is argued, needs to step in to correct the informational and other shortcomings of less than perfect markets. Though its premise is widely divorced from everyday reality, the rationale is useful when considering the nature of factors which impede individuals in the pursuit of their own best interests in the marketplace.

The sources of market failure can be summarized as follows:

- Information has the properties of a public good. It is difficult for information providers to prevent the use of their products by non-paying customers. The tendency for individuals to free-ride on others' efforts will result in a shortage of information and therefore of informed consumers.
- The above argument has been used to justify government subsidy of information. However, its corollary is that the activities of suppliers can be disciplined to the benefit of the majority by relatively small numbers of well informed consumers.

¹ This section owes much to the work of Iain Ramsey - Rationales For Intervention in the Consumer Marketplace (U.K.) Office of Fair Trading. The paper formed part of the policy development exercise which led up to Britain's 1987 Consumer Protection Act.

- There may be hidden costs, as with carcinogenic properties of food or drugs, which do not become apparent until it is too late to link them to the product responsible.
- There are certain market structures wherein sellers are unconcerned about goodwill, for example where sales are likely to be non repeating (as with high-pressure door to door sales, or fly-by-night sellers), or where oligopolistic conditions produce products with similar defects.
- Information is not cost-free and consumers are involved in constant cost-benefit calculations as to the quantity of information-gathering justified by particular purchases. Presumably less important purchases are made on the basis of less complete information.
- Information processing costs, particularly where complex goods or services are concerned, can be prohibitively high. The amount of time and effort required to compare realistically, for example the competence of particular professionals, or the durability of sophisticated electronic products, will be beyond the resources of most individuals.
- by extension, information processing is likely to be routinely more difficult and therefore costly for some groups of consumers, (for example the illiterate or those with low incomes,) than for others.
- Individuals tend to make choices on the basis of bounded rather than strict rationality. That is, in the face of complex decisions, they tend to simplify the problem and reduce alternatives. A U.S. Federal Trade Commission study¹ suggested that individuals use more readily available and vivid information (e.g. point of purchase information), refer initially to previous experience (even considering a previously unsatisfactory brand), place too much weight on small or incidental samples of information (e.g. anecdotal information from friends) and perhaps most importantly ignore small probability events, such as long term harm from product

¹ Consumer Information Remedies. Federal Trade Commission, 1979.

accidents. The Hirshhorn Study² emphasized this last point in its exploration of Canadian hazardous products legislation.

- Finally the cost of forcing a supplier to remedy a problem may well be higher than the value of the product. The economic and psychological costs of obtaining redress through the courts, are for example commonly regarded as prohibitively high.

The market failure rationale suggests that regulation is an appropriate response where costs to consumers of information and redress are unreasonably high, or where consumers are put at serious risk for reasons of bounded rationality. The medical profession, for example, is regulated because the layman cannot reasonably be expected to evaluate a doctor's skills, and hazardous products are regulated in part because consumers are not good at evaluating low probability risks. Regulation short circuits the need for consumers to be perfectly informed.

The importance of this efficiency promoting aspect of regulation can be illustrated by analogy to traffic rules. Traffic flow is made possible by limiting drivers to predictable sets of behaviour (driving on the right, stopping at red lights, etc.). The rules obviate the absurd and impossible requirement for every driver on a given section of road to be perfectly informed in advance as to the precise intentions of every other. Effective enforcement of the regulations is required to assure drivers of a degree of safety, enabling them to function with confidence and thereby facilitating more efficient traffic flow.

This function of regulation is a formal extension of other commonly agreed limitations on human behaviour, which range from the basics of speaking common languages and using the same measurement systems, to conforming to complex product standards or codes of ethics.

It is clear that as the marketplace becomes more complex more rules will be required to facilitate its efficient operation. What is less clear, is who can best administer the rules, and at what point the efficiency gains

² Product Safety Regulation and the Hazardous Products Act. Ronald Hirshhorn. Economic Council of Canada, June 1981.

from the standardised behaviour and expectations which they create, are outweighed by losses in innovation and competition.

Equity/Fairness

One of the earlier arguments for government intervention based on the common law doctrine of inequality of bargaining power, suggested that consumers are at a disadvantage in the marketplace because their informational, monetary and organizational resources are generally smaller than those of suppliers. Expressed in these terms the equity rationale is not very different from that of market failure. In both cases, the costs of access to and processing of information, and of redress are key elements. In both cases too, government decisions about remedies, whether regulatory or informational, can reasonably be based on cost-benefit analyses.

The unequal resources argument does not, however, address a central dilemma implicit in the equity/fairness rationale. The problem is that the rationale puts regulators in the position of being arbiters of moral questions in a society which is far removed from moral consensus.

This is particularly the case in the product safety area and can be illustrated by the experience of the Consumer Product Safety Commission in the U.S. with all-terrain vehicles. The Commission has been negotiating with producers for a number of years to establish voluntary standards for these vehicles which continue to be involved in large numbers of child injuries and deaths. Since 1981 the Commission has been obliged by law to defer to voluntary industry standards under certain conditions, on the grounds that government imposed standards unnecessarily restrict innovation and competitiveness. Under severe public criticism for having delayed too long, the Commission is now apparently moving to impose regulation on all-terrain vehicle manufacturers, having failed to agree on an adequate voluntary standard.⁴ The first dilemma for government as the arbiter of equity in product safety matters, is that economic loss and jobs fall on one side of the equation and human life and injury on the other. Each delay, change of priorities, and decision as to whether and how to inform the public, also changes the equation.

⁴ The CPSC, Guiding or Hiding From Product Safety.
Consumer Federation of America, May 1987.

A second, related problem, is that questions rationally viewed by government in terms of fairness and equity, tend to be judged by the public on the basis of more fundamental moral precepts. Hence when public attention is focussed on a consumer problem by the media, issues are voiced in terms of offended justice rather than a search for equable solutions. The result as in the case of exploding pop bottles, is that relatively minor issues divert resources away from problems which rationally should be given much higher priority. Priorities give way to the political and social requirement that justice must be seen to be done.

By implication the fairness rationale should be extended to include the idea that government should not only promote marketplace fairness, but should do so visibly in the interests of long term public confidence in the marketplace and in government.

III. Overview of Consumer Protection in Canada

The array of consumer protection machinery in Canada, appears formidable. Broadly interpreted, elements of consumer protection are administered by eleven federal departments under more than 50 pieces of legislation. Provincial governments administer their own consumer laws, intervene directly in large numbers of disputes each year and run education and information programmes. Canadian business has increasingly invested in consumer affairs personnel to deal with customer complaints, sponsors Better Business Bureaux, and through them has recently begun to experiment with arbitration as a dispute settlement mechanism. The media provide consumer information, investigate high profile issues, and engage in dispute settlement through newspaper action lines. The Consumers' Association, and other more specialized non-profit groups, lobby business and government on consumer issues and provide detailed information and advice.

This section provides an overview of consumer protection in Canada, and recent developments and issues affecting its component parts. The section deals in turn with the legal framework, the role of provincial consumer protection ministries, consumer oriented business initiatives and lastly with consumer organizations. Issues affecting CCAC's role are dealt with separately in a later section of the paper.

A. Federal and Provincial Consumer Law: Summary and General Issues

The literature devoted to analysis of federal and provincial consumer laws and their interaction is vast, and a comprehensive review of the field is well beyond the scope of this paper. However, as a basis for developing general priorities, a very brief overview of the legislation and salient related issues is attempted below. The five areas of law described are based on an analytical framework developed by E.P. Belobaba in his work for the MacDonald Royal Commission. This section draws heavily on that work.¹

¹ The Development of Consumer Protection Regulation, 1945 to 84. E.P. Belobaba in Consumer Protection, Environmental Law and Corporate Power. Vol. 50. MacDonald Commission Research Studies.

Product Safety

The principal federal laws dealing with product safety are the Hazardous Products Act, Consumer Packaging and Labelling Act, Motor Vehicle Safety Act and Motor Vehicle Tire Safety Act, each enacted in the late 1960s, and the much earlier (1920) Food and Drugs Act. These Acts depend generally on the Criminal Power and on regulations promulgated by the responsible departments. The provinces have introduced local regulation assuring the quality of some products like upholstered furniture and have attempted to control quality of consumer services through licensing. They have also made efforts to improve the injury compensation system through tort law reform and the introduction of workers' compensation.

Federal product safety laws, and particularly the Hazardous Products Act, have been criticized for their lack of flexibility in the enforcement area due to dependence on the criminal power.² Meanwhile debate at the provincial level has questioned the adequacy of tort law reform as a means for securing just and consistent settlement of product injury cases and has raised the question of no fault insurance schemes as a rational supplement to, or replacement for existing arrangements.

Information and Advertising Regulation

Federal level regulation of consumer information and advertising occurs in longstanding weights and measures and trademark regulation, and more recently in the labelling and deceptive advertising provisions of the Hazardous Products Act, Food and Drugs Act, the Consumer Packaging and Labelling Act, the Motor Vehicle Safety Act, the National Trademark and True Labelling Act and the Competition Act.

