

CONSUMER PRODUCTS WARRANTIES:

PERSPECTIVES, ISSUES, AND OPTIONS

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CHAPTER ONEINTRODUCTIONPurpose and Scope

The initial task given to the researchers was two-fold. First, the research group was asked to identify and assess industry practices and viewpoints in the areas of

- . product durability
- . express warranties
- . post-purchase systems of relationships with customers
- . other parts of the supplier system as they relate to product economic life

Second, the research group was asked to provide the Federal-Provincial Task Force on Consumer Legislative Programs with options for durability rules and guidelines for rules on express warranties. These options and guidelines were to be realistic in a business setting and to give special consideration to potential problems of small business. It should be explicitly recognized that existing laws with respect to consumer products warranties provide a context to which the research tasks had to be tied if this report was to have credibility and operational value. In this respect, it is important to emphasize that the researchers are not lawyers and were not expected to compose their comments and ideas in legalistic prose. Our views with respect to the law are those of "knowledgeable" laymen and that knowledge, to the extent that it is incomplete or flawed is, as we discovered, much more complete and perfect than is the knowledge of virtually all consumers and businessmen from which we collected information.

It was our understanding from the outset that this report was intended as input for public policy officials throughout the country and that more legally knowledgeable people would fine-tune our options and guidelines. Further, it was also understood that the whole purpose of this project was to report upon and critically examine the viewpoints, behavior, and

suggestions of both consumers and business suppliers on the topics of post-purchase problems relating to warranties.

As the study progressed, it became apparent to us that the scope of analysis had to be broadened to encompass all major participants in the post-purchase service system: consumers, manufacturers, distributors, and governments. In other words, this report exceeds the initial task given to us because of our finding and belief that alternative rules for durability and express warranties must be examined in a broader total system perspective. Throughout this report, we have been careful to distinguish between reporting the viewpoints of consumers, business persons, and governments and our own conclusions based on such observations.

### Methodology

The research was confined to two industries: new automobiles and new white goods (major home appliances). These industries were chosen because:

- . products have a high purchase price relative to most other consumer purchases
- . both product classes normally require considerable service over their economic life
- . consumer complaint data consistently show these two product classes as having relatively higher post-purchase problems than other classes
- . the two industries are markedly different in many respects allowing the researchers to examine many different approaches to post-purchase issues

Only two industries were selected because of limited time and other resources available to the researchers. A trade-off was made between depth of research treatment and breadth of treatment in favour of depth. The researchers decided that the topic under study was so complicated that traditional survey research would not be meaningful at this point in time.

Field data were collected from three classes of respondents: consumers, manufacturers, and members of the distribution trades. These data then were analyzed in conjunction with the researchers' understanding of business practice and of governmental regulations in several jurisdictions.

Consumer data were collected from two small groups -- one urban and one rural -- in each of three provinces (Saskatchewan, Ontario and Quebec). Group meetings were held in which the objective was to elicit a wide range of consumer expression on a small number of topics over a two to three hour period of time. A separate report, Appendix A, The Evidence of Consumer Focus Groups, outlines the research objectives and methodology in considerably more detail. A summary of the highlights is included here as Chapter Four.

Industrial data were collected by lengthy personal interviews with selected executives in organizations in both the automobile and white goods industries. Most of these interviews were conducted with two of the three researchers present, involved several executives in the organization being interviewed, and covered a full working day. Sixteen interview sessions were conducted with thirteen organizations.

Finally, a selective review of the consumer behavior, legal and governmental literature was made to identify and incorporate concepts and materials which we decided were relevant in fulfilling our assigned and expanded tasks.

It is very important to realize that at no time did we anticipate or promise development of a complete description of business practices ranging from design through to after-sale service. Such a description was beyond the resources of the research budget. Instead, this research should be regarded as exploratory in nature with specific focus on: (a) problem identification and (b) reactions to various proposals for problem solution.

During the course of our interviews and discussions with people in both business and government, we found ourselves on numerous occasions, as a team from a School of Business Administration working for the Federal Government, being challenged in subtle ways as to "which side" we were on. We find this notion of an adversary relationship to be a dysfunc-

tional one in that it focuses too much attention on maintaining high visibility for the differences between the two kinds of organization (usually expressed in negative terms with respect to the other kind of organization) to the detriment of the recognition that there is an interdependence among the two kinds of organization and the consumer/voter, and of working to make that interdependence a functional one. We have tried to minimize the "which side" issue by focussing our efforts on the identification of a set of problems which consumers, government and business can agree on as being the key ones. Indeed, much of our effort was spent on determining which warranty problems both business and consumers agreed upon. We believe strongly that there must be broad agreement across all three societal groups as to the problems and their sources if effective change to minimize the problems is to occur.

#### Organization of the Report

This report is divided into twelve chapters. We spent considerable time discussing ways of presenting our report, what assumptions to make about its readers, and what length would be most appropriate. We concluded that the report was best addressed to the policy maker in government and business rather than the lawyer, that brevity was essential, and that some time must be spent on each of the following topics:

- . What is the magnitude and dimensions of the problems? - Chapter Two
- . What are the dimensions of product performance? - Chapter Three
- . What are the self-reported experiences, attitudes, and behavior of consumers? - Chapter Four
- . How are the major appliance and automobile industries organized and what are the implications for warranty issues? - Chapter Five
- . What are the dimensions of and evidence about product durability? - Chapter Six
- . What are functional general concepts relevant to the term warranty? - Chapter Seven



- . How do the warranty systems operate in both the appliance and automobile industries? - Chapter Eight
- . Why understanding the consumer perspective in the buy/use process is particularly important for the policy maker? - Chapter Nine
- . What are the key problems? - Chapter Ten
- . What statutory initiatives have governments throughout North America attempted or proposed in the field of consumer warranties? - Chapter Eleven.
- . What options exist and look promising for policy makers in government and business? - Chapter Twelve

CHAPTER TWOPROBLEM IDENTIFICATION

One of the most challenging tasks we faced was finding a way to conceptualize the multi-dimensional topic of warranties in order to structure our research and writing. At the same time, we wished to indicate the various groups who have a stake in warranties and to indicate the issues, pressures and behaviors that arise because of differing interests. Exhibit 2-1 is a simplified model of our conceptualization. Such a representation is by no means exhaustive on the subject, but adequately serves to illustrate the variations in questions and concerns expressed by members of these various groups. Before getting into the specifics of this conceptualization, it is perhaps useful to identify the major questions it raises:

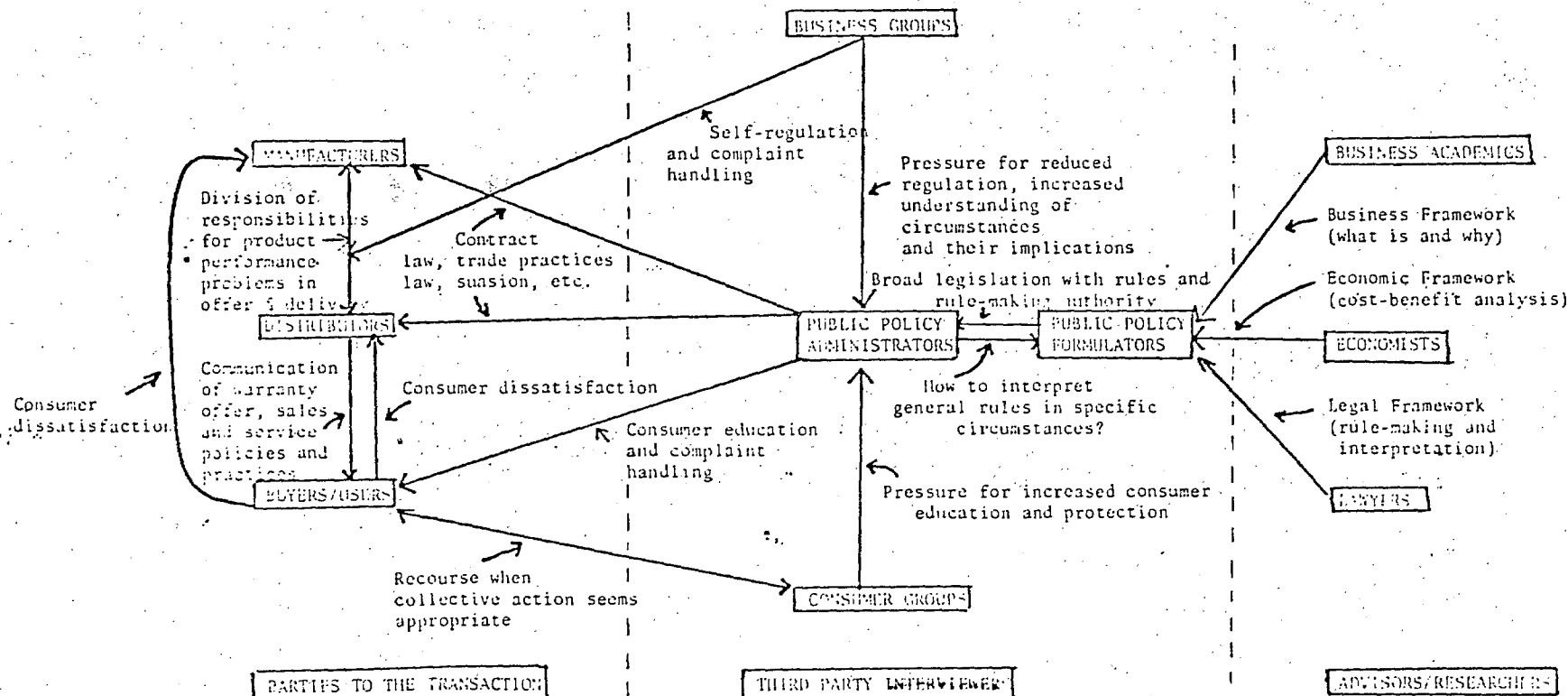
1. To what extent are buyers/users dissatisfied and how is this dissatisfaction manifested?
2. To what extent do business people perceive there are problems and what if anything are they doing about them?
3. What is the appropriate role of governments and other "third parties" in dealing with these problems?

These questions are central to the entire investigation of warranty policies and practices. The first question is partially addressed in this chapter and elaborated upon in Chapters Four, Six, Seven and Eight. Question two is addressed primarily in Chapters Five, Six and Eight while question three is addressed in Chapters Five, Seven, Nine, Eleven and Twelve.

If warranties for consumer products are a problem, this problem will be manifested in consumer dissatisfaction, either expressed in behavior or attitude. Consumer dissatisfaction may generally be considered the sentiment that arises when consumers perceive a discrepancy between what they expected in a particular marketplace transaction and what they received. It is the gap between expectation and performance. The greater the dissatisfaction, the more

Exhibit 2-1

A Conceptual Model of Warranty Viewpoints



INTERVIEWEES



incentive there is for business to improve warranty offers (what is promised), communication of warranties (how promises are made) and warranty fulfillment (how promises are delivered). At the same time the greater the dissatisfaction, the more incentive there is for governments to take the initiative in one or more of the three areas to narrow the gap between expectation and performance. This initiative may incorporate the recognition that the law itself can be a source of the gap to the extent that it has not evolved at the same rate as changes in the marketplace. At the same time, it is vitally important to point out that imbalances in the expectation/performance "equation" can result from either inadequate market performance or unrealistic expectations, and that consideration to both must be given if problems creating the gap between performance and expectation are to be defined accurately.

Typically, consumer satisfaction has been measured based on volume of complaints. Both business and government organizations have followed this approach, reasoning that the greater the number of complaints, the greater the dissatisfaction. By classifying complaints according to product (e.g. new automobile versus new major appliance) according to type (e.g. warranties versus advertising), and according to source (e.g. geographic region), priorities for action have traditionally been established.

One of the best known examples of this traditional approach in Canada is Box 99, the mailing address of the Federal Department of Consumer and Corporate Affairs. Data collected by Box 99 indicate that guarantees and warranties (their categorization) constitute a small but apparently growing percentage of all complaints received both in Ottawa and regionally. For example, in fiscal year April 1, 1974 - March 31, 1975, complaints about guarantees and warranties constituted 3 percent of total complaints whereas in fiscal year 1978-79, the rate was close to 5 percent. In absolute terms, the number of complaints has ranged about the one thousand level per year in recent years. Box 99 data have also been cross-categorized to determine which product categories draw which types of complaints. Exhibit 2-2 is an example of one such report. Notice that the three key areas of warranty complaint appear to be in motor vehicles, real estate, and appliances. This conclusion is consistent with other time periods covered by Box 99 data, with provincial complaint data, and with experience in the United States. However, such

complaint data do have shortcomings that can be serious when conclusions are drawn from them and action proposals are based upon them:

- . such data are not based on a representative sampling of the public and therefore may not accurately convey public dissatisfaction (not all dissatisfied consumers complain; some cannot be satisfied)
- . the categorization of complaints is often confusing (what is the relationship among complaints about product quality, repairs and servicing, and warranties in Exhibit 2-2?)
- . often no indication is provided as to the number of complaints that were found to be justified or were resolved
- . complaints can and often are influenced by media hype and/or other activities of third parties
- . the totals rarely show who was responsible for the complaint (e.g. an automobile repair and servicing complaint may refer to a domestic auto manufacturer, importer, independent service station, specialty shop, etc., yet often the conclusion is drawn that the domestic auto manufacturer is responsible for the total complaints)
- . the data are often difficult to reconcile across jurisdictions
- . the data are seldom put in perspective (complaints corrected for number of users, importance of product, and availability of alternative avenues of redress)

Certainly efforts have been made to overcome such shortcomings in problem identification. One such effort is the broad-based consumer attitude study administered on a random sampling basis in a particular region. For example, the Ontario government commissioned such a study in 1978.<sup>1</sup> This survey of almost 1000 Ontario consumers over the age of 18 revealed a high percentage of respondents were extremely or moderately concerned about warranties, product quality, and post-purchase service, as indicated in Exhibit 2-3. This sort of study generally

Exhibit 2-2

Box 99 Summary Data

CONSUMER SERVICES BRANCH  
DIRECTION DES SERVICES AUX CONSOMMATEURS  
COMPLAINTS, ENQUIRIES AND ADMINISTRATION DIVISION  
DIVISION DES PLAINTES, ENQUÊTES ET ADMINISTRATION

JANVIER - JUIN, 1978

MONTH - Mois JANUARY - JUNE, 1978

RECORD OF COMPLAINTS HANDLED BY THE CONSUMER SERVICES ACTIVITY OF CONSUMER & CORPORATE AFFAIRS CANADA PLAINTES SOUS LA TUTELLE DU SERVICE DE L'AIDE AUX CONSOMMATEURS	ADVERTISING Réclamages	ALLEGED UNETHICAL PRACTICES Pratiques présumées contraires à l'éthique	PAID GOODS & SERVICES MARCHANDISES NOT RECEIVED Produits et services payés non reçus	GUARANTEES & WARRANTIES Garanties	LABELLING Étiquetage	PACKAGING Emballage	PRICES Prix	QUALITY Qualité	REPAIRS & SERVICING Réparations et entretien	SAFETY Sécurité	STANDARDIZATION Normalisation	MISCELLANEOUS Divers	TOTAL
APPLIANCES Appareils	81	83	281	142	6		66	178	258	75	3	88	1,261
COSMETICS AND BEAUTY PRODUCTS Cosmétiques et produits de beauté	27	15	56	2	16	5	18	22	3	27	1	22	214
DETERGENTS AND HOUSEHOLD PRODUCTS Détergents et produits ménagers	38	12	27	6	22	12	37	47	1	39	7	11	259
DRUGS Médicaments	6	11	7		3	4	76	2		6	3	3	121
EDUCATION Enseignement	4	16	25				4	6		1	1	8	65
ELECTRICAL AND ELECTRONIC EQUIPMENT Matériel électrique et électronique	129	68	329	93	14	7	62	101	287	12	1	85	1,188
FINANCE Financement	37	696	224	4	2		126	4	3		1	141	1,238
FOODS Aliments	278	146	81	4	410	206	582	913	3	156	139	75	2,993
GOVERNMENTAL FUNCTIONS AND SERVICES Fonctions et services gouvernementaux	22	94	193	1	15		74	15	7	8	12	81	522
HOME FURNISHINGS Ameublement	102	72	419	43	12		46	263	86	42	3	145	1,233
HOUSEWARES Articles de maison	44	23	116	9	9	1	17	57	3	71	1	18	369
INSURANCE Assurances	10	87	195	2			49	2	2	1	4	74	426
JEWELLERY Bijoux	23	31	201	42	3	1	20	49	93		1	39	503
MEDICAL EQUIPMENT AND SUPPLIES Fournitures et matériels médicaux	5	16	44	7	4		18	25	6	6	1	13	145
MEDICAL SERVICES Services médicaux	3	26	34			1	62	14	4	1		26	171
MISCELLANEOUS Divers	92	109	216	10	19	16	98	33	13	33	20	103	762
MDTOR VEHICLES AND ACCESSORIES Automobiles et leurs accessoires	171	351	689	703	6	2	278	899	1458	183	61	428	5,229
PERSONAL SERVICES Services personnels	117	197	357	6	3	3	108	77	21	18	5	158	1,070
PUBLICATIIONS	29	118	261		2	2	31	4		1		113	561
REAL ESTATE/HOUSING Affaires immobilières - logement	161	333	578	177	9	4	3140	324	309	51	126	572	5,784
RECREATION AND EQUIPMENT Loisirs et matériel connexe	101	58	270	45	35	5	42	117	70	108	4	62	917
SALES PROMOTIONS Stimulation des ventes	221	182	312	2	2		14	12	1			73	819
STATIONERY AND OFFICE SUPPLIES Papeterie et fournitures de bureau	13	13	45	11	3	7	16	11	15	2	4	8	148
TEXTILES	23	9	72	3	23	1	15	35	4	6	7	21	219
TRANSPORTATION AND COMMUNICATION Transports et communications	60	120	237	1			143	26	8	3	1	136	725
WEARING APPAREL Vêtements	81	37	525	9	89		53	314	43	30	10	95	1,286
<b>TOTAL</b>	<b>1878</b>	<b>2923</b>	<b>5784</b>	<b>1322</b>	<b>707</b>	<b>277</b>	<b>5195</b>	<b>3550</b>	<b>2698</b>	<b>880</b>	<b>416</b>	<b>2598</b>	<b>28,228</b>

Exhibit 2-3

Priority Ontario Consumer Issues  
(abridged from Ontario Consumer Issues)

<u>Issue</u>	<u>% Moderately or Extremely Concerned</u>
Food prices	88
Cost of housing	80
Poor quality of many products	74
Poor quality of after-sale service and repairs	66
Too much advertising	64
Inadequate warranties	56
Misleading/confusing labelling	54
Not knowing what to do if something is wrong with a product	39

leads one to the conclusion that complaint data usually significantly understate dissatisfaction and frequently misrepresent dissatisfaction priorities.

A related effort to improve problem identification is industry specific satisfaction monitoring. One version is that done by an outside observer, exemplified by Professor Louis Romero's 1971 study of Ontario new car buyers.<sup>2</sup> Exhibit 2-4, drawn from his work, indicates that a measure of overall consumer satisfaction with a product does not necessarily represent product performance problem experience. In short, while only 20 percent of his sample expressed overall dissatisfaction, much higher percentages experienced difficulties.

The other version of industry specific satisfaction monitoring is that done by brand owners themselves. For example, Exhibit 2-5 shows the format of one automobile company's survey of new car owners approximately three months after purchase.<sup>3</sup> Data from these surveys are analysed to indicate overall consumer satisfaction with both the vehicle and the dealership. A related effort by automobile companies is a review of consumer satisfaction with dealer sales and service performance.

A third approach to problem identification is the broad scale consumer satisfaction/dissatisfaction study (CS/D). This sort of research is relatively new, expensive, time-consuming and sophisticated. Such research has been done in the United States on a national scale and, until this year, not done in Canada. Professor Stephen Ash of The University of Western Ontario is the principal researcher on a federally-sponsored CS/D study undertaken in 1979. Over 3000 usable questionnaires were collected throughout the country, divided almost equally between three categories (food and clothing, durables, and services) representing a total of 225 products and services. This study is still underway as of this writing, but Exhibits 2-6, 2-7 and 2-8 show some of the early results relevant to an assessment of the magnitude of the warranty and service problem in major appliances and automobiles. Such results enable a variety of interpretations. For example, we believe Exhibits 2-6 and 2-7 show that the overall level of consumer dissatisfaction with major appliances and automobiles is roughly 13 percent and 22 percent of purchasers dissatisfied respectively. Exhibit 2-8 shows an overall level of consumer dissatisfaction of 27% for auto repairs and service and 23% for small and large household appliances.



Exhibit 2-4

Summary Data From  
Romero's Study

<u>Questions</u>	<u>Yes</u>	<u>No</u>	<u>Answers</u> <u>Yes &amp; No<sup>a</sup></u>	<u>No</u> <u>Defects</u>	<u>Total</u>
1. Are you satisfied with the performance of your car?	274 (79.89%)	54 (15.74%)	15 (4.37%)	--	343
2. Has your car had any of these?					
- Mechanical problems	176 (51.31%)	167 (48.69%)	--	--	343
- Defects in appearance	75 (21.87%)	268 (78.13%)	--	--	343
- Squeaks of rattles	75 (42.27%)	268 (77.73%)	--	--	343
3. Were the defects corrected free of charge under the warranty?	152 <sup>b</sup> (51.70%)	94 <sup>b</sup> (31.97%)	48 <sup>b</sup> (16.33%)	49 (14.29%)	343
4. If there were not corrected please state why:					
- Defect not covered by warranty	46 (32.39%)	96 (67.61%)	--	--	142 <sup>c</sup>
- Dealer tried but could not fix	65 (44.77%)	77 (54.32%)	--	--	142 <sup>c</sup>
5. Was it necessary to return to the dealer with the same defects?	174 (59.18%)	120 (40.82%)	--	--	294 <sup>d</sup>

Exhibit 2-4 Cont'd.

- (a) This column refers to respondents who ticked both boxes relating to Question 1. For purposes of evaluation the answers have been treated as negative.
- (b) These percentages are calculated on the total number of respondents (294) who complained that their cars had shown some defect.
- (c) Question 4 was answered only by those respondents who stated that some or all of their defects were not corrected free of charge under the warranty.
- (d) Question 5 was answered only by those respondents who stated that their cars had shown some defects.

Exhibit 2-5

A Sample of One Organization's Questionnaire  
Used for Obtaining Customer Satisfaction

Data



CUSTOMER  
SATISFACTION  
QUESTIONNAIRE

Your dealer and we, the manufacturer, want you to enjoy the best possible experience with your General Motors vehicle. We need your opinion to help us continue our efforts to improve. The information you provide will be of great value to us.

We have offered several possible responses to each question, one of which may come closest to your viewpoint. In addition, you may want to include comments on the adjoining page.

THIS GROUP OF QUESTIONS  
CONCERNS YOUR VEHICLE

1. We believe we have engineered your GM vehicle to provide you with an appealing design, smooth performance and dependable operation. What's your impression?

- |                         | Excellent                | Good                     | Fair                     | Poor                     | Bad                      |
|-------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a. Appealing design     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Smooth performance   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Dependable operation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

2. Selection of materials for each part of your vehicle received a great deal of attention. We believe you are interested in appearance, durability and ease of maintenance. What do you think of the materials used on your vehicle?

- Excellent
- Good
- OK
- Could have been better
- Selection is poor

3. Quality workmanship received the highest priority and consideration during the construction of your vehicle. How would you rate the workmanship on your vehicle?

- The workmanship is excellent
- The workmanship is good
- They did a fair job
- The workmanship is poor
- Terrible workmanship

4. Quietness was engineered into your vehicle. How well have we succeeded?

- My vehicle is extremely quiet.
- It is very quiet
- My vehicle is fairly quiet
- It's noisy
- It's much too noisy

5. Your new GM vehicle was designed with fuel economy in mind. What is your experience?

- It's excellent
- It's good
- It's fair
- It's poor
- It's bad

6. Your convenience and comfort are very important to us. How would you rate your vehicle?

- I'm extremely pleased
- I'm well pleased
- I'm not satisfied
- I'm not pleased
- I'm extremely disappointed

THIS GROUP OF QUESTIONS CONCERNS YOUR  
PURCHASING EXPERIENCE AT YOUR DEALERSHIP

1. Your dealer and salesman want the purchase of your new vehicle to be a pleasant experience. Was it?

- I thoroughly enjoyed buying my vehicle
- It was a pleasant experience
- It was OK
- I found it difficult
- It was an extremely difficult experience

2. Your dealer knows that taking delivery of your new vehicle is an important and exciting event for you. How was your new vehicle delivery handled?

- Everything I expected, and more
- The event was special
- It was OK
- It wasn't particularly well handled
- It was a bad experience

3. Your dealer knows it is helpful to you to know the people in his Service Department. How much of an opportunity were you given to meet them?

- I was introduced to or contacted by Service Personnel.
- I was given names of persons to see
- I was told where the Service Department was located
- I was told little about how to get Service
- I was told nothing about how my Service needs would be handled

4. Your dealer and salesman have a continuing interest in you as a customer. This should be expressed by maintaining contact with you. Has interest been shown since delivery?

- Yes, they are extremely interested
- They keep in touch
- Some interest
- They show very little interest
- Not a word from anyone

Exhibit 2-5 (Continued)

DP 79

22405 84B

**THIS GROUP OF QUESTIONS CONCERNS YOUR DEALERSHIP'S SERVICE DEPARTMENT**

1. Your dealer wanted your new vehicle to be properly prepared for your use. How would you describe your vehicle's condition at the time of delivery?

- Exceptionally well prepared
- Well prepared
- Adequate
- Not well prepared
- It was awful

(Questions 2 through 5 apply only if you have visited your dealership's Service Department. If you haven't, please leave them blank.)

2. Your new GM vehicle is covered by an excellent Warranty. General Motors and your dealership want you to understand it and receive the protection it affords. If you have required Warranty Service, how do you rate the willingness of your dealer's Service personnel to perform Warranty Service?

- It was handled in an excellent manner
- It was well handled
- It was handled OK
- It left something to be desired \*
- It was a bad experience \*

\* Please comment.

3. Your dealer knows how important it is to perform your Service work correctly the first time. What has been your experience?

- Handled very well, everytime
- Good most of the time
- OK
- Sometimes they miss
- Never right the first time

4. Your dealer wants his Service Advisors (the people who greet you when you come in for Service) to be courteous, helpful, knowledgeable and reliable. How do you rate them?

	Excellent	Good	Fair	Poor	Bad
a. Courtesy & Helpfulness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Knowledge of your car	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Keeping promises	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Your convenience in obtaining Service is important to your dealer. How do you rate the following?

	Excellent	Good	Fair	Poor	Bad
a. Hours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Entrance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Promptness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Waiting Area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**THIS GROUP OF QUESTIONS ARE OF GENERAL CONCERN**

1. The primary objective of your dealer is to stock a wide variety of parts to service your vehicle when required. What has been your experience?

- Excellent
- Dealer did not have all the parts but was able to get them quickly
- Slight delay in getting the parts
- Parts not right the first time
- Extensive delay in getting parts \*
- \* Please comment

2. With your new vehicle, you received a Maintenance Schedule outlining periodic service - e.g. - oil and filter changes, lubrication, safety checks, etc. - that your new vehicle will eventually require.

Do you plan to have this service performed by a G.M. dealership? YES  NO   
If NO please comment.

3(a) Based on your experience, would you recommend a General Motors vehicle to a friend? YES  NO

3(b) Based on your new vehicle sales experience, would you recommend that a friend buy a vehicle from your dealership? YES  NO

3(c) Based on your new vehicle service experience, would you recommend that a friend buy a vehicle from your dealership? YES  NO

THANK YOU FOR ASSISTING US BY ANSWERING THESE IMPORTANT QUESTIONS. THE FOLLOWING INFORMATION WOULD ALSO BE MOST HELPFUL TO US:

PLEASE INDICATE CORRECT ADDRESS ONLY IF THE ADDRESS ON YOUR LETTER IS INCORRECT.