Provincial level regulation has been more limited. The relevant law deals with the grading and labelling of natural products, truth in lending and cost of credit disclosure. In addition, a number of provinces deal with misleading advertising under trade practices legislation.

Both federal and provincial capacity to enforce regulation of the area has come under scrutiny. In the case of federal law, the limitation on flexible enforcement techni-

² The Administration of the Federal Hazardous Products Act. Shaul and Trebicko. Canadian Business Law Journal, Vol. 7, 1982-83.

ques again lies in the criminal power basis of the legislation. Debate in the area has also touched on the question of who advertising and information rules are intended to protect (the reasonable or the credulous consumer) and on the absence of research in the area of human information processing³ which would form the basis for more informed policy development. Part of the problem in this area is in arriving at a satisfactory definition of what is reasonable. If the "reasonable" consumer is for example, defined as the average consumer then policy development should be predicated on the actions of people who rarely read warranty contracts and whose information processing capacities are typically quite limited. A recent study by the U.S. Advertising Educational Foundation found that 74% of participants misunderstood at least a portion of the advertisements and articles they were asked to read. The average reader misunderstood 15% to 23% of advertising content, and 19% to 28% of editorial content.⁴

Transactional Fairness

The general question of fair trade practices has been essentially a provincial concern and B.C., Alberta, Manitoba, Ontario, P.E.I. and Newfoundland have enacted trade practices legislation. The laws were intended to supplement common law in the area, to clarify doctrines with regard to contracts and to allow for a range of flexible enforcement techniques including substitute actions, and administrative cease and desist and voluntary compliance procedures. However the laws are intended primarily for enforcement by the courts on the basis of complaints, and include non-exclusive lists of prohibited practices for purposes of judicial guidance. These laws are not harmonized across the provinces in which they exist.

A central concern in the area of transactional fairness is that posed by the standard form contract used in the majority of consumer transactions. Problems arising are those of readability of fine print, transactional behaviour which may deny the purchaser reasonable opportunity to comprehend the contract, unfairness and surprise in the content of the fine print, and inequality of bargaining power between the purchaser and seller. Saskatchewan and Quebec have attempted to deal with these problems through

³ E.P. Belobaba at note 12 above and L. Ransay at 9 above.

⁴ Advertising and Education Foundation, 1987 The Comprehension and Miscomprehension of Print Communication.

mandatory disclosure requirements, otherwise they fall under the jurisdiction of the common law doctrines of unconscionability and inequality of bargaining power. Judicial control available through common law, has been criticised on the grounds that case by case development of the law is not an effective way to police a rapidly changing marketplace, and that the unconscionability and inequality of bargaining power doctrines are loose and yield unpredictable results.

Product Quality and Consumer Warranties

Consumer warranties fall primarily under provincial jurisdiction. Most provinces have limited their intervention in this area to preventing retailers from excluding in warranty documents the implied common law conditions of merchantability and fitness for purpose. However Saskatchewan and New Brunswick have adopted more comprehensive legislation directed specifically at warranties.⁵ Quebec also provides more extensive regulation of warranties under its Consumer Protection Act.

The same issues of readability, transactional behaviour, surprise and inequality of bargaining power problematic with the standard form contract, apply to consumer warranties. There has also been debate as to the true nature of the warranty, whether as an assurance of product quality, or as a form of insurance which benefits both the supplier and the purchaser. This debate has been focussed recently by the failure of a number of companies offering extended warranties. The provinces have reacted by considering a requirement for such firms to register as insurance companies, thereby imposing on them more stringent conditions of financial security and business conduct.

Dispute Resolution and Redress

Legal mechanisms for consumer redress also fall again primarily in the provincial domain, and provinces have focussed in the main on the small claims court as a mechanism for dealing with consumers' difficulties in litigating disputes. These courts have been reformed to improve accessibility by extending hours, and improving staffing and consumer assistance facilities. However it is clear that there are strong psychological and financial disincentives

⁵ Consumer Product Warranties Act - Saskatchewan, and Consumer Product Warranty and Liability Act - New Brunswick.

which dissuade the average consumer from using small claims courts.

Individual attempts have been made to provide alternative dispute settlement mechanisms. Saskatchewan provides for mediation of disputes under its warranty law, and Ontario which has recently begun the experiment with the Ontario Motor Vehicle Arbitration Plan is also considering the creation of a consumer ombudsman. However the concept of informal dispute resolution mechanisms has been criticised on the grounds that consumer justice should not be seen as second class in nature.

Only Quebec has so far provided for effective class action suits. However, Ontario may soon make similar provisions if the recommendations of its recent legislative review are followed.

B. Provincial Government Ministries

Like CCAC, provincial consumer ministries face a reassessment of their services in the light of shrinking resources. Ministries in B.C. and Alberta have been among the hardest hit by resource constraints. The B.C. ministry has been split and its consumer function now forms part of the provinces Ministry of Labour, while the Alberta Ministry has cut staff by 40% in recent years and further cuts are expected in the near future. While other ministries have not suffered to the same extent and Ontario has received additional funds for its legislative review process, there is widespread concern that resources are not keeping pace with demand.⁶

Provincial strategies for dealing with tight resources, range from service cutbacks, to better targetting of inspection services, industry self regulation and occasionally innovative dispute settlement mechanisms.

B.C. eliminated funding in 1984, for the independent groups which ran its complaint handling service, and ministry staff now answer only those complaints directly related to the province's consumer legislation. (The perception in B.C., that consumer problems are becoming less of an issue, is not shared by ministries which have maintained their complaints handling capacity. A contact in one of the

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Information in this section derives from telephone interviews with provincial ministry contacts during the fall of 1987.

Atlantic provinces suggested that complaints are not only rising in number, but are becoming more difficult to resolve because consumers tend to resort to the Ministry only after other avenues have been eliminated). Alberta has attempted to focus its resources on vulnerable groups, and has moved to self regulation in the real estate industry. Both initiatives are relatively new and are not problem free. Other provinces have cut back on education and information initiatives.

Benefitting from its rapidly expanding economy, Ontario has been able to allocate considerable resources to a comprehensive review of its consumer protection law. Based on extensive consultation with business, consumer representatives and academics in the consumer law field, the review is scheduled for completion in December 1987.

Recognizing that Ontario's consumer legislation is both complex and in some instances outdated, the review has recommended sweeping reforms. In doing so it has attempted to depart from the traditional approach to consumer law reform, based on individual legislative solutions to specific consumer problems. Instead, those involved established a series of principles of marketplace fairness, as criteria within which to frame legislative reform. The four principles, which correspond closely to the analytical frameworks in Belobaba's review of consumer protection regulation undertaken for the McDonald Commission⁷, are as follows:

- information disclosure which is adequate for comparison and informed decision making, and is in accurate and understandable language;
- transactional fairness, based on a clear understanding of the deal by the consumer, reasonable time free from high pressure in which to make an informed decision, and reasonable expectations of consumer behaviour and knowledge;
- fair value, which includes elements of fitness for purpose and price;
- access to just remedies and redress based on: clear standards of acceptable marketplace behaviour for both business and consumers; protection of rights and reasonable expectations for all parties; prior attempts at dispute resolution by the involved parties; and timely interventions matched to the circumstances and the parties involved.

⁷ E.P. Belobaba at note 12 above.

C. Business Initiatives

Section I noted that many companies, especially larger and more established ones, have met the challenge of stiffening competition by increasing their efforts to ensure that they have satisfied customers. Their efforts have had a noticeable effect on product quality, but have not met with unqualified success.

Problems in the area appear to stem from questions of attitude and human motivation at all levels of organization, rather than technical expertise or corporate will. Consumer complaints departments for example have had difficulty in convincing company management that their function is something more than that of a safety valve providing dissatisfied customers with a mechanism for venting frustration.⁸ Consumer affairs professionals acknowledge that while this attitude is changing, much work remains to be done in the area. Quality assurance experts cite examples of companies where as many as 25% of the production work force are engaged in checking for and correcting mistakes made by others.⁹ A significant part of such experts' function is to devise means for improving motivation by increasing job satisfaction. Under their influence, North American automobile companies have begun to experiment with techniques pioneered in Sweden and Japan, whereby workers co-operate in small teams to produce complete cars.

At a more fundamental level, are questions of workplace ethics. These have been the subject of increasing public attention associated with, for example failure of Western financial institutions, and insider trading on Wall Street.¹⁰ In a recent survey of business students at Duke University 44% said they would engage in insider trading in their company's stock if given the opportunity to do so undetected.¹¹ These examples are cited, not as a means of highlighting shortcomings of North American business, but to illustrate the point that business' ability to deliver

⁸ Ian Ramsay at note 9 above.

⁹ Quality Means a Whole New Approach to Manufacturing.
Businessweek, June 8, 1987.

¹⁰ The Honeymoon With Big Business is on the Docks, Globe and Mail, 31/8/87.

¹¹ Corporate Ethics, Goodness is Catching Economist,
15/8/87.

customer satisfaction is not independent of wider questions of social value and motivation.