PRINT OR TYPE

CUSTOMER STATUS: \_\_\_\_\_ INITIALS: \_\_\_\_\_ SURNAME OR FAMILY NAME: \_\_\_\_\_

CO MR MRS MISS MS \_\_\_\_\_

HOUSE NO. \_\_\_\_\_ STREET NAME \_\_\_\_\_ ST. NO. AVE. \_\_\_\_\_ DIRECTION \_\_\_\_\_

APT. NO. \_\_\_\_\_ BOX NO. \_\_\_\_\_ RURAL ROUTE \_\_\_\_\_ ENG. FR. \_\_\_\_\_

CITY LOCATION \_\_\_\_\_ PROVINCE \_\_\_\_\_ POSTAL CODE \_\_\_\_\_

Our records show that you purchased a \_\_\_\_\_

According to our records your dealership is: \_\_\_\_\_

If this is not correct, please indicate the model you did purchase. \_\_\_\_\_

(PLEASE COMPLETE QUESTIONS ON REVERSE SIDE)

Exhibit 2-6

National Consumer Satisfaction/Dissatisfaction Study:  
Durables Purchase; Importance Rating; Satisfaction/Dissatisfaction Rating Section:  
Appliances and Personal Care Equipment

CATEGORY	PURCHASE % of Respondents* having Purchased	IMPORTANCE RATING % of Purchasers rating Important	IMPORTANCE RATING Rank by Importance Rating	SATISFACTION/DISSATISFACTION RATING				TOTAL SATISFACTION/DISSATISFACTION			
				% OF PURCHASERS				% OF PURCHASERS			
				SATISFIED		DISSATISFIED		SATISFIED		DISSATISFIED	
Quite	Somewhat	Somewhat	Quite	Total	Rank	Total	Rank				
1. Refrigerators, Freezers	30.8	89.0	2	65.0	24.0	7.6	3.4	89.0	6	11.0	13
2. Ranges, Ovens, Grills	22.5	88.4	3	60.6	26.8	6.9	5.7	87.4	8	12.6	10
3. Microwave Ovens	5.1	35.3	16	46.1	38.5	9.6	5.8	84.6	12	15.4	7
4. Washers, Dryers, Dishwashers	36.4	86.0	4	67.5	22.1	7.2	3.2	89.6	5	10.4	14
5. Air Conditioners, De- Humidifiers, Electric Heaters	17.9	52.0	11	56.2	37.3	5.4	1.1	93.5	2	6.5	17
6. Vacuum Cleaners, Carpet Sweepers, Floor Polishers	35.4	68.4	8	58.4	26.0	11.2	4.4	84.4	13	15.6	6
7. Garbage Disposers, Trash Compactors	1.4	71.4	7	53.3	46.7	-	-	100.0	1	-	18
8. Water Filters, Purifiers	2.0	55.0	9	52.4	28.6	9.5	9.5	81.0	18	19.0	1
9. Sewing Machines, Electric Sissors	12.6	50.0	12	53.8	39.2	3.1	3.9	93.0	3	7.0	16
10. Snow Blowers, Lawnmowers, Other Lawn Equipment	25.6	54.7	10	57.1	35.6	6.5	0.8	92.7	4	7.3	15
11. Small Kitchen Appliances	60.2	43.9	14	56.0	31.1	7.0	5.9	87.1	10	12.9	9
12. Electric Razor, Electric Hair Clippers	16.3	47.2	13	62.9	25.1	7.2	4.8	88.0	7	12.0	12
13. Electric Hair Dryers, Curlers, Make-up Mirrors, etc.	43.3	34.2	17	51.0	34.2	10.6	4.2	85.2	11	14.8	8
14. Exercise or Body- Building Machinery	7.4	27.0	18	53.2	29.9	13.0	3.9	83.1	15	16.9	4
15. Electric Vibrators, Massagers	3.4	38.2	15	35.3	47.1	14.7	2.9	82.4	16	17.6	3
16. Eyeglasses, Contact Lenses	49.1	90.8	1	63.2	24.2	8.9	3.7	87.4	8	12.6	10
17. Hearing Aids	1.9	78.9	6	42.1	42.1	15.8	-	84.2	14	15.8	5
18. Wheelchairs, Other Medical Appliances	3.6	83.3	5	54.1	27.0	2.7	16.2	81.1	17	18.9	2

\* N = 1030

Source: National Consumer Satisfaction/Dissatisfaction Study; Ash (forthcoming)

Exhibit 2-7

National Consumer Satisfaction/Dissatisfaction Study:  
 Durables Purchase; Importance Rating; Satisfaction/Dissatisfaction Rating Section:  
 Cars and Other Transportation

CATEGORY	PURCHASE			IMPORTANCE RATING				SATISFACTION/DISSATISFACTION RATING				TOTAL SATISFACTION/DISSATISFACTION			
	% of Respondents* having Purchased	% of Purchasers rating Important	Rank by Importance Rating	% OF PURCHASERS				% OF PURCHASERS							
				SATISFIED		DISSATISFIED		SATISFIED		DISSATISFIED					
				Quite	Somewhat	Somewhat	Quite	Total	Rank	Total	Rank				
1. New Car	29.8	93.3	1	49.5	28.7	14.7	7.1	78.2	11	21.8	2				
2. New Truck, Van, Off-The-Road Vehicle	6.9	85.5	4	40.8	36.6	12.7	9.9	77.4	13	22.6	1				
3. Used Car	27.5	86.5	3	41.0	37.5	14.8	6.7	77.5	12	21.5	3				
4. Used Truck, Van...	7.6	72.4	7	41.8	43.0	7.6	7.6	84.8	9	15.2	5				
5. Snowmobile	4.3	32.6	12	56.8	31.8	6.8	4.5	88.6	7	11.3	7				
6. Motorcycle	5.0	36.0	11	53.8	36.5	1.9	7.7	90.3	5	9.6	9				
7. Motor Home, Travel Trailer, Camper	7.2	56.9	9	62.2	28.4	8.1	1.3	90.6	4	9.4	10				
8. Airplane	0.5	40.0	10	20.0	60.0	20.0	-	80.0	10	20.0	4				
9. Adult Bicycle	18.2	29.6	13	48.9	38.3	9.6	3.2	87.2	8	12.8	6				
10. Child's Car Seat, Safety Harness	9.8	89.8	2	75.2	19.8	5.0	-	95.0	2	5.0	12				
11. Tires, Batteries, Accessories	61.8	79.5	5	57.5	32.7	5.7	4.1	90.2	6	9.8	8				
12. Antifreeze, Engine Oil, Other Maintenance...	67.4	74.2	6	67.4	30.8	1.8	-	98.2	1	1.8	13				
13. Parts & Equipment for Home Repair of Car	31.8	69.5	8	54.0	40.0	3.0	3.0	94.0	3	6.0	11				

\* N = 1030

Source: National Consumer Satisfaction/Dissatisfaction Study; Ash (forthcoming)

Exhibit 2-8

National Consumer Satisfaction/Dissatisfaction Study:  
 Services Purchase; Importance Rating; Satisfaction/Dissatisfaction Rating Section:  
 Repairs and General Services

CATEGORY	PURCHASE % of Respondents* having Purchased	IMPORTANCE RATING % of Purchasers rating Important	Rank by Importance Rating	SATISFACTION/DISSATISFACTION RATING				TOTAL SATISFACTION/OISSATISFACTION			
				% OF PURCHASERS				% OF PURCHASERS			
				SATISFIED		DISSATISFIED		SATISFIED		DISSATISFIED	
Quite	Somewhat	Somewhat	Quite	Total	Rank	Total	Rank				
1. T.V., Radio, Stereo Repairs	48.9	58.7	9	46.9	30.0	14.1	9.0	76.9	15	23.1	6
2. Auto Repairs and Services	73.6	90.6	1	35.3	36.6	16.3	11.8	71.9	19	27.1	2
3. Heating, Air Conditioning Repairs	38.3	87.2	2	61.2	24.4	9.5	4.9	85.6	7	14.4	13
4. Other Appliance Repairs	32.7	67.3	5	41.4	35.3	13.7	9.6	76.7	16	23.3	5
5. Plumbing, Carpentry, Other Home Repairs	37.5	76.5	4	50.1	31.6	10.2	8.1	81.7	11	18.3	10
6. Watch, Clock, Jewelry Repairs	40.2	32.1	19	41.8	34.2	15.2	8.8	76.0	17	24.0	4
7. Carpet Cleaning, Window Washing, Home Care Services	19.4	41.8	17	47.5	36.3	10.8	5.4	83.8	10	16.2	11
8. Yardwork, Snow Removal, Lawn Care Services	20.4	54.9	10	46.0	35.2	11.7	7.1	81.2	12	18.8	9
9. Home Redecorating	13.0	59.2	8	58.8	30.1	6.6	4.4	88.9	3	11.0	18
10. Home Improvement Services, (Siding, Insulation Installation)	16.7	77.8	3	56.3	27.8	9.7	6.2	84.1	9	15.9	12
11. Casspool, Septic Tank Services	7.4	63.5	6	63.6	23.4	7.8	5.2	87.0	4	13.0	17
12. Furniture Upholstery/Refinishing Service	16.4	49.4	14	65.5	24.0	5.3	5.3	89.5	1	10.6	20
13. Laundry, Dry Cleaning Service	67.8	49.3	15	52.5	36.6	8.5	2.4	89.1	2	10.9	19
14. Coin-Operated Laundry Service	25.1	49.0	16	39.4	40.2	12.1	8.3	79.6	14	20.4	7
15. Domestic Help, Maid Service	9.3	52.7	13	48.5	37.1	10.3	4.1	85.6	7	14.4	13
16. Moving and Storage Service	11.2	59.8	7	50.8	35.6	9.3	4.3	86.4	6	13.6	15
17. Water Softening Service	5.8	53.4	11	35.5	45.2	6.4	12.9	80.7	13	19.3	8
18. Photographic Service	65.7	28.9	20	46.4	40.5	10.0	3.1	86.9	5	13.1	16
19. Parcel Delivery and Freight Service	44.6	53.4	11	36.7	33.7	18.6	11.1	70.4	20	29.7	1
20. Mail Order Firms	40.0	33.0	18	37.8	38.1	14.0	10.1	75.9	18	24.1	3

\* N = 1052

Source: National Consumer Satisfaction/Dissatisfaction Study; Ash (forthcoming)

It should be emphasized that these results were not the highest found in the study. Other product categories with comparable or higher reported levels of consumer dissatisfaction were:

restaurant meals	19% of purchasers
mobile homes	20%
children's games and toys	23%
apartment rental	29%
parcel delivery and freight service	30%
post office	31%
employment agencies	50%

Some more detailed analysis of the reported causes of dissatisfaction using this study data are reported in Chapters Six and Eight. Full scale analyses along these lines must await the results of the CS/D study later this year.

The final approach to problem identification is direct consumer probing. The intent following this approach is to find out not just the extent of problems, but also to learn why they are problems. In this way, action opportunities may be discovered. Our focus group research, summarized in Chapter Four, is an example of this approach.

All of the above approaches are based on consumer self-reports. While highly useful in identifying areas in which there are substantial expectation/performance gaps, as perceived by consumers, they do not always provide good information as the underlying reasons for the gaps. Thus, while the preceding data indicate that consumer dissatisfaction with the performance of new automobiles and appliances is a problem of some magnitude, it is not obvious exactly what the dimensions of the problem are. A considerable amount of the material in the following seven chapters is related to our efforts to identify these relevant dimensions, which are summarized in Chapter Ten.

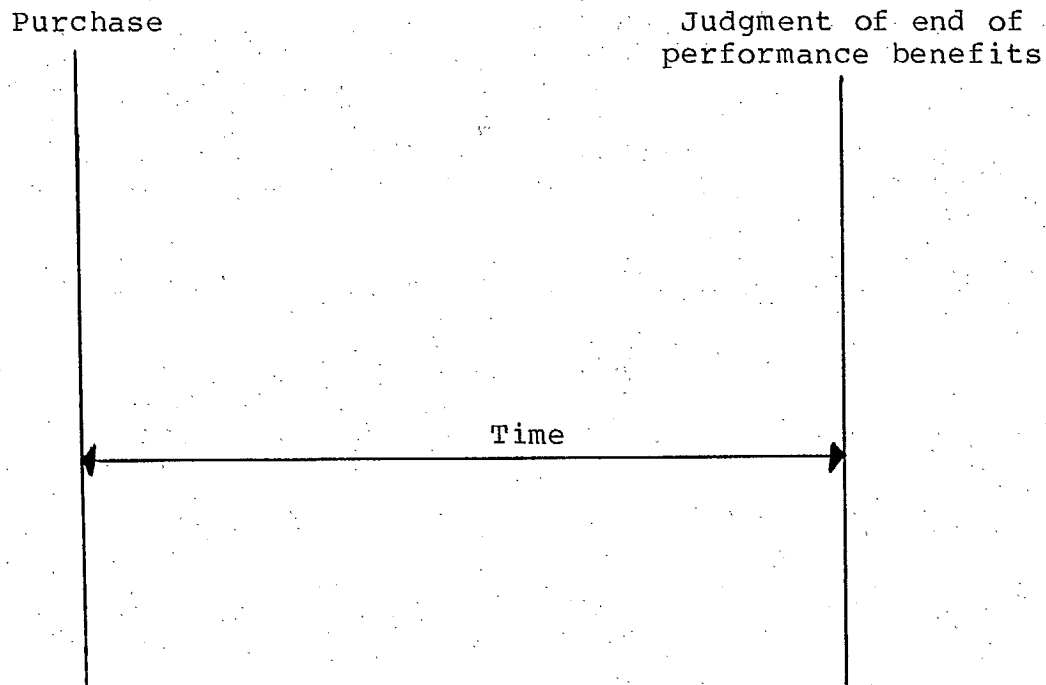


CHAPTER THREEECONOMIC LIFE CONCEPTS AND DATA

The objective of this brief chapter is to establish common understanding among readers of a number of concepts and terminology that will be used in the remainder of the report. Data will be provided on economic life costs for refrigerators and "standard size" automobiles.

Economic Life

The economic life of a consumer product is considered in this report as the period of time between purchase and termination of use to obtain performance of any kind. It can be portrayed graphically as in Exhibit 3-1. The length of the time period of economic life will vary not only by product category, model, and brand, but by product usage patterns, conditions, and user characteristics. Further, some performance benefits may be obtained for longer periods of time than others.

Exhibit 3-1Concept of Economic Life

## Performance Benefits

Consumers buy products to obtain performance benefits. We have identified four kinds of these performance benefits that can be obtained from the ownership and/or use of appliances and automobiles.

### 1. Primary Function Performance

This is the core performance for which the product was purchased: the automobile provides transportation, the stove elements and oven heat properly.

### 2. Secondary Function Performance

This is the performance obtained by use of ancillary mechanical/electrical/thermal (M/E/T) subsystems purchased as product options: the car radio works, the stove clock/timer works.

### 3. Aesthetic Performance

This is the performance obtained from the physical design and colour of the product and its component parts.

### 4. Psychic Performance

This performance benefit is an emotional state of mind induced by ownership or use of the product, or from knowledge about the seller. For many consumers, the ownership or use of a new automobile provides high psychic performance benefits. The appliances in the kitchen, such as the stove, generally provide more psychic performance benefits than do the "downstairs" appliances such as the clothes dryer. Knowledge of the seller's reputation for satisfied customers can provide psychic performance benefits for consumers as well.

## Costs Associated With Obtaining Performance and Benefits

There are a number of costs associated with ownership and use of both appliances and automobiles. We have aggregated them into four categories.

### 1. Purchase Cost

This typically has been the only cost the buyer perceives as relevant in the purchase decision.

## 2. Operating Costs

These are the costs associated with use and includes energy costs and, in the case of automobiles, such costs as insurance, parking and tolls. With increases in operating costs, these are now being considered more frequently by consumers in making purchasing decisions.

## 3. Service Costs

These are the costs associated with work on the product to provide continuity of performance benefits, especially but not exclusively functional performance benefits. In some situations it is useful to consider service costs as being of two kinds, maintenance (pre-failure) and repair (post-failure).

## 4. Psychic Costs

These are comparable to psychic performance benefits in that it is a state of mind induced by ownership or use of the product. Examples of psychic costs are uncertainty over the continued functional performance of a product that has failed three times in the previous three months, or frustration with the apparent indifference of service personnel.

## Costs Associated With Product Economic Life

It was noted in the previous section that many consumers consider purchase cost is the only relevant product financial cost in a purchase decision. Yet products which consume energy in their operation and/or which have M/E/T systems which wear with use have operating and service cost requirements over their economic life. Undoubtedly one reason why consumers do not take such costs into consideration prior to purchase is that they do not have easy access to information on total costs associated with owning and using products.

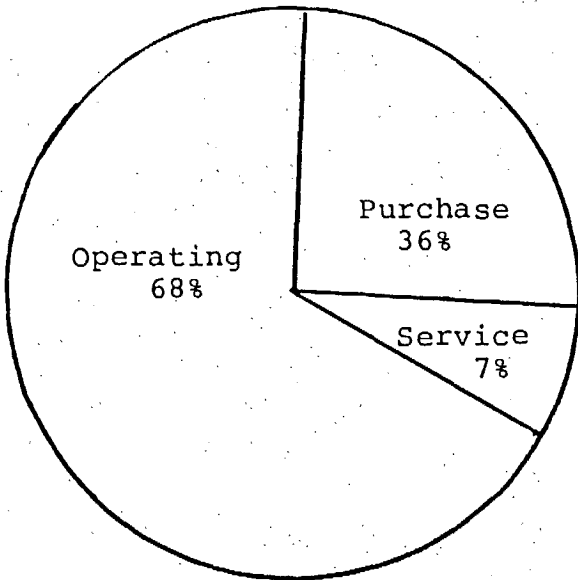
Exhibit 3-2 provides data on the estimated costs associated with economic life for a refrigerator and a standard-sized automobile purchased in 1972. For both products, the purchase cost is less than the operating costs. Exhibit 3-3 provides comparative data that show purchase cost as a proportion of total cost declining and service costs rising substantially. While all

costs are rising in terms of dollars, operating and service costs have both risen at a substantially higher rate than has purchase cost. These data have a number of implications with respect to consumer behavior and government policy makers that we will discuss in later chapters.

Exhibit 3-2

Economic Life Costs of Two Products

Refrigerator



100%

Explanatory Data

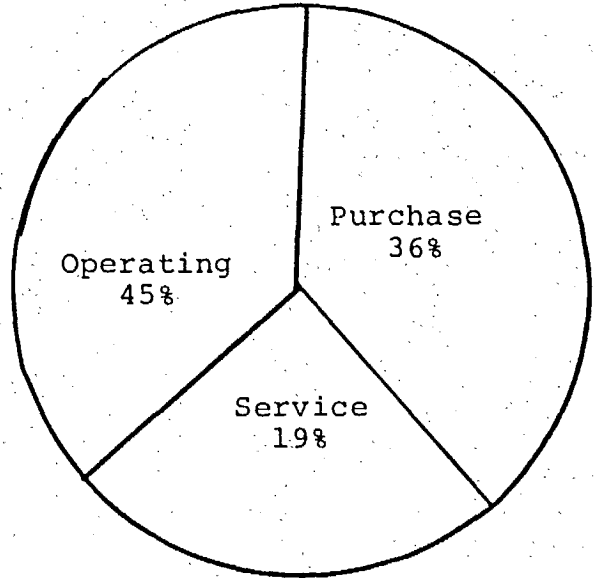
Model year: 1972  
Economic life: 14 years

Simple Cost:

Acquisition	\$ 275.00
Operating	750.00
Service	<u>75.00</u>
	\$1,100.00

Source: The Productivity of Servicing  
Consumer Durable Products, MIT

Standard Sized Automobile



100%

Explanatory Data

Model year: 1972  
Economic life: 10 years

Simple Cost:

Acquisition	\$ 4,900.00
Operating	6,050.00
Service	<u>2,580.00</u>
	\$13,530.00

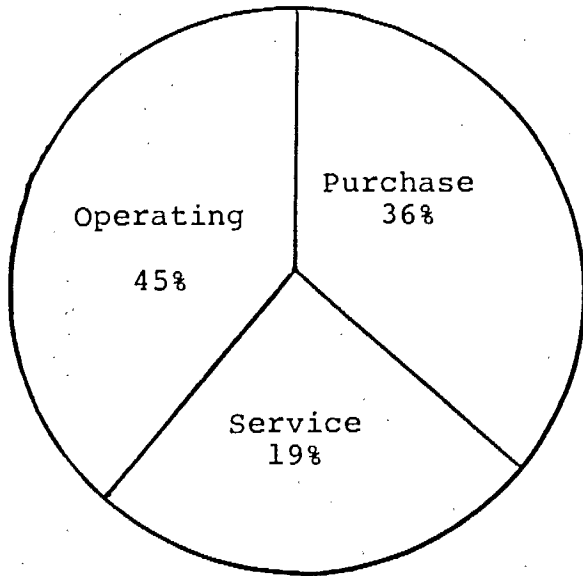
Source: U.S. Dept. of Trans-  
portation, Highway  
Statistics Division

Exhibit 3-3

Economic Life Costs  
of a Standard Sized Automobile

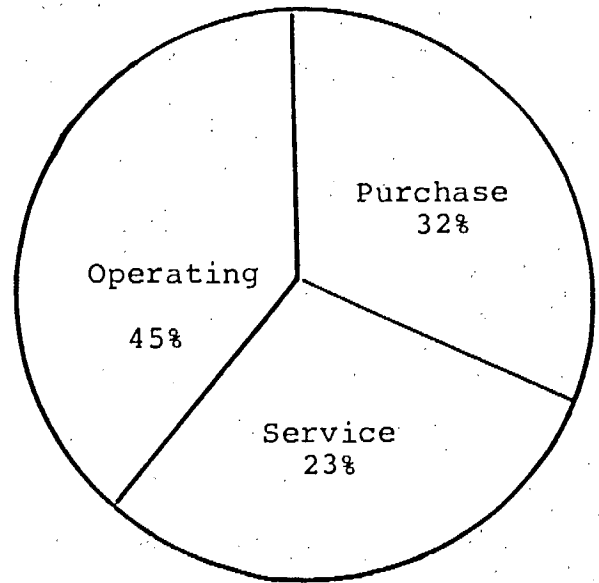
1972 vs. 1976

1972



100%

1976



100%

Explanatory Data

Model year: 1972  
Economic Life: 10 years  
Simple Cost:

Acquisition	\$ 4,900.00	+14%
Operating	6,050.00	+33%
Service	<u>2,580.00</u>	<u>+60%</u>
	\$13,530.00	24%

Percent Change

1972-1976

Explanatory Data

Model year: 1976  
Economic Life: 10 years  
Simple Cost:

Acquisition	\$5,625.00
Operating	8,100.00
Service	<u>4,130.00</u>
	\$17,855.00

Source: U.S. Dept. of Transportation, Highway Statistics Division

## CHAPTER FOUR

### THE EVIDENCE OF THE FOCUS GROUPS

A complete report of the focus group methodology and analysis is provided as a separate document in an effort to encourage reading of the document in its entirety. This document is entitled Appendix A, The Evidence of Consumer Focus Groups. What appears in this section of the report is a summary of attitudes and beliefs as expressed in the focus groups. The summary is organized in a sequence comparable to that in which the focus groups were run.

#### Product Durability

The word durability is not one used spontaneously with any frequency by consumers. At the same time it must be acknowledged that there was no consensus among consumers in providing an alternative expression of what appears to be an ambiguous and complex concept. Four different interpretations of durability emerged from the focus groups.

1. The length of the (express) warranty time period.
2. The length of time a product lasts without any repair costs being borne by the customer.
3. The length of time a product lasts, including that time in which the consumer bears the costs of repair.
4. A notion of material sturdiness: a preference for steel over white metal or plastic; the thickness of steel; the weight of the product.

In the discussion of the importance of the concept of durability in purchase and use of white goods and appliances, most consumers took the perspective of definition three above, one which we have termed product longevity. There is a tendency for it to be expressed in years for white goods and in mileage for automobiles.

Consumers have a concern about product longevity for both white goods and automobiles. There is some indication that the concern is greater for automobiles, both because of greater relative complexity and because of higher purchase price. There was numerically equivalent consumer concern about both product categories with respect to mechanical/electrical/thermal performance and aesthetic performance. Here again, the degree of concern was higher for automobiles. The relative prominence of concern with aesthetic performance reflects some consumer capability to assess different kinds of performance and thus the relative importance of different kinds of performance in the determination of individual satisfaction.

For some consumers, product longevity was not a matter of great significance. For these individuals, there were clearly greater personal values associated with the psychic benefits of owning a new product, together with the performance benefits derived from the product features associated with the new product. Personal values are influenced by the society around the individual and, for some people, this is expressed as "pressure" to conform to social norms. This social pressure was perceived in the focus groups to be higher for automobiles than for white goods.

Those consumers who expressed expectations about product durability generally did so from the perspective of product longevity. Such expectations were more often expressed for white goods than for automobiles, probably because the consumer is more likely to own a white goods product for its entire economic life. Among white goods, expectations regarding length of economic life were found to vary from one product to another.

Four categories of expectations have been defined by Miller<sup>1</sup>: minimum tolerable expectations (what must be); expected expectations (what will be); deserved expectations (what should be), and ideal expectations (what can be). Consumers in the focus groups did not explicitly distinguish among these four types of expectations, although all were evident. Most consumers who expressed definite expectations about product longevity appeared to reach their conclusion by selectively drawing on experience to determine their ideal expectation (what can be), and then expressing this as their deserved expectation (what should be). An example is a parent or relative who had a particular appliance for over 20 years. Therefore, all appliances of this kind should last over 20 years.



To conclude, some but by no means all consumers expressed expectations regarding the economic life of products. The principal reason why consumers did not express their expectations more often was probably their expressed recognition of the number of factors, many of them under the control of the individual consumer, which determines product longevity.

This recognition was clear in the part of the focus group discussions which centered on determinants of product durability. Both level and manner of usage were explicitly raised as factors affecting product longevity. Probably because consumer control over the operation of the equipment is greater for automobiles than for white goods, the manner of usage was more often mentioned for automobiles. This was true as well for maintenance.

Manufacturers were frequently criticized by consumers as the source of product durability problems. Criticisms in the area of product design related to material selection, product complexity, repairability, design omissions, frequency of design changes, and quality control. With respect to durability, two perspectives dominated. One was product longevity; the other related to notions of repairs, that is, the need for repair and the availability of parts. Product breakdown necessitating repair is a concept which we have termed product reliability.

Climatic conditions and garaging were mentioned by a few consumers as determinants of aesthetic product longevity for automobiles. This was in contrast to mechanical longevity, where manner of usage and maintenance were most often cited as non-manufacturer determinants of longevity.

Price was not perceived as a significant indicator of either product reliability or longevity. There was little acknowledgement of brand name as an indicator of these components of durability.

Store reputation was not perceived by consumers either as an indicator or as a determinant of product reliability or longevity per se. However, many consumers clearly believed that when they purchased an automobile or white good, they purchased a service package in the form of a warranty as well as the physical product. Several consumers acknowledged that product reliability and longevity could be affected by

the quality of service performed on the product. Many more consumers expressed in a variety of ways that knowledge of retailer reputation affected both consumer need to have precise knowledge of warranty terms at the time of purchase and degree of concern about getting warranty performance after purchase. Most discussions of retailer quality related to appliances rather than to automobiles. Some consumers believed that very large department chains had the best reputation for after-sale service, while others expressed the view that the small outlet which gave personalized service provided the best level of after-sale service.

### Warranties

Consumers in all focus groups were aware of the existence of warranties, although they were equally, if not more inclined to call them guarantees. There was no recognition of different types of warranty and, in particular, focus group participants had no knowledge of implied warranties in general, much less implied warranties of fitness for purpose or merchantability. In short, none of the consumers in these focus groups indicated that they had any awareness of rights in law.

Consumers, however, were clear that a warranty given by a manufacturer or retailer could and did limit seller obligation to the purchaser. At the same time, no consumer in the focus group challenged the right of the seller to circumscribe his warranties as he sees fit. Consumers were unable to recall with confidence the terms of the warranties on the automobiles and white goods which they had purchased during the previous two years. Recall of warranty terms seemed more impressive for products which had broken down, an event which apparently prompted customers to investigate the explicit terms of the warranty. Knowledge of warranty terms appeared to be greater for automobiles than for white goods, and knowledge of the duration of warranties appeared to be greater than knowledge of specific items covered or excluded. The most frequently quoted warranty was twelve month/12,000 mile coverage for automobiles.

While consumers say that the warranty is an important factor in the purchase of an automobile or white good appliance, most acknowledge that they do not acquaint themselves with warranty items prior to or at the time of purchase. Further, most consumers are perceived by focus group participants as investigating

warranty terms only after product failure. This behavior is attributed by focus group participants to occur because consumers do not take warranty terms and performance into account sufficiently at time of purchase and/or do not value warranty highly as a relevant variable at the time of purchase. At the same time, focus group participants believed consumers in general are more likely to attach more importance to warranty terms (a) the greater the financial outlay and perceived risk associated with the purchase, and (b) the longer the intended period of ownership.

Focus group consumers perceived little differentiation among competitive brands within a product category on the basis of warranty terms. They also recognized the ease with which competitors could match changes in warranty terms offered by a particular company. Two divergent views, both centered on the duration of warranty, emerged with regard to brand owner motivation in setting warranty terms. One group believed that it was in the best interest of the brand owner to provide a solid warranty, and that brand owners established their warranty terms with this in mind. The second group of consumers were more cynical, believing that the one-year automobile warranty was designed to minimize expense to the manufacturer for in-warranty repair work. However, dissatisfaction with the one-year warranty did not prompt many of these consumers to recommend longer warranty periods. There appeared to be two reasons for this. First was the recognition that warranty terms affect product prices. Second, it was realized that product misuse by some consumers affects brand owners' costs for in-warranty repairs, and that this also affects retail prices.

While focus group participants recognized the relationship between warranty terms and retail prices, there were differences in views as to what might be an ideal personal warranty. This is to be expected, given individual assumptions about actual warranty costs and differences across individuals in terms of willingness to assume risk. At the same time, there was a broad agreement that a warranty becomes less attractive to the consumer if it is perceived as unduly restrictive, or if the speed and quality of repairs is likely to be circumscribed by poor dealer service.

Focus group participants acknowledged that some consumers misuse warranties in terms of product misuse, maintenance neglect, and claims for warranty beyond the warranty terms.

### Warranty Problems

Access to the precise warranty terms prior to purchase was identified as a problem by several consumers. This problem was associated predominantly with white goods.

Express warranties were described by focus group members as complicated, ambiguous, and as being presented in fine print. At the same time, warranty terminology was not viewed as deliberately designed to confuse the consumer, although some consumers are frustrated by the fact that certain components of overall repair costs are limited or excluded in some warranties.

Some consumers who expressed the belief that warranty coverage was often inadequate did so on the grounds that consequential damages were not covered. Time costs in obtaining redress and replacement transportation were suggestions for inclusion in warranty coverage. A further example, although not consequential damage in the legal sense, was redress for loss of resale value for inadequate rustproofing performance.

Restriction on warranty transferability on resale was of concern to some consumers. It was thought to exist more in the case of automobiles than for white goods. The consensus of focus group consumers was that warranty transferability should be permitted.

Record keeping in terms of purchase slips and warranties was perceived by focus group members as a consumer responsibility, but one not handled well by consumers.

For white goods and automobiles, the first recourse of most consumers in the event of an in-warranty product performance problem was contact with the firm from which the product had been purchased. Given population mobility, this was not always practical, and some consumers stated that they had not received adequate service when they had taken their automobiles for warranty work to a dealer other than the one from which the car was purchased.

Several problems involving poor in-warranty service were cited by consumers, with greater frequency for automobiles than for white goods.

Consumer expectations regarding speed of dealer service appeared to be greater the more recent the purchase, although there was diversity within the focus groups as to whether or not dealers met this expectation.

Importance of the product to a consumer (e.g. an automobile required for daily use) seemed to influence the urgency with which consumer service was required and, therefore, expected.

The expectations of focus group consumers regarding speed of service were frequently not fulfilled, especially for automobiles. Explanations given for this lack of fulfillment included low dealer profitability for warranty work, dealer emphasis on vehicle sales rather than service, small size of dealer service facility relative to requirements, sale of more models than can be efficiently serviced, deliberate dealer delay until after expiry of the warranty time period, and delays in obtaining parts. The interrelationship between parts availability and parts cost apparently is not understood by consumers, who complained as well about parts costs. Dealers tended to be blamed for parts problems, although frequency of design changes by manufacturers was recognized as a contributory factor.

Quality of service was also the subject of numerous focus group consumer complaints. Once again, the great majority of complaints concerned automobiles. The requirement that warranty repair work be performed by an authorized service representative was seen both as weakening consumer bargaining power with the dealer and preventing consumers from doing their own repair work at lower cost. Non-performance of work was seen as a problem by some consumers, as was inadequate dealer attention to major repairs. There was a feeling among some focus groups consumers that poor dealer quality of service might be related to dealer exploitation of the warranty system to obtain greater profits. Overall, quality of service was perceived almost exclusively as a dealer problem, with only one consumer identifying the idea that quality of service might be related to the dealer-manufacturer relationship.

### Action Recommendations

Focus group consumers were asked explicitly what action they believed consumers, manufacturers, dealers, and governments might take to minimize product durability and warranty problems. Action recommendations for consumers included acquisition of more information on comparative product performance, more detailed information about warranties, and shopping around prior to purchase. Post-purchase recommendations covered better use of information in the owner's manual, together with intelligent use and maintenance. With respect to redress mechanisms, there was mixed awareness of alternative mechanisms and knowledge of how to make contact, given awareness. Simplicity and economy in redress mechanisms was desired by focus group participants. The principal action recommendation was that more consumers should make known and press their complaints than they now do.

The focus group participants recognized that the manufacturer was primarily responsible for the components of durability. Action recommendations for manufacturers included less frequent model changes and product testing standards that better reflect the uses (and perhaps abuses) to which products are put. At the same time there was some recognition of cost-selling price tradeoffs and conflicting pressures such as weight versus fuel economy. There were few specific suggestions for manufacturer action with respect to warranties, although there was some support for the offering of alternative warranties at different prices. There was little focus group request for more manufacturer information on warranties or maintenance. The courtesy and responsiveness of automobile and white goods manufacturers was unfavourably compared to that of packaged goods manufacturers.

Recommendations for dealer action included better informed salesmen with respect to knowledge of products, warranties, and store repair and return policies. Improvement of dealer sensitivity to consumer complaints, integrity in honoring warranties, and flexibility in interpretation of warranty terms were all recommendations for action. There was support on the part of some focus group participants for extinction of warranties following repair within the warranty period.

Action recommendations for government in the area of delivery of information to consumers included direct information of a general nature and requiring supplier system warranty information be both simple and clearly displayed. There were also action recommendations in the establishment of quality control standards for products and the provision of a redress mechanism.