D. Consumer Organizations

Canada's relatively small number of consumer organizations collectively suffer from waning public attention and from related funding restrictions. Other than the Consumers Association the national level organizations fall into two groups: those which specialise in specific areas of consumer concern as with the Automobile Protection Association (APA), Transport 2000 or the Toy Testing Council; and those like the Public Interest Advocacy Centre and the National Anti-Poverty Organization which speak on consumer affairs as part of a broader mandate to serve the interests of disadvantaged groups. Of these by far the largest is the APA with a membership of 15,000.

The Consumers Association with about 150,000 members remains the main force in non-government consumer protection. During its forty year existence it has been the focus of citizen consumer activism, has played a part in much of the present structure of consumer legislation and can claim some credit for the creation both of Consumer and Corporate Affairs Canada and provincial government consumer ministries. Organised at both the provincial and federal level, the Association sees its roles as those of informing consumers and of lobbying government and business on their behalf. The organization's publicly visible work - product testing and publication of results in the monthly Canadian Consumer magazine and the Quebec Association magazine Protect Yourself, represents a relatively small proportion of its overall activity. This activity also includes research and analysis in a dozen or more policy areas at one time, monitoring of issues related to special needs groups and participation in tribunals, regulatory hearings and standards formulation committees. The organization's lobbying activity has been based on careful, responsible research and a consultative approach. Its style is reflected in the tone of June 87 issue of Canadian Consumer, celebrating CAC's fortieth anniversary. The relevant article emphasizes the essentially co-operative nature of efforts by business, government and the Association to build Canada's present consumer protection apparatus.

The CAC, like other consumer organizations in North America lost membership and consequently income in the early 1980s. Its funding problems have not been on the same scale as, for example, the Consumers Union in the U.S. which was \$5 million in debt in 1982. On the other hand it has not so far succeeded (as U.S. organizations have) in rebuilding its membership base. The number of volunteers

giving time to the organization is also declining. The organization's problems began during the recession when Canadians became preoccupied with the issue of maintaining their incomes. During the recession volunteer numbers and charitable donations generally, dropped across the country (charitable giving has only recovered in the last two years).

Why the Association's fortunes have not recovered is not clear, though a number of suggestions have been made. Some commentators point to general improvements in business attitudes to consumers. The president of the Association points to greater pressure on families' time resulting from greater participation by women in the workforce. Others have suggested that consumer issues cannot compete for public attention with the more fundamental economic and political concerns dominating media headlines, or that middle class consumers who form the organization's membership are more self reliant and need it less. Certainly consumer issues have become more complex. The Association's earliest successes were with issues like product visibility in bacon packaging, and sale of meat from sick animals. Presently it focuses on problems of the order of airline and communications deregulation, or technical standards writing. These issues are not only harder for the public to understand but require more research and greater expertise on the part of volunteers.

Each of the above factors probably plays a part in the Association's present problems. However they probably also add up to an oversimplified version of the truth. Numbers of consumer problems have not fallen, and consumer organizations in the U.S., which have slightly altered their appeal and undertaken membership drives, have recovered their fortunes. Staff at Consumers Union for example, estimate the organization is now close to \$10 million in the black. Moreover a survey conducted for CAC by Decima Research earlier in 1987 showed continued public approval for the organization and for its present role.¹²

Consumer organizations in Canada may be in trouble, but their importance to the public apparently persists.

¹² A Study of Attitudes Toward the Consumer Environment in Canada for the Consumers' Association of Canada. Decima Research - March 1987.

Summary and Issues

The Canadian consumer protection network is impressive in terms of the volume of regulation involved, and the variety of initiatives undertaken by government, business and the non-profit sector. However, it clearly is far from perfect and probably far from its point of optimal efficiency.

The processes of law making and enforcement are complicated by constitutional division of powers, which places different aspects of consumer protection in both federal and provincial hands and leaves areas of confusion and overlap. Constitutional limitations have restricted the effectiveness of federal regulation by basing it in criminal law, which for trade matters is cumbersome and inflexible.

Provincial consumer protection laws vary in their scope and content, so that consumers receive far from uniform levels of protection across the country. Provincial programs notably in the area of complaint handling and mediation now also vary widely, as do the attitudes of provincial governments to the importance of consumer protection. At one extreme, British Columbia judges consumer protection to be a matter of small present public concern, and one to which government need pay minimal attention. At the other extreme, Ontario is about to overhaul its consumer laws in the interests of better service to the public, has taken an aggressive stance on the issue of marketplace fairness, and is considering creating a new institute of consumer research and education and a provincial consumer ombudsman.

Nor is the approach of business to consumer affairs more uniform. Many companies have made successful efforts to increase quality of merchandise, complaint handling and redress procedures. Others continue to be the cause of customer dissatisfaction and economic loss. Members of the business community recognize the complexity of organizational, behavioural and attitudinal problems which must be overcome in order to improve the quality of products and service.

The consumer movement in Canada at the moment appears at a low ebb. Unlike its counterparts in other OECD countries it has not regained strength since the 1982 recession. However, the Consumers Association is now taking stock and studying the possibility of new approaches. If it is able to assess the interests of its constituency correctly, the evidence suggests that it can regain its former strength.

Government's Role

Several issues appear relevant to Consumer and Corporate Affairs Canada. First, in the light of provincial differences on the matter, there is a need for assessment of the general importance of government's role in promoting marketplace fairness in the late 1980s. B.C. appears to have taken the approach that consumer protection is no longer an importance issue for the public and that government's role can diminish accordingly. Interestingly, B.C. has cut back its complaints handling service severely, and is therefore receiving very restricted evidence on the levels and nature of consumer problems. Ontario on the other hand, has based its current reform initiative on the twin premises that preservation of consumer rights is intrinsically desirable and that confidence in the marketplace and in social institutions generally is interlinked with fair treatment of consumers in their daily dealings in the marketplace.

The latter approach would seem in the long term to be more realistic and more productive. Consumer protest in the sixties was in part a reaction to critical market failures resulting in poor product quality, safety and consumer service. Since the 60s Canada, like other OECD countries, has created an infrastructure of measures for maintaining marketplace fairness and safety. Public attention to consumer protection has diminished, at least in part, because that infrastructure exists. The challenge for the eighties is to make the infrastructure work better to cope with increasing marketplace complexity. To begin to dismantle it seems likely to invite a further cycle of market failure-based problems and protest.

Consensus on Fairness

A second and far from straightforward issue is that of business and consumer attitudes to fairness. Not surprisingly opinions within the business community vary as to both the nature and importance of marketplace fairness. For example, consumers clearly regard a measure of quality as a fair return for the purchase price of a product. A cursory look at business' attempts to improve product quality, shows that such efforts depend on improving the attitudes of all employees, both toward the enterprise they work for and to their individual functions within it. The example illustrates the point that marketplace fairness is not created by "business" or "consumers", but by individuals with roles in both areas. The subject of individual motivation to behave fairly is obviously well beyond the scope of this paper. However, two factors would seem fundamental to any attempt to improve general levels of

fairness. First, fair behaviour on the part of individuals will to an extent be dependent on their perception of how fairly the marketplace is likely to deal with them. Fair or unfair behaviour is likely to be reciprocal and cumulative. Secondly, there must be a clearly articulated standard against which fairness in any transaction can be judged. In short, there must be clear expectations as to what is fair, a general expectation that they will be adhered to and visible justice in the event that they are not. These are obviously not sufficient conditions for maintaining marketplace fairness, but they would appear to be necessary ones. Without them, individuals' expectations of fair treatment are likely to be eroded and their own behaviour is likely to deteriorate.

National Consistency

A third issue revolves around the patchwork nature of Canadian consumer protection, whose laws, degrees of enforcement and consumer services vary from province to province. The situation is in large part the legacy of constitutional arrangements put in place a century ago and at odds with Canada's present status as a trading nation. The Labatt Lite issue, which resulted in amendments to the federal Food and Drugs Act regulations, followed by actions on the part of each province to create individual and parallel regulations, illustrates the unsatisfactory nature of the present situation. Achievement of more consistent and national trade regulation would appear to be an important long term goal in the interests of both consumers and of Canada's international trading status.

Flexible Remedies

A further issue is that of the limited flexibility of mechanisms available to the Department for enforcement of laws based in the criminal head of power. Clearly there is a need to explore options for more flexible civil and administrative remedies.

Consumer Organizations

Finally the question arises as to the nature of the Department's future relations with the non-profit consumer organizations. The public sees a continued need for such organizations providing disinterested information and advice on products and services, and advocating on consumer issues. Experience in the U.S. and Britain suggest that the Department could profitably encourage consumer organizations to gear their activities to the reality of leaner times, to consider the requirements of special needs groups, and where appropriate to act as a channel for product safety information.

IV. Developments In Other OECD Countries

Consumer protection regimes in the OECD countries have tended to conform the same pattern of development: growth in the late sixties and early seventies, stagnation in the mid seventies and questioning and revision in the 1980s. To provide perspective on the Canadian experience this section reviews the adaptations which have been made in three OECD countries: the United States as our major trading partner, Britain because of its related legal tradition, and Sweden which has developed one of the more comprehensive consumer protection regimes.