Members of all six focus groups were asked to react to the Saskatchewan legislation that products should last for "a reasonable period of time." There was no awareness of the existence of this legislation, even among those residents of Saskatchewan. The legislation was generally viewed as imprecise and unlikely to benefit the consumer. Several consumers apparently believed that a single time period would be determined for each product. This assumption provoked criticism on the grounds that it would not be able to accommodate variations in the frequency and manner of product usage among consumers.

## CHAPTER FIVE

### THE EVOLUTION OF STRUCTURE AND OPERATIONS IN THE WHITE GOODS AND AUTOMOBILE INDUSTRIES

The purpose of this chapter is to provide information about the structure and operation of several aspects of the appliance and automobile industries that we believe are relevant to the development and evaluation of alternatives by policy makers, but which tend not to have received adequate attention in our estimation in the law-perspective literature.

#### The White Goods Appliance Industry

While both the new automobile and white goods appliance industries are in the mass-marketing of consumer durables, the structure and rate of change of the two industries has been very different. Forty years ago the appliance industry structure was comparable on some dimensions to that of the new automobile industry today. Control of the product offerings was in the hands of the manufacturers and most new products were sold by independent dealers who were small in scale relative to the manufacturers. However, there were some differences between the two industries. There were many more domestic appliance manufacturers than there were domestic automobile manufacturers. A significant proportion of appliances were sold through department stores, some of which were larger than their appliance suppliers. Finally, retail appliance dealers of all kinds tended to assume responsibility for appliance service over the life of the product to a greater extent than for automobiles.

The advent of white goods appliances as mass-market products in the 1950's brought changes in the distribution structure for these products. Mass-merchandising emerged in the form of appliance discount houses which, through volume sales, could profitably operate with lower retailer margins. The resulting volume and margin pressures on small independent dealers led to a greatly lowered level of after-sale appliance service. Manufacturers responded by integrating forward into the appliance repair business in those centres where it was economically viable to maintain company owned and operated service centres, and by contracting out warranty service to independent



service organizations in those areas where it was not economically feasible to have a company service operation. At about the same time, large volume appliance retailers began to emphasize private brands as a means to get both greater consumer loyalty and higher margins. A few large retailers, notably Simpsons-Sears, developed strong appliance service organizations as part of their merchandising philosophy.

By the mid-1970's, the majority of white goods appliance sales were being made by mass-merchandise retailers. The largest of these had well-developed "house" brands on which the product specifications were set by the retail organization. After-sale, in-warranty and post-warranty service was handled by a mix of large manufacturer and large retailer-controlled service operations in major urban areas and by independent service operations, many connected with an appliance retail operation, in the case of smaller manufacturers and in rural and smaller urban areas.

#### The New Automobile Industry

The structure of the new automobile business today is largely unchanged from that of 40 to 50 years ago: control of new product offerings held by the manufacturers; products sold by independent franchised dealers, who are small in scale relative to the manufacturers; and warranty service provided within this system.

The growth of the automobile as a mass-market product in the 1950's and 1960's, while not affecting the basic industry structure, did have an impact within the dealer system. Some large urban dealers moved to large-volume low-margin operations, encouraged, it would appear, by manufacturer interest in increased sale of new products. As this trend increased, the volume and margin pressures on smaller dealers increased and created a downward pressure on the level of after-sale service. It is likely that the tying of warranty service to the selling dealer became a vital issue to smaller dealers trying to protect their business at this time. Further, it would appear that the shift in the last ten years of financial responsibility for predelivery inspection and warranty costs from dealer to manufacturer was taken by manufacturers to alleviate stresses in their dealer system. It should be noted that some manufacturers still tie warranty service to the selling dealer, which suggests that smaller dealer continues to maintain power in some of the systems.

Over the years, there has developed a very large number of organizations outside this system in the business of providing automobile repairs. While precise data are not available, it appears that the share of the total automobile service market held by the manufacturers and their dealers had declined in the last forty years, with an increasing proportion of the high volume service business (such as exhaust systems) going to firms outside the manufacturer-dealer system.

One important trend that will have far-reaching implications for the automotive service industry structure is the increasing use of electronics components. At the moment, the best estimate we could obtain of the average proportion of a new automobile dealer's service business accounted for by warranty work was 25 percent. As electronics components become more prevalent, this new technology will require different servicing equipment and technical skills. Substantial investments will be needed to install the costly equipment needed to test electronic functioning and to train service personnel in this field. This trend, in our opinion, will not only result in increased costs passed on to consumers, but also in a restructuring of the automotive service industry. In particular, we foresee a marked decrease in the role of independent gas stations in making repairs and a corresponding increase in the role of new car dealers. It is impossible to predict at this time whether or not the public will gain or lose in this regard.

A similar development in electronics has already been occurring in the major white goods appliance industry. The introduction of microwave ovens is the most notable example, but also there have been solid state items and other devices introduced into more traditional appliance lines. Two trends have occurred. First, service personnel are approaching such products as assembled modules and replacing entire modules rather than actually repairing products in a traditional sense. (This is discussed further in Chapter Eight). Second, new channels of sale and service are being experimented with by appliance manufacturers. For example, microwaves are frequently offered in stereo-hifi stores because the electronic technology is more similar than between microwaves and the traditionally mechanically-operated appliances.

Most importantly, a key factor in the structural evolution of the automobile industry was identified over the course of the interviews with every automobile manufacturer we met with. Although it was not expressed as such, we believe this factor is the change in business concept occurring in these organizations in recent years from one of sales to one of sales and service to achieve customer satisfaction. The pervasiveness of this change varies both within and across organizations but, in our opinion, the trend is established to such an extent that the direction is irreversible. At the same time, we want to emphasize that the process of change will take some time because: (a) the large size of each of the organization systems; (b) each system contains independent dealers, not all of whose business objectives will be congruent with the changes at the manufacturer level, and; (c) perhaps most important, the change in business concept involves a change in the object of attention from physical products (automobiles) to people (customers).

### Conclusions

This evolution in structure and operations in the white goods appliance and automobile industries has its parallel in a great many other product categories. The implications that can be drawn for warranty policymaking are numerous.

1. Market structures, like products, can and do change over time. The law should either be robust enough to allow for these changes or, if this is not possible, should be updated periodically to reflect the changes in the world. Draftsmanship can vitally affect the robustness of a law and we believe that law draftsmen, who use the word "manufacturer" as a synonym for "control of product specifications" are decreasing the robustness of any resulting law. We believe that a more appropriate term is "brand owner," a word acknowledged in the Ontario Bill 110 but, if reading law literature is an indication, a concept not well understood by those whose principal orientation is law.
2. Where change is occurring, performance may deteriorate temporarily. This is exemplified by the short-term deterioration of appliance servicing at the time of merchan-

dising structure and product specification control changes in the appliance industry. The same temporary performance deterioration may occur when there are changes in product technology and/or production technology.

3. There are tasks to be performed in the sale and service of a product. Margins at various levels in an industry structure are directly related to which system member is doing those tasks, as well as to the costs and risks associated with those tasks. Thus, one would expect a retailer who assumes administrative and financial responsibility for warranty service to have higher margins than the retailer who does not. Note that this issue is related to the one as to whether or not sufficient margins are available to do the job properly, a reason frequently put forward as a prime cause of inadequate automobile predelivery inspection and dealer warranty repair service in the 1960's and early 1970's.
  
4. Responsibility in law on the part of a system member for fulfillment of a function or task should not be equated with an obligation on that system member to carry out that function or task. This is best illustrated by an example from the appliance and home entertainment industries. In both industries, there is a common practice of "outboarding" warranty labour costs. In practice, this means that the retailer, rather than the manufacturer assumes financial responsibility for the labour costs associated with in-warranty repairs. In these highly competitive industries, the outboarding of warranty labour also has the effect of reducing federal sales tax payable by the manufacturer.

There are abuses of this system. Exhibit 5-1 provides an example. It is for reasons such as these that the Ontario Law Reform Commission Report recommended that, wherever possible, the manufacturer assume "the responsibility of providing the servicing facilities and paying for them." However,

it appears that this recommendation is based on the assumption that manufacturers are invariably better able to assume repair service obligations than are retailers. This is not congruent with the current Canadian scene, where there are a number of large retailers who have the capability and resources to provide a higher and more uniform level of service than many of their suppliers. It is for this reason that it is important not to build rigidities into the law that would create problems at the same time others are being eliminated.

5. It is important to monitor over time the effect of existing policy initiatives on present and developing future system performance to ensure accurate assessment of what future policy initiatives might be required.

Exhibit 5-1

A November 1978 "Sound Off" Column by  
Gordon Sanderson from the London Free Press

"TV Warranty? Fine Tuning May be Necessary"

It's bad enough to have a new color television set break down just three days after purchase. To then have the manufacturer's service centre say that repairs will be at the owner's expense is just too much, especially after the set was sold with "full manufacturer's warranty."

But it happened to Elizabeth Revill of 70 Fiddler's Green, London, and her unhappy experience should serve as a lesson to others to read and understand warranties - and also be aware of the difference between dealers who sell sets with a manufacturer's service contract and those who are known in the trade as "self-servicing."

In the first instance, a dealer buys a blanket service contract from the manufacturer which guarantees that if any set he sells malfunctions within the warranty period, the customer has only to go to the nearest manufacturer's service outlet and obtain repairs without charge.

In the second category, the self-servicing dealer undertakes to do the service at his own premises. This puts a customer at a distinct disadvantage if he moves to another community, making it difficult to return to the selling dealer for warranty work.

Self-servicing, in this context, could be construed as "self-serving" on the dealer's part.

This is precisely the situation which confronted Miss Revill and which prompted her brother-in-law, H.F. Schwartz of Sarnia, to write a complaint letter on her behalf to Sound Off.

Miss Revill purchased a 1979 portable 20-inch RCA color television from Crazy Kelly TV & Stereo in Chatham on November 15. The bill, including tax, was \$460.05. The bill of sale was marked "full manufacturer's warranty."

Exhibit 5-1 Cont'd.

Miss Revill, however, lives in London. And just three days later, on November 18, the sound went on the set. She contacted the RCA television service centre at 162 King Edward Avenue in London to report the problem and ask for service under warranty.

It was then she learned that RCA would not service the set unless she agreed to pay \$19.95 for the call. Alternatively, she could pay \$39.95 for a one-year RCA service contract.

"What kind of rip-off is this?" asks Schwartz, who also expressed his dissatisfaction in a letter to RCA Corp. in Indianapolis.

Sound Off's first call was to the London RCA service centre where manager Mario Pancino was familiar with Miss Revill's case. "She bought the set from Krazy Kelly (no connection with a London retailer of a similar name) in Chatham," Pancino said. "This dealer handles his own service."

He said RCA dealers have the option to buy service contracts from RCA or to do their own servicing. The "full manufacturer's warranty" Miss Revill purchased with the set does not include labor.

"When she called us for service, we told her she has the option of paying \$19.95 for the service call or sign a \$39.95 contract which would provide service coverage for a full year. Or you can take the set back to Krazy Kelly in Chatham and let them do it at no charge."

The full manufacturer's warranty issued by RCA states as follows:

"(1) If any parts fail in your RCA receiver within one year from date of purchase, we will supply replacement at no charge in exchange for the part that failed. This includes tuners and plug-in modules."

"(2) If the color picture tube should fail in your RCA receiver within three years from the date of purchase, we will supply a replacement at no charge in exchange for the picture tube that failed. The replacement picture tube will carry a warranty for the unexpired portion of the basic warranty period, or one year, whichever is greater."

Exhibit 5-1 cont'd.

"(3) The dealer from whom you purchased the receiver will instruct you in its operation, when required. The dealer will carry out warranty to the purchaser. The dealer is to complete the pre-stamped, pre-addressed warranty registration and mail to the company."

"(4) The purchaser is responsible for any service labor cost and any transportation cost to and from the dealer service location, unless the purchaser has made other arrangements at the time of purchase whereby the dealer undertakes this responsibility.

"(5) The purchaser must retain the bill of sales as proof of date of purchase and if planning to move to a new location outside the dealer's service area, contact the dealer for service arrangements in the new location."

This warranty clearly puts the onus on the consumer and is an important consideration for those who may be considering an RCA TV purchase in an area where they may not be living.

The London RCA service manager said all this was explained to Miss Revill. However, because her set had broken down so soon after purchase, the centre did try to be helpful.

"We called Chatham. We advised Krazy Kelly in Chatham (of the customer's problem) and they refused to send someone here to London to fix it," Pancino said. "They refused to pay us to fix it. They told us to advise the customer to bring the set back to Chatham and they would look after it."

Since this was impractical, Miss Revill signed a one-year service contract and paid RCA \$39.95. Her set was fixed and found to have a defective module.

"We gave her the options," Pancino said. "We weren't very happy with the way Krazy Kelly in Chatham looked after the customer. We tried our best within our means to make her happy."

He said that in London, all Woolco stores, Simpson's, London Furniture and Krazy Kelly's have RCA service contracts.

Eaton's, Stallards TV Sales and Service and Frank Warner each perform their own.



Exhibit 5-1 cont'd.

"In town, we haven't run across any dealer that hasn't performed their own service adequately," Pancino said. "We prefer they buy our service because it keeps my people working and we feel that our people are better qualified to do the service. But this is a funny case because it's out of town."

He said a self-servicing dealer may sell RCA sets cheaper "because he's hoping nothing will happen during the warranty period."

In the case of dealers who purchase the company's warranty service, it doesn't matter. RCA will back the product under warranty, including labor charges.

Bob Webb, manager of Krazy Kelly in Chatham (a retail outlet owned by Mad Man Madigan Ltd.), confirmed that his store is a self-servicing dealership. He said there is nothing in the RCA warranty to cover labor and under terms of warranty, it is a carry-in service available at the dealership.

He suggested Miss Revill's complaint should really be with RCA. He agreed that it would be unwise to buy an RCA from his store if the customer lived beyond the Chatham service area or intended to move to another community.

The store, Webb said, does sell other TV makes which are covered by full manufacturer's warranty, including labor, anywhere in Canada.

The customer is responsible for transportation to and from the dealer, "unless the dealer has made other arrangements, and we do make other arrangements with people."

When the price is appropriate, Krazy Kelly will state on the bill of sale "one year's free service."

In Miss Revill's case, the dealer would gladly have repaired her set without charge had she brought it back to Chatham.

Webb said he knew the salesman who dealt with Miss Revill "and he would have explained that to the customer."

Exhibit 5-1 cont'd.

Miss Revill obviously did not get the message. "That's possible," Webb said.

The case raises a couple of interesting points. Can a manufacturer limit responsibility for repairing a defect in a brand new product by terms of an express warranty? And should a consumer be penalized by a servicing agreement between a retailer and a manufacturer?

The bottom line is always to read the fine print.

CHAPTER SIXPRODUCT DURABILITY

Executives in both the white goods and automobile industries did not find the word durability a useful one in describing their products. Like consumers, they found the word ambiguous in meaning. For virtually all of the interviewees, the word durability has two principal components and, in the automobile industry, a third as well.

1. Product reliability - the mechanical/thermal/electrical operation of the product. Within this category there is a distinction made between primary function operation (i.e. the automobile runs, the stove elements heat) and secondary function operation (the butter warmer keeps the butter soft, the car radio plays). The distinction is made because it is perceived by executives that consumers view primary function failure as both a more serious failure and one which requires more immediate repair service.
2. Product appearance at time of delivery - this is, executives told us, usually a consumer surrogate for both automobile reliability and longevity.
3. Product longevity - the length of time that the product lasts, given appropriate maintenance and repair.

In this chapter we will review the factors which were generally agreed upon as affecting these components of product performance. We have organized the discussion by stage in the purchase/use time sequence.

Product ReliabilityPre-sale

There are a number of factors which affect product reliability that are determined before the vehicle is sold to the customer.

Design, while acknowledged to be very closely related to reliability, is not perceived in either the white goods appliance or automobile industries as a pervasive problem of any substantial nature. This is especially so for primary function operation. Brand owners are highly cognizant of the adverse consumer and trade acceptance effects associated with systematic product function failure,<sup>1</sup> together with the very high costs of fixing design related failures in the field. Therefore most organizations work diligently to ensure that product design does provide function reliability prior to being put on the market. Although hard data are not available which directly bear on the interrelationship between appliance and automobile product design as to functional reliability, executives in both industries expressed the view that the level of product reliability related to the design of both product subsystems and complete units has increased. Within the automotive industry, it was emphasized that this was particularly true for automotive drive systems.

Executives in each industry acknowledged that products do get offered for sale that have design-related defects. Where this happens it generally occurs for one of two reasons:

- (a) Modification of existing designs to reduce material or labour production costs, or substitution of materials in a time of shortage. In either case, systematic product functional failure can occur if inadequate testing of product performance is carried out with the modified components.
- (b) Design changes incorporating new technology that result in a product that has increased consumer benefits in some areas simultaneous with less consumer benefits in terms of reliability. This is quite frequently the case in the introduction of new product components based on new technology. As experience with the new technology grows, advances are made in the technology which improves product reliability. The recent most dramatic change in consumer products of this kind of technology has been in the television industry. The advent of integrated circuits into industry products has reduced the first year Canadian TV

service call incidence (color) from 1.1 per set in 1973 to .15 in 1978. The estimated figure for 1983 is .10.<sup>2</sup>

One aspect of automobile design deserves special mention in relation to reliability. To the extent that automobile owners equate non-reliability with any time in which the vehicle is not available for use, then changes in the frequency of maintenance requirements may be used as one indicator of reliability. Exhibits 6-1 and 6-2 provide data that show that design changes over the years have reduced the number of maintenance operations and lengthened the time intervals between recommended maintenance. It should be noted that in the Automotive News story from which Exhibit 6-2 data were taken, U.S. industry officials presenting the data to U.S. congressional hearings did make it very clear that the reduced number of trips to the dealer should not be equated with lower maintenance costs inasmuch as "new federal standards on emissions, fuel economy and safety inevitably mean greater complexity and higher costs per unit." A recent London Free Press newspaper article listed the consumer cost of these maintenance procedures within the warranty period at \$111 for 1979 cars.

There is a set of factors associated with product manufacture and assembly that affect product reliability. These include changes in production technology, and levels of production quality and quality control. The view was expressed widely by members of each industry that the average level of complete unit product functional reliability of industry products leaving the factories has been improving. There was a frank admission by the domestic automobile manufacturers that the average level of product quality of their vehicles in the 60's and early 70's was below that of imported vehicles. All went on to state their belief that the current levels of product quality are equal to, or above those of imported mass-market vehicles. They state that the improvement has come through improved standards of manufacturing and assembly, together with better and higher quality control standards. It should be noted that there has been a shift in emphasis in the items included in vehicle quality control checks in recent years. Whereas the emphasis at one time was almost exclusively on items related to safety and mechanical/electrical reliability, items relating to aesthetic performance have been added for reasons that will become clear in a later section.

Exhibit 6-1

Comparison of Lubrication  
Requirements, 1949 and 1979

<u>Lubrication</u>	<u>1949</u>	<u>1979</u>
Chassis	1,000 mi	7,500 mi or 1 yr
Generator	1,000 mi	-
Distributor	1,000 mi	-
Throttle Bellcrank	1,000 mi	-
Solenoid Linkage	1,000 mi	-
Air Cleaner		
Normal	2,000 mi	Every 2nd oil change
Heavy		Every oil change
Engine Oil		
Normal	2,000 to 3,000 mi	7,500 mi or 1 yr
Heavy		3,000 mi or 3 months
Carbuertor Accelerator		
Pump Shaft	5,000 mi	-
Rear Axle	Spring and Fall	7,500 mi or 1 yr
Manual Trans- mission	Spring and Fall	7,500 mi or 1 yr
Automatic Trans- mission		
Normal	-	100,000
Heavy	-	15,000
Wheel Bearings	10,000 mi	30,000 mi
Steering Column Gear		
Shift Control	10,000 mi	-
Clutch and Break Pedal Shaft	10,000 mi	-
Clutch Cross Shaft	-	30,000 mi

Source: General Motors of Canada Ltd.

Exhibit 6-2

Changes in Maintenance Requirements  
over 50,000 Mile Period

<u>Company</u>	<u>Model Year</u>	<u>Requirements</u>
Chrysler	1958	73 trips to dealer
	1978	9 trips to dealer
Ford	1974	125 procedures
	1979	30 procedures
GM	1956	47 trips to dealer
	1978	7 trips to dealer

Sources: Automotive News, Oct. 30, 1978  
Chrysler Canada Ltd.

The offerings of automobiles and white goods to consumers contain a range of potential functional, aesthetic, and psychic performance benefits beyond the primary functional performance benefits (e.g. transportation for an automobile). A number of these performance benefits are associated with the addition of one or more mechanical/electrical/thermal subsystems to the basic product. Examples are the elimination of the defrosting task in an automatic defrost refrigerator, and cooler interior summer temperature in a vehicle equipped with air conditioning. Both the availability and purchase of these benefits has increased for automobiles and white goods over the years. Thus, the average number of mechanical/ electrical/thermal systems in white goods and automobiles purchased by consumers today is substantially higher than it was, say, twenty years ago.

This leads to some interesting conclusions about product reliability when combined with the unanimous views of members of both the automobile and white goods industries that total unit reliability with respect to mechanical/electrical/thermal functions is inversely related to the number of such subsystems in the complete unit. It means that "deluxe" product models, to the extent they include more mechanical/ electrical/thermal subsystems are, on average, less reliable than "economy models" of the same product. It also means that gains in reliability in primary product function in complete units have been muted by the average increase in secondary product functions, each with their own reliability factor. Further, it is quite possible that the average consumer view as to what a "basic" complete product unit is may have changed. For example, a frost-free refrigerator may now be considered the standard refrigerator rather than a manual defrost one.

The quality of pre-delivery inspection at the dealer level is highly important in minimizing pre-use reliability problems with automobiles, a point emphasized by all automobile organizations interviewed. Similarly, correct installation of a major appliance is critical in appliance reliability. Industry data are not available for automobiles on the cumulative effects of pre-sale factors on overall product reliability. Some data are available for both television sets and appliances.

In the U.S., first year service incidence for color TV's decreased from about 2.3 to one between 1964

and 1972. Black-and-white service requirements declined from 1.0 to below .5 in the same period. Refrigerator first-year service incidence declined from about .7 to about .3 over the 19 year period between 1958 and 1972. Automatic washing machines manufactured shortly after World War II "reportedly required about three service calls per year on the average whereas current models require about one call every five years on the average."<sup>3</sup>

Canadian data for appliances and television sets are given in Exhibit 6-3. The forecast increase in years between calls/appliance is attributed to improved product quality and the stability of manufacturing model changes. The figures for television sets show a dramatic drop in service incidence, the result noted earlier of rapid technology change affecting product reliability.

It should be emphasized that even though the service call frequency per household is forecast to drop slightly for major appliances, the service cost per household per year is forecast to rise dramatically, partly as a result of increased appliances per home, but primarily because of labour price rises. In the home entertainment field, the huge drop in forecast service incidence is not matched by a drop in forecast service cost per year.

### Early Life

All of the factors in the preceding section also affect white goods and automobile reliability in early product life.

The physical environment of use is a factor affecting automobile reliability of all stages in product life. Severe climatic and poor road conditions push mechanical/electrical/thermal systems towards the edge of their capabilities. It is under these conditions in early life that defects are likely to surface in product failure.

The same phenomenon occurs for some appliances. If there are defects in an air conditioner or refrigerator, they are likely to show up in very hot humid weather, when these appliances are being worked the hardest.



Exhibit 6-3

Major Appliances Service Data (White Goods)

	<u>1978</u>	<u>1983 (Est.)</u>
Appliances/Household	4.15	4.50
Service Calls/Household/Year	.69	.64
Service Cost/Household/Year	\$36	\$62
Years Between Calls/Appliance (Average)	6.0	7.1
Increase in Service Cost Due to:		
Inflation		78%
Increased Products per average Household		22%

Home Entertainment Service Data

	<u>1973</u>	<u>1978</u>	<u>1983 (Est.)</u>
TV Sets/Household	1.27	1.29	1.18
First Year TV Service Incidence (Color)	1.1	.15	.1
First Year TV Service Incidence (B&W)	.6	.05	.01
TV Service Incidence/ Household/Year	1.2	0.46	0.21
Home Entertainment Service Cost/Household/ Year	N/A	\$28.00	\$29.50

Source: W.C. Bradbury  
Canadian Electrical Appliance Service  
Association

Two factors, both under the control of the consumer, have a substantial impact on early product life reliability of appliances and automobiles. One is consumer knowledge of how to operate the product. Every organization interviewed stated strongly that it was both in their interest and the consumer's for the consumer to have good knowledge of how to use the product. All reported problems in conveying this information on the selling floor at the time of purchase. It would appear that many consumers are caught up emotionally in making a large dollar commitment purchase, and that this emotion is heightened when the product is perceived as providing psychic performance benefits. At the same time, it was acknowledged by all organizations interviewed that there were widespread problems associated with the quality of salesman knowledge and performance.

Some organizations selling appliances have worked to overcome the lack of knowledge about product use by scheduling a service call after delivery with the specific objective of demonstrating product use, or by providing cooking lessons for purchasers of microwave ovens, a relatively new product category. Such actions are recognition of the idea that information on product use is much more salient to consumers at time of use than it is at purchase.

Many automobile dealerships have a policy of scheduling a demonstration ride at the time of delivery, during which the salesman will demonstrate all the operational features of the vehicle. A substantial number of customers refuse this service in their haste to "show off the new car."

One automobile organization is attempting to minimize the problem of operating knowledge by providing the buyer with an owner's manual to read between the time of purchase and delivery. This program has not been in effect long enough to provide data on its effectiveness. Both the automobile and white goods appliance industries report that consumers with problems in operating the product do not use the owner's manual to the extent they could. The manuals are, to use the words of one automobile industry executive, "the least-read best sellers in the world."

Further, for appliances, many consumers do not spend much time in trying to identify or fix problems before calling for assistance. This behavior explains why many appliance service organizations, in

responding to a consumer telephone call, ask early in the conversation if the consumer has checked to see that the appliance is plugged in and that the circuit fuse has not blown. It was reported by one appliance service organization that in 24% of service calls for color televisions in the first year of ownership, the service task was to adjust the picture. It is important to realize that all consumers who purchase a product pay for the cost of dealing with those consumers who do not take time to learn how to operate the product.

A second factor controlled by the consumer that affects product reliability in early life is amount and style of product use. Style of product use is less critical for appliances than it is for automobiles, primarily because there is less direct user-machine interaction that affects wear rates on product components. Therefore, it is not surprising that reported levels of misuse and abuse are much lower for appliances than for automobiles, and is not perceived to be a problem in the appliance industry to the same extent that it is in the automobile industry.

Most organizations interviewed were asked if there were any patterns of misuse and abuse that related to socioeconomic or demographic factors. With the exception of males between legal driving age and 25 identified as high abusers of automobiles, the responses were negative. However, we have the distinct feeling that virtually all service organizations do not collect data that would enable them to respond well to this question.

Both appliances and automobiles have parts that wear with usage. Therefore, amount of usage is a factor affecting product reliability in early product life. This relationship is more important in the case of automobiles, where the number and complexity of wear-parts is greater, and the variations in the amount of consumer usage much greater than for appliances.

Data from the Ash study provides evidence from the consumer perspective as to the magnitude and source of customer dissatisfaction with products purchased in the previous three years. Exhibit 6-4 shows that in situations of high customer dissatisfaction with a purchase, quality of product materials and workmanship are perceived as a high problem area source across all the product categories. Question 10, which incorporates notions of both product reliability

and product longevity, also generated a high response across all product categories. With the exception of new cars and trucks, responses to questions related to express warranty offers and delivery of service against those offers (questions 12-15) indicate fewer perceived problems in this area, as well as more product specific problems than for those related to materials and workmanship, and expectations about product reliability and product longevity. A somewhat comparable pattern emerges in Exhibit 6-5, in which the respondents were asked to indicate "the one most important reason for their dissatisfaction." There is, however, high loading on question 10 for small appliances and especially personal care appliances.

The alert reader will have noted some disparities between the magnitude of the response numbers to question 1 and 2 in Exhibits 6-4 and 6-5, and the supplier perspective on product reliability pre-sale and in early product life put forward on the preceding pages of this chapter. Two factors are largely responsible for these disparities. The first is a technical one. The data in Exhibits 6-4 and 6-5 were collected from highly dissatisfied purchasers. They should not be construed as applying to the total population of purchasers.

The second factor is a more subtle one. The questions in Exhibits 6-4 and 6-5 all relate to supplier system input into the expectation/performance "equation". We do not have comparable information for these consumers as to their personal input into the expectation/performance "equation", and the linkages with such responses to the questions in Tables 6-4 and 6-5. Although it would be highly functional for both government and business policy makers to have such data, we believe that the accumulation of data in this report from the focus groups, business interviews, and consumer behavior literature combine to indicate that this personal input is an important factor in any expectation/performance gap, and that, as a result, the "Reasons for Dissatisfaction" data in the Ash study should be interpreted with considerable caution as wholly accurate descriptors of marketplace problems.

#### Later Life

It would appear that the set of dominant factors affecting product reliability and of white goods and automobile change to some extent over the life of the vehicle. The number of mechanical/

Exhibit 6-4  
Reasons for Dissatisfaction Reported by Purchasers  
Who Identified the Product Category As the Most  
Unsatisfactory Purchase of One or More  
Highly Dissatisfying Purchase Experiences

Reasons for Dissatisfaction	Percent Responding to Reason for Dissatisfaction							
	New Cars and Trucks N=45	Used Cars and Trucks N=41	Refrigerators, Freezers N=13	Ranges, Ovens, Grills N=14	Clothes Washers and Dryers, Automatic Dishwashers N=17	Vacuum Cleaners, Carpet Sweepers, Floor Polishers, Rug Shampooers N=14	Small Kitchen Appliances N=49	Electric Hair Dryers, Curlers, etc. N=23
1. The quality of materials was inferior	47%	37%	31%	71%	47%	57%	37%	15%
2. The quality of workmanship was inferior	55	27	23	43	17	50	39	13
3. The product had drawbacks that I was not told about when I bought it	20	49	31	14	29	21	14	13
4. The cost of using the product is higher than I was led to believe	20	24	8	0	6	0	4	0
5. The item that was delivered was different from the one I bought	0	2	0	14	0	0	2	0
6. The product was damaged when delivered	9	12	31	21	12	7	4	0
7. I had to wait a long time before the product was delivered	2	2	8	7	12	14	4	0
8. The product was misrepresented to me by the salesman	7	17	0	7	6	29	2	4
9. The product did not correspond to the general impression created in an advertisement	9	15	7	0	18	43	4	26
10. The product did not perform as well or last as long as advertising claims led me to believe	42	20	46	21	47	36	41	78
11. The credit terms were misrepresented to me	2	2	0	0	0	0	0	0
12. The warranty (guarantee) did not cover all of the things that went wrong	53	17	8	0	12	21	10	4
13. The warranty (guarantee) was not as extensive as the general impression created in advertising	16	12	8	7	6	14	2	9
14. Repairs or services under the warranty (guarantee) were unsatisfactory	58	17	15	21	6	14	16	9
15. The warranty (guarantee) was not honored	11	7	0	14	0	7	4	0
16. The store was unwilling to provide a refund or an exchange	7	10	8	0	6	14	2	13
17. The dealer misrepresented his ability to provide parts and service for the product	18	17	15	7	12	0	0	4
18. I was tricked by a salesman into buying a more expensive model than I needed	7	2	0	0	0	14	0	0
19. The price that was charged was higher than what I had agreed to pay	4	0	0	0	0	7	0	0
20. The price that was charged was higher than the advertised price	0	0	0	0	0	0	0	0
21. The product was unsafe	2	20	0	7	12	7	4	13
22. The product advertised as a "special" or "bargain" was unavailable at the store	2	0	0	7	6	0	4	0
23. The product wasted energy resources	20	17	8	21	12	7	6	0
24. The instructions for using and taking care of the product were incomplete or impossible to read	0	7	0	0	0	0	4	0
25. Other reasons not listed above	13	22	15	14	12	21	10	4
No. of Purchasers	380	356	317	232	376	365	620	446

1. Cars and trucks were in a category set of 13 product groupings which included transportation vehicles of all types, together with accessories and home use maintenance and parts products. The other six categories were in a category set of 18 product groupings which included major and small appliances of various groupings, together with several categories of durable personal and health care products. Electronic home entertainment products were not in this category set.