The United States

The direction of government consumer protection in the United States began to change in the late 1970s. Partly under the impact of an increasingly organized business lobby, public opinion began to regard initiatives by the federal consumer protection agencies as overprotective and as unnecessary interference in the operation of the marketplace. The signal for this change came in 1979 with the accusation by the Washington Post that the Federal Trade Commission had become the "national nanny" over its attempts to regulate advertising aimed at children. Since then federal consumer agencies have cut their budgets and staff by between 30% and 40% and have shifted priorities and approaches radically.

Established in 1972 the Consumer Product Safety Commission has a statutory mandate to protect Americans against unreasonable risks of product related injury, assist consumers in evaluating the comparative safety of products, develop safety standards, and promote research into causes and prevention of product related death and injury. The Commission has a measure of independence from political influence, since it is not under the control of the executive branch.

Since 1981, the Commission has been obliged by law to defer to voluntary industry standards where these are a viable option, rather than to establish and impose its own. The agency has come under growing criticism from the consumer lobby, on the grounds that it is deferring too much to the needs of industry and is failing in its function of adequately protecting American consumers.¹ The Commission has recently sought new means for increasing compliance

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See note 4 in Section II above.

levels and in the last year adopted the technique of targetting specific business sectors for intensive inspections. The technique was first applied to imported toys at a series of ports of entry. It apparently uncovered more violations in the first days of operation at one port than had been found in total by the Commission during the previous year.

The Bureau of Consumer Protection at the Federal Trade Commission is responsible for combatting unfair or deceptive trade practices, in particular relating to false or misleading information. In 1980 Congress assumed the right to veto proposed FTC rules and required it to provide detailed cost benefit analyses for all new rules. Since then the Commission has moved away from promulgating industry-wide trade rules toward more case investigations. At the same time it has reduced its attention to misleading advertising and focussed on problems of outright consumer fraud.

The U.S. Office of Consumer Affairs is responsible for co-ordination of government consumer programs and promotion of the consumer interest in government and with business. The Office has adapted to reduced resources by choosing carefully the issues which it addresses and maintaining strict priorities in relation to them. Issues are selected for action both on the grounds of importance to consumers and in relation to the potential for successful action. The Office maintains a relatively high public profile and like the two regulatory commissions has a quasi-independent status.

All three of these agencies are mandated to provide public information and education and have devised imaginative techniques for putting across their messages. Their education material is aimed at business as well as consumers, is carefully targetted on the groups it is intended to reach and is continuously evaluated in terms of public demand for its use. The agencies frequently use community organizations to distribute the material, whose publication costs are also often borne by business. The agencies have also begun to use television for information and education purposes.

Non-government consumer organizations in the U.S. are not only more numerous than those in Canada, but maintain a higher profile in the media and a more confrontational approach with government. While suffering membership loss and financial problems in the early eighties the organizations are now regaining strength. Consumer's Union attribute their recent success to having adapted their monthly magazine Consumer Reports to deal with more basic problems and issues appropriate to lean economic times. Other organizations have made similar efforts to adapt their

approaches to the changing interests of the public. American public interest in consumer affairs has apparently not declined, merely shifted its focus.

Britain

Unlike Canada or the U.S. where legislative activity in the consumer protection area has slowed since the mid seventies, Britain has maintained a fairly full legislative agenda in recent years. The latest addition to British consumer law is the 1987 Consumer Protection Act, which consolidates a number of previous pieces of legislation and moves towards the concept of imposing a general duty to trade fairly.

British interest in the concept stems from awareness that laws individually targetted against specific undesirable trade practices, are quickly outflanked by the inventiveness of the marketplace.

In the Consumer Protection Act, the concept is applied to the area of product safety. Previous British legislation in the product safety area adopted a similar approach to the Canadian Hazardous Products Act in listing specific products requiring regulation. The new Act imposes a general safety requirement on marketed goods and enables an injured party to obtain redress, if necessary from the supplier of the product, rather than simply the producer. The Act in these respects falls in line with European Community Policy on product safety regulation.

While the Consumer Protection Act does not fully embody the concept of a general duty to trade fairly, the matter has received much attention from the U.K. Office of Fair Trading, which published a discussion paper on the topic in 1986.² The paper suggested that a new general duty relating to consumer transactions should meet the following criteria:

- it should have the objective of raising trading standards generally
- it should provide for cheaper more accessible consumer redress
- it should facilitate a rolling back of criminal law where appropriate
- it should minimize business compliance costs

² A General Duty to Trade Fairly. Office Fair Trading, 1986, HMSO.

- it should provide a range of sanctions
- it should facilitate quick enforcement
- there should be certainty as to the definition of fair practice
- it should be flexible enough to deal with new trade practices.

Among the functions of the Office of Fair Trading is that of encouraging business to improve its trade practices. The 1973 Fair Trading Act imposes a duty on the Director General of Fair Trading to encourage business associations to develop and disseminate codes of practice to their members. The Office has set a series of criteria which must be met in order for such codes to receive its endorsement. These include:

- avoidance of restrictions on competition
- clear statement of consumers' rights under law
- provision of a conciliation service in the event of disputes
- provision for independent arbitration in the event the conciliation service proves unsatisfactory.

The arbitration scheme is usually provided through the offices of the U.K. Chartered Institute of Arbitrators. The codes of practice are voluntary measures without statutory backing.

In Britain as in Canada, non government consumer protection is dominated by a single large organization - the Consumers Association and its affiliate the Consumer Research Foundation. The organization has a healthy membership, rising revenues and affiliations with European and other international consumer bodies. One interesting aspect of its operation is that it acts as a clearing house for information on product hazards, which it collects from local authorities' trading standards offices, its own members and through its international contacts. Hazard warnings are published in its monthly magazine "Which".

Sweden

Government consumer affairs functions in Sweden are administered by the National Board For Consumer Policies, whose Director General is also the Consumer Ombudsman. The Board's functions are to: provide consumer information; administer consumer law; "ensure that goods, services marketing methods and contract terms are adapted to consumers' needs"; and improve distribution, consumer education and the activities of local consumer organizations.

The Consumer Ombudsman employs a hierarchy of measures to deal with trade practices or goods and services deemed

undesirable. At the first level negotiated settlement is attempted. Thereafter the Ombudsman's office has the power to issue an administrative injunction against the sale of a product or service, or the use of a particular trade practice. Failure to comply with an injunction incurs an automatic penalty. If a firm accepts an injunction this acquires the same legal force as a decision by the next level in the hierarchy - the market court. If a firm does not accept an injunction or the problem involves a point of principle the Ombudsman takes the matter to a market court, against whose decisions there is no provision for appeal. Failure of a company to comply with a market court ruling brings the matter before the criminal courts.

Sharing the same offices as the Board for Consumer Policies but operating independently is a Public Complaints Board which mediates disputes between buyers and sellers. Its rulings are binding with no provisions for appeal.

The activities of these organizations are backed by local and regional consumer guidance authorities which provide advice and information. Sweden does not possess a significant organized consumer movement in the same sense as other OECD countries. Non government consumer activity tends instead to be centred on the country's co-operative movement.

In the last year a parliamentary commission undertook a major review of the country's consumer policy. Its major recommendations suggest that Sweden's comprehensive and administratively flexible framework of consumer protection measures is under strain in the face of marketplace complexity. These recommendations include the following:

- that means be found to strengthen the capacity of families for consumer self reliance through improved information and education
- that school teachers be given better consumer related training
- that more responsibility be placed on business in the consumer protection area, in particular in relation to provision of consumer information
- that efforts be made to strengthen attention to the consumer interest in the regulated and public sectors
- that more attention be paid to the need for research into the nature and causes of consumer problems and that more durable financing be found for this function.

In each of the three countries, government is attempting to come to terms with the complexity of the marketplace fairness issue. In each country there is a concern to facilitate a greater contribution to fairness by

business and consumers themselves. U.S. agencies have devoted considerable imagination and resources to consumer and business education. In Britain the focus has been on creating a more flexible legal framework and on encouraging business groups to generate their own codes of practice. In Sweden interest appears at this stage to be in the areas of information, education and better understanding of the nature of consumer problems.

V. Consumer Policy Issues for CCAC

This section attempts to clarify the issues surrounding four major interrelated areas of concern for the Department's consumer affairs function:

the requirement to deal with a changing and increasingly complex marketplace with restricted resources;

the requirement to comply with the current government priority of minimal intervention in the marketplace, consistent with the public interest;

the objective of promoting marketplace safety;

the concern to promote fairness in the marketplace;

Resource Restrictions

The full implications of the fundamental problem of unlimited demand and limited resources have been brought home to consumer agencies in all OECD countries in the last decade. This has occurred partly because economic hard times eliminated the option of throwing money at problems, and partly because in the process of attempting to solve consumer problems, governments and others have come to appreciate the full extent of their complexity. The rhetoric of the sixties was concerned with justice and consumer rights and was based on the notion that consumers were the victims of uncaring businesses. The perspective of the eighties is that marketplace fairness depends on complex interaction among a great number of social, economic and political forces.

The resources problem can be viewed from two perspectives. From a broad political viewpoint, government is faced with the need for spending restraint coupled with a public expectation that it maintain its consumer protection function. From the point of view of managers in the Consumer Bureau, resource problems strain their capacity to perform mandated functions and to maintain quality of service.