Source: National Consumer Satisfaction/Dissatisfaction Study by Ash (forthcoming)

Exhibit 6-5

Distribution of the "One Most Important Reason"  
For Dissatisfaction for Dissatisfied Purchasers  
In Eight Product Categories

Reasons for Dissatisfaction	Percent Responding to Reason for Dissatisfaction							
	New Cars and Trucks	Used Cars and Trucks	Refrigerators, Freezers	Ranges, Ovens, Grills	Clothes Washers and Dryers, Automatic Dishwashers	Vacuum Cleaners, Carpet Sweepers, Floor Polishers, Rug Shampooers	Small Kitchen Appliances	Electric Hair Dryers, Curlers, etc
	N=45	N=41	N=13	N=14	N=17	N=14	N=49	N=23
1. The quality of materials was inferior	13%	22%	15%	14%	12%	21%	18%	13%
2. The quality of workmanship was inferior	20	12	8	14	12	14	22	0
3. The product had drawbacks that I was not told about when I bought it	2	17	15	0	18	7	4	0
4. The cost of using the product is higher than I was led to believe	2	5	8	0	0	0	0	0
5. The item that was delivered was different from the one I bought	0	0	0	7	0	0	0	0
6. The product was damaged when delivered	0	2	8	14	6	0	0	0
7. I had to wait a long time before the product was delivered	0	0	0	7	6	0	0	0
8. The product was misrepresented to me by the salesman	0	5	0	0	0	0	0	0
9. The product did not correspond to the general impression created in an advertisement	4	0	0	0	0	7	0	9
10. The product did not perform as well or last as long as advertising claims led me to believe	13	5	15	7	12	14	29	57
11. The credit terms were misrepresented to me	0	0	0	0	0	0	0	0
12. The warranty (guarantee) did not cover all of the things that went wrong	9	5	0	0	0	7	2	0
13. The warranty (guarantee) was not as extensive as the general impression created in advertising	4	2	8	0	6	0	0	4
14. Repairs or services under the warranty (guarantee) were unsatisfactory	11	0	0	7	0	7	4	4
15. The warranty (guarantee) was not honoured	0	5	0	14	0	0	2	0
16. The store was unwilling to provide a refund or an exchange	0	2	0	0	0	0	0	0
17. The dealer misrepresented his ability to provide parts and service for the product	4	2	8	0	12	0	0	4
18. I was tricked by a salesman into buying a more expensive model than I needed	0	0	0	0	0	7	0	0
19. The price that was charged was higher than what I had agreed to pay	2	0	0	0	0	7	0	0
20. The price that was charged was higher than the advertised price	0	0	0	0	0	0	0	0
21. The product was unsafe	2	5	0	0	6	0	4	4
22. The product advertised as a "special" or "bargain" was unavailable at the store	0	0	0	0	0	0	2	0
23. The product wasted energy resources	2	0	0	0	6	0	2	0
24. The instructions for using and taking care of the product were incomplete or impossible to read	0	0	0	0	0	0	0	0
25. Other reasons not listed above	9	10	15	14	6	7	10	4

Source: National Consumer Satisfaction/Dissatisfaction Study by Ash (forthcoming)

electrical/thermal subsystems in the product, the amount and style of product usage, and the physical environment of use remain as factors which affect reliability in later product life. However, the level of manufacturing quality and quality control, automobile predelivery inspection, appliance installation, and consumer knowledge of how to operate the product would appear to recede in importance, to be replaced by a new set of factors.

Product design is a factor that is likely to emerge in later product life as one affecting product reliability, as well as the continuing level of aesthetic performance benefits of the product.

To the extent that performance problems arise because of design flaws, they are likely to become a contentious issue between the product owner and the brand owner because of the fairly high probability that they will occur beyond the coverage period of the brand owner's express warranty.

For white goods, the quality of energy supplies comes into play in those areas, almost exclusively rural, where there is variability in the voltage supply of electricity, and in those areas, parts of Saskatchewan being a prime example, where the quality of water has an effect on appliance operation in the longer run.

The frequency and quality of product maintenance becomes a more dominant factor in later product life, particularly for automobiles. It was reported by the automobile industry that the level of automobile maintenance drops substantially after the warranty time period. There is a strong feeling within the automotive industry that the general level of automobile preventative maintenance currently is declining. Ironically, one of the causes would appear to be the improved vehicle designs which have lengthened the time/mileage requirements between maintenance jobs. Car owners are apparently less attentive to these maintenance tasks than they were when the recommended time interval between maintenance jobs were shorter. The second cause of lowered levels of preventative maintenance is the greatly increased consumer acceptance of self-service gas stations, and consequent reduction in the number of under-the-hood checks frequently performed in full-service gas stations.

There is a relationship between motor vehicle condition and public safety in that a poorly maintained vehicle poses a greater road safety hazard than one which has been well maintained. This was recognized by the research team of the Ontario Law Reform Commission as a "matter of fundamental importance to all citizens of Ontario" and led to the conclusion that "The merits of periodic inspections for all used vehicles ought to be re-examined."<sup>4</sup> We would like to emphasize our support for these statements and our concern that the problem is growing in magnitude!

Finally, but by no means least significant, the quality of service is a factor that becomes more dominant in affecting reliability in later product life for both white goods and automobiles. Industry views on this factor will be provided in a later chapter.

#### Product Appearance at Time of Delivery

While product appearance at time of delivery undoubtedly is important for white goods, it did not enter into the interviews with appliance executives as a major source of concern. Such was not the case for automobiles.

Delivery of a new automobile is frequently the first time that the buyer has seen the specific product that he or she has purchased. There is a wide agreement in the automobile industry that vehicle condition at the time of delivery is a critical factor in the owner's long-run satisfaction with it. The cues which the consumer uses, however, tend to be highly selective and related to non-mechanical aspects of the vehicle. Paint chips, quality of the overall paint job (especially as perceived by inspecting the hood area in front of the driver's seat), and even the presence of mud on the floor mats are all reported by the people in the automobile trade as the cues used by consumers as indicators of the overall quality of the vehicle, including mechanical operation.

The question naturally arises as to what the differences between the two industries that would result in the widely differing levels of concern. There appears to be three principal reasons. The first relates to factory quality control. Until a few years ago, the primary emphasis of domestic automobile manufacturing quality control was on ensuring reliability of vehicle operation. However, when it became apparent that consumers were valuing aesthetic performance more



highly at time of delivery and/or using aesthetic performance cues as an indicator of overall vehicle performance, additional emphasis was given in these areas on improving manufacturing quality, and adding more aesthetic items to the quality control procedures. The second is product deterioration between the factory and the dealer, which is substantially a greater problem for automobiles than for white goods. One industry source reported that 20% or more of automobiles suffered some physical deterioration during the transportation process during the winter months. The third reason is that to a greater degree than for appliances, an automobile requires preparation prior to delivery -- preparation that is not under the direct control of the brand owner. The concern among all domestic automobile manufacturers was the variability within their dealer organizations in ensuring that delivered vehicles met customer expectations in terms of physical appearance, and their difficulties in reducing this variation.

The importance of vehicle appearance at time of delivery is illustrated in the report of automobile manufacturers that the level of satisfaction the new car buyer has in the first 90 days of ownership is highly likely to remain as the buyer's overall assessment of that vehicle over the total period in which he or she owns it.

### Product Longevity

#### Ownership

Longevity as a concept can be related to both the product and to ownership of that product. Length-of-ownership patterns are different for white goods than they are for appliances. While hard data do not appear to be available, there is a wide consensus among people in the two industries that there is a much higher tendency among white goods owners than among automobile owners to own a product over its total life.<sup>5</sup> Automobile sources estimate that in Canada the average number of owners over the life of an automobile is between three and four, and is rising.

Given these patterns of ownership, one would expect that there would be more purchase decisions for automobiles than for any specific appliance. This is confirmed by the U.S. data in Exhibit 6-6.

Exhibit 6-6

Durables Purchased by Age of Head of Household

Number of durables purchased per 100 households over the five-year period 1968-1972.

<u>Age of Head</u>	<u>Used Car</u>	<u>New Car</u>	<u>Color TV</u>	<u>Refrig- ator and Freezer</u>	<u>B&amp;W TV</u>	<u>Washing Machine</u>	<u>Clothes Dryer</u>	<u>Range</u>	<u>Air Condi- tioner</u>	<u>Dish- washer</u>
Under 25	204	78	51	44	62	46	31	24	22	6
25 to 29	166	74	52	47	34	45	38	26	24	15
30 to 34	130	64	44	39	35	37	28	19	18	19
35 to 44	142	71	43	39	32	34	24	19	16	16
45 to 54	119	85	39	32	30	27	18	21	17	11
55 to 64	67	58	28	27	21	22	13	14	13	6
65 years +	28	23	16	18	16	12	8	11	11	2
Overall	107	63	36	33	30	29	20	18	16	10

Source: U.S. Department of Commerce, Consumer Buying Indicators, p. 65, No. 47 (1974).

U.S. data on reasons for purchasing durable goods are provided in Exhibit 6-7. It shows that a substantial proportion of replacement decisions, particularly for cars, are made for reasons other than the primary function performance of the product.

Field data as part of a large U.S. study<sup>6</sup> show for refrigerators in housing authority and military-base rental accommodation, an increase in non-critical refrigerator failures (door adjustments, gaskets, and accessories) in the nine to eleven year range was accompanied by a sharp increase in the proportion of refrigerators replaced rather than repaired.

Mueller,<sup>7</sup> in an early study, found that the desire for innovation in refrigerators was highest among high-income groups. She reported that 45% of the replacement purchases of refrigerators were undertaken by households whose current refrigerator was under 10 years old and in good condition.

The data in this section suggest that there are a number of factors in addition to product reliability that affect product ownership longevity, and that these factors impact on product economic life:

- household resources
- household values with respect to product functional, aesthetic and psychic performance levels
- rates of product and/or manufacturing technological change
- relative levels and rates of change in new product maintenance, repairs and operating costs.

To the extent that these factors operate in economic life decisions, the end of product economic life can occur although the product still has primary function capability.

#### Product Economic Life

Several factors were identified in the previous section as affecting length of economic life for decisions on how long to own a product. In

Exhibit 6-7

Reasons for Purchasing Durable Goods:  
Cars and Household Durables

<u>Reason for the purchase</u>	<u>Household Durables</u>	<u>Cars</u>
Replace item, no longer usable	28%	23%
First-time purchase	35%	13%
Replace item, usable condition	18	25
good condition	<u>6</u>	<u>20</u>
	24%	45%
Purchased as addition	10%	17%
Other (gift, impulse, etc.)	<u>3%</u>	<u>2%</u>
	100%	100%
Number cases	(354)	(206)

Source: G.S. Day and W.K. Brandt, "A Study of Consumer Credit Decisions: Implications for Present and Prospective Legislation", The National Commission on Consumer Finance Technical Studies, Volume 1, U.S. Government Printing Office, 1973.

addition to these, product economic life is affected by a number of the same factors that were identified as dominant influences on product reliability in later product life.

- . product design
- . amount and style of usage (style of usage more critical for automobiles)
- . level of maintenance and repair (maintenance more critical for automobiles)
- . physical environment of use (more critical for automobiles)

There are two additional factors which must be added to this list:

- . level of product reliability
- . collisions (automobiles).

Level of product reliability at a given point in time reflects the product history on the combination of the factors of design, usage, service and physical environment. With respect to automobile collisions, a U.S. Department of Transportation study<sup>8</sup> quotes insurance industry statistics of a U.S. annual Collision Frequency rate of 10.7 per 100 cars. Canadian automotive sources state that collisions were the major single cause for automobiles being taken out of service from the fourth year of vehicle life on.

The notion of monitoring the economic life of products is not a difficult one conceptually. However, it is an expensive one to implement. This factor is mitigated to some extent for automobiles where basic annual registration data do exist. Because of this cost problem, most available data are cross-sectional in nature i.e. collected at one point in time. These must be interpreted with some caution in that they may not reflect adequately such differences across products as market saturation levels, or rate of technological change and differences across time such as economic conditions.

Canadian cross-sectional data for selected appliances are given in Exhibit 6-8 and for automobiles in Exhibit 6-9. It is our understanding that the automobile data have not been compiled by any organization in Canada since 1974.

Exhibit 6-8

Age of Appliances among Households Owning

		Age of Equipment		
		<u>0-5</u>	<u>6-10</u>	<u>Over 10</u>
Ranges	1978	33.5%	28.6%	36.0
	1977	37.3	27.8	34.9
	1976	36.9	28.3	34.8
Refrigerators	1978	38.1	29.8	32.1
	1977	40.1	27.6	32.3
	1976	39.6	27.6	32.8
Automatic Washers	1978	46.2	32.0	21.8
	1977	49.0	28.2	22.8
	1976	49.2	28.6	22.2

Source: Statistics Canada 64.202

Exhibit 6-9

Total Cars in Operation in Canada, 1974,  
by Model Year

<u>Model Year</u>	<u>Age (Years)</u>	<u>Total Cars in Operation</u>	<u>Percent of Total Cars in Operation</u>
(Prior) 1965	9+	1,053,550	14.7%
1966	8	547,530	7.7
1967	7	548,710	7.7
1968	6	651,750	9.1
1969	5	718,700	10.0
1970	4	644,870	9.0
1971	3	670,360	9.4
1972	2	839,820	11.7
1973	1	999,010	14.0
1974	(part year)	<u>476,245</u>	<u>6.7</u>
Total		7,150,545	100.0%

Source: R.L. Polk & Co. (Canada)

A different approach to estimating the economic life of appliances is given in Exhibit 6-10. The figures are derived from known market saturation rates and production data for each product. The Exhibit data represent the number of years of past production required to total the known saturation rate. As an indicator of the true economic life of products, it is most accurate for mature (stable market saturation) products. Refrigerators and electric ranges are two product categories that have both high and stable market saturation. The changes in the data reflect not only the inherent reliability and longevity of the products themselves, but also technological change and consumer values and resources. For example, the sharp drop in the average of oldest ranges from 18.0 in 1972 to 14.5 in 1973 was due to large sales of self-clean ranges as replacement for standard-clean ranges.

Exhibit 6-11 does provide longitudinal data for automobiles in the U.S. It is the most accurate kind of data that we have been able to obtain on product economic life. The data have been transformed in Exhibit 6-12 to a product economic life curve which is near-normal, has a model economic life of 9 years and an average economic life of about  $10\frac{1}{2}$  years. Seventy-five percent of the distribution lies between the 6th and 12th years.

### Summary and Conclusions

The word durability was found to have multiple meanings among people associated with the new white goods appliance and new automobile industries. Product reliability and product longevity were the principal components of the word durability identified, with those in the automotive industry identifying product appearance at time of delivery as a third factor which consumers use as a surrogate for both reliability and longevity.

The dominant factors affecting product functional reliability appear to change over the life of the vehicle. The list of dominant factors at three stages of product life are summarized as Exhibit 6-13. Product functional reliability appears to be only one of many factors influencing the length of product economic life. The list of dominant factors for economic life is given in Exhibit 6-14.



Exhibit 6-10

Average Age of Oldest Product

APPLIANCE

<u>Year</u>	<u>Freezers</u>	<u>Refrigerators</u>	<u>Ranges (Electric)</u>	<u>Microwave Ovens</u>	<u>Dishwashers</u>	<u>Washers</u>	<u>Dryers</u>	<u>Room Air Conditioners</u>
1972		15.6	18.0	—	6.6	13.0		3.2
1973		16.2	14.5	—	6.4	11.5		3.3
1974	10.3	15.7	14.6	—	6.0	11.6		3.5
1975	10.5	15.2	14.4	1.0	6.1	11.0		3.9
1976	11.1	14.7	14.2	2.0	7.2	10.8	13.0	3.9
1977	12.9	13.5	14.3	3.0	8.2	11.0	11.5	4.7
1978	13.3	13.6	14.5	4.0	8.8	11.7	11.3	5.4
1979	13.7	13.6	14.8	5.0	9.5	11.5	11.3	6.0
1980	14.1	13.7	15.1	6.0	10.3	11.5	11.0	6.7
1981	14.5	13.8	15.4	7.0	11.0	11.2	11.0	7.3
1982	14.9	13.9	16.2	8.0	11.7	11.1	11.2	7.8
1983	15.0	14.0	16.0	9.0	12.5	11.2	11.4	8.2
Top Out*	18			15	11-12	10-11		10+

\*The expected average age when the product class becomes a mature one.

Source: W.C. Bradbury  
Canadian Electrical Appliance Service Association.

Exhibit 6-11

Average Percent of Model Year Units Registered  
in the U.S. for 1-14 Years after End of Model Years  
(using Model Years 1958-1972)

No. of Years After End of Model Year	Percent of Model Year Units Registered
	100% <sup>a</sup>
1	99.3
2	98.4
3	97.2
4	94.8
5	90.9
6	84.4
7	74.3
8	61.2
9	47.0
10	34.1
11	23.6
12	15.9
13	10.4
14	7.5

(a) 100% = No. of model year cars registered in  
in calendar year after model year.

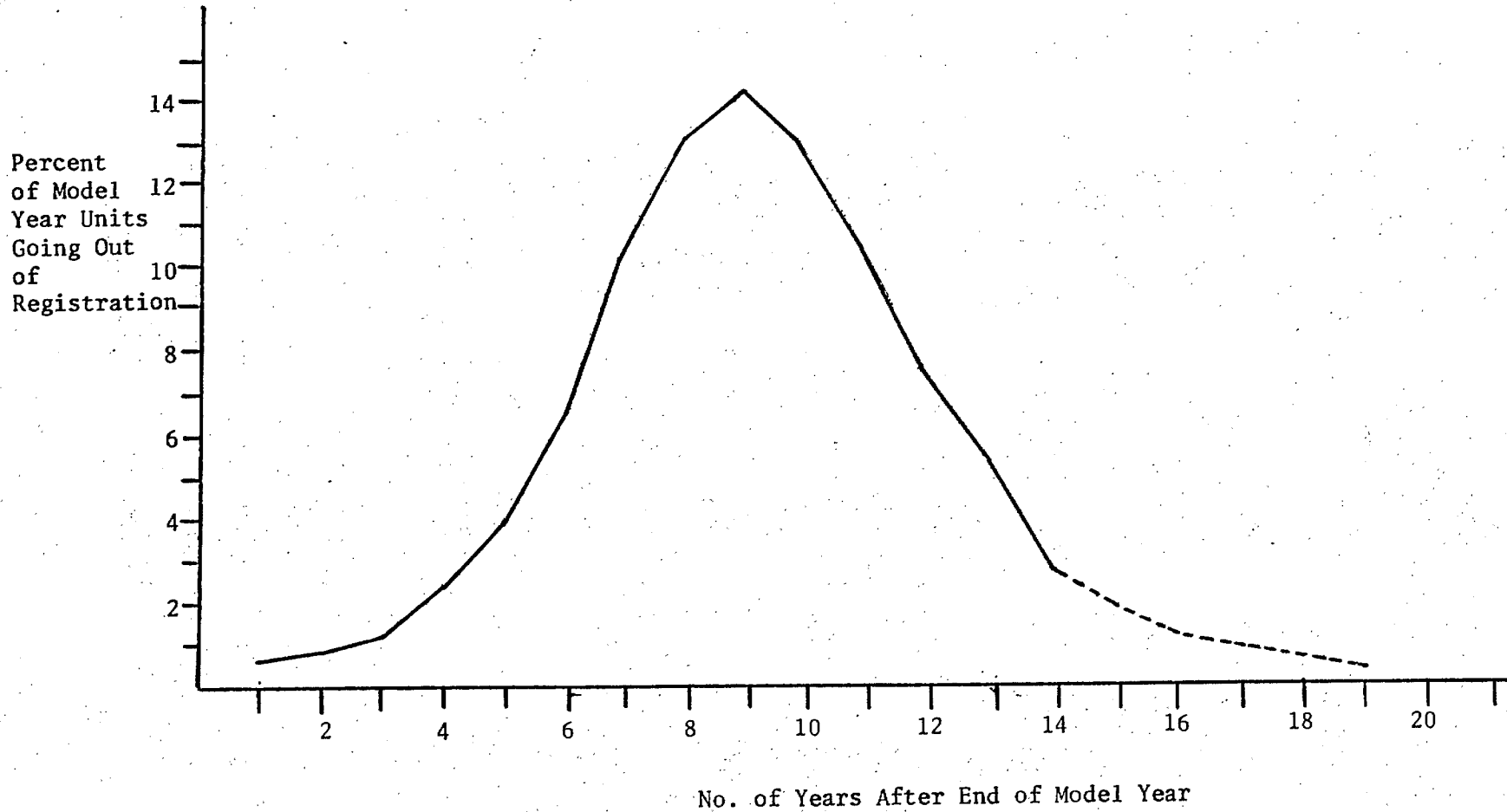
Original Source: R.L. Polk & Co. (U.S.)

Exhibit 6-12

Product Economic Life Curve

For U.S. Automobiles

(Using Model Years 1958-1972)



Source: Based on R.L. Polk & Co. data. See Exhibit 6-11.

Exhibit 6-13

Dominant Factors Affecting Functional  
Reliability of White Goods Appliances  
and Automobiles

Pre-Sale

- Level of Manufacturing Quality and Quality Control
- Number of Mechanical/Electrical/Therman Subsystems
- Predelivery Inspection (Automobiles)
- Design for Extended Maintenance (Automobiles)

Early Life

- Level of Manufacturing Quality and Quality Control
- Number of Mechanical/Electrical/Thermal Subsystems
- Predelivery Inspection (Automobiles) and Installation (White Goods)
- Consumer Knowledge of How to Operate the Product
- Amount of Style of Usage
- Physical Environment of Use

Later Life

- Number of Mechanical/Electrical/Therman Subsystems
- Amount and Style of Usage
- Physical Environment of Use (Automobiles)
- Product Design
- Level of Product Maintenance (Automobiles)
- Level of Product Service (Automobiles)
- Quality of Energy and Water Supplies (White Goods)

Exhibit 6-14

Dominant Factors Affecting Length of Economic Life  
of White Goods Appliances and Automobiles

- . Household resources.
- . Household values with respect to product functional, aesthetic, and psychic performance levels.
- . Rate of product and/or manufacturing technological change.
- . Relative levels and rates of change in new product, maintenance, repairs and operating costs.
- . Product design.
- . Amount and style of usage (style of usage more critical for automobiles).
- . Level of maintenance and service (maintenance more critical for automobiles).
- . Physical environment of use (more important for automobiles).
- . Level of product reliability.
- . Collisions (automobiles).

Our conclusions on product functional reliability, based both on interview information and limited "hard" data, are as follows:

- . Reliability decreases with increases in the number of product subsystems at a given level of technology.
- . The average number of subsystems in complete units has increased.
- . The level of product reliability related to the design and manufacturing of product sub-systems has improved, especially for automobile drive train systems.
- . The average overall level of reliability for complete units has increased.
- . The rate of increase in repair/service costs is greater than the rate of improvement in product reliability.
- . The average overall costs of repair service to maintain reliability have increased.

Only very limited data are readily accessible about the economic life of white goods and automobiles. Further, much of this data must be interpreted with caution because of the methodology used in its collection. Our principal conclusion is that if product longevity is perceived to be a real or potential problem by policy makers, then better and more systematic data collection on product longevity must be undertaken to identify the true magnitude of the problem. Aside from that, the limited data available suggest that product economic life is not as short as perceived by most consumers.

Finally, we conclude that the decline in automobile maintenance, with its potentially adverse effects on public safety, is an area that merits more detailed assessment.

CHAPTER 7SOME THOUGHTS ON IMPLIED AND EXPRESS WARRANTIES

We have given a very considerable amount of thought over the course of the research as to the objectives and expression of both implied and express warranties. This chapter provides our perspective on the two kinds of warranty. Chapter Eleven is a more detailed description of existing and proposed warranty legislation.

Implied Warranties

It is our belief that the objective of laws is to provide guidelines on aspects of societal conduct. As such, laws are a formal expression of societal expectations and experience as to how specific kinds of conduct should be carried out in the best interests of society as a whole. Sales law is an expression of the rights and obligations of buyers and sellers based on societal expectations and experience. With respect to warranty, the law is concerned with:

- . who has rights,
- . who is responsible for providing those rights (i.e. has obligations),
- . what those rights are, both as a minimum and as a voluntary offer by a seller,
- . what the obligations are, associated with maintaining and delivering those rights,
- . who decides if the rights and/or obligations are not being met, and
- . if the rights are not being met, a delineation of the process by which the unfilled rights are to be fulfilled or remedies provided for lack of fulfillment.

To date, warranty law, as a subset of sale of goods law, has recognized two types of rights for buyers and obligations for sellers. Implied warranties refer to rights and obligations imposed by statute on

Exhibit 6-14

Dominant Factors Affecting Length of Economic Life  
of White Goods Appliances and Automobiles

- . Household resources.
- . Household values with respect to product functional, aesthetic, and psychic performance levels.
- . Rate of product and/or manufacturing technological change.
- . Relative levels and rates of change in new product, maintenance, repairs and operating costs.
- . Product design.
- . Amount and style of usage (style of usage more critical for automobiles).
- . Level of maintenance and service (maintenance more critical for automobiles).
- . Physical environment of use (more important for automobiles).
- . Level of product reliability.
- . Collisions (automobiles).



the parties to the transaction. Chapter Eleven elaborates on this by providing examples of laws which contain implied warranty provisions. The second type of right/obligation is entitled express warranties. In this instance, the seller voluntarily makes a promise relating to his obligations to the buyer post-sale. There has been considerable discussion as to the proper relationship between implied and express warranty rights and obligations which we have dealt with in other chapters, especially Chapters Eleven and Twelve.

Leaving aside for the moment the issue of the relationship between implied and express warranties, the question naturally arises as to what are the characteristics of "good" implied warranty law. We argue that such a law will have the following characteristics:

- . it has clearly communicated intent.
- . it is robust in terms of:
  - (a) applicability to the field of coverage,
  - (b) applicability over time,
  - (c) capability of being understood by both the buyers and sellers to whom it applies.

The combination of these three factors leads to the conclusion that such law will of necessity be written in general terms and/or be in the form of enabling legislation. This notion of expression in general terms does create some complications, as we shall discuss shortly.

- . wide knowledge of the law where there is a difference between the law, as an expression of informed expectations and experience, and the manner in which the majority of buyers and/or sellers operate in the marketplace. Note that knowledge of the law, or even awareness of its existence, is not urgently required when there is congruency between the law and the manner in which buyers and sellers normally operate in the marketplace.

- . there is acceptance of the value of the law by both buyers and sellers, but particularly by buyers on whom it confers rights, because they assume collectively costs associated with those rights.
- . it is, and is seen to be enforced adequately and equitably.
- . the long run societal benefits outweigh the societal costs.

It was pointed out earlier that the expression of the law in general terms creates some complications. This occurs because there is a conflict between the long-term nature of the "good" law and the generally much shorter-term interests of both buyers and sellers.

On the seller or business side, the expression of the law in general and commonly understood terms places the small business organization on a more equal footing with larger organizations, inasmuch as there is less requirement for interpretative expertise that is more costly on relative basis for small business. The opposite is the case if the general expression is ambiguous, prompting business firms to perceive unknown legal risk. In the short-term, many businessmen would like specificity in the law with respect to obligations in order to reduce risk of uncertainty and unpredictability of costs. Others say that from a purely business perspective, the short-term benefits are outweighed by the longer-term costs associated with the monitoring and administration of product-specific law, together with potential problems of rigidity, to the extent that changes in the law do not keep pace with changes in technology or market structure.

On the buyer side, the prospective purchaser of a specific product generally wants to have access to explicit information on rights, even if he or she does not avail themselves of that explicit information prior to purchase. The private or express warranty can provide such information. Indeed, we see express warranties, in theory, as an opportunity to be specific expressions of the law as they apply to specific products and, in aggregate over time, to reflect changing levels of economic risk associated with the underlying state of the art of product and production technologies. That is, they have the potential to play a productive role in the marketplace and in the evolution of the law.

### Express Warranties

Both our focus group and business interview research revealed a very low level of awareness of implied warranties. At the same time, many individuals in both groups have a well developed notion of warranty as the getting or giving fair value for money paid, or a "square deal". We will use the idea of a square deal in developing concepts about the complex inter-relationship between warranty objectives, form of warranty offer, and the warranty delivery system.

Consumers buy physical products to obtain performance benefits of various types. For many products, use to obtain performance benefits is accompanied by physical product wear. Note that a product does not have to have mechanical/electrical/thermal components for this to occur. Hammers and cooking utensils, as well as appliances and automobiles, are all examples in which wearout occurs because the product is used in a process that involves the transfer of energy.

Conceptually, a year's production by a firm of any one of these products can be thought of as having an average expected economic life expressed in usage, and a minimum and maximum expected life. The average amount of usage associated with the economic life of the product will be determined by the performance capabilities of the product, conditions of use, style of use, the level and quality of product maintenance and repairs, and a number of factors associated with consumer resources and needs in the future, together with future market offerings and costs. To the extent that there is a variation in any of these factors, there will be a difference between minimum and maximum product life. The economic life of each product group can be expressed as a curve, with the total area under the curve representing the year's production. This was, in fact, what was done for automobiles in Exhibit 6-12. However, the development of such a curve for a product in the year of its manufacture is an exceedingly difficult one. Even if the producer has good knowledge of the performance of the product under some testing standard, the resulting curve would be only a rough approximation of the true one. However, the producer does know that the products below the average will be heavily weighted on some combination of those weakest in inherent performance capability, those used under severe conditions, and those abused and/or poorly maintained.

What is consumer perception of a square deal at the time of purchase of one of these products? It is likely to include some notion that the average economic life, whatever it is, represents value for the purchase price. It is likely to include also an offer of compensation in the event of product failure. However, it is not likely to include compensation up to the average length of product life, because this would mean subsidization of those customers who abused or misused their products. Consumer perception of a square deal on this dimension is more likely to be compensation for a product that breaks down with very little use, or wears out quickly within "reasonable" conditions of use, style of use, and maintenance. That is, the consumer is likely to include in the idea of a square deal, protection against the risk of economic loss caused by factors out of his or her control.

It is to the brand owner's advantage to provide and be seen to provide this risk protection via an express warranty as an inducement to the prospective buyer, independent of whether or not the law requires him to do so. The inducement is two-fold. First, the higher individual buyer risk of product failure is lowered by spreading the cost of product failure over all buyers. Second, the existence of the risk protection is likely to influence the prospective buyer's idea upward of what the unknown average economic life of the product is.

However, there remains for the brand owner the task of determining how best to communicate the offer of risk protection to prospective buyers, and how best to set up and administer within the distribution system a method of delivering the offer fairly and at reasonable cost. The two are interrelated, as we shall point out.

If the offer is expressed as compensation for defective material and workmanship (supplier fault), there must be sufficient expertise in the distribution system to assess products on these dimensions. To the extent that the required expertise is above a very minimum level, it will be both difficult and expensive to get the expertise distributed widely and evenly throughout the distribution system. The alternative of concentrating expertise will result in delays in decisions which will be resented by consumers.

These same issues are present where consumer misuse or abuse of the product (consumer fault) is stated as grounds for denying compensation.

In either approach of concentration or decentralization, individual product judgment decisions must be made. Those refused compensation with this kind of system are likely to be unsatisfied for one or more reasons:

- . The buyer is unlikely to understand decisions based on technological considerations, and regard them as unfair or irrelevant.
- . The buyer may perceive that the person making the decision has a financial interest which influenced the decision.
- . The reason given for refusing compensation is most likely to be product abuse, misuse, or lack of maintenance. The buyer is not likely to perceive himself/herself as an atypical product user.

A second way of expressing the offer is compensation for any buyer within a given period of time (no fault). This reduces the requirement for expertise and related costs in the distribution system. However, there are some new problems for the brand owner. The shift to time from usage has altered the economic life curve. Products below the average on a time curve will include not only those that were defective, those that were used in severe conditions, and those that were abused or poorly maintained, but those products which were used frequently and much of their full-value economic life used up. Further, there may be some products above the average which are in fact defective, but the defects have not yet surfaced because the product was used very little.

It should be apparent that the decision on a time period is not an easy one. The shorter the time period set, the more it is likely to exclude buyers who have a defective product. The longer the time period, the more the buyers to the right of that time line are subsidizing buyers who used up the economic life of the product quickly or who misused or poorly maintained the product. For the brand owner, however, lengthening the time period likely will influence prospective buyers' assessment of the average economic life of the product.

Whatever the time period decided upon, a further decision must be made as to whether exceptions will be allowed in cases where requests for compensation are made after the stated time period. If such exceptions are allowed, the problems and costs associated with expertise and individual decisions (fault) again must be faced, together with dissatisfaction on the part of those customers refused compensation or not notified that such a possibility exists. This is precisely why brand owners who have engaged in such exceptions have frequently been charged with having "secret warranties". Executives we interviewed felt such a "judgment" period after the stated time period was appropriate and in the consumer's interest as well as their own. However, should such exceptions be construed as applying generally to all owners, these same brand owners said they would revert to the stated time period only.

There are also some issues related to the shift to records as the basis of the decision. If the onus is on the buyer to produce the records, and those records are not available, many buyers will be dissatisfied because of their belief that compensation has been denied on a technicality totally divorced from product performance. On the other hand, if the brand owner assumes responsibility for the keeping of records, there are administrative costs, which increase disproportionately as the time period is extended. Such costs will in the final analysis be placed on the consumer.

An idealized sequence of the steps that the preceding suggest might be followed in the establishment of an express warranty are:

1. Determination of the magnitude of the consumer risk created by the warrantor through the delivery to the buyer of a product that is defective. Ideally, this should include information on both the average risk and frequency distribution of the amount of the risk to which individual buyers must be exposed.
2. Development of alternative warranty offers. These will include combinations of fault, no-fault, and compensation coverage.

3. For the appropriate warranty offers, determination of the magnitude of the potential liability created, beyond that of the risk created by the warrantor, by virtue of the way the offer is expressed.
4. Dollar, time and psychic costs incurred by both buyers and the warrantor in the operation of the alternative compensation systems.
5. Selection of the warranty offer which best meets both of the following criteria:
  - . The minimization of individual consumer product economic loss, risk of such loss occurring, and related consumer costs in obtaining compensation for such loss.
  - . The minimization of incremental product costs associated with the manner in which the product risk protection is expressed, together with costs associated with the operation of the compensation system.

Three things should be noted in this sequence. First, many of the costs are difficult to estimate without information based on historical events. Second, the relevant costs will vary widely across product classes and even among variations in models within a product class. Third, it should be explicitly recognized that the two criteria in step five are conflicting, and that tradeoffs must be made between minimizing individual cost risks and costs averaged over all buyers. Tradeoff problems will be minimized in a system that contains both a component of no-fault and a component of fault.

We will return to a general discussion of implied and express warranties in Chapters Eleven and Twelve, following an examination in Chapter Eight of the warranty offers and delivery against those offers in the automobile and major appliance industries.

CHAPTER EIGHTWARRANTY SYSTEMS IN THE WHITE GOODS APPLIANCE  
AND AUTOMOBILE INDUSTRIES

The purpose of this chapter is to convey the industry perspective about a number of subject areas relating to the development of warranty offers and delivery against those offers, together with relevant literature sources and our observations and conclusions.

Warranties and Service ContractsWarranty Objectives and Coverage

Every organization interviewed in both the white goods appliance and automobile industries stated that they viewed the warranty as a competitive marketing tool, and that the primary decisions on warranty have been made by marketing management. Corporate counsel, however, are becoming increasingly involved because of variations in warranty law across the provinces.

At the same time, it must be acknowledged that there were variations across organizations as to why express warranties were given, ranging from "It has always been done" to a clear and precise statement that the warranty was an integral part of the product offer which was important to the firm's goal of building long-run customer loyalty.

We note that these industry views on warranty objectives are at variance with the literature that explores the relationship between implied and express warranties, where there is a virtually unanimous conclusion that the primary objective of express warranties is to limit the warrantor's liability in law. Several reasons can be provided that account for some, if not all, of this discrepancy in viewpoint.

1. The emphasis by marketing executives is on terms of coverage, whereas the emphasis by lawyers and government policy makers is much more on exclusions.



2. There is more emphasis by business executives on the source and size of costs, including administrative costs, than there is on the part of lawyers and government policy makers.
3. While there is a difference among businessmen as to which system members should bear which costs, both risk and use, over what period of time, businessmen in general appear to believe in a time period over which their organization should assume risk of economic loss that is shorter than that perceived as appropriate by many government policy makers and lawyers. At the same time, policy makers and lawyers tend to underestimate the magnitude and difficulty in incorporating the consumer use issue into warranty offers and administration.

Warranty coverage was perceived by those organizations whom we interviewed as having two components. The first was coverage against individual risk associated with product failure attributable to problems originating in the supply of the product. Inasmuch as product functional failures attributable to problems associated with the supply systems are most likely to occur with heavy use, the coverage, if expressed in time should take into account the effect of climate, or seasons on product primary or secondary functional system use. For example, a one-year warranty for car air conditioners is designed to ensure sufficient time for the use of that subsystem, no matter what time of year the buyer purchased the vehicle. In general, warranty coverage is concerned with those factors in pre-sale, and in early product life which are affected by supply system performance and that affect product aesthetic performance and product functional reliability. The much higher variability in both amount and style of usage for automobiles than for white goods appliances means that these factors receive more consideration in the automobile industry, both in the way the coverage offer is expressed and is administered.

The second warranty coverage component is the use of the warranty coverage period and characteristics as a competitive marketing tool, inasmuch as the coverage is perceived by consumers as a market signal of product reliability and longevity. Real changes in

product reliability and longevity may or may not change with changes in warranty coverage. Further, and just as important, the level of service in fulfilling the warranty offer, may or may not change as well with a change in the warranty coverage offer.

### Warranty Complexity

Warranties can be considered as having three components: provisions, exclusions, and information.

1. Provisions - Provisions are those statements in the warranty that the consumer perceives as the warrantor's statement of after-sale obligations. There is work being done in both the automobile industry and the appliance in simplifying the wording used in the expression of warrantor after-sale obligations. For example, Inglis has gone from a legalistic warranty card to a letter designed to be readily understandable by anyone with a grade 10 education (see Exhibit 8-1). At the same time, there is a trend within the automobile industry to increase provision complexity by providing separate statements of after-sale obligation for an increasing number of product components. For example, one 1979 model year warranty contains, in addition to the statements covering the "overall" vehicle, separate statements of coverage for the emission control system, battery, air-conditioner, sealed refrigerant system, and perforation from corrosion, as well as a separate warranty for the tires given by the tire manufacturer.

2. Exclusions - We see warranty exclusions as having two components. The first of these is consumer obligation to use and maintain the product in a reasonable fashion (fault in the negative sense). Because of differences in both product maintenance requirements and consumer style of usage between appliances and automobiles more emphasis is given to these factors in automobile warranties than in appliance warranties.

The second component of exclusions concerns statements made with the intent to limit the warrantor's obligation. We have identified a number of issues in this area, all of which are tied to the existence of specific laws and/or changes in laws.

Exhibit 8-1

An Example of a "Customer-Language" Warranty

INGLIS LIMITED

HEAD OFFICE  
14 Strachan Avenue  
Toronto, Ontario, Canada  
M6K 1W6

Dear Customer:

Good performance. That's what this letter is all about.

We know that you expect good performance from your WHIRLPOOL\* Refrigerator and we aim to see that you get it. Here's how its performance is protected.

**WARRANTY FOR YOUR WHIRLPOOL REFRIGERATOR**

During the first year after purchase, all parts of the appliance which we find are defective in materials or workmanship will be repaired or replaced by Inglis free of charge, and we will pay any labour charges.

During the first five years after purchase, all parts of the sealed refrigerator system, which consists of the compressor, condenser, evaporator and connecting tubing, which we find defective in materials or workmanship will be repaired or replaced by Inglis free of charge, labour no charge. However, at distances greater than twenty miles from the nearest service organization authorized by Inglis to service WHIRLPOOL appliances, we reserve the right to charge transportation and travelling costs for the excess distance.

This protection is yours as the original purchaser for single family use in your home and is not transferable without written permission from Inglis. It requires that all service be performed by a service organization authorized by Inglis to service WHIRLPOOL appliances. Naturally, it doesn't cover damage by accident, misuse, improper installation, fire, flood, or acts of God. But it does cover you wherever you live in Canada... even if you move and take the refrigerator with you.

Now, about servicing. Let's face it. Sometimes even the best products need service. So, if that's ever true of your WHIRLPOOL refrigerator, there is a way to get action fast. Just call your Inglis Factory Service Branch, or the nearest service organization authorized by Inglis to service WHIRLPOOL appliances. They are trained to make whatever's wrong right, and there are over 340 locations in Canada.

We suggest you keep this letter with your sales slip. It's nice to know you'll have protection, even though you may never need it.

Sincerely,  
INGLIS LIMITED

For service, call your nearest Direct Factory Service Branch listed below:

CHICOUTIMI, 163 Bosse Street . . . . .	543-0267	BARRIE, No. 7 - 4 Alliance Blvd. . . . .	726-3922
QUEBEC, 2289 Leon Harmel . . . . .	681-3538	HAMILTON, 324 Hilton Drive . . . . .	547-2335
SHERBROOKE, 764 King Street East . . . . .	563-6565	LONDON, 962 Leathorne Street . . . . .	686-8633
THREE RIVERS, 5427 Royal Blvd. . . . .	375-9674	WINDSOR, 3180 Grand Marais East . . . . .	944-3551
MONTREAL, 855 Autoroute Laval West . . . . .		REGINA, Box 1095, 632 East 4th Ave. . . . .	569-9681
Chomedey, Ville de Laval . . . . .	382-8110	SASKATOON, No. 5 - 1624 Ontario Ave. . . . .	652-9285
OTTAWA, 28 Capital Drive . . . . .	225-0510	EDMONTON, 12235 Fort Road . . . . .	474-8576
TORONTO WEST		CALGARY, 1338 - 11th Avenue S.W. . . . .	245-2201
5945 Ambler Drive, Mississauga . . . . .	624-2800	VANCOUVER, 1610 Ingleton Ave. . . . .	299-7411
TORONTO EAST		VICTORIA, 3121 Steele Street . . . . .	386-2208
110 Torbay Road, Unit 1, Markham . . . . .	495-9511		

**DISTRIBUTOR SERVICE**

MANITOBA - THOMAS RATHWELL LIMITED, WINNIPEG, 774-4561

For services in areas other than those listed, contact your WHIRLPOOL appliance dealer, consult your local telephone directory for the nearest Inglis Authorized Service Depot.

**FOR YOUR PROTECTION ALWAYS INSIST ON FACTORY SPECIFIED PARTS**

\*Trademark in Canada. Used by Authority of Canadian Trademark Owner,  
WHIRLPOOL CORPORATION, U.S.A.

Consistency in Law - The intent of law can be compromised by inconsistencies within legislation. We see this as having occurred for example, in Ontario where disclaimers are void in law, but not prohibited. This is discussed further in Chapter Eleven. In our view, if disclaimers are not wanted, the law should clearly prohibit them. Otherwise warrantors may be encouraged to ignore the law until challenged by consumers.

The Semantics or Meaning of the Law - The recent legislation in several Canadian jurisdictions has created uncertainty for both businessmen and consumers until there had developed some body of case law through judgments. Most of the uncertainty arises from the use of the word "reasonable" in some of the legislation. Here it is clear that the intent of the law is to have the courts decide what "reasonable" is, given the circumstances of the situation. We see no obvious reason why the word "reasonable" should necessarily create any greater uncertainty than the words "fitness for purpose" and "merchantability" which appear in other legislation except, of course, for its newness in the law. We believe that the bearing of some uncertainty on the part of business is a fair tradeoff in their and the larger societal interest in having "good law" as we outlined it in the previous chapter. Further, it is precisely this kind of wording that business argues for whenever lawmakers attempt to phrase economic law in very specific rules and regulations. On the whole, we see the allowance for some interpretation as the better approach based on North American experience in antitrust and trade regulations. This approach, however, does place a great deal of emphasis on the quality of the person(s) making the interpretation.

However, there are other words and phrases in some of the new legislation where the clear intent, which was another dimension of our "good law", does not appear to exist in eyes of a number of businessmen we interviewed. Further, they believe that the intent associated with these words and phrases could vitally affect the interpretation of the word "reasonable," thus increasing their economic uncertainty. An example is section 17-(1) of the Saskatchewan Consumer Products Warranties Act, 1977, which states that "nothing in this Act shall prevent a warrantor from giving additional written warranties in addition to the statutory warranties set out in section 11." (See Chapter Eleven, especially Exhibit 11-7, for elaboration of this Act.)

The words "additional" and "in addition to" can be interpreted as running either concurrently or consecutively with the statutory warranties, and is the kind of problem that could be minimized by improved draftsmanship and/or through a clear statement of intent. A similar kind of problem occurs with the use of the word "durable" in the Saskatchewan and New Brunswick acts. As applied to those products which normally require maintenance and repairs, it is not clear whether durability is intended to mean functional reliability (the product works), functional longevity (the product works over a long period of time), or both. Further, to the extent that it is intended to mean functional longevity, there is ambiguity as to who should bear the responsibility and cost for maintenance and repairs over the time period.

The Thurst of the Law - The semantic ambiguities described in the previous section lead to some general uncertainty among businessmen as to the thrust of the law. To a number of businessmen we interviewed, it was not clear whether the sole intent of recent legislation was to recognize in law the changed market conditions of a mass-market society, or whether there was as well an attempt by government policy makers to impose a shift in standards with respect to product longevity. The possible existence of such an alternative in itself creates economic uncertainty among businessmen.

The Existence of Different Laws in Different Jurisdictions - Where there are variations across legal jurisdictions as to the manner and extent to which a warrantor can legally limit economic obligations, the warrantor operating in more than one jurisdiction must make a decision as to whether a separate warranty document should be created for each jurisdiction, or whether an omnibus warranty should be created for all jurisdictions. The benefits of administrative simplicity, together with potential high costs of error, are the underlying reasons why all brand owners in our interview sample had warranties which covered all legal jurisdictions in Canada.

At the same time, we are seeing the beginning of a trend in which a brand owner offers a basic express warranty which includes a statement that says something like:

"Your rights may vary according to the law in your province. Check with your consumer affairs office."

This, in our view, is a highly undesirable situation in that the consumer really has no idea of his/her rights. Further, as administrators of complaint handling services well know, consumers are not likely to find out, especially those consumers that least can afford to bear the economic loss on their own. It would be far better, in our view, to harmonize the law and to encourage the express warranty designer to explain both express and implied rights.

The cumulative impact of the all four of the above issues has created an environment conducive to increased complexity in the character of exclusions in current warranty offers. The situation is further exacerbated by some business executives who perceive governments to have taken an adversary relationship with respect to their organization or industry, or who have placed themselves in an adversary position.

3. Information - The information component of a warranty covers who a consumer should contact if product problems develop and the process he/she should follow in getting such problems fixed. There is a trend in both appliance and automobile warranties to provide explicit information in this area. While this adds to the length of the warranty document, it provides less process complexity for the consumer.

Overall, the current trend in warranty complexity is a mixed one, with simplification of provision language and process information taking place at the same time as complication in legal exclusions and, for automobiles, an increase in the number of separate warranty provisions.

#### Warranty Registration

In theory, warranty registration on the part of the warrantor involves the establishment of a record for each product sold for a period of time which, at a minimum, is the time of coverage. In practice, the establishment and maintenance of such a record system is expensive and, in relative terms, is more expensive the longer the period of coverage or the lower the selling price of the product. Further, registration records costs will be higher and less complete where the warrantor has less control over record information at point of sale, except where such registration is required elsewhere by law as in the case of motor vehicles. This is likely to be the case for manufacturer brand owners, particularly those that are

small in size relative to their distribution, or who provide only a small part of the retailer's product offerings. High product selling price relative to record cost is undoubtedly one reason why all automobile warrantors that we interviewed maintain readily accessible warranty registration record systems. Lower appliance product selling price relative to record cost has resulted in a mix of systems and operational procedures for handling warranty registration. None of the appliance organizations we interviewed require the customer to maintain records, although we are aware of some other firms that refuse to honor a warranty without proof of purchase. Yet of those firms we interviewed, only one had a readily accessible system of warranty records and this system was less than a year old and did not yet cover all geographic areas in which the organization operates. The other organizations we interviewed operate on a system of trust and exception. For the most part, a statement by the customer that the product is in-warranty is sufficient. In those rare cases where the customer's assertion might be challenged, selling records are often not available and recourse is made to purchase records and/or to model/ serial numbers. Such a system can lead to abuses on the part of both the seller and consumer. On the consumer side, one large national appliance organization which operates such a system sampled warranty claims and matched them against sales records. Although they found that 20% of claims were out-of-warranty, they have not changed their system. It is very clear from the preceding that the cost of developing and maintaining warranty records on the part of the warrantor, even for such relatively high priced durables as white goods appliances, is considered by business executives to outweigh the benefits such information might provide in warranty administration.

### Service Contracts

While express warranties and service contracts are both forms of insurance designed to average some kinds of risk across all buyers, there is a fundamental difference between the two as perceived by both warrantors and the law. An express warranty is an integral part of the product offer. A service contract, on the other hand, is a separate offer, perhaps by a separate business organization, even though it may be made at the same time as the product offer. Stated another way, an express warranty forms part of the product contract, while service contract

is, as the name suggests, a separate contract. However, it is unlikely that many consumers make this distinction, or would even if the distinction were not blurred by the use of the words extended warranty, often applied to service contracts. It is much more likely that they consider it an option, akin to a physical product option, and available at an incremental price.

The widespread availability of service contracts is a relatively recent phenomenon. Indeed, the publicized offer of service contracts by automobile manufacturers has occurred only in the last year.

The existence of service contracts provide market signal information on aspects of product reliability over a period of time not only to consumers, but to market competitors, government policy makers, and the law as well. The source and scope of that information provide data of special interest to policy makers. We will present the limited data we have from this perspective on a number of dimensions.

1. Coverage of product categories - To the extent that the service contract offer(s) contain information that aggregate brands into product categories, information is available on reliability of products already in use by consumers or projected reliability of new products.

For example, examination of the Eaton's Extended Warranty Plan prices (see Exhibit 8-2) clearly show the impact of improved technology on service requirements for television sets. The fact that there are two categories for both ranges and refrigerators, provides evidence supporting our previous conclusions, on the relationship between reliability and number of product mechanical/electrical/thermal subsystems. Similar kinds of information can be obtained from comparison of automobile service contracts (see Exhibit 8-3), which demonstrate that four-wheel drive vehicles, with their incremental mechanical subsystems, are likely to have less functional reliability over a given period of time than are conventional automobiles.

2. The Offerer of the service contract is at arm's length from the offeror of the warranty - Rates in this type of offer should, in theory, represent the best estimates of the economic cost of product failure, plus some provision for administrative costs and profit for the offeror. This is the same as for other types



Exhibit 8-2

Rate Card for Eaton's Extended Warranty Plan

AGE OF APPLIANCE AND EWP RATE PER YEAR

	<u>3 yr. discounted package (on yr. old unit)</u>	<u>1 yr. old</u>	<u>2 yrs. old</u>	<u>3 yrs. old</u>	<u>4 yrs. old</u>
TV. Color	177.95	59.95	65.95	71.95	79.95
T.V. B & W	95.95	31.95	35.95	38.95	42.95
Stereo	83.95	27.95	30.95	33.95	36.95
Auto Washer	72.95	23.95	26.95	29.95	31.95
Auto Dryer	49.95	16.95	18.95	20.95	22.95
Twin-Tub or Wringer Washer	56.95	18.95	20.95	22.95	25.95
Dishwasher	83.95	27.95	30.95	33.95	36.95
Standard Range	56.95	18.95	20.95	22.95	25.95
Self Cleaning Range	79.95	26.95	29.95	31.95	35.95
Standard Refrigerator	58.95	19.95	21.95	23.95	26.95
Side-by-side Refrigerator	79.95	26.95	29.95	31.95	35.95
Freezer	56.95	18.95	20.95	22.95	25.95
Micro-Wave Oven	87.95	29.95	31.95	35.95	38.95

Bonus — 10% Discount if you purchase E.W.P. on more than 1 item or year.

Note — All prices subject to change without notice.

All items out of full warranty may require inspection at customer's expense.

Exhibit 8-3

Suggested Retail Prices for Automobile Manufacturer  
Service Contracts

GM Continuous Protection Plan - 1979 Charges

Coverage: 3 years or 60,000 kilometres  
Deductible: \$25 per occurrence

GROUP DIVISION	A	B	C	D	E	
MSR PRICE	\$151	\$181	\$211	\$241	\$271	
CHEVROLET	Chevette	Monza Nova	Camaro (except Z28) Berlinetta Malibu	Monte Carlo Bel Air Impala Caprice	CamaroZ28	Corvette
PONTIAC	Acadian	Sunbird Phoenix	Firebird Esprit Formula Le Mans	Grand Prix Laurentian Catalina Parisienne	Trans Am	-
OLDSMOBILE	-	Omega	Cutlass	Delta 88	Ninety-Eight	Toronado
BUICK	-	Skyhawk Skylark	Century Regal	Le Sabre	Electra	Riviera
CADILLAC	-	-	-	-	-	All Models
TRUCKS- PLEASURE ONLY 2 Wheel Drive	-	Manufacturer's GVW up to 5500 lbs.	Manufacturer's GVW 5501 to 7800 lbs.	Blazer Jimmy	Manufacturer's GVW 7801 to 10,000 lbs. El Camino	Caballero Suburban Sportvan Rally Wagon
MSR PRICE			\$377		\$437	
TRUCKS- PLEASURE ONLY 4 Wheel Drive	-	-	GVW 5501 to 7800 lbs.	Blazer Jimmy	GVW 7801 to 10,000 lbs.	Suburban

SURCHARGES: \$25.00 for each of the following equipment: Diesel Engine, Electronic Fuel Injection, Trip Computer

Ford Extended Service Plan  
1979 Charges

Coverage: 3 years or 60,000 kilometres  
Deductible: \$25 per occurrence

NEW VEHICLES Prices shown are for full 36 months/60,000 km coverage, whichever occurs first.	Suggested retail price. Personal use.
SUBCOMPACT Pinto, Bobcat, and Fiesta	\$150
COMPACT Fairmont, Zephyr, Mustang and Capri (excl. models with Turbo charged engines)	\$160
MIDSIZE Granada, Monarch, LTD II, Cougar, Thunderbird, XR-7 and Mustang/Capri models with Turbo charged engines	\$190
FULL SIZE LTD and Marquis	\$210
LUXURY Lincoln Continental, Lincoln Versailles and Continental Mark V	\$275
LIGHT TRUCKS 4x2 Econoline, Courier, Ranchero, F100-F350 4x2	\$205
LIGHT TRUCKS 4x4 Bronco, F150-F350 For new vehicles in commercial use, add \$50 to the applicable prices above (cars only).	\$275

Exhibit 8-3 Cont'd

Chrysler Protection Plan  
1979 Charges

Coverage: 5 years or 80,000 kilometres  
Deductible: \$50 per occurrence

PASSENGER CARS AND STATION WAGONS	SUGGESTED RETAIL PRICE
Colt, Arrow	\$196
Challenger, Sapporo Omni, Omni 024, Horizon, Horizon TC3	\$210
Aspen, Volare	\$232
Diplomat, Caravelle, LeBaron, Cordoba, Magnum XE	\$257
Newport, New Yorker Fifth Avenue	\$281
LIGHT TRUCKS AND VANS	
Dodge D50	\$226
Dodge Pickup (2-wheel drive)	\$257
Compact Vans and Wagons, Sport Utility (2-wheel drive)	\$289
Cut-Off Van ("MB" Model)	\$398
All 4-wheel Drive Trucks	\$459
Motor Home Chassis ("M" Model)	\$489

Source: The Globe and Mail, May 1, 1979, p. 13.

of insurance. In practice, where warrantors are also offering service contracts, the warrantors' rates, depending on the quality of the information base and company objectives, could represent good statistical information for others or merely the warrantor's best guesses.

Where the warrantor is offering a service contract, there is also interest on the part of government policy makers as to the intent of the offerer in providing the service contract. We have limited information in this area. One automobile manufacturer stated that their organization's service contract was intended to appeal to two classes of consumers: those interested in insuring against high individual risk of product failure and, through relaxation of fault associated with automobile misuse, those consumers who misuse their vehicles. The explicit stated objectives of the contract were to:

1. extend the period of pooled risk sharing for those who wanted this service, especially against risk of substantial economic cost.
2. minimize the friction in the system created by refusal of warranty claims to consumers who misuse the product.
3. develop a dealer service business with customers over a longer period of time.

Implied, but not stated, was the offer of a profit-making service competing with insurance organization offerings.

From our perspective, we see that the offer of service contracts at time of purchase may well have a consumer benefit not considered in their formulation. Where risk insurance for a fairly long time period is introduced actively into the sales transaction, it may result in the prospective buyer giving more consideration to both warranty coverage and the trade-off between purchase price and quality and accessibility of after-sale service of all types.

All new automobile service contracts that we are aware of, whether offered by the warrantor or an organization independent of the warrantor, provide some benefits that extend into the existing warranty period and expand upon the warranty benefits. The incremental benefits provided cover such consequential damages as

towing and alternate transportation costs. At the same time there is a deductible clause, typically \$25 to \$50 per occurrence. The clear intent here is to:

1. provide consistency of coverage over the period of the contract.
2. provide incremental coverage during the period of warranty to make the contract more attractive to consumers.
3. provide a combination of limited individual risk and pooled risk in order to reduce the price.
4. provide, in those contracts where product misuse is not excluded, a means by which this group of consumers bears higher individual cost.

Warranty Competition: Offers and Delivery  
Against Offers

Virtually all of the academic and public literature on warranty competition has focussed exclusively on issues related to the content of the warranty offer. It is our belief that this is an overly narrow perspective on several counts.

First, it does not take into account the interrelationship developed in Chapter Seven between the manner in which the offer is expressed and the kind and cost of system required to provide delivery against that offer. Second, it does not take into account that the level of delivery against a warranty or service contract offer has the potential of creating greater problems in customer satisfaction than the offer itself. Finally, there seems inadequate appreciation that, while an offer can be quickly matched, there requires a commitment in time, money, materials and people to provide delivery against an offer. The ability to mobilize these resources effectively will vary across organizations in both the short and long-term, with the result that the meaningful competition in warranties and service contracts takes place in delivery against the offer. Further, for industries with oligopolistic structures or selling "mature" products, it is one area of activity in which an organization can differentiate itself from its competitors -- precisely because the mobilization of resources is difficult to match.

In a paper entitled "Consumer Economics of Appliance Warranties" Gerner and Bryant hypothesize that most appliance warranties for a given product class will have identical warranty provisions.<sup>1</sup> The few warranties below the median will be closer than those few above, and that there is a pressure for those below the median to move to the median over time, a pressure not existing for those above the median. These hypotheses of Gerner and Bryant are based on notions that consumers have a general knowledge of warranty provisions found on most brands of most appliances. While risk-averse consumers will purchase appliances which have more comprehensive warranties than the median, according to Gerner and Bryant, "Most consumers are insensitive to marginal differences in warranty duration and coverage. Because of this, consumers demand warranty service which is at least as comprehensive as that provided in the typical warranty, regardless of the actual provisions in the warranty on the specific appliance which has failed." It is this demand for service which was hypothesized to create the pressure on those offering warranty coverage below the median. No test of this hypothesis was made. The hypotheses about the distribution of warranty provisions was tested by collected 69 warranties over five appliance product categories. 87% of the brand owners were reported as offering as single warranty. The data for basic warranty coverage and "certain components" are given in Exhibits 8-4 and 8-5, and provide support for the hypothesis of distribution of warranty provision coverage.

Gerner and Bryant's notions that (a) "consumers can be expected to be concerned about the existence of warranties, but not about specific provisions of warranties", and (b) that the general knowledge which consumers have include some concept of a coverage norm for the product class are consistent with our focus group data and has implications for public policy which will be discussed in Chapter Nine. It should be noted that Gerner and Bryant attribute the high proportion of single warranty coverage across models of the same brand to equivalent reliability across those models. Our research does not support this. Rather, it would appear that there are reliability variations across models based on the number of M/E/T subsystems they contain, but that a single warranty is set to minimize administrative costs and to present a common warranty coverage that can be associated with all models in the product category bearing the brand name.

Exhibit 8-4

Basic Warranty Coverage by Appliance

	Refrigerators		Ranges		Clothes Washing Machines		Television Sets		Air Conditioners	
	N	%	N	%	N	%	N	%	N	%
Number of Warranties	20	100	24	100	18	100	24	100	22	100
<u>Coverage of All Parts and Labor</u>										
Parts Coverage Duration										
1 Year	18	90	24	100	9	50	24	100	19	86
2 Years	-	-	-	-	9	50	-	-	1	5
5 Years	2	10	-	-	-	-	-	-	2	9
Labor Coverage Duration										
None	-	-	5	21	1	6	-	-	3	14
90 days	-	-	-	-	-	-	7	29	-	-
1 Year	18	90	19	79	17	94	17	71	18	82
2 Years	-	-	-	-	-	-	-	-	1	5
5 Years	2	10	-	-	-	-	-	-	-	-

Source: "Consumer Economics of Appliance Warranties", Jennifer L. Genner and W. Keith Bryant, Department of Consumer Economics and Public Policy, Cornell University, undated.



Warranty Coverage on Certain Components\*

	Refrigerators		Ranges		Clothes Washing Machines		Television Sets		Air Conditioners	
	N	%	N	%	N	%	N	%	N	%
<u>Parts Coverage Duration</u>										
1 Year	-	-	14	58	1	6	2	8	1	5
2 Years	-	-	-	-	-	-	22	92	-	-
4 Years	-	-	2	8	-	-	-	-	-	-
5 Years	20	100	4	17	16	89	-	-	21	95
10 Years	-	-	1	4	1	6	-	-	-	-
Life	-	-	3	13	-	-	-	-	-	-
<u>Labor Coverage Duration</u>										
None	-	-	4	17	-	-	-	-	2	9
90 Days	-	-	-	-	-	-	2	8	-	-
1 Year	1	5	16	67	1	6	-	-	3	14
2 Years	-	-	-	-	-	-	22	92	-	-
5 Years	19	95	-	-	16	89	-	-	7	77
10 Years	-	-	1	4	1	6	-	-	-	-
Life	-	-	3	13	-	-	-	-	-	-

\*The minimum coverage on certain components is that coverage provided for all parts and labor. When no special coverage on certain components is provided, the basic coverage is assumed.