The theoretical rationales for government intervention discussed earlier provide some insight into the broader aspect of the problem. These rationales suggest that regulation eliminates an often impractical requirement for market knowledge, and provides consumers with confidence in the fairness and safety of the marketplace. In doing so it facilitates and improves the efficiency of a complex marketplace. Intervention of this kind is in fact a cost of marketplace complexity, which is not reflected in market

prices and is therefore not subject to the normal marketplace supply and demand discipline. A price has to be paid for the growing complexity which lies behind high standards of living and economic growth. The price can be paid in terms of greater consumer vigilance, greater attention to consumers' needs and expectations on the part of business, more consumer protection intervention, or a larger proportion of individual misfortune for consumers. If too much of the price is paid in the last of these ways, then confidence in the marketplace is eroded and other social costs rise.

General Solutions

Logically two general approaches to the problem of resource constraints present themselves. First it makes sense that the costs of consumer protection become more fully reflected in the price of goods and services with which they are associated, and that they be transferred away from government. Secondly it makes sense that consumers and business take on more of the collective responsibility for this aspect of a fair, safe and efficient marketplace.

Predictably, logic and practicality do not coincide. Apart from the difficulty of attitude barriers, there are strong incentives for business to reduce costs rather than take on more. Meanwhile consumers' resources of time and income are tight and there are clear practical limits to the ability of the most diligent consumer to protect himself against hidden costs and dangers, or to obtain satisfactory redress.

Nevertheless there are indications that the two approaches are worth pursuing. There has been clear a trend towards more responsiveness on the part of business and there is evidence that many consumers have become more sophisticated, more demanding and more aware of their rights. It seems reasonable to expect to build on these trends. Moreover as with the Ontario travel industry insurance fund, there are already examples of consumer protection costs being built into market prices. A number of initiatives appear likely to be fruitful. As a precondition of further action, it would seem important to clarify the limits of appropriate and realistic government intervention in the marketplace, and to make a correspondingly clear statement as to the rights and general responsibilities of the other marketplace actors, consumers and business.

A further important step would be to work towards providing consumers with the tools for greater self reliance. Among the more important tools are information and education. Plain language laws (or interpretations of existing law) would provide consumers with better access to

and understanding of the legislation designed to protect them. Carefully designed and targetted information and education initiatives would help consumers deal with the severe overload of information which they currently suffer. These initiatives could be conducted in co-operation with the provinces, business and organizations serving the needs of special interest groups like senior citizens, the illiterate and so on.

In addition consumers could be provided with improved redress mechanisms in the form of class actions before the courts, or quicker and less costly administrative dispute settlement mechanisms. Ontario's recent legislative review has recommended both approaches in that province.

The Department could continue to build on the efforts of businesses which have shown a positive interest in consumer affairs by engaging them in discussion leading to the definition of clear rules of marketplace fairness. It could provide concrete public recognition of business efforts in the consumer protection field. It could also explore the potential of encouraging business associations to develop their own codes of fair practice based on the British Office of Fair Trading model.

Departmental Solutions

From a Departmental management perspective, resource constraint presents three options: greater efficiency, re-ordering of priorities and doing less. CCAC's resources have been shrinking for some years and all three options have been used. In particular the Department has gone to some lengths to make more efficient use of resources in the inspection area; priorities have shifted towards voluntary regulation and information and education as more effective compliance tools; the Department has passed the bulk of its complaint handling capacity to the provinces; and the real value of the grants and contributions program shrinks each year at the inflation rate.

Efficiency

The question of internal efficiency appears not to be a current policy concern, in that it receives ongoing attention from managers, periodic assessment through the established audit and evaluation processes, and already has been the subject of close scrutiny in the light of longstanding resource constraints.

However there are opportunities for increasing the efficiency of the general Canadian consumer affairs machinery, of which the Department forms a part. This is most notably the case in the area of federal provincial

co-operation. The resource problem is common to CCAC and the provincial ministries, and there are areas in which resources could profitably be shared. Each jurisdiction presently produces its own array of consumer information. Much of this is overlapping and might be unified. Moreover, the Province of Ontario is planning to launch an institute of Consumer Education and Research, which is clearly an initiative with national implications in which all consumer ministries including CCAC could usefully share. The Canadian constitution has divided federal and provincial responsibilities for consumer matters along lines which are far from rational in a modern economy. Flexibility and co-operation are vital in dealing with this problem in the interest of promoting a fair, efficient and internationally competitive marketplace.

Priorities

The option of doing less appears to be a limited one in view of concerns about compliance and the extent of previous retrenchment. However there would appear to be room for manoeuver in the area of priorities.

This is most evident in the product safety area. The Product Safety Branch has been concerned for some time that its resources are repeatedly diverted away from high priority problems to relatively minor issues which have become the focus of attention for the media or aggressive interest groups. The most recent example is that of exploding pop bottles, which are the cause of comparatively insignificant numbers of injuries annually. However the problem is not confined to the product safety area. Another convenient example is that of nutritional labelling for which the public has very little concern,¹ but which has received attention because of combined lobbying on the part of medical interests and segments of the food industry. The medical interests have a public health concern, the industry is concerned to obtain more latitude for making nutritional claims about its products.

The solution would appear to lie in setting and adhering to priorities based on clearly demonstrable numerical evidence of public need and or demand; (this technique has been used successfully in the United States by the Consumer

1

Nutrition Labelling and Consumer Behaviour: A Review of the Evidence, John P. Liefeld, October 1983. Prepared for the Department of Health and Welfare.

Product Safety Commission²) and in educating the public as to the problems posed by resource constraints. Obtaining clear evidence implies upgrading problem identification techniques particularly in the product safety area. The CAIRE system was established as a pilot project. It does not yield sufficiently detailed or statistically accurate information for informed priority setting. One official at the U.S. Consumer Product Safety Commission described the information it yields as "anecdotal".

Minimal Intervention

The Department has in the past taken considerable pains to minimize the impact of its regulatory initiatives on the marketplace. Extensions or changes to the Department's regulatory framework have been based on extensive consultation with affected groups. In recent years, many of the standards developed under the auspices of departmental programs have been voluntary measures arrived at with the active co-operation of the relevant industry associations. The Nielsen Task Force questioned two areas of consumer operation - marketing practices and product safety. Both areas were subsequently found to be operating satisfactorily, though some improvements in co-ordination mechanisms were recommended among the various federal programs regulating hazardous products. Moreover, recent studies conducted by the Department's Evaluation Branch in the Consumer Products area, show broad industry satisfaction both with the Department's regulatory regime and with levels of co-operation and consultation achieved by CCAC officials.³

The Hirschorn study on the administration of the Hazardous Products Act found its implementation to have been cost effective.

While industry groups express desires for individual technical improvements, the evidence is strong that the regulatory burden imposed by implementation of CCAC consumer legislation is within acceptable limits. The laws are in any case framework legislation, precisely of the type which

² The Administration of the Federal Hazardous Products Act, J.C. Shail, C.M.S. Trebilcock, Canadian Business Law Journal Vol. 7 8297.

³ These general conclusions were reached as a result of the six studies making up the Departments Evaluation of the Traded Goods Program.

lay the ground rules for marketplace operation and conform to the definition of efficiency enhancing regulations discussed in Section II above.

The question arises as to whether, when future need for regulation occurs, the Department should seek to facilitate industry self-regulation. The answer appears to lie in the nature and circumstances of the regulation required. The Department has already moved towards self regulation in the advertising pre-clearance area, so that the Advertising Foundation will in future be responsible for adjudication fairness in comparative advertising claims. However, the record of self-regulation in other jurisdictions has not always been satisfactory. The Province of Alberta, for example, is far from satisfied by self-regulation arrangements in its real-estate sector. By implication, the question of self-regulation should be approached carefully on a case by case basis, with adequate provisions for evaluation and review.

Promotion of Safety.

The safety concern is worth special attention, partly because the government has made promotion of health and safety one of its priorities, partly because the area is one in which consumer concern is highest, and partly because it is the area in which the Consumer Bureau's decision making has the potential for the most dramatic impact on consumers lives.

The problems with the CAIRE system and the difficulty of arriving at, and sticking with priorities have been discussed above. The importance of these problems is worth re-emphasizing. Resources are tight. CCAC should be sure that it is using them to save the most lives and prevent the most injuries.

The figures produced by CAIRE suggest that the largest numbers of product related accidents result from interaction of product characteristics and misuse or poorly informed use. On the CAIRE scale of dangerous products bicycles rank highest, but baby walkers, strollers and cribs, cause more accidents than chainsaws, while high chairs rank at the same level. There is a need to understand how accidents related to these child-care products happen in order to facilitate public information and education. While these activities may be beyond the resources of the Product Safety Branch, they appear likely and important areas for co-operation with industry and the health care profession.