Source: "Consumer Economics of Appliance Warranties", Jennifer L. Genner and W. Keith Bryant, Department of Consumer Economics and Public Policy, Cornell University, undated.

Both Romero (1972)<sup>2</sup> and The Ontario Law Reform Commission Report (1972)<sup>3</sup> describe the "warranty race" of the 1960's in which the Big Four automobile manufacturers increased and then reduced warranty provision coverage during the decade. Both documents focus on the offer as the means of competition and give the impression that more offer coverage means better warranty protection. We would like to demonstrate that this may not be the case.

First, the OLRC Report and businessmen concur on the reasons underlying changes in offer coverage among major competitors. There was unanimous agreement within both the appliance and automobile fields that a large shift upward in warranty offer coverage by one major competitor in an industry without an accompanying change in price invariably occurs as a result of a sharp drop in market share. It is a defensive move first to protect and then increase market share and, if successful will be met by other competitors as a defensive move also. Chrysler was the example given in the automotive field, Electrohome the example in the home entertainment field.

The potential problems with respect to consumer risk of economic loss are of two kinds. The consumer who buys the product of the firm which first increased the offer exchanges the risk of broadened coverage for the risk that the warrantor will stay in business over that period of time. Purchasers of all products with broadened coverage assume the risk that the level of delivery against that expanded offer will not deteriorate relative to previous levels.

It is our conclusion that delivery against the increased warranty offers of the 1960's did, in fact, deteriorate. High consumer psychic costs were generated by an offer that was different from the general concept previously held that the coverage was for the total vehicle. On the warrantor side, there was not adequate understanding of the increased levels of expertise required in the system to make fault judgments on older vehicles. This resulted in time delays, which meant time and further psychic costs for customers. Further, the magnitude of the records administration task was seriously underestimated. The result was a situation which the automobile manufacturers we interviewed all agreed was a real "hassle." Customers were unhappy, dealers were unhappy, and manufacturer service organizations were unhappy. Put bluntly, the delivery systems could not support the offers. Therefore, the offers were scaled down to fit what the systems could deliver.

Given the introduction of service contract offers by the three largest North American automobile manufacturers in the last year, the question naturally arises as to what degree the problems associated with extended warranty coverage in the 1960's will recur in the coming years. There are a number of reasons to suggest that they will not. To begin with, the organizations had the experiences of the 1960's, both organizational and costs, as input into their planning of the service contract offers. With respect to records administration, the technology and operational systems are much improved over the 1960's. There has also been two critical changes in the automobile manufacturer service contract offers from those of their extended warranty of the 1960's. First, the fault exclusions of customer abuse and misuse of the product are not in the service contract offers (although they currently remain in some non-manufacturer offers), which will relieve a number of stresses present in the warranty system of the 1960's. The second is that the coverage of the service contract offer is broader in terms of subsystems included than were the extended warranties of the 1960's. An overriding factor is the shift in business philosophy to a much greater commitment to service which we identified in Chapter Five.

However, the fact remains that these service contract offers are more limited in provision coverage than the express warranties. As such, they represent once again a departure from the full vehicle coverage "norm" or general expectation set likely to be held by most consumers. To the extent that this general expectation set among service contract buyers is not broadened and more congruent with the reality of their purchase, there will be problems in the service contract delivery system.

Although Romero viewed warranty competition within the context of warranty offers, his research provides excellent evidence of differences across car manufacturers in terms of delivery against both product and warranty offer. Rather interestingly, Romero stated that it was not the intent of his survey research... "to draw invidious comparisons between the different makes of cars..." In contrast, we argue that comparison across manufacturers in terms of delivery against the product and warranty offers is worthwhile, because differentials across manufacturers are an indication of competitive differences in capability of providing buyer value. Further, we are aware of a number of private research studies carried out by

organizations in both the white goods appliance and automobile industries that were designed to get precisely this kind of information.

Romero's sample was 343 owners of 1970 Chevrolets, Fords, and Plymouths. They responded to five questions in a mail survey. Exhibit 8-6 indicates that Chevrolet owners were more likely to purchase a car that they viewed as requiring no warranty work than were Ford and Plymouth owners. Exhibit 8-7 shows for automobiles perceived as having defects by owners, the proportion of Chevrolet owners having defects corrected free of charge under the warranty was higher than for the competitors. Further, Exhibit 8-8 indicates that Chevrolet owners were more successful than owners of the other makes in getting problems "fixed right the first time." Therefore, it is not surprising to see in Exhibit 8-9 that the highest proportion of owners expressing satisfaction with the performance of their cars were owners of Chevrolets, although it is somewhat surprising that the differences in satisfaction rates across the three automobiles is not as great as one might have expected from the previous exhibits.

Finally, Exhibit 8-10 provides convincing evidence that consumer satisfaction is affected significantly by their perception of the degree to which the warranty offer was delivered.

### Operation of After-Sale Service Systems

#### Changes in Systems Structures and Operations

Some aspects of the operation of after-sale service systems have been discussed in earlier chapters. We believe it functional to start this section with a review of some of that material.

Chapter Three traced the evolution of the structure of the white goods appliance and automobile industries. Today, after-sale, in-warranty and post-warranty appliance service is dominated by a mix of: (a) large manufacturer and large retailer controlled service operations in major urban areas, and (b) independent service organizations, many connected with an appliance retail operations, in the case of smaller manufacturers and in rural areas.

Exhibit 8-6

Condition of 1970 Automobiles  
as Reported by Owners

<u>Make of Car</u>	<u>Defects</u>		<u>No Defects</u>		<u>Total</u> <u>No.</u>
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	
Chevrolet	96	80.0	24	20.0	120
Ford	104	87.4	15	12.6	119
Plymouth	94	90.4	10	9.6	104

Chi Square: 5.677 with 2 d.f.  
5.99 is .05 level

Source: Adapted from Romero (1972), Table 38

Exhibit 8-7

Actual and Percentage Answers to the Question:  
"Were the Defects Corrected Free of Charge Under  
the Warranty?"

<u>Make of Car</u>	<u>Answers</u>				<u>Total</u> <u>No.</u>
	<u>Yes</u>		<u>No or Some</u>		
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	
1970 Chevrolet	60	62.5	36	37.5	96
1970 Ford	46	44.2	58	55.8	104
1970 Plymouth	46	48.9	48	51.1	94

Chi Square: 7.088 with 2 d.f.  
5.99 is the .05 level

Source: Adapted from Romero (1972), Table 38

Exhibit 8-8

Actual and Percentage Answers to the Questions:  
"Was it Necessary to Return to the Dealer More  
Than Once with the Same Defect?"

<u>Make of Car</u>	<u>Answers</u>				<u>Total No.</u>
	<u>Yes</u>		<u>No</u>		
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	
1970 Chevrolet	46	47.9	50	52.1	96
1970 Ford	68	65.4	36	34.6	104
1970 Plymouth	60	63.8	34	36.2	94

Chi Square: 7.540 with 2 d.f.  
 5.99 is the .05 level

Source: Romero (1972), Table 42.

Exhibit 8-9

Actual and Percentage Answers to the Question:  
"Are you Satisfied with the Performance  
of Your Car?"

<u>Make of Car</u>	<u>Answers</u>				<u>Total No.</u>
	<u>Yes</u>		<u>Yes or Yes and No</u>		
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	
1970 Chevrolet	102	85.0	18	15.0	120
1970 Ford	95	79.8	24	20.2	119
1970 Plymouth	77	74.0	27	26.0	104

Chi Square: 4.14 with 2 dif.  
 3.22 is the .20 level  
 4.60 is the .10 level

Source: Adapted from Romero (1972), Table 34.

Exhibit 8-10

Association Between Level of Satisfaction with New  
Automobile and Experience with Warranty Repairs

	No need for warranty repairs	All free warranty repairs	Some free warranty repairs	Refused all free warranty repairs	
Satisfied Owners	49 100%	148 97.4%	25 52.1%	52 55.3%	274
Owners not Completely Satisfied	0	2 1.3%	7 14.6%	6 6.4%	15
Dissatisfied Owners	0	2 1.3%	16 33.3%	36 38.3%	54
	49	152	48	94	343

Chi Square: 109.8 with 6 degree of freedom. Sig. = 0.000

Source: Adapted from Romero (1972), Table 23.

Within the new automobile industry, the service system structure has remained largely unchanged for a great many years. However, if one looks at the total automotive service market, it would appear that the new automobile manufacturers and their dealers have been obtaining a declining share of this market.

We see, in both the white goods appliance and new automobile industries a shift in business concept in the last decade to put more emphasis on fulfilling warranty obligations and a more recent shift in business concept among the automobile manufacturers which we interviewed from one of sales to one of sales and service.

The emergence of more centralized and larger organizations assuming responsibility for in-warranty, and for the white goods appliance industry, post-warranty service, has been followed by a number of changes in operations which should result in improved system operation. One is the increased development and use of information systems which has enabled organizations to identify systematic in-warranty problems earlier, and has provided the basis for more efficient and effective parts management. One major parts management trend in both industries is increased emphasis on parts standardization. A very recent and, in our view, extremely encouraging development in the automobile industry is the emergence of systems to monitor organizational performance from the customer perspective on such dimensions as product, customer service, and product service both in and post-warranty.

There is within both industries an emphasis on decentralization of decision making on warranty claims to minimize customer problems created by time delays. The issue is a more critical one in the new automobile industry where customer fault is a larger factor in the operation of the warranty system.

Finally, in both the white goods appliance and automobile industries there is current examination and some experimentation with mediation systems.

#### Problem Areas

We have identified in the preceding section changes in the structure and operation of the in and post-warranty service systems which have led to, or have the potential for improved systems performance. There are, however, a number of problem areas.



1. The first group of problems is related to organization capability to provide service. There is a short to medium-term shortage in both the white goods appliance and automobile industries of competent service personnel, both technical and managerial, over the total service systems, but particularly in rural areas. The problem with respect to technical personnel is greater within the appliance industry. It is believed in the industry that the problem is related in part to the relatively low perceived status of the appliance service jobs on the part of many people making job and career choices. The problem with respect to managerial personnel, on the other hand, is greater within the automobile industry with its recent emphasis on providing customer service in addition to product service. There is an acknowledged problem in both industries with lack of consistency and/or quality of service performance. It was stated to us in several interviews that "the biggest problem in both in-warranty and post-warranty service is that the product is not fixed right the first time."

This view is confirmed by data in the Ash study. Exhibit 8-11 shows that for the four services where the reason is relevant, "The service was not performed correctly the first time" was the leading reason in terms of the percentage of respondents indicating it as a reason for their high dissatisfaction. Exhibit 8-12 shows this reason as being the key one for more respondents than any other reason.

The third problem area in this group of problems is speed of warranty claim response, and it is primarily an automobile problem. This occurs because of claim size, a greater magnitude of customer misuse and abuse of product and, we suspect in some cases, insufficient cooperation and trust in manufacturer/dealer relationships. The importance of early settlement of warranty claims was emphasized by one executive of an automobile manufacturer, who said that "We can satisfy almost all customers if we settle a claim within ten days. However, if the claim is not settled in 30 days, about 80% of the customers will not be satisfied, no matter what the settlement offer is."

The final area in this section is the trend on the part of off-shore manufacturers to policies of discontinuing parts supplies. This is normally accompanied by the supply of 1/2% to 2% additional goods with orders to cover replacement of defective goods. The practice currently is occurring primarily

Exhibit 8-11

Reasons for Dissatisfaction Reported for the Five Repairs and  
General Services Categories Identified as  
Having the Greatest Absolute Number  
Of Highly Dissatisfied Purchasers

Reasons for Dissatisfaction	Percent Responding To Reason For Dissatisfaction				
	Auto Repairs and Services N=80	Television, radio, stereo repairs N=38	Parcel delivery and freight service N=24	Plumbing carpentry and other home repair services N=22	Appliance repairs (other than TV, radio, or stereo N=22
1. The service was provided in a careless, unprofessional manner	43%	34%	63%	36%	36%
2. The service was not completed in the agreed time	31	40	75	36	23
3. The service was not performed correctly the first time	70	63	33	59	59
4. I was charged for services that were not performed	18	13	17	5	18
5. I was charged for materials that were not furnished	6	0	4	0	0
6. The fee was much higher than the amount agreed upon in advance	20	13	0	9	5
7. The fee was higher than an advertised price for the service received	5	0	4	0	5
8. The quality of materials which were furnished was inferior	15	3	0	18	23
9. Things were worse after the service than before	43	24	4	23	9
10. An item was lost or broken	15	8	50	5	0
11. A professional confidence was violated to my embarrassment or injury	1	5	0	0	0
12. The professional advice I received was incorrect and caused me substantial losses	14	0	0	5	5
13. Services were performed in an incompetent manner with very harmful results	19	11	21	9	9
14. I was tricked by the person providing the service into buying services I didn't want	9	11	4	0	5
15. Results fell far short of those claimed in ads	10	0	17	0	5
16. I was harassed by bill collectors	1	0	0	0	0
17. Credit terms were misrepresented to me	6	3	4	0	0
18. The warranty (guarantee) did not cover everything that went wrong	24	8	6	5	8
19. I feel I was treated with extreme rudeness	9	3	17	5	9
20. Other reason not listed	9	11	29	9	18
<b>Number of Purchasers in Category</b>	<b>774</b>	<b>514</b>	<b>469</b>	<b>394</b>	<b>344</b>
N for total Sample = 1052					

Source: National Consumer Satisfaction/Dissatisfaction Study; Ash (forthcoming)

Exhibit 8-12

Distribution of the "One Most Important Reason" For  
Dissatisfaction for Four Service  
Purchase Categories

Percent Responding to Question

Reasons for Dissatisfaction	Percent Responding to Question				Total No.	%
	Auto Repairs and Services N=80	Television, radio, stereo repairs N=38	Plumbing, carpentry, and other home repair services N=22	Appliance Repairs (other than TV, radio or stereo) N=22		
1. The service was provided in a careless, unprofessional manner	13%	8%	18%	9%	19	12%
2. The service was not completed in the agreed time	4	13	9	9	12	7
3. The service was not performed correctly the first time	31	37	36	32	54	33
4. I was charged for services that were not performed	3	11	0	9	8	5
5. I was charged for materials that were not furnished	0	0	0	0	0	0
6. The fee was much higher than the amount agreed upon in advance	5	3	9	0	7	4
7. The fee was higher than an advertised price for the service received	3	0	0	0	2	1
8. The quality of materials which were furnished was inferior	8	0	5	9	9	6
9. Things were worse after the service than before	13	8	14	5	17	11
10. An item was lost or broken	1	3	5	0	3	2
11. A professional confidence was violated to my embarrassment or injury	0	0	0	0	0	0
12. The professional advice I received was incorrect and caused me substantial losses	3	0	5	0	3	2
13. Services were performed in an incompetent manner with very harmful results	5	5	0	5	7	4
14. I was tricked by the person providing the service into buying services I didn't want	1	0	0	0	1	1
15. Results fell far short of those claimed in ads	0	0	0	0	0	0
16. I was harassed by bill collectors	0	0	0	0	0	0
17. Credit terms were misrepresented to me	3	0	0	0	2	1
18. The warranty (guarantee) did not cover everything that went wrong	5	3	0	9	7	4
19. I feel I was treated with extreme rudeness	1	3	0	0	2	1
20. Other reason not listed	4	8	0	14	9	6

Source: National Consumer Satisfaction/Dissatisfaction Study; Ash (forthcoming)

with small appliances and results in a retail practice called "over the counter" replacement warranty. The problems or potential problems are likely to arise post-warranty, if the customer is not aware at time of purchase that replacement parts are not available.

2. The second group of problems might be termed willingness on the part of an organization or system to provide service. Within this group, one problem area occurs where there is not a clearly defined responsibility within the service system for providing customer service. The problem is more likely to occur in the white goods and home entertainment industries where financial responsibility for providing warranty service is split in some situations between separate business organizations. An example of such a problem was given in Exhibit 5-1. A similar kind of problem can occur in warranty systems which incorporate consumer and/or brand owner fault when the warrantor is not willing to assume financial responsibility for all warranty decisions made by agents. This situation exists in the new automobile industry, where dealers have varying financial limits on their authority to make warranty claim decisions.

Another problem area, constraints in warranty service portability, is related to this problem of willingness to provide warranty service. In the situation described in Exhibit 5-1, the in-system financial arrangements constrained customer warranty portability. Some automobile warranties constrain new vehicle maintenance to the selling dealer.

A further problem area in this group of problems regarding warranty service applies currently to white goods appliances and home entertainment products, in metropolitan Montreal, Toronto, and Vancouver. Appliance industry executives stated that daytime access to dwelling units was a problem because of the high number of units in which no adult was home during the day coupled, with high anonymity of "neighbors." Some experimentation with evening service calls has been done. While this does add to customer service, it has been found that this does create additional staffing problems and costs. The executives also noted that there was a far greater tendency in these three metropolitan areas than any other part of Canada for consumer expectation of 365 days a year service.

Where warrantors do not provide after-sale service at a level sufficient to fulfil their warranty obligations, risk of economic loss is shifted from the brand owner to the consumer. The Ash study contains some data on the magnitude of this loss, as perceived by the consumer. This distinction is important, because the data may contain situations in which the economic loss stemmed from consumer misuse or abuse of the product for which the warrantor denied compensation, or from consequential damages which were legally excluded from the warranty offer. Exhibit 8-13 shows for new cars and trucks, and Exhibit 8-14 shows for major appliances that there is a strong linkage perceived by consumers between warranty difficulties and financial loss. The same relationship also holds for small appliances.

3. This group of problems relate to consumer knowledge and beliefs with respect to repair costs and services. It is an area where we do not have good direct data, but have sufficient "bits and pieces" to suggest that some problems in the repair marketplace may be occurring because the knowledge and beliefs of the consumer may not be congruent with the realities of the marketplace. We see that the problems can occur in one or the other of two levels.

The first relates to lack of consumer knowledge about product economic life costs such as those presented in Exhibits 3-2 and 3-3. We strongly suspect that consumers seriously underestimate the after-purchase costs associated with product use and, to the extent that this is true, may overextend themselves financially with respect to product purchase, downplay service considerations in the decision as to place of purchase, exhibit the deferral of maintenance reported in Chapter Six, and view product breakdown requiring repairs as a nasty psychic and budgetary surprise. In such situations, a consumer is likely to bring feelings of anger and hostility to the repair situation, or warranty situation where customer fault is an issue.

One automobile organization reported that the existence of such feelings declined markedly where repair payment policies were changed from cash only to acceptance of credit cards.

The other level of problem area relates to consumers maintaining what might be called traditional beliefs that are at variance with what is occurring in the marketplace. In Chapter Five, it was noted that a

Exhibit 8-13

New Cars and Trucks - Association Between Warranties  
as a Cause of Dissatisfaction and Financial Losses

Financial Loss

	None	\$1-99	\$100-499	\$500 plus	
No Warranty Difficulties	15 68.2%	1 25.0%	1 10.0%	3 33.3%	20
Warranty Difficulties	7 32.8%	3 75.0%	9 90.0%	6 67.7%	25
	22	4	10	9	45

Kendall's Tau C 0.427 Sig. = 0.004

Source: Data from a National Consumer Satisfaction/  
Dissatisfaction Study, Ash (forthcoming).

Exhibit 8-14

Major Appliances - Association Between Warranties  
as a Cause of Dissatisfaction and Financial Losses

Financial Loss

	None	\$1-24	\$24-99	\$100-499	
No Warranty Difficulties	34 87.2%	2 66.7%	7 63.6%	1 20.0%	44
Warranty Difficulties	5 12.8%	1 33.3%	4 36.4%	4 80.0%	14
	39	3	11	5	58

Kendall's Tau C 0.343 Sig. = 0.001

Source: Data from a National Consumer Satisfaction/  
Dissatisfaction Study, Ash (forthcoming).

number of focus group participants had beliefs about the appropriateness of materials in relation to product reliability and and longevity (e.g. steel preferred to white metal or plastic), beliefs not reinforced by the materials used in a great many products in the marketplace. There is also widespread belief, it would appear, that repair of individual parts is intrinsically desirable. Two examples of this belief are provided in Exhibit 8-15. It is clear from these examples that belief in the desirability of individual part repair can create a conflict where the repair labor cost in a repair/replace part decision should lead to replacement rather than repair. It appears that in their desire to protect their belief in the value of repair, many consumers underestimate the labor costs associated with repair.

4. The final problem group relates to government activity. Over the course of our data collection, it became very apparent that many members of the white goods appliance and home entertainment industries believe that sharing of service information among organizations is functional in improving the overall level of services performance and have, in fact, formed the Canadian Electronic and Appliance Service Association (CEASA) to achieve that goal. We did not find any comparable cooperation in the automobile industry. While the situation was never discussed in any of our interviews with automotive executives, we have concluded that the oligopolistic industry structure creates an environment in which executives believe any intercompany activities should be minimized to avoid potential problems with respect to competition policy legislation. The outcome in our estimation is lowered service system performance because of the lack of shared information on systems for improved service planning and delivery, and monitoring of delivery performance.

A related problem area is in the area of data collection. CEASA members rely heavily on sales statistics for parts and service planning. Availability of Statistics Canadian data is crucial for product categories where imported products represent any substantial proportion of sales. This data is not collected for electronic products other than TV, which has created substantial service planning problems in the growing area of the home entertainment products.

EXHIBIT 8-15

A "SOUND OFF" COLUMN IN THE LONDON FREE PRESS,  
BY GORDON SANDERSON, JANUARY 29, 1979

Fix-It Men Hard to Find in a Modular Society

We are living in a modular society. The old concepts of service and repair are changing as mass production and the high cost of labor make it easier to throw out a component part than spend hours looking for a loose wire.

In the electronics and small electrical appliance field, service technicians are becoming more parts replacers than trouble-shooting fix-it-men.

The consumer is the one who pays, often for unnecessary replacements, because service shops find it uneconomical to take things apart in the hope a labor-saving gadget can be fixed in less time and for less cost than simply ordering a new one.

Example: Jennifer Clarke of 199 McCarty St., Thamesford, took her Schick hand-held dryer to Rowland's Appliance Service Ltd. in London for repair on Jan. 18.

Two days later Rowland's phoned Mrs. Clarke and said the dryer needed a new motor. Total repair bill would be \$17.

"As the dryer was purchased new for \$25 and is presently on sale for \$19.95 I did not feel that it was worth having it fixed for that price," Mrs. Clarke said.

She took the dryer parts home in a bag and later asked an electrician to look at it to see if it could be repaired for less money.

"He took the motor apart and found that a spring that held two magnets together had come loose," she said. "He put the spring back in place, reassembled the dryer and it has worked fine ever since."

Mrs. Clarke told Sound Off she has not only lost confidence in the repair service but also was unhappy to find a piece of the plastic dryer casing was broken when returned to her. She now has taped it together.



Exhibit 8-15 cont'd.

Frank Piccin, president of Rowland's, said his firm would have been willing to replace the plastic shell of the dryer "if we broke it," but Mrs. Clarke had not returned to report the damage.

He said it is "standard practice" on small appliances like dryers to take them apart and try to find the problem. But if there is no "circuit reading" on the motor, they assume it has gone and needs replacing.

"The motors on these things are very small and 99 per cent of the time, when there's a problem, it is either the field or commutator, which would necessitate a new motor," Piccin said. "In this case we were wrong, but it is the exception."

"Because of the (low) cost of these units, if there's any problem with the motor we can't spend the time on them because the customer probably wouldn't want to get it repaired anyway."

Piccin noted that Mrs. Clarke's dryer had been given the usual checks to find the problem, such as "checking the cord, the circuit board and diodes, etc.," and that after she was given the \$17 repair estimate, which was declined, she had not been charged for the diagnosis.

"If a customer wishes to have a unit reassembled there is a \$4 charge."

Sound Off checked with a couple of other appliance repair firms in London and received varying opinions about the incidence of electric motor "burn-out" in hair dryers. One repairman did not agree they were unrepairable 99 per cent of the time.

The head office service centre of Schick (Canada) Ltd., Scarborough, however, said nonfunctioning motors of all small appliances returned for repairs are "thrown out" and replaced with new motors. One reason for this is that all products sent out by Schick must comply with strict Canadian Standard Association regulations.

"We never open up returned motors. We junk them," said a service person. If a consumer returns a hair dryer to the factory for service, cost of a replacement motor on a hand-held unit would be \$4.50 plus \$4.00 for labor.

Exhibit 8-15 cont'd.

Another example of the "replace, don't fix" policy now prevalent in the service industries surfaced in a Sound Off complaint letter last fall from Joe Abela of 1167 Sorrel Road, London.

Abela said his wife called a local TV repair service after the sound and picture failed on the television set.

A serviceman from Peter's Television Ltd., checked the set in the home and replaced a power supply unit and another part. The total bill was \$89, including \$64.90 for parts, \$2.60 sales tax and \$21.50 labor.

Abela said he raised objections to the bill for complete replacement of the power supply module because "in most cases the problem is a small burnt diode that can easily be fixed on the spot or at the shop. We had similar repairs before for much less cost."

Peter Gurlesky, owner of Peter's Television Ltd., said there are many reasons why a technician will replace a defective power supply unit, not the least of which is the desire to get a customer's set in working order again in the shortest possible time.

A serviceman in the home will check the usual trouble points, such as fuses, but if after he replaces a fuse and a power module still shorts out, he will replace it.

"On that particular power supply module it is possible at times to repair if you are willing to spend a lot of time, for which you have to charge. But in most cases it is a hit-or-miss thing and then what happens if the set goes again and you have an angry customer calling you back.

"In practice, we do not repair modules but return them to Phillips."

Though the cost of a replacement is higher, the customer has the advantage of a full one-year warranty on the replaced module and the TV is back in service within a half-hour.

CHAPTER NINETHE BUY/USE PROCESS AND CONSUMER INFORMATION  
PROCESSING

All individuals and groups with an interest in consumer buy/use behavior use some kind of implicit or explicit model of consumer behavior. The model used vitally affects conclusions as to the extent and manner in which that behavior might be modified. The purpose of this chapter is to present a model that we believe represents well the dynamics of consumer information processing in the acquisition and use of major durables, together with what we see as the major implications for government policy makers with respect to influencing that process.

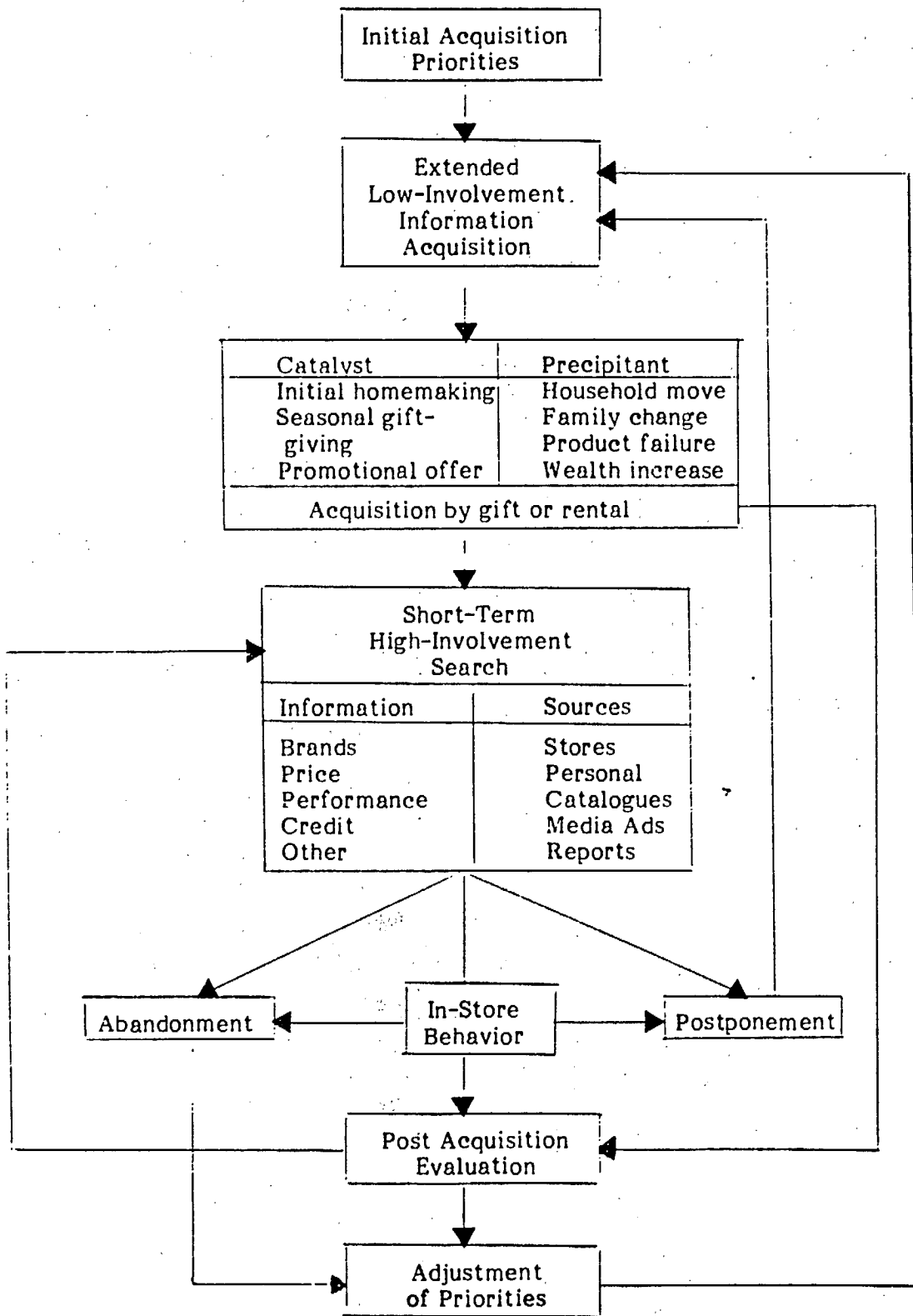
The core model is one developed by Dickson and Wilkie in a recent publication, *The Consumption of Household Durables: A Behavioral View* (1978).<sup>1</sup> Their model is depicted in Exhibit 9-1, and relates to a purchase decision, rather than a person or household. The decision can involve joint household buying behavior as well as a number of people in specific individual roles at varying stages in the process.

The key propositions underlying the model, as stated by the authors, are:

1. Deliberate and highly involved search behaviour, however short, is either precipitated by an unexpected event or triggered by an expected event which converts priorities or stalled plans into action.
2. Casual acquisition of product information may occur over an extensive time before a precipitating or catalytic event happens. This information is obtained under very different conditions of interest, concern and product involvement from what will be found at stages of deliberate and intensive search.
3. The search for and choice of the purchase outlet frequently may precede the consideration of specific brands and, consequently, clearly influences the composition of the evoked choice set.

Exhibit 9-1

A Model of the Acquisition of Major Durables



Source: Dickson and Wilkie (1978)

Store loyalty can be a more important concept than brand loyalty.

4. The expertise and interactive skills of store personnel are significant in the purchase of major durables.
5. After sufficient search, immediate purchase may be abandoned or postponed and the process may lie dormant until activated by a future event. Abandonment will have an impact on acquisition priorities for other products.