In 1986, a couple whose child died in a crib accident attempted to sue the Department for failure to regulate and to provide adequate information on the relevant hazard. The

incident suggests a number of problems. First, it underlines the need to clarify for the public the nature of the protection which government is able to provide in the marketplace. Secondly, it underlines the importance of carefully targetted product hazard information. The Product Safety Branch has clearly been careful and creative in routing its information brochure on products hazardous to children through community institutions most likely to reach parents. However, the effectiveness of routine press releases notifying consumers of newly identified hazards appears questionable and a likely area for further study and evaluation. Thirdly, the incident calls into question the length of time required to create new regulations under the Hazardous Products Act. The problem with crib mattress supports was known to the Department for many years before the relevant regulation was amended.

Finally, the question of product liability seems worth addressing. The Department commissioned a study on the question in 1983¹ which suggested the need for major reform, on the grounds that the present system provided haphazard justice. While the problem does not fall strictly within the Department's mandate, its relationship to the health and safety issue makes it strong candidate as an area for co-operation with the provinces.

Marketplace Fairness

Section II of this paper suggested the difficulty of government's role as arbiter of marketplace fairness in a society lacking clear consensus on many moral issues. The role of government in promoting fairness is nevertheless an important one. A sense of assurance that one stands a reasonable chance of getting a fair deal would seem to be a necessary precondition of doing business. It has also been suggested that the cynicism which results from the cumulative effects of many small injustices, is likely to have a negative effect not just on marketplace functions but on other social institutions. Nader expresses the perspective as follows. "The reason for an interest in the little injustices is (that) people care about them. Little injustices are the greater part of everyday living in a consumption society, and of course attitudes towards the law are formed by their encounters with the law or by the absence of encounters when the need arises. If there is no access for

¹ Products Liability and Personal Injury Compensation in Canada: Towards Integration and Rationalization. E.P. Belobaba, 1983.

those things that matter, then the law becomes irrelevant to its citizens and something else, alternatives to the law become all they have".⁵

Given CCAC's major goal of promoting fairness, a necessary starting point will be to define precisely what the Department regards as fair behaviour on the part of the marketplace actors. The approach has been adopted to some extent in Britain and very recently by the province of Ontario. The elements of marketplace fairness enunciated by Ontario appear in Section III above. A clear statement by CCAC of principles of marketplace fairness will: reduce the scope of the moral consensus problem; provide a standard against which consumers and business can judge their own behaviour and expect to be judged; clarify expectations; and provide identifiable goals which marketplace actors can work towards.

This paper has already touched on progress made by segments of Canadian business in the area of customer satisfaction and fair trading, and on the continued rise in consumer dissatisfaction with less scrupulous or well managed business. The enforcement of Canadian consumer regulation in general has come under criticism, and the Department is concerned about its own compliance programs. Since CCAC is already undertaking a separate study of its compliance strategies, the issue need not be dealt with in detail here. Section III above dealt with the constitutional straight-jacket which places CCAC legislation under the criminal head of power and the consequent limitations on the use of flexible enforcement mechanisms. As a step towards improving the Department's compliance capacity it would seem essential to legitimise the use of flexible remedies based on the trade and commerce power.

Finally, the paper touched in Section II on the need in promoting fairness, to be seen to be fair. The Department has in the past maintained a relatively low profile on two grounds. First, its consumer legislation is the kind which provides a framework for marketplace fairness and is therefore relatively unglamorous to public eyes. Secondly, the bulk of its regulatory work is best done through consultation, which is most effectively conducted away from the glare of publicity.

⁵ Belobaba, p. 1, quoting Nader. See Note 1 to Section III above.

These reasons clearly remain valid. However, under present circumstances it would seem important to modify past practice for two reasons.

First, resource constraints require that the Department now set and stick more firmly to priorities in the face of interest group pressure. Moreover, it makes sense for the Department to publicize its conception both of what is fair in terms of marketplace behaviour and what are the realistic consumer protection responsibilities of government and the other marketplace actors. For the purposes of both initiatives, it will be useful if CCAC and the Minister have accumulated public support in advance through promotion of an understanding of the Department's contribution to Canadian society.

Secondly, consumer confidence in business, and in the fairness of the marketplace, has been shaken by recent developments. It makes sense for CCAC as the national consumer department to work towards restoring and maintaining this confidence.

Principles Underlying Policy Change

Finally, it seems important to stress the basic principles which should underlie effective policy development. These principles are neither new nor dramatic. They derive partly from CCAC's accumulated experience in the consumer affairs field and partly from the issues and approaches outlined above.

The Department has for the most part established a constructive working relationship with business, with other parts of government and with consumer advocates. The relationship has been built on a foundation of careful consultation in effort to balance the interests of all concerned. Policy development should continue to be based on a foundation of constructive consultation.

This paper has stressed the growing complexity of the marketplace, and the fundamental complexity of the issue of marketplace fairness. In view of this complexity, responsible policy development should be built on the premise of gradual orderly change, whose effects should be made the subject of rigorous scientific impact assessment.

The fact of tight resources among all consumer affairs agencies and the problem of the constitutional division of federal and provincial powers highlight the need for governments, business and consumer organizations to seek out co-operative solutions to current problems. Whenever possible, policy development should therefore be directed towards co-operative initiatives.

VI. Consumer Policy Framework - First Draft

Section V identified a series of consumer policy issues for CCAC related to changing marketplace conditions, limited departmental resources, current government priorities and Consumer Bureau objectives. The major issues are summarized below together with possible approaches to their resolution and a series of principles on which such approaches should be based. It is suggested that these approaches form the policy priorities for the Department's consumer function. Issues, priorities and principles are listed for discussion, within CCAC. Following such discussion, a revised version of the list will form the Department's consumer policy framework.

Issues and Priorities

Restricted Resources and Increasing Marketplace Complexity

While government resources are limited, the public expects consumer protection to keep pace with the growing complexity of the marketplace. Since consumer protection measures are one of the costs of marketplace complexity, it makes sense that these costs be reflected in the market price of goods and services rather than in taxation.

1. The Department should therefore explore means to facilitate the transfer of costs for consumer protection into the marketplace.

The Department must optimize the use of its limited resources in the interests of achieving marketplace fairness. To this end CCAC should:

2. Ensure that its policy priorities are based on careful numerical assessment of consumer need and interest.
3. Where possible use its resources to build on existing trends toward greater consumer self reliance.
4. Make efforts in co-operation with the provinces, business and consumer organizations, to furnish consumers with the tools for self reliance in the form of information, education and effective dispute settlement and redress mechanisms.

Minimal Regulatory Intervention Consistent With Public Interest

The evidence suggests that the Department's regulatory regime already complies well with this government priority.

5. In future efforts to facilitate self regulation by industry groups, the Department should proceed on a

case by case basis with adequate provision for evaluation and review.

6. Work with committed areas of the business community to build on their current efforts in the consumer protection area, and provide public credit for those efforts.

Marketplace Fairness

The Department faces the difficulty of promoting fairness in a society lacking clearly defined moral consensus. Under the circumstances the CCAC should:

7. Establish in consultation with other marketplace actors a clear definition of fair marketplace behaviour, as a standard against which trading practices may be judged, as a guideline for shaping future consumer regulation, and as a step beyond inefficient attempts to regulate individual undesirable trade practices.
8. Focus on the requirement for enforcement of those aspects of its regulatory regime concerned with marketplace fairness.
9. Promote marketplace fairness publicly in the interests of raising and maintaining public confidence.

Marketplace Safety

Promotion of safety is a current government priority and one of the most visibly important aspects of the Department's consumer mandate. Priority should therefore be given to ensuring the optimum use of CCAC's resources in this field and it is important that:

10. Priorities in the product safety area be set on the basis of precise and detailed data on the causes of product related injury in Canada.
11. The Department's intervention to ensure the safety of Canadians be both timely, flexible and authoritative.
12. Information and education related to product hazards be carefully designed and precisely targetted for maximum impact on the social groups at risk. Information and educational initiatives should be pursued in co-operation with other marketplace actors in order to maximise their impact and minimise demands on CCAC and other agencies' resources.

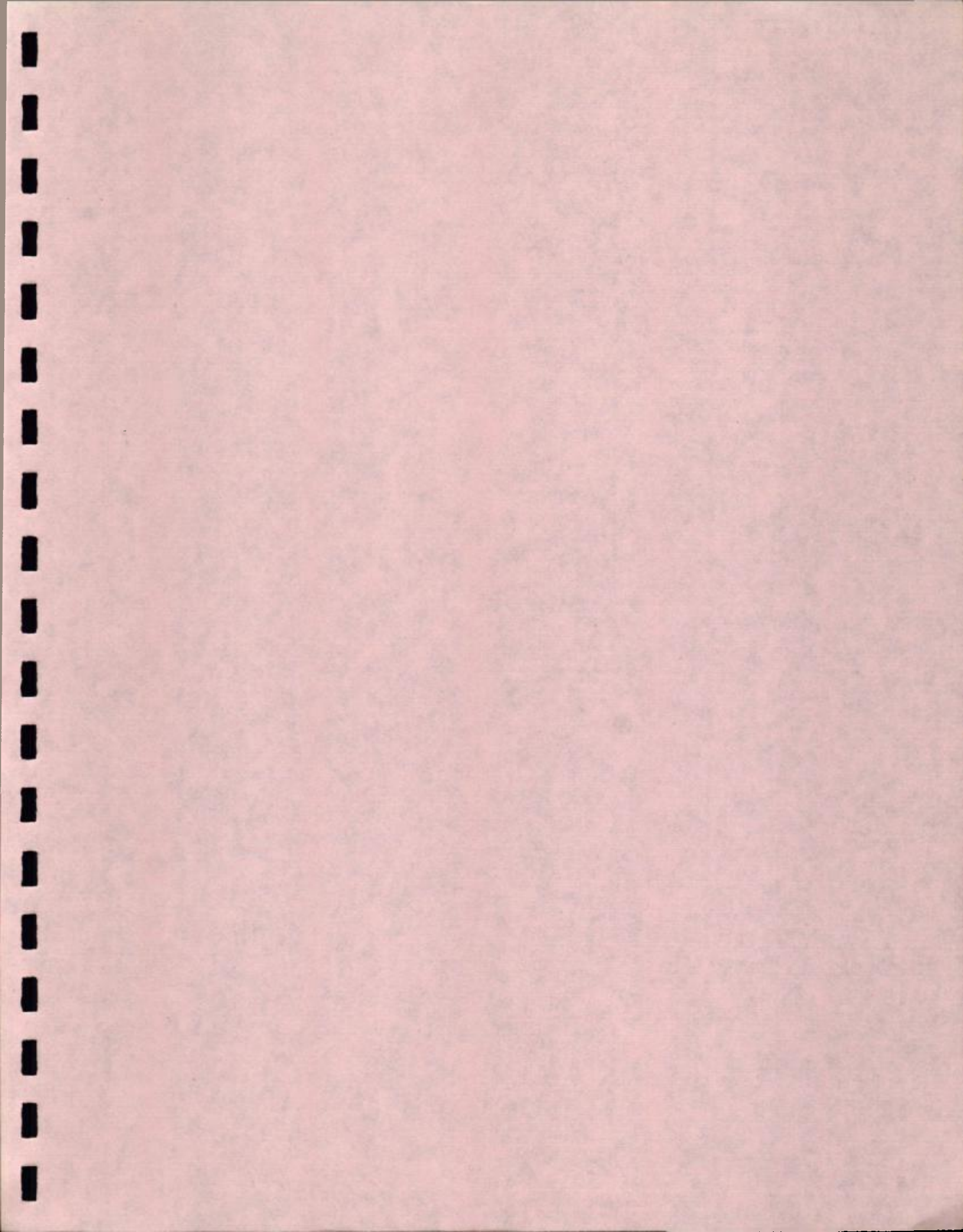
Principles

The consumer affairs functions of CCAC are in the main concerned with maintenance of framework legislation which promotes the efficient and orderly operation of the marketplace. These functions form part of the low profile and unglamorous, but none the less important infrastructure of a complex society. Recognizing their importance to the fair and orderly functioning of Canadian society the Department's consumer policy priorities should be implemented on the basis of the following principles.

The principle of constructive consultation and co-operation, contributing to the building of consensus on the concept of marketplace fairness.

The principle of economy in the use of resources, based on rigorous assessment of consumer needs, as the foundation for marketplace intervention.

The principle of gradual, orderly and carefully implemented change, accompanied by sound scientific impact assessment.





MEMORANDUM

NOTE DE SERVICE

From [unclear]

TO
A

Moya Greene
Director
International and Intergovernmental Affairs

FROM
DE

Director
Consumer Services Branch

SUBJECT
OBJET

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/NOTRE RÉFÉRENCE
YOUR FILE/VOTRE RÉFÉRENCE
DATE October 22, 1986

Further to our telephone conversation of yesterday morning, I am attaching copies of two documents which should help stimulate our initial thinking on the development of a long-term consumer affairs strategy. The first is a "Statement of Proposed Work" intended to lay the foundation for a "normative theory" for government activity in consumer affairs. The second is the paper that we are proposing be used as the basis for discussion at the Minister's Policy Forum on Consumer Issues.

By the term "normative theory", we mean a framework, or set of norms or standards, which would establish (admittedly in a broad and general way) why, when, and how the government should take action in consumer affairs. If we had such a theory, our long-term planning would be much more focused and direct. (At the present time, it seems that we can easily identify developing marketplace phenomena, such as telemarketing, but we cannot so easily identify marketplace issues, because we do not really know what we are looking for. In other words, we are hard-pressed to determine the consumer implications of telemarketing and the appropriate government response to them, because we have no real answers to the "why", "when", and "how" questions.)

Although the Department has been in existence for almost 20 years, most of its activities have been reactive. To some extent, that ad hoc approach was inevitable, since the Department was born at a time when a good many simple and obvious consumer issues existed and needed to be addressed. Consumer issues will continue to exist, however, and I would suggest that such influences as technological advance, the accelerating speed of market maturation, and international trade will result in consumer issues that are far more subtle and complex than in the past. In such an environment, the Department cannot likely remain as relevant as it should if it relies primarily on such cumbersome approaches as reactions to lobbying to guide its activities.

The "Statement of Proposed Work" contains an outline showing how the taxonomy for a theory of government activities in consumer affairs might look. As answers to probably the most important question, "Why should the government take action?", it indicates:

- a) to promote economic efficiency by correcting market failures.
The 4 market failures that are widely recognized by economists, and that are currently receiving the most attention in the consumer economics literature, are imperfect information, excessive transaction costs, uncosted externalities, and structural deficiencies.
- b) to promote equity.
Activities promoting equity might be categorized as having 3 objectives: distributional justice, corrective justice, and acceptable public values.

In response to the question "When should the government take action?", the outline indicates: "When benefits (economic or social) exceed costs (economic or social)". Finally, it shows "hard" law, "soft" law, or other activities as answers to the question "How should the government take action?"

A vast literature has developed, particularly in the last 10 years, examining in detail some of the individual items shown in the outline. Our quick review, however, has not revealed any comprehensive and detailed synthesis into the type of taxonomy suggested. We are also unaware of any similar framework being used in the Department. I think you will agree, however, that if we accept something like "the correction of market failures" as one of our goals, it becomes much easier to pinpoint, for example, the potential for imperfect information as warranting attention in the telemarketing phenomenon.

At the moment, we are assembling a list of experts whom I might ask to make proposals on the basis of the "Statement of Proposed Work". We should be in a position to discuss the list at our meeting of October 27.

Maureen Wadsworth
Maureen Wadsworth

Attach. (2)

c.c. Assistant Deputy Minister
Bureau of Consumer Affairs

STATEMENT OF PROPOSED WORK

Description

The proposed work would provide an objective and comprehensive summary of the considerations attaching to the three fundamental questions in government activity in consumer affairs: Why should the government intervene in the marketplace?...When should the government intervene?...How should the government intervene? The summary will be drawn primarily from ideas presented in existing economic literature, though with reference to existing legal and social research where appropriate. International sources would be included, though emphasis should be placed on recent works particularly relevant to the Canadian marketplace. The completed work (consisting of 60 to 100 single-spaced typed pages) would be systematically organized so as to form, to the extent possible, an outline of a normative theory of government activity in consumer affairs. A bibliography would be included. The following is a suggested outline, showing topics which could be covered and the probable structure of the completed work.

Outline of a Normative Theory for Government Activity in Consumer Affairs

- A. Why should the government take action?
 - 1. To Remedy Market Failures
 - a. Imperfect Information
 - b. Uncosted Externalities
 - c. Excessive Transaction Costs
 - d. Structural Deficiencies
 - e. Other
 - 2. To Promote Equity
 - a. Distributive Justice
 - b. Corrective Justice
 - c. Public Values
 - d. Other
 - 3. Other
 - a. Organizational Imperatives
 - b. Paternalism
 - c. Other

- B. When should the government take action?
 - 1. When economic benefits exceed economic costs
 - a. Methodologies for Analysis
 - b. Weaknessess
 - 2. When social benefits exceed social costs
 - a. Methodologies for Analysis
 - b. Weaknessess
 - 3. Other (e.g. Voter Models)

- C. How should the government take action?
 - 1. "Hard" law
 - a. Incentives for compliance
 - b. Disincentives for non-compliance
 - c. Other

2. "Soft" law
 - a. Industry Programs
 - b. Multi-Sector Programs
 - c. Other
3. Other
 - a. Reflexive Law
 - b. Consumer Education
 - c. Other

Background

It has been suggested that government activity in the interests of consumers is guided by the three fundamental questions described above. In recent years, a good deal of economic research has been done on separate components of each of these questions. For example, several models have been proposed which indicate how remedying market failures by correcting information imperfections can be an appropriate economic rationale for government intervention in the marketplace. However, the existing literature does not seem to include a comprehensive "umbrella" synthesis which systemizes all the available data. Marketplace changes stimulated by increasing affluence, advancing technology, and growing consumer sophistication are expected to accelerate during the coming years. In addition, regulatory reform will emphasize economic efficiency without sacrificing public protection. For these reasons, a consolidation of the rationales and methodologies theorized for government activities in consumer affairs is required.

Use of Results

The completed work will be used as a reference by officials in the Bureau of Consumer Affairs to assist them in more detailed research in specific situations involving:

1. identifying and analyzing the consumer interest in new marketplace phenomena;
2. formulating and evaluating modes of government intervention in the marketplace, in the consumer interest.
3. identifying particular areas in which further research is required to realize fully a normative theory of government activities in consumer affairs.