The beginning stage in the process for the young person is one of development of initial acquisition priorities, which are culturally determined by the family and society in which that young person grows and matures. This is followed by an extended period of low-involvement information acquisition which, in the case of the young person, is obtained from "parents, relatives, friends, television programs and commercials, and other entertainment media." This information, in turn, shapes acquisition priorities.

A key feature of the model is the authors' perspective that "particular situational events trigger the decision to undertake intensive search with a view to purchase." These events can be categorized as unexpected (precipitant) or expected (catalytic), and initiate a period of short-term high involvement search behavior focusing on decisions about finance, product features, where to shop, and identification and use of other sources of information. In-store shopping follows, and in-store interaction with sales staff takes place. This interaction appears to be a three stage process; orientation, evaluation and consummation. One of three outcomes takes place: purchase, postponement; or abandonment. If purchase takes place, there is post-purchase acquisition evaluation, followed by adjustment of priorities. Abandonment or postponement of purchase are also followed by adjustment of priorities.

Considerable evidence is provided in the publication to support this two-stage information seeking process. Three specific research studies relate to this research project. Exhibit 9-2 indicates that service and warranty, together with ease of use, are the highest rated attributes of appliances on the part of both consumers and retailers. However, results

of two studies of consumer/salesman interactions (see Exhibits 9-3 and 9-4) suggest very strongly that these attributes do not have high consumer salience in negotiations immediately preceding the purchase decision. Two concepts can account for this apparent anomaly in consumer behavior. The first is that store and/or brand have become surrogates for service and warranty at the time of the specific product decision choice. For example, there is evidence in the marketing literature that approximately half of appliance purchasers visit only one store.<sup>2</sup>

The second concept is that the majority of consumers use only that information at a given point in the buy/use process that they perceive as functional at that point in time. Both the focus group data and industry interviews strongly support the notion that while the general concept of existence of an express warranty may be salient at the point of purchase, for many consumers the specifics of the warranty do not become relevant unless and until there is a product failure. Further, the industry interview data strongly support the notion that knowledge of how to use the product does not become salient until the consumer is actually using the product. On the strength of this evidence, we have modified the Exhibit 9-1 model to incorporate this post-purchase phase of consumer information seeking and use. The revised three-stage information seeking model appears as Exhibit 9-5.

#### The Implications of the Model for Government Policy Makers

The model supports the fairly widespread belief that consumers, individually or jointly as family buying groups, plan major purchases such as white goods and automobiles. However, the model perspective that consumers seek and process information in a sequential manner is at variance with a commonly held view that consumers seek and evaluate all relevant information concerning product benefits and costs prior to purchase. Further, the model is descriptive, not normative. It attempts to explain how consumers do behave, not how some person or group thinks they ought to behave. The distinction is important, we believe, because our training and experience both combine to form our conviction that the probability of influencing change in consumer behavior is much greater when the activities designed to influence change are based on a foundation of understanding of existing consumer behavior.

Exhibit 9-2

Importance of Given Attributes of Appliances

<u>Attribute</u>	<u>Percentage of Consumers Rating as Important in:</u>			<u>Percentage of Retailers Rating as Important in:</u>		
	<u>Refrig- erator</u>	<u>Range</u>	<u>Clothes Washer</u>	<u>Refrig- erator</u>	<u>Range</u>	<u>Clothes Washer</u>
Price	74	75	74	78	81	82
Style	72	74	55	68	81	46
Service and warranty	97	97	96	90	83	94
Extra gadgets	40	36	39	21	42	24
Ease of use	91	90	92	81	89	93

(a) Percentage who scored 4, 5, or 6 on a six-point importance scale.

Source: Dickson and Wilkie (1978) Table 36. Abstracted from McClure and Ryans (1968), Table 13.

Exhibit 9-3

Bargaining Topics Between Consumer and Salesman

	<u>Number of Bargaining Acts per Transaction</u>
Price	11.2
Product features	6.5
Timing of purchase	3.0
Brand	1.9
Terms	1.7
Delivery	1.7
Service	1.2
Guarantee	0.9
Product quality	0.6
Styling	0.5

Source: Dickson and Wilkie (1978), Table 40.  
Original source, Pennington (1968).<sup>4</sup>



Exhibit 9-4

Stages in the Salesperson-Consumer Interaction

Part 1

Orientation Stage

Emphasis on brand and special features for both refrigerators and color TVs. Secondary emphasis in discussion on size and price for refrigerators and furniture style for TVs.

Evaluation Stage

Customers referred to an average of 1.1 and 1.9 brands and models for refrigerators and TVs, respectively. Salesperson referred to an average of 3.0 and 5.3 brands and models, respectively. Emphasis on price, construction details, brand and furniture style for TV sets. Special features, capacity, price, construction details, and brand were the main discussion points for refrigerators. The salesperson raised more of these factors than the customer.

Consummation Stage

Emphasis on nonproduct features, such as store financing, delivery, set up, availability, special deal, and trade-in.

Source: Dickson and Wilkie (1978), Abstracted from Olshavsky (1973).<sup>5</sup>

Exhibit 9-4 (Cont'd)  
Part 2

Average Number of References per Attribute per Transaction and the Proportion of Transactions Referring at Least Once to Each Attribute for the Evaluation Phase

	Refrigerators			Color Televisions		
	Both	Salesman	Customer	Both	Salesman	Customer
Average number of attribute references (range)	40.1 (11-95)	25.6 (9-45)	13.8 (2-30)	52.8 (20-148)	34.3 (16-96)	18.7 (4-52)
Number of brands or models considered	4.1 1.0	3.0 .96	1.1 .75	7.1 1.0	5.3 1.0	1.9 .63
Type of product attributes						
Special features	8.7 <sup>a</sup> 1.0	6.5 1.0	2.2 .80	0.6 .31	0.6 .31	0.1 .06
Size (capacity)	7.8 1.0 <sup>b</sup>	5.2 1.0	2.5 .75	6.4 .88	4.6 .88	1.8 .69
Price	7.4 1.0	4.4 1.0	2.9 .92	14.2 1.0	8.8 1.0	5.5 .94
Construction details	5.1 .87	3.7 .87	1.4 .63	11.0 .94	6.9 .94	4.1 .94
Brand	4.7 .96	2.5 .87	2.1 .83	9.2 1.0	5.9 1.0	3.2 .88
Overall dimensions	2.7 .57	1.5 .54	1.2 .42	0.6 .31	0.4 .25	0.2 .13
Color	1.1 .46	0.5 .33	0.5 .37			
Product warranty	0.8 .37	0.5 .37	0.3 .12	2.3 .63	1.4 .63	1.0 .38
Year	0.6 .37	0.4 .33	0.3 .25	0.8 .50	0.6 .50	0.2 .25
Reliability	0.6 .29	0.3 .21	0.3 .21	0.4 .25	0.3 .25	0.1 .13
Operating expense	0.2 .08	0.1 .08	0.1 .04	0.4 .19	0.3 .19	0.1 .13
Furniture style				5.6 .94	3.7 .94	1.9 .75
Picture quality				1.7 .56	1.1 .56	0.6 .44

(a) Read: An average of 8.7 references occurred to special features per transaction, 6.5 were by the salesman, 2.2 by the customer.

(b) Read: Reference to size (capacity) occurred at least once in 1.0 (proportion measure) of all transactions by either the salesman or customer. Reference by the salesman occurred in 1.00 (100%) of transactions and by the customer in .75 (75%) of transactions.

Source: Olshavsky (1973)

Exhibit 9-5

A Three-Stage Information Seeking Model for the Acquisition of Major Durables

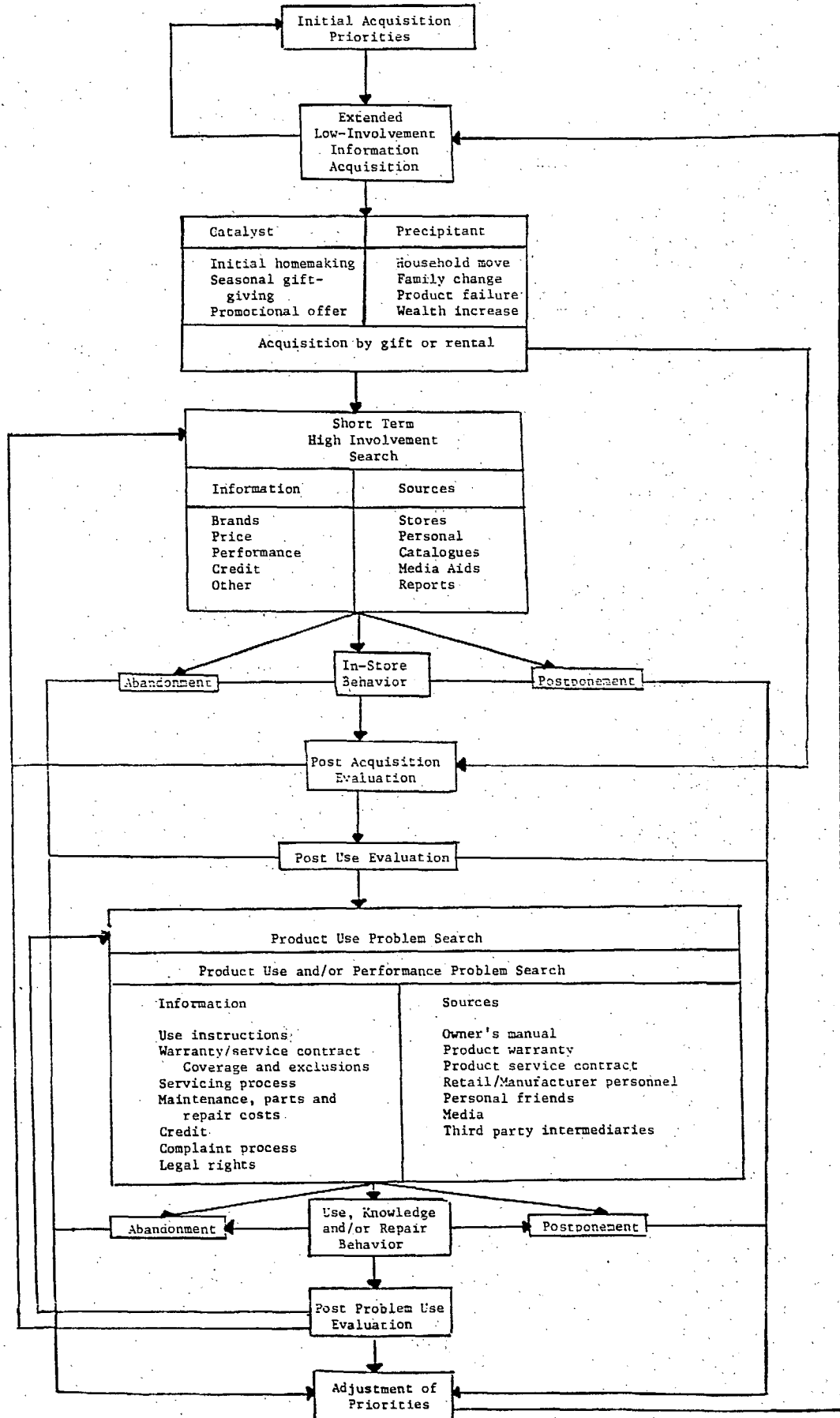


Exhibit 9-6 contains what our research has indicated as the key consumer characteristics in the purchase and use of major durable products. The existence of these characteristics leads us to the conclusion that government intervention of any kind as it applies to consumer use of information is most likely to be both effective and efficient when it provides consumers directly or indirectly with the kind and specificity of information appropriate to their interests and needs at their particular stage in the acquisition/use process. We realize that this conclusion may not sit well with many government policy makers, who perceive that consumer self-interest is not well served with their current patterns of use of information. We do not argue with the marketplace occurrence of consumer misuse or lack of use of information. What we are suggesting is that government information intervention is more likely to be successful if its goal is long-run and oriented towards changing consumer acquisition priorities and the provision of information directed towards the low involvement information acquisition stage of the acquisition/use process. For the most part, we see this as resulting in the provision of information initially at a lower level of specificity than many government policy makers currently might like to see. An example is the concept of product economic life costs. Given low consumer awareness and use of this concept, we conclude that consumer education should start with development of consumer awareness of the concept and its general value in the purchase decision process rather than with making economic life cost information available at the point of purchase.

Exhibit 9-6

Key Consumer Characteristics in the Purchase and Use of  
Major Durable Products

- . tends to use a small proportion of the available information
- . acquires and processes information sequentially over economic life:
  - (a) purchase
  - (b) use
  - (c) warranty
  - (d) service
- . thinks in terms of purchase cost, not economic life cost, with consequent overemphasis on purchase price
- . knows that warranty coverage is reflected in the purchase price
- . uses surrogate information for judging performance;
  - (a) existence of warranty and warranty period for reliability, longevity
  - (b) retail outlet or brand name for reliability, longevity, existence of warranty, and quality of warranty and service systems
  - (c) product appearance for overall functional performance and reliability
  - (d) magnitude of repair costs for functional reliability
- . has slow changing belief structure on the relationship between product materials and product longevity
- . wants fast response to problems
- . has little or no interest in, or knowledge of legal rights, especially if expressed in legal language
- . has expectations about product performance, especially product reliability, that are based on selective references to prior experience
- . perceives that some consumers misuse products
- . has little bargaining power with organizations which choose not to bargain

Exhibit 9-6 cont'd.

- . neglects maintenance/service to an increasing extent
- . perceives direct relationship between size of cost outlays and risk protection against performance failure
- . works on assumption that things will go right unless explicitly told to the contrary
- . buys, to an increasing extent, more complex products.

CHAPTER TENSUMMARY OF KEY PROBLEM AREAS

This brief chapter provides a summary of what we see as the key problems currently existing in product delivery, in-warranty and post-warranty service systems for white goods and automobiles. They are key problems in our estimation either because of their pervasive nature or because of the high dollar, time, or psychic costs incurred when the problem is present. With one exception, the problem set is not ordered in terms of magnitude. The accomplishment of such a task is well beyond the scope and resources of this project. Moreover, we see such a task as less relevant than getting reasonable agreement among system members (consumers, manufacturers, distribution trades, government policy makers) that these are the key problem areas.

Examination of the problem set will suggest that the problems might be split into three groups, consumers, business, and government. We have resisted this form of "source" categorization because we see a number of the problems occurring at the interface of these broad groupings, which indicates to us joint problems. We have shown for each problem the area or areas of product delivery, in-warranty service, or post-warranty service systems in which it lies. Parts availability does not appear in the problem set for the product classes we have focussed on because it is our conclusion that it is not a problem of any substantial nature in these industries. Length of product economic life is also not in the problem set for the two product classes in the study because the limited data available lead us to the conclusion that length of economic life of appliances and automobiles does not appear unreasonable. It is possible, of course, that the availability of trend data may show a problem in this area.

Finally, during the course of our research, we have identified three existing or potential problems outside the principal research area that we believe merit explicit recognition. These are listed at the end of the chapter.

Key Problem Areas for White Goods and Automobiles

- . Lack of consistency and/or quality of service performance - In-warranty service, Post-warranty service. We see the above problem because of its pervasiveness, the fact that there is widespread consumer requirements for service, and the knowledge that it impacts on a number of other problems in the set, as being the most serious one in the set in terms of an expectation-performance gap. As stated earlier, the other problems in the set are unordered.
- . Expectations on the part of some consumers with respect to product reliability, service costs and, to some extent, product longevity, are higher than distribution/manufacturer ability and willingness to provide at prices those same consumers are willing to pay - Product delivery, In-warranty service, Post-warranty service.
- . Information on total economic costs of product ownership not readily available to consumers - Product delivery, Post-warranty service.
- . Short to medium term shortage of competent service personnel (technical and managerial) over total service systems, and particularly in rural areas - In-warranty service, Post-warranty service.
- . Responsibility for warranty performance not clearly defined - In-warranty service, Post-warranty service.
- . Competition policy which lowers service system performance when it discourages shared information on systems for improved service planning and delivery, and monitoring of delivery performance - In-warranty service, Post-warranty service.
- . Scope and quality of information systems which monitor warranty and service system performance of variable quality - In-warranty service, Post-warranty service.
- . Low consumer interest in available information - Product delivery, In-warranty service, Post-warranty service.
- . Lack of consistency and/or quality of salesman communication at point of sale - Product delivery.



- . Lack of consistency and/or quality of predelivery inspection (automobiles) - Product delivery.
- . Warranty information not as available or understandable as it could be - In-warranty service.
- . Existence of, and information on implied warranty rights not known/understood by virtually all consumers and many members of the distribution/ manufacturing system - In-warranty service.
- . Portability of warranty protection within and across provinces not consistent - In-warranty services.
- . Systematic product failure which becomes known after the end of the express warranty period, or beyond the financial resources of supplier system member(s) to fix - In-warranty service.
- . High consumer psychic costs in a warranty system in which the organization responsible for warranty protection is not clearly identified and/or has final non-legal decision power - In-warranty service.
- . Consumer misperception of how warranty systems operate with respect to registration and expiry period - In-warranty service.
- . Lack of consistency of governmental requirements for warranty system across jurisdictions - In-warranty service.
- . Outdated and/or vaguely phrased legislation which does not have intended effects and/or has unintended side effects - In-warranty service.

#### Other Key Existing or Potential Problem Areas

- . Lowered maintenance levels on the part of automobile owners may be leading to increased public safety risk.
- . Trend on part of off-shore suppliers to policies of discontinuing parts supply.
- . Lack of sales data for electronic products other than TV for use in service systems planning.

CHAPTER 11BRIEF OVERVIEW OF RECENT PUBLIC POLICY STATUTORY  
INITIATIVES REGARDING CONSUMER WARRANTIES

The purpose of this chapter is to provide a background against which options for future public policy initiatives may be evaluated. It is not our intention of presumption to pass ourselves off as legal experts. Accordingly, we have chosen to concentrate on the broader issues of what has been tried or proposed by public policy officials in the field of consumer warranties in Canada and the United States<sup>1</sup>. We leave a more detailed, technical review and evaluation to legal specialists.

In both Canada and the United States, legislation affecting warranties exists at the federal and provincial/state levels. In both countries, the cornerstone of warranty law is at the provincial/state level, although the U.S. has passed federal legislation designed to strengthen state law.

Canadian Federal Legislation

The only important Canadian federal legislation affecting consumer warranties is the Combines Investigation Act (1976), Section 36. Those sections, shown in Exhibit 11-1, apply to representations about products and services. Included in the means of representation covered are warranties. For example, it is a contravention of the act to make a representation to the public in the form of a statement, warranty or guarantee of a product's efficacy or length of life not based on adequate tests. Similarly, it is illegal to offer a warranty promising product replacement or repair if there is no reasonable prospect of this promise being carried out. Under the Combines Investigation Act, Sections 36(3)-(5), any party responsible for such illegal representations may be fined and/or imprisoned in a criminal proceeding and/or sued for damages by consumers or competitors. The test of whether or not a warranty representation is materially false or misleading (Section 36(4)) is the general impression conveyed as well as the literal meaning.

Exhibit 11-1

Excerpts from the Combines Investigation Act (1976)

36. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) make a representation to the public that is false or misleading in a material respect;

(b) make a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies upon the person making the representation;

(c) make a representation to the public in a form that purports to be

(i) a warranty or guarantee of a product, or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result

if such form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out; or

(d) make a materially misleading representation to the public concerning the price at which a product or like products have been, are or will be ordinarily sold; and for the purposes of this paragraph a representation as to price is deemed to refer to the price at which the product has been sold by sellers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold by the person by whom or on whose behalf the representation is made.

(2) For the purposes of this section and section 36.1, a representation that is

(a) expressed on an article offered or displayed for sale, its wrapper or container,

(b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

(c) expressed on an in-store or other point-of-purchase display,

(d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

(e) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatever made available to a member of the public,

shall be deemed to be made to the public by and only by the person who caused the representation to be so expressed, made or contained and, where that person is outside Canada, by

(f) the person who imported the article into Canada, in a case described in paragraph (a), (b) or (e), and

(g) the person who imported the display into Canada, in a case described in paragraph (c).

(3) Subject to subsection (2), every one who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in subsection (1) shall be deemed to have made that representation to the public.

(4) In any prosecution for a violation of this section, the general impression conveyed by a representation as well as the literal meaning thereof shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

(5) Any person who violates subsection (1) is guilty of an offence and is liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for five years or to both; or

(b) on summary conviction, to a fine of twenty-five thousand dollars or to imprisonment for one year or to both. R.S., c. C-23, s. 36; 1974-75-76, c. 76, s. 18.

### United States Federal Legislation

In the U.S. there is a federal law specifically aimed at improvement of consumer warranty practices, the Magnuson-Moss Warranty - FTC Improvement Act (1975). This act was designed to tackle consumer problems with warranties by requiring information disclosure pre-sale, changes in written warranties, and improvement in redress mechanisms in the event of disputes post-sale.

The act applies to all consumer products costing more than five dollars, where consumer product is defined as:

... any tangible personal property normally used for personal, family, or household purposes (including property intended to be attached to or installed in any real property, whether or not it is attached or installed). Section 101(1)

All products costing ten dollars or more must have any written warranties designated as "full" or "limited". (See Exhibit 11-2 for a summary of the distinction.) For products costing fifteen dollars or more, any warranty must be available to consumers prior to purchase to facilitate comparison shopping. The act sets out guidelines for readability and information disclosure.

The Act also prohibits any disclaimer of implied warranty rights available under state laws, except where a seller specifically states in writing that no warranty at all is given.

Critical to the impact of the Magnuson-Moss Act is the effort put into its administration by the Federal Trade Commission. Under the act, the FTC is enabled to formulate rules on the precise content of written warranties, service contracts, redress mechanisms for consumers, second-hand car warranties, and informal dispute-settling procedures.

### Canadian Provincial Law

In Canada, warranty law is considered a provincial matter because it deals with property rights. This means that in Canada alone there are several streams of legislation and case law. Because our intent here is only to summarize Canadian warranty

Exhibit 11-2

Magnuson-Moss Warranty - FTC Improvement Act (1975)  
Distinction Between Full and Limited Warranties

Full:

A defective product will be fully repaired free of charge, including transportation costs if necessary.

It will be repaired within a reasonable time.

The warranty is valid for all owners during the warranty period.

If the product is unrepairable (or cannot be repaired after a reasonable number of tries), the consumer may elect for either a new product, or a full refund.

The warranty must clearly state what parts are and are not covered under warranty.

Limited: It is "limited" if it is anything less than the above. For example, such a warranty may:

Cover only parts, not labour.

Allow a pro-rated refund, depending upon the actual time period of usage.

Require the consumer to cover transportation costs.

Exclude coverage for other than the first purchaser.

Charge for incidentals such as handling.

law as it exists today, we'll look most closely at Ontario law as an example of typical Canadian warranty law, and then at recent developments in some other provinces.

Warranty law is sales law. By definition, a sale is a contract by which goods are transferred from seller to buyer. Sales law has developed over a long period of time as common law both in England and North America. In 1893, England codified common law principles in a Sale of Goods Act. Canadian provincial laws followed shortly thereafter, almost on a word for word basis.

Such laws contain lengthy provisions about contract formation, breach of contract, and remedies for breach of contract. For example, a study of sale of goods law reveals that for a contract to be enforceable there must be offer, acceptance, intention, capacity, sufficient certainty of terms and consideration (money, for instance) transferred from the buyer to the seller. Each of these words has specific meaning in law. Further, one would learn that the elements of a contract may include (a) agreement between the buyer and seller (b) general custom (trade practice), and (c) statutory rules. Rather than dwell on this, it is important to realize that the basic premise underlying sales of goods law was that both buyers and sellers were entering into the contract with relatively full knowledge of the circumstances and on approximately an equal footing.

Under the Ontario Sales of Goods Act, an important distinction is made between "condition" and "a warranty". A condition is a major or essential term of a contract, breach of which relieves the injured party from further duty to perform the contract if he so elects. A warranty is a minor or non-essential term, breach of which does not relieve the injured party from the deal, although he may sue for damages. This distinction is important because it determines the nature of the remedy available to the injured party. In other words, breach of warranty by the seller entitles the buyer to claim damages, or get the product repaired or replaced, but does not entitle him to rescind the contract and get his money back. This distinction is artificial according to some experts, and worse, is always determined on a situation-specific basis. This means the average buyer is highly unlikely to know what remedies he is entitled to in the event of product problems.

Another distinction is made in the law between implied and express warranties. Implied warranties refer to promises the seller is always presumed to have made to the buyer, even if nothing was said about those promises. At one time these presumed promises could be disclaimed in many jurisdictions by saying so in a written statement. In short, implied warranties are statutory rights given the buyer by law. Express warranties refer to statements of reassurance about product quality and performance made by the seller that can be construed as inducements to purchase. Traditionally, such statements were only binding if made in writing -- the "parol evidence rule" disallowed statements made verbally. This rule has been relaxed in judicial practice.

The Ontario Sale of Goods Act confers seven implied warranty rights on the buyer (see Exhibit 11-3 for excerpts). The explanations provided below are by no means a complete, legally accurate description:

- . title - seller has right to sell the product
- . quite possession - no interruption of physical possession and enjoyment
- . freedom from encumbrance - undisclosed third party does not have a claim
- . fulfillment of description - goods correspond with description provided
- . sale by sample - goods received correspond with sample seen by buyer
- . fitness for particular purpose - purpose for which the buyer wants the product is clear and the buyer relies on the seller's judgment
- . merchantability - "The condition that goods are of merchantable quality requires that they should be in such an actual state that a buyer fully acquainted with the facts and therefore knowing what hidden defects exist and not being limited to their apparent condition would buy them without abatement of the price obtainable for such goods if in reasonably sound order and condition and without special terms" (Bristol Tramways v. Fiat Motors)

Exhibit 11-3

Excerpts from Ontario's Sale of Goods Act

Implied  
conditions,  
and  
warranties

**13.** In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is,

- (a) an implied condition on the part of the seller than in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
- (b) an implied warranty that the buyer will have and enjoy quiet possession of the goods; and
- (c) an implied warranty that the goods will be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made. R.S.O. 1960, c. 358, s. 13.

**14.** Where there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description, and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. R.S.O. 1960, c. 358, s. 14.

**15.** Subject to this Act and any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description that it is in the course of the seller's business to supply (whether he is the manufacturer or not), there is an implied condition that the goods will be reasonably fit for such purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.
2. Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or not), there is an implied condition that the goods will be of merchantable quality, but if the buyer has examined the goods, there is no implied condition as regards defects that such examination ought to have revealed.
3. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. R.S.O. 1960, c. 358, s. 15.



Exhibit 11-3 (cont'd)

Sale by  
sample

**16.—(1)** A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

Implied  
conditions

(2) In the case of a contract for sale by sample, there is an implied condition,

- (a) that the bulk will correspond with the sample in quality;
- (b) that the buyer will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) that the goods will be free from any defect rendering them unmerchantable that would not be apparent on reasonable examination of the sample. R.S.O. 1960, c. 358, s. 16.

**53.** Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract. R.S.O. 1960, c. 358, s. 53.

Exclusion  
of implied  
laws and  
conditions

These implied rights provide the buyer with the basis to claim for product failure damages, consequential damages, or personal injury. They are extended to the buyer who is in privity of contract with the seller. Privity refers to the direct contractual link between two parties, such as between a consumer and a retailer. Generally speaking, consumers do not have privity of contract with wholesalers and manufacturers. However, in personal injury cases, the courts have frequently set aside the need for privity of contracts and permitted purchasers to pursue the manufacturer or wholesaler directly.

As mentioned previously, sellers in Ontario were allowed for some time to limit their obligations under implied warranty law by the use of disclaimers. An amendment to the Ontario Consumer Protection Act (1971, c 24 s.2) now makes such disclaimers void in law; that is, they are not binding (see Exhibit 11-4). Notice that disclaimers are not prohibited, thus still permitting companies to give consumers the impression that implied rights have been limited.

The Sale of Goods Act does not stipulate what must be said in an express warranty. This is particularly noteworthy in view of the disclosure of relevant information approach taken by the U.S. Magnuson-Moss Warranty - Federal Trade Commission Improvement Act of 1975.

The Ontario Sale of Goods Act, until recently, was typical of all provincial law affecting consumer warranties. However, based on growing concern among the legal profession and the expressed dissatisfaction of consumer voters, several provincial governments have responded with proposed or actual statutory changes.

One very visible foundation for statutory change throughout Canada is the Ontario Law Reform Commission Report on Consumer Warranties and Guarantees in the Sale of Goods, released in 1972. This major study concluded with suggestions for sweeping changes in statutory law. The following excerpt gives the flavour of the report:

Apart from the more specific analysis to which some portions of this Act will be subjected in the following chapters of this report, its principal shortcomings can be said to be these. It proceeds from the

Exhibit 11-4

Excerpts from Ontario's Consumer Protection Act

GENERAL

Agreements  
and waivers  
contrary  
to Act

**44.** This Act applies notwithstanding any agreement or waiver to the contrary. R.S.O. 1970, c. 82, s. 44.

"Consumer  
sale"  
defined

**44a.**—(1) In this section, "consumer sale" means a contract for the sale of goods made in the ordinary course of business to a purchaser for his consumption or use, but does not include a sale,

- (a) to a purchaser for resale;
- (b) to a purchaser whose purchase is in the course of carrying on business;
- (c) to an association of individuals, a partnership or a corporation;
- (d) by a trustee in bankruptcy, a receiver, a liquidator or a person acting under the order of a court.

Implied  
warranties  
R.S.O. 1970,  
c. 421

(2) The implied conditions and warranties applying to the sale of goods by virtue of *The Sale of Goods Act* apply to goods sold by a consumer sale and any written term or acknowledgement, whether part of the contract of sale or not, that purports to negative or vary any of such implied conditions and warranties is void and, if a term of a contract, is severable therefrom, and such term or acknowledgement shall not be evidence of circumstances showing an intent that any of the implied conditions and warranties are not to apply. 1971, c. 24, s. 2 (1).

NOTE: Section 44a above applies to contracts for consumer sales entered into after the 18th day of October, 1971. See 1971, c. 24, s. 2 (2).

fictitious premise that the parties are bargaining from positions of equal strength and sophistication and it uses concepts to describe and distinguish between different types of obligations that are not (sic) obsolete and difficult to apply. It supplies a framework of remedies for breaches of the seller's obligations that are unrelated to practical realities. Especially serious is the Act's preoccupation with the bilateral relationship between the seller and the buyer, which totally ignores the powerful position of the manufacturer in today's marketing structure. This results, at least in the Anglo-Canadian law in shielding the manufacturer from contractual responsibility to the consumer. By the same token the law has largely ignored the impact of manufacturers' express warranties and the defects in their contents and administration. Finally, our sales law is private law and it has failed to provide any meaningful machinery for the redress of consumer grievances. This last weakness is perhaps the most serious of all weaknesses, for as has been frequently observed, a right is only as strong as the remedy available to enforce it. (OLRC Report, D. 23)

Exhibit 11-5 is a reproduction of the OLRC summary of recommendations.

The Ontario government issued a Green Paper on Consumer Product Warranties in Ontario in August, 1973 seeking comments from interested parties on the proposals submitted to it by the OLRC. Some of the proposals which the Ontario government found most contentious in the view of the business community were as follows:

- . An implied warranty that the goods (including where appropriate, the individual components of the goods) shall be durable for a reasonable period of time, having regard to all the surrounding circumstances of the sale.
- . An implied warranty that spare parts and reasonable repair facilities will be available for a reasonable period of time with respect to goods that normally require repairs. (OLRC Report, p. 156)

## Exhibit 11-5

### Excerpt from OLRC Report on Warranties

#### GENERAL SUMMARY OF RECOMMENDATIONS

Set out below is a summary of the Commission's Recommendations.