ANNEX I

POLICY FORUM
ON
CONSUMER ISSUES

DISCUSSION PAPER

THE CONSUMER AND THE MARKETPLACE

Consumers, producers, and government....
What are their responsibilities
as citizens of the marketplace community?

Introduction

The Right Honourable Brian Mulroney has written:

*The private sector must have room to breathe and room and energy to grow.
Government's role is to provide that environment.*

The government's new regulatory policy recognizes that role. Government activity in the marketplace will proceed on a pragmatic basis, with *increased emphasis on economic efficiency*, but with *continuing protection of the public wherever appropriate.*

In the consumer marketplace, both concerns - economic efficiency and public protection - are of the utmost importance. Regulating "smarter" will provide the opportunity to protect the public while reducing the burden of regulation. However, in defining new regulatory structures, some fundamental issues cannot be avoided. When will emphasis on economic efficiency result in less than appropriate public protection? When will a focus on public protection reduce efficiency to undesirable levels?

As we address these questions in the future, we must balance the roles that consumers, producers, and government all play. All have obligations...to themselves and to each other. What are their responsibilities as citizens of the marketplace community?

One of the responsibilities of government is to arrive at decisions that reflect the broadest possible consensus. Legislators need the nation's viewpoints.

You can help define the appropriate direction for consumer policy in the next decade, by considering the challenge presented in this paper --- **achieving a balance of responsibilities among consumers, producers, and government.**

Background

Although the marketplace is full of risks, we've come a long way past "*caveat emptor*". The marketplace framework based on the principle of "Let the buyer beware" assumed that the consumer was the most efficient evaluator of risk. The concept arose at a time when products were simple, producers were easily identified, consumers were easily identified, consumers and producers communicated cheaply, and consumers could easily tell whether a product was well made. But today's marketplace is much more complex and impersonal. The consumer purchasing a clay pot made next door in ancient Rome assumed far less risk than today's Canadian, who may be buying by telephone a digital computerized coffee-maker made by a Taiwanese subsidiary of a Dutch conglomerate. Conditions, then, have clearly changed. The individual consumer now faces new difficulties, of which he or she may not even be aware. Yet, rewarding with consumer purchases the cost-effective production of quality products remains the keystone of an efficient market economy. What are the implications of these new conditions for the marketplace framework of today and tomorrow?

The question is an important one, because Canadians, like everyone else, generally seek to avoid or minimize risk. More significantly, they make a strong distinction between risks which they undertake knowingly, and risks that are imposed upon them. They generally assess risk according to some rough calculation in which, using whatever information is available, the probabilities that particular events will occur are balanced with the relative severity of their consequences. But today, at least three external factors can distort the calculation. First, the complexity and specialization of modern life implies that the consumer may not have full information on the probabilities and consequences of occurrences, if such information exists at all. Second, the consequences of a purchase may often befall someone other than the buyer. Third, certain risks are for various reasons seen to be simply unacceptable in modern society.

As one of the three main actors in the marketplace (consumers, producers, and government), government has often been moved to take action by the existence of these external factors. Regulations establishing label and quality standards help convey information to buyers; pollution controls limit some of the adverse consequences that might otherwise befall persons other than buyers themselves; mandatory installation of seat belts in cars reduces the risk of highway deaths. However, the advantages and limitations of these types of action will undoubtedly be subject to debate under tomorrow's conditions.

What are tomorrow's conditions? In a study conducted in 1980, the Hudson Institute saw bright prospects for achieving "a high level of broadly worldwide economic affluence and beneficent technology" during the two decades from 1980 to 2000. The Institute's futurists viewed many of the problems of current concern, such as shortages, pollution, and crowding, not as threats to mankind's future but as basically solvable challenges. More pertinently, they foresaw the development of a new emphasis on selective risk avoidance. It was seen as both natural and inevitable that increasing affluence and the increasing capabilities of advanced technology would make it easier to reduce overall risk and to choose more freely which risks will be run.

However, it was cautioned that an overemphasis on risk avoidance could lead to innovators, entrepreneurs, and businessmen being forced to bear all the risks and the burden of proof, as if only they, and not society as a whole, benefited from their profits and efforts. Other developments foreseen by the Hudson Institute were a rise in justifiable concerns about the possibility of irrevocable damage or major catastrophes, more concern about equity, and less faith in market forces and individual entrepreneurship. A similar study conducted by Public Policy Forecasting, Inc. concluded that the cycle of "consumerism", at a relatively inactive stage in 1980, would swing toward a new wave of consumerist action, peaking around 1993.

By now, some of these predictions may have been overtaken by events. Others are now being reinforced. For example, the latest editions of "Tomorrow's Customers" (published annually by Clarkson Gordon/Woods Gordon) have confirmed the influence of increasing affluence and accelerating technological advance. Together with expanded business and consumer optimism in an increasingly competitive environment, its 1985 authors described a "leaner, tougher and more aggressive Canadian business". Several trends of a more specific significance have been highlighted. In particular, changes in age and income distribution and in spending patterns imply new stimuli for consumer durables and other household-related furnishings, for child-care products and services, for luxury goods and services, for "fantasy-fulfillment" pursuits, and for such time-saving devices and resources as one-stop shopping and computer banking. In 1986, special emphasis was placed on the growth of Canada's information sector.

Thus, today's projections of tomorrow's conditions contrast an increased desire to avoid risk with an increased potential for more, or at least different, risks. The risks may range from the trivial, through the momentous, to the unknown or even unknowable.

No-one would argue that it is either possible or desirable to eliminate all risk. On the other hand, the minimization of hidden dangers, particularly where, for example, irreversible damage may result, seems to be an appropriate pursuit for consumers, producers, and government alike. Indeed, in recent years consumers and producers have become more vocal in suggesting, and in some cases have actually demonstrated, that they as well as government can act to minimize marketplace risk. At this time, however, the line circumscribing the appropriate sphere of activity for each actor has not been clearly drawn. Indeed, the effective limits may be subject to constant change. If the global objective is to optimize both economic efficiency and public protection, how can such lines be at least sketched in?

Perhaps the responsibilities of consumers, producers, and government can be better defined through consideration of the following challenges and examples.

Challenges

It has been said that regulating quality in the marketplace is directed by the interplay among three considerations. The direction of these three - economics, ethics, and politics - often coincide. In some cases, however, *actual harm* may result from market activities. Then, concerns for economic efficiency and concerns for public protection usually compete.

- *When is it government's responsibility to balance these concerns?*
- *What influences, other than optimal resource allocation, should consumers' purchasing decisions be guided by?*
- *What influences, other than profit, should producers be prepared to be guided by?*
- *How strong are these influences? To what degree can government policy rely on them to balance efficiency and public protection in a hazardous marketplace?*

Technological advance and increasing affluence carry with them the prospect of greater efficiencies and an improved standard of living. "Smarter" regulation promises a marketplace in which a dynamic entrepreneurial spirit is not unjustifiably impeded. But new products, and new production and distribution techniques, will quickly raise new questions. A new regulatory regime must anticipate them.

- *What new risks and responsibilities - for consumers, producers, and governments - will technological advance create?*
- *How can government policy development keep pace with accelerating marketplace development?*
- *Can a lasting balance of responsibilities be achieved? If not, how can a shifting balance be appropriately directed?*

Examples

Industrial: The technologies that produce the goods demanded in today's marketplace can also, in the extreme, produce the tragedies of Bhopal and Chernobyl.

- *Should Canadians expect to be safe from such risks?*
- *Can consumers themselves ensure their own safety? If so, how?...at what cost?*
- *Can producers themselves be expected to eliminate the potential for industrial hazards? If so, how?...at what cost?*

Psychological: Some have said that the psychological impact of war toys, pornography, and promotions aimed at children can be as harmful as the traditionally-defined hazardous products. Indeed, it raises particularly intriguing questions about the sort of society we wish to have in Canada, and the degree to which manipulation of the marketplace should be used to achieve that society.

- *Who is placed at risk by psychological hazards?*
- *Who should be concerned about psychological hazards?*
- *How should those concerns be addressed? At what cost?*

Environmental: Environmental quality represents a classic externality in economic models. It remains a controversial issue, and Canadians usually direct their concerns for it toward government.

- *Can a clean and safe environment be purchased in a freely-functioning marketplace?*

Economic: Increasing complexity and diversity in consumer goods and services are making optimizing purchase decisions more and more difficult. In addition, the technical and sophisticated nature of up-to-date information raises the consumer's "cost" of understanding it. In most economic models, these circumstances might be regarded as market failures.

- *What questions will new developments in shopping, banking, and communicating raise?*
- *What are the practical limits of "caveat emptor" in a changing marketplace?*
- *In a more self-regulated marketplace, who should remedy these types of market failures? At what cost?*

Legislative: Regulatory reform will mean reduced regulation where the practical interests of the economy and job creation call for it, just as there will be improved and even intensified regulation where public protection requires it.

- *Can we expect the rationales for public protection to change over time, or do fundamental criteria exist? What might they be?*