##### PART I

##### INTRODUCTION

##### The Nature and Extent of Consumer Warranty Complaints—Chapter 1

The Commission recommends that:

1. The Legislature of the Province of Ontario enact a new statute, to be known as *The Consumer Products Warranties Act*, which will deal comprehensively and systematically with all aspects of consumer warranties.
2. The proposed Act apply, in lieu of *The Sale of Goods Act*, to all persons selling consumer products to consumers, in the course of their business, and to all manufacturers of such products.
3. "Consumer products" be defined in the proposed Act as meaning goods that are regularly, although not necessarily exclusively, bought for personal use or consumption.
4. "Consumer" be defined in the proposed Act as an individual acquiring a consumer product for his own use or consumption, or for the use or consumption of another individual.
5. The proposed Act provide that where the buyer intends the product to be used for a business and a non-business purpose, the predominant purpose would govern the characterization of the use.
6. "Sale" in the proposed Act include all near-sale transactions, including leases with an option to purchase, leases for substantial terms, and should cover materials transferred under a contract for work and materials.
7. The proposed Act consist of the following principal parts:
  - a. A statement of the warranty obligations of the seller and manufacturer of a consumer product;
  - b. A code of basic guidelines for the contents of express performance warranties and their administration;
  - c. Machinery for the resolution of warranty disputes; and
  - d. General provisions for the administration of the Act.

##### PART II

##### THE EXISTING LAW AND ITS SHORTCOMINGS

##### The Consumer and The Sale of Goods Act—Chapter 2

The Commission recommends that, under the proposed *Consumer Products Warranties Act*:

1. The distinction between contractual and non-contractual representations should be abolished and replaced by the single concept of "warranty", which should be defined as follows:

"Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of any such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon."

2. The distinction between warranties and conditions should also be abolished and replaced by the single concept of a warranty. This change should be accompanied by the adoption of a new set of remedies for breach of the seller's warranty obligations, as outlined in recommendation 6, below.
3. The parol evidence rule should be abolished for consumer transactions and evidence should be admissible of representations which do not appear in the written agreement.
4. Effect should be denied in consumer transactions to clauses denying the authority of agents or employees of the seller to make representations which otherwise would fall within the usual scope of their authority.
5. The implied warranties conferred on a buyer in a consumer transaction should encompass:
  - a. Implied warranties of title, freedom from encumbrances, and quiet possession. These should follow the existing provisions in *The Sale of Goods Act*, subject to the adjustments in detail discussed in the text of section 5. a., chapter 2 (Implied Condition of Title), and to the observations and recommendations made in chapter 3 (Disclaimer Clauses).
  - b. The warranty of description should be deemed to be an express warranty. It should also be made clear that a sale in a self-service store is a sale by description and that a seller is deemed to have adopted as his own the labels or markings attached to the goods and all other forms of descriptive materials accompanying the goods.
  - c. An implied warranty of merchantability:
    - (i) The warranty should be renamed a warranty of "consumer acceptability".
    - (ii) It should be defined in terms of the definition approved in *Kendall v. Lillie*, except that the scope of the warranty should cover all purposes for which the goods are normally used unless the dealer or manufacturer has informed the consumer that the goods are not fit for all such purposes, or it is common knowledge among consumers that the particular goods are not fit for all such purposes;
    - (iii) It should apply to used as well as new goods but with proper allowance being made for the age of the goods, the price paid for them, and all the other surrounding circumstances of the transaction; and
    - (iv) The warranty should not apply with respect to such defects as have been adequately disclosed to the buyer or that would have been apparent to him in those cases where he has examined the goods prior to his purchase.

Exhibit 11-5 Continued

- d. An implied warranty that the goods (including, where appropriate, the individual components of the goods) shall be durable for a reasonable period of time, having regard to all the surrounding circumstances of the sale.
- e. An implied warranty that spare parts and reasonable repair facilities will be available for a reasonable period of time with respect to goods that normally require repairs.
- f. An implied warranty of fitness. This should follow the existing lines of section 15.1 of *The Sale of Goods Act*, except that in *The Consumer Products Warranties Act*:
  - (i) The condition of fitness should no longer be confined to sales where the goods are "of a description which it is in the course of the seller's business to supply", but should be extended to cover all sales in which the seller is acting in the course of business;
  - (ii) The proviso to section 15.1 should be repealed;
  - (iii) The provision in section 15.1 to the effect that the condition of fitness will be implied in a contract of sale only where the buyer makes known the particular purpose for which he requires the goods so as to show that he relies on the seller's skill and judgment should be replaced by a provision whereby the condition of fitness will be implied unless the circumstances are such as to show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment; and
  - (iv) It should be made clear that the words "particular purpose" cover not only an unusual or special purpose for which goods are bought, but also a normal or usual purpose.
- 6. The buyer's remedies for breach of the seller's warranty obligations should be as follows:
  - a. Where the breach is remediable and the breach is not of a fundamental character, the retailer or manufacturer should have a reasonable opportunity to make good the breach, including any breach in the implied warranties of title, freedom from encumbrances, and quiet possession.
  - b. "Breach of a fundamental character" means
    - (i) That the product departs significantly in characteristics and quality from the contract description; or
    - (ii) That the product is substantially unfit for its ordinary or specified purpose; or
    - (iii) That the product, in its existing condition, constitutes a potential hazard to the health or property of the purchaser or any other person.
  - c. Where the defect is of a fundamental character and appears within a reasonable period after delivery of the product to the purchaser, the purchaser should be able to reject the product and be entitled to a refund of the purchase price, subject to a reasonable deduction for the use of the goods. The purchaser

- should also be entitled to recover any other damages which he may have suffered, subject to the usual tests of foreseeability.
- d. In other cases, where the defect has not been remedied within a reasonable time, the purchaser should have the option of rescinding the contract as under c. or of having the defect remedied elsewhere and recovering the cost thereof from the retailer or manufacturer, together with any other reasonably foreseeable damages which he may have suffered.
- e. Where the dealer is being sued for a breach that is basically attributable to the manufacturer he shall have a right to "vouch over" and to be indemnified by the manufacturer in respect of any damages that the purchaser may recover from him, unless he is precluded from doing so by the terms of the agreement between him and the manufacturer.

**Disclaimer Clauses: General Considerations  
and Judicial and Legislative Reactions—Chapter 3**

The Commission recommends that:

1. Section 44a of *The Consumer Protection Act* should be removed from that Act and made a part of the new *Consumer Products Warranties Act*, subject to the following:
  - a. Rather than nullifying the effect of those types of disclaimer clauses set out in present section 44a, the new section should prohibit the use of disclaimer clauses to exclude, restrict or diminish express or implied warranty rights or the remedies otherwise available to the buyer for breach of term in a consumer transaction.
  - b. It should be clear that the new section applies to express and implied warranties, and remedies for breach thereof, in the case of second-hand goods or goods sold "as is" or with disclosed defects. The standard to be applied to goods sold in such circumstances would be that formulated under the implied warranty of "consumer acceptability", with proper allowance made for the age of the goods, the price paid for them, all surrounding circumstances of the transaction, and subject to the other features of this implied warranty set out in recommendation 5. d., chapter 2, *supra*.
  - c. The new section should make no exception allowing the exclusion of consequential damages.
  - d. The scope of the new section should include oral as well as written disclaimers.
  - e. Section 31 (1) (f) of *The Consumer Protection Act* should be repealed.
  - f. Section 53 of *The Sale of Goods Act* should be amended so as to make it clear that it does not apply to consumer sales governed by *The Consumer Products Warranties Act*.
2. The Commission makes no recommendation respecting the inclusion in *The Consumer Products Warranties Act* of any power to dispense with the prohibitions against contracting out or limiting the measure

## Exhibit 11-5 Continued

of recoverable damages in consumer sales through the use of a regulation-making power where unfair hardship is claimed as a result of the recommended absolute prohibition. Such a power may or may not be a desirable feature of consumer transaction legislation, but the Commission concludes that the case for its inclusion and, if included, its scope, can only be made after a study of the experience under *The Consumer Products Warranties Act* in the recommended form.

3. An unconscionability provision similar to section 2-302 of the *Uniform Commercial Code* should be added to *The Sale of Goods Act*, pending a general review of that Act, to provide some protection in the case of an unfair bargain in a non-consumer transaction. The relevant part of section 2-302 of the *Uniform Commercial Code* reads as follows:

If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

### Problems of Vertical and Horizontal Privity—Chapter 5

The Commission recommends that:

1. The doctrine of privity of contract should be abolished in warranty claims by a consumer buyer against the manufacturer of the goods.
2. There should be in *The Consumer Products Warranties Act* clearly stated statutory rules holding a manufacturer civilly liable for breach of any express warranties and also deeming him to have given a consumer buyer (whether or not the consumer bought the goods from the manufacturer) implied warranties of the same type as run from the retail seller to the consumer buyer.
3. The same definition of an express warranty should apply in the case of representations by a manufacturer as will apply to a seller's representations.
4. The implied warranties of the manufacturer should be subject to adjustments in wording based upon the difference in the factual relationship between the consumer buyer and the retail seller and the consumer buyer and the manufacturer, as illustrated in section 1. d. (ii), *supra*.
5. The measure of damages recoverable by the consumer buyer and the extent to which a manufacturer can exclude or restrict his warranty liabilities to the consumer buyer should be governed by the same principles as obtain between the consumer buyer and his immediate seller in accordance with the recommendations obtained in chapters 2 and 3 of this report. Any notice of a disclaimer clause given to the consumer buyer by or on behalf of the manufacturer before or at the time of the purchase of the goods by the consumer buyer in writing or otherwise, and which may reasonably

be expected to come to the buyer's attention in the ordinary course of events shall be effective if the disclaimer or restriction of liability would otherwise be valid.

6. The introduction of the manufacturer's new warranty liabilities should not relieve the retail seller from his warranty obligations to the consumer. However, where the retailer is being sued by a consumer buyer, the retailer should be able to "vouch over" against the person from whom he bought the goods (whether or not that person was the manufacturer of the goods) and to claim an indemnity, unless he is precluded from claiming an indemnity by the terms of his agreement with the seller. The "vouching over" procedure should be similar to the procedure set out in Section 2-607(5) of the *Uniform Commercial Code*.

Where the buyer is sued for breach of warranty or other obligation for which his seller is answerable over

- (a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he is so bound.
  - (b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.
7. Where the retailer's right to indemnity is subject to a disclaimer or other restrictive clause in the contract between him and his seller, such clauses should be subject to judicial scrutiny and should be unenforceable, in whole or in part, if it would not be fair or reasonable in all the circumstances of the case to allow reliance on the clause.
  8. Subject to the qualifications in recommendation 7 above, where
    - (a) a retailer has purchased goods from a person other than the manufacturer of them; and
    - (b) the retailer is being sued by a consumer buyer for breach of warranty,the retailer should have a right of indemnity against the manufacturer that is co-extensive with the consumer buyer's rights against the manufacturer.
  9. The definition of "manufacturer" in the proposed Act should include the following classes of persons:
    - (a) The person who manufactures or assembles the goods, except where the goods are manufactured or assembled for another person who attaches his own brand name to the goods;

## Exhibit 11-5 Continued

- (b) Any person who describes himself or holds himself out to the public as the manufacturer of the goods;
  - (c) Any person who attaches his brand name to the goods;
  - (d) In the case of imported goods, the importer of the goods where the foreign manufacturer does not have a regular place of business in Canada.
10. In order that the rights of a successor in title be adequately protected, "consumer buyer" should be defined in the proposed Act to include any person deriving his interest in the goods from or through the original purchaser, whether by purchase, gift, operation of law, or otherwise.
11. For the purposes of recommendation 10, above, the rights of the successor in title should be no greater than those of the original consumer buyer.

### PART III

#### MANUFACTURERS' EXPRESS (PERFORMANCE) WARRANTIES

##### Legislative Regulation of Manufacturers' Warranties—Chapter 7

The Commission recommends that:

1. The scope of the proposed *Consumer Products Warranties Act* include provisions that empower the Ontario Government to regulate all aspects of express performance warranties, whether given by manufacturers or other suppliers, and their administration.
2. The proposed Act should deal with ensuring the availability of spare parts and general service facilities.
3. The proposed Act must contain strong and realistic enforcement provisions.
4. Subject to the guidelines contained in the *Report of the Royal Commission Inquiry Into Civil Rights*, the proposed Act should contain basic guidelines in as much detail as is practicable and create and employ a regulation-making power to complete the legislative scheme and to adjust it to the circumstances and needs of particular industries.
5. The proposed Act should contain a provision requiring that every regulation made thereunder be tabled in the Legislature within fifteen days, and stand referred to an appropriate Committee of the Legislature.
6. The proposed Act should include the power to require by regulation the adoption of standard form warranty documents and retail sales agreements, where such are desirable and practical for certain types of products.
7. The following guidelines should apply to the form and content of all written warranties, for all used as well as for all new goods sold in Ontario, except where the unique warranty problems of a particular industry require some modification by means of regulation:
  - a. The warranty shall state clearly the name and address of the person offering the warranty;

- b. The warranty shall be clearly legible (unless the size of the product makes this an unreasonable requirement, e.g., a lighter or a watch) and shall refer only to one product or to one product classification;
- c. The warranty shall not be deceptively worded;
- d. In particular the term "warranty" or "guarantee" shall not be used in the caption of the document unless
  - (i) the promisor undertakes at least to repair or replace any malfunctioning part free of charge to the consumer or to make him a fair allowance on account of the defective product on the purchase of a new product of comparable price and quality; and
  - (ii) the warranty covers all the major components of the product;
- e. The document shall state clearly the duration of the warranty but different periods may be stated for different components of the product;
- f. The document shall state clearly the procedure for the presentation of a claim under the warranty;
- g. No warranty shall make the warrantor or any person related to him commercially the sole judge whether a product is defective or whether the buyer is otherwise entitled to present a claim;
- h. The recognition of a claim under the warranty shall not be made contingent on the buyer returning the product to the manufacturer or selling dealer, at his own expense or otherwise, where the requirement is an unreasonable one;
- i. Subject to the regulations, a warranty shall not exclude or limit the express or implied warranties otherwise created by law or the buyer's right to claim damages or other forms of relief for breach of the express or implied warranties or for breach of the written warranty;
- j. Every written warranty shall state clearly that its terms are *in addition* to any rights or remedies the buyer may have under the Act unless the Act or its regulations permits the exclusion or limitation of the statutory warranties.

### PART IV

#### PUBLIC LAW ASPECTS OF WARRANTIES AND GUARANTEES

##### Enforcement of the Consumer's Rights—Chapter 8

The Commission recommends that:

1. *The Consumer Protection Bureau Act* should provide that the Consumer Protection Bureau has the duty, in appropriate cases, to request that the Attorney General seek to initiate proceedings to refer any matter with respect to a warranty complaint to the courts under the provisions of *The Constitutional Questions Act*.



Exhibit 11-5 Continued

2. The proposed *Consumer Products Warranties Act* should contain a section under which a reference as described in recommendation 1, above, in respect of a matter arising under the proposed Act, is specifically authorized. Such a section might read as follows:

The Lieutenant Governor in Council may refer to the Court of Appeal or to a judge of the Supreme Court for hearing and consideration any matter arising under or in connection with this Act that he thinks fit, and the court or judge shall thereupon hear and consider the matter so referred.

3. The *Consumer Protection Bureau Act* should provide that, in addition to the existing powers of the Bureau, it has the power:
- to mediate consumer disputes;
  - with the consent of the parties, to initiate arbitration in consumer disputes, if mediation fails;
  - in appropriate cases, under the direction of the Attorney General, to prosecute any violation of *The Consumer Products Warranties Act*;
  - as an alternative to prosecution, with the consent of the respondent, to issue a cease and desist order covering the practice or behaviour which has been the subject matter of the complaint; and
  - where the parties do not agree to arbitration or, notwithstanding such agreement, the matter is of such a nature that a more formal hearing is appropriate, to refer the issue to the Commercial Registration Appeal Tribunal of the Department of Financial and Commercial Affairs.

The *Consumer Protection Bureau Act* should provide for the establishment of arbitration machinery for carrying out recommendation 3. h., above, consisting initially of a single individual from or designated by the Consumer Protection Bureau in Toronto and from or designated by each Bureau branch office.

5. Once the basic arbitration machinery is operating as described in recommendation 4, above, arbitration committees should be established in those centres and for those consumer industries where the volume of business and necessity for specialization justify this step.
6. Arbitration committees should be established for particular sectors of the consumer industries, and should consist of three persons, one of whom is from the industry in question, one of whom is a member of the consuming public and one of whom is an independent professional person, although not necessarily a lawyer.
7. The fee payable to the arbitrator or arbitration committee should be borne by the Consumer Protection Bureau.
8. Certain of the arbitration committees should also be designated as warranty advisory committees, with one such committee for each major segment of Ontario's consumer industries, with responsibility, under the direction of the Consumer Protection Bureau:

- to employ empirical knowledge about the specialized area dealt with by the committee to attempt to work out satisfactory warranty standards with the industries in question;
- to evaluate product performance;
- to assess the adequacy of service and repair facilities provided by the industry; and
- to advise the Bureau about all aspects of the industries in question that relate to warranties and consumer protection.

9. The Commercial Registration Appeal Tribunal should have jurisdiction, upon reference of a matter from the Consumer Protection Bureau, to inquire into and determine whether there has been a violation of *The Consumer Products Warranties Act*, and to assess the quantum of the loss to the complainant, as a matter of restitution, caused by the breach.
10. In a hearing of a matter pursuant to recommendation 9, above, the Commercial Registration Appeal Tribunal should be governed by the provisions of *The Statutory Powers Procedure Act, 1971*, with power to require witnesses to appear, to compel production of documents and to do all other things necessary for a full and fair hearing.
11. If the Commercial Registration Appeal Tribunal finds a complaint referred to it pursuant to recommendation 3, e., above, to be justified, it should have power to:
- make an order for restitution (but not for general damages) in favour of the complainant; and
  - make an order that the respondent cease and desist from the violation of the particular provisions of *The Consumer Products Warranties Act* identified by the Tribunal.
12. Where the Consumer Protection Bureau, with the consent of the respondent, issues a cease and desist order in accordance with recommendation 3. d., above, or where the Commercial Registration Appeal Tribunal issues an order pursuant to recommendation 11, above, such an order should be filed in the office of the Registrar of the Supreme Court, whereupon this order should be entered in the same way as a judgment or order of that court and be enforceable as such.
13. The *Consumer Protection Bureau Act* should provide that the establishment and execution of a programme of consumer product testing and performance evaluation should be a function of the Bureau.
14. Means should be provided to the Consumer Protection Bureau to engage in a vigorous and continuing public information programme, including regular publication of:
- an account of the activities of the Bureau;
  - digests of important cases dealt with by mediation, arbitration or consent orders;
  - reports of cases of violations of *The Consumer Products Warranties Act* prosecuted by the Bureau under the direction of the Attorney General;

## Exhibit 11-5 Continued

- d. reports of warranty cases referred to the courts by the Lieutenant Governor in Council pursuant to recommendations 1 and 2, above;
- e. reports of cases arising under *The Consumer Products Warranties Act* that are dealt with by the Commercial Registration Appeal Tribunal; and
- f. reports of the activities and recommendations of the Warranty Advisory Committees.

8. Legislation should be enacted to provide that in every trade sale of a used vehicle to a consumer in which a certificate is required to be signed by the selling dealer and issued to the buyer under section 58 of *The Highway Traffic Act*, but is not signed or is not issued, the dealer, for the purposes of an action brought under recommendation 7, above, shall be deemed to have signed and issued a certificate to the buyer to the effect that the vehicle met the prescribed requirements and performance standards on the date of delivery.

### Consumer Warranties and Public Standards—Chapter 9

The Commission recommends that:

1. *The Consumer Products Warranties Act* should contain a prohibition against the making of any false, misleading or deceptive statements by a manufacturer or distributor in any advertisement, circular, pamphlet or other representation to the public with respect to the terms, conditions or benefits to the consumer of any warranty that he offers or purports to offer, or that he indicates is offered in relation to the goods by any distributor or retailer with whom he deals.
2. *The Highway Traffic Act* should require that, whenever a certificate is issued pursuant to section 58, it must be signed by both the dealer and the mechanic who actually conducted or supervised the inspection and tests prescribed under the regulations to the Act.
3. *The Consumer Products Warranties Act* should provide that in the sale of a used vehicle by a registered dealer, there is, where a certificate is issued pursuant to section 58 of *The Highway Traffic Act*, as a component of the contract of sale, an implied warranty that the vehicle meets the standards prescribed under the regulations to the Act as at the date of the inspection, and, if the date of delivery is later than the date of the inspection, an implied warranty that the vehicle meets the same standards on the later date.
4. The certificate issued pursuant to section 58 of *The Highway Traffic Act* should be retitled a "Certificate of Minimum Safety".
5. The Certificate of Minimum Safety should clearly disclose on its face that its issuance represents an implied warranty in the terms described in recommendation 3, above.
6. The adequacy of fines prescribed for violation of the motor vehicle certification requirements in *The Highway Traffic Act* should be reviewed.
7. Legislation should be enacted to provide that in trade sales to consumers, both signatories of a certificate issued pursuant to section 58 of *The Highway Traffic Act* owe a duty to exercise reasonable care to all persons within the scope of the risk created by a failure to exercise such reasonable care, even though such persons are not in a contractual relationship with either signatory, to ensure that any used vehicle certified as meeting the prescribed requirements and performance standards on the date of the inspection (or in the case of a dealer, on the date of delivery if that is later than the date of inspection) in fact meets those standards.

According to one official in the Ontario government, the business reaction to the durability rule was virtually unanimous: they did not like the uncertainty "reasonable" created and wanted a specific list of "circumstances of the sale" that would bear on an interpretation of the word reasonable.

In 1976, Bill 110 got first reading in the Ontario legislature. This bill, "An Act To Provide For Warranties In The Sale Of Consumer Products", put legal form to the majority of the OLRC Report recommendations. In our view, the departures from those recommendations were relatively minor, for example, here is the "durability" section:

4. There is an implied warranty by the manufacturer and retail seller jointly to the consumer of a consumer product that,
  - (a) the consumer product and its components will perform for a reasonable length of time, having regard to the price and all surrounding circumstances; (Bill 110, Ontario, 1976)

As of 1979, the Ontario government has not pursued Bill 110 beyond first reading and is still studying the entire area of warranties.

On May 10, 1977, the government of Saskatchewan passed its Consumer Products Warranty Act. This act contains much that looks familiar to a student of the OLRC Report. The implied warranty rights (statutory rights) of title, quiet possession, freedom from encumbrance, sale by sample, fulfillment of description, and fitness for purpose have been retained, updated, and (in the view of some) clarified. To these implied rights have been added a section on durability and a section on spare parts and servicing facilities (see Exhibit 11-6 for a partial text). A close reading reveals a difference from the Ontario version: in Saskatchewan the retailer appears to be legally liable whereas in Ontario both the manufacturer and retailer share liability. In fact, a later section (s. 13) in the Saskatchewan Act extends responsibility to the manufacturer, under a specified set of circumstances.

Exhibit 11-6

Excerpts from Saskatchewan's Consumer Products  
Warranties Act, 1977 - Statutory Rights -

11. Where a consumer product is sold by a retail seller, the following warranties shall be deemed to be given by the retail seller to the consumer.
  - (7) that the product and all its components shall be durable for a reasonable period of time, having regard to all the relevant circumstances of the sale, including the description and nature of the product, the purchase price, the express warranties of the retail seller or manufacturer, the necessary maintenance the product normally requires and the manner in which it has been used;
  - (8) where the product normally requires repairs, that spare parts and reasonable repair facilities will be available for a reasonable period of time after the date of sale of the product.

It is also interesting to note that the Saskatchewan Act confers rights on the consumer purchaser plus anyone who receives the product as a gift or subsequently repurchases the item during the time period "reasonable" is interpreted to cover. Further, unlike the existing Ontario provision that voids disclaimers, Saskatchewan prohibits them outright.

The Saskatchewan Act includes an extensive section (s. 17) on express warranties. There are rules regarding what information an express warranty must contain and what information or statements must not be contained (see Exhibit 11-7). These rules are quite similar in many ways to the information required by the Magnuson-Moss Act. One major difference, however, is that the Saskatchewan Act does not require full disclosure pre-purchase.

Another extensive section of the Saskatchewan Act includes several provisions for remedies in the event of breach of warranty rights. These remedies range from the traditional civil suit in small claims or divisional court to new powers of mediation and non-judicial arbitration. This section is undoubtedly intended to ensure that warranty promises are indeed delivered to consumers.

Finally, the Saskatchewan Act provides for extensive rule-making authority by the government. This authority allows product category specific application of or exemption from specific regulations.

Other provinces have made statutory changes as well. New Brunswick passed its Consumer Products Warranty and Liability Act in July, 1978. Quebec also passed the Quebec Consumer Protection Act in 1978 which contains 20 sections relevant to consumer warranties. Both acts have much in common with the Saskatchewan Act and at first glance one might conclude that the Saskatchewan Act is being used as a model statute. This, however, is not necessarily the case. For example, the N.B. Act does not outline in detail what information must be included in an express warranty. The N.B. Act does, however, include a section on product liability. This provision introduces the concept of "strict liability" to N.B.: the person suffering loss does not need to prove negligence or establish he has a contract with a seller in order to claim damages. Instead, he has to prove he suffered a loss because of design fault, workmanship, or materials and that that resultant loss was reasonably foreseeable. As another

Exhibit 11-7

Excerpts From Saskatchewan's Consumer Product  
Warranties Act, 1977 - Express Warranties -

17. (1) Nothing in this Act shall prevent a warrantor from giving additional written warranties in addition to the statutory warranties set out in section 11.
- (2) Any additional written warranty shall contain:
  - (a) the name and address of the warrantor;
  - (b) the parts of the consumer product covered by the warranty;
  - (c) the duration of the warranty;
  - (d) the conditions that the person claiming the warranty must fulfill before the warrantor will perform his obligation under the warranty;
  - (e) the costs, if any, that must be borne by the person claiming under the warranty;
  - (f) a statement that the provisions of the additional written warranty are in addition to and not a modification of or subtraction from the statutory warranties and other rights and remedies contained in this or any other Act;
  - (g) the procedure a person claiming under the warranty has to follow for the presentation of a claim under the warranty;
  - (h) the name and address of the repair facility that the consumer product is to be sent to for repair or that a request is to be sent to for the repair of the product in the home of the person claiming under the warranty.
- (3) No additional written warranty shall contain any provision:

Exhibit 11-7 cont'd.

- (a) that makes the warrantor or his agent the sole judge in deciding whether or not there is a valid claim under the warranty;
- (b) that purports to exclude or limit any express or statutory warranty or any of the rights or remedies contained in this Act;
- (c) that makes a claim under the warranty dependent on the consumer product being returned to the warrantor, when it would be unreasonable to so return the product;
- (d) that limits the benefit of the warranty to the consumer and that excludes or in effect excludes persons mentioned in subsection (1) of section 1 from receiving the benefit of the warranty;  
or
- (e) that is deceptively worded.

example of difference, the Quebec Act provides for warranties on used products sold by dealers. Exhibit 11-8 is a thumbnail sketch of these three acts. Each act has generated much comment and study, but little is known yet how each will be administered or interpreted by the courts.

Overall, three provinces have passed revised statutes dealing with warranties, although as of October 1979, only Saskatchewan's has been proclaimed. These changes have been greeted with enthusiasm by some and intense opposition by others. Further there have been numerous trips by corporate counsel and senior management to provincial capitals to learn just what the lawmakers are trying to do, and to influence their behavior if possible. Meanwhile, all provincial authorities are reportedly examining proposals for change. It remains to be seen if the new directions taken by Saskatchewan, New Brunswick, and Quebec will be followed by the rest of the provinces.

#### United States State Legislation

As in Canadian provinces, U.S. state laws have been patterned after English law. The major statute is called the Uniform Commercial Code (the earlier version was entitled the Uniform Sales Act) which has been adopted by all states except Louisiana. This law, somewhat comparable to the scope of Canadian sale of goods law, was a model statute designed to unify state regulations regarding obligations of sellers and buyers in sales transactions. This code includes sections on implied and express warranties, excerpted in Exhibit 11-9.

The two basic implied warranties under the Uniform Code are the warranty of merchantability and the warranty of fitness for a particular purpose. The code also describes the creation and form of express warranties. Broadly, any affirmation of fact, promise, description, sample or model which is made part of the basis of the bargain creates an express warranty that the goods shall conform to such promise, description or sample. It is not necessary to use formal words such as "warrant" or "guarantee" to create an express warranty, but the seller's opinion, commendation or affirmation merely of the value of the goods does not create a warranty.



Exhibit 11-8

Summary of Recent Consumer Legislation in Three Provinces

	SASKATCHEWAN	QUEBEC	NEW BRUNSWICK
TITLE	<u>Consumer Product Warranties Act (1977)</u>	<u>Consumer Protection Act (1978)</u>	<u>Consumer Product Warranty and Liability Act (1978)</u>
CONSUMER PRODUCTS	<p>... Any goods ordinarily used for personal, family and household purposes ...</p> <p>Includes - Used goods</p> <ul style="list-style-type: none"> <li>- Goods for installation</li> <li>- Leased goods</li> <li>- Conditional sale goods</li> </ul>	<p>... Any moveable property used by any person, except a merchant who obtains goods or services for the purposes of his business ...</p> <p>Includes - Leased goods</p> <ul style="list-style-type: none"> <li>- Used goods</li> </ul>	<p>... Any tangible personal property new or used, of a kind that is commonly used for personal, family or household purposes ...</p> <p>Includes - Leased Goods</p> <ul style="list-style-type: none"> <li>- Conditional sale goods</li> </ul>
IMPLIED WARRANTOR	Manufacturer and Retailer	Manufacturer and Merchant	The seller
PRIVITY OF CONTRACT	Not a defence	Not a defence	Not a defence
DISCLAIMERS	Prohibited	Prohibited	Prohibited
WHO MAY CLAIM	<ul style="list-style-type: none"> <li>* Consumer</li> <li>* Subsequent owners by whatever means</li> </ul>	<ul style="list-style-type: none"> <li>* Any person using the product</li> </ul>	<ul style="list-style-type: none"> <li>* Any person who suffers a consumer loss because of the product.</li> </ul>
IMPLIED WARRANTY	<ul style="list-style-type: none"> <li>* Title</li> <li>* Freedom from Encumbrance</li> <li>* Fitness for Purpose</li> <li>* Fulfillment of Description</li> <li>* Quiet Possession</li> <li>* <u>Durability</u> - ... the product and all its components shall be durable for a reasonable period of time, having regard to all the circumstances of the sale ...</li> <li>* <u>Acceptable quality</u> - ... that the product supplied under the contract is of acceptable quality (except where defects are pointed out or should have been apparent)</li> <li>* <u>Spare Parts and Servicing</u> - ... that spare parts and reasonable repair facilities will be available for a reasonable period of time after the date of sale of the product.</li> </ul>	<ul style="list-style-type: none"> <li>* Title</li> <li>* Freedom from Encumbrance</li> <li>* Fitness for Purpose</li> <li>* Fulfillment of Description</li> <li>* <u>Durability</u> - ... Goods being the subject of a contract must be durable in normal use for a reasonable time, taking account of their price, the terms of the contract and the conditions of use of operation of the goods.</li> <li>* <u>Spare Parts and Servicing</u> - ... replacement parts and repair service must be available for a reasonable time after the making of the contract (except where the consumer is warned by the merchant or manufacturer that he does not supply spare parts).</li> </ul>	<ul style="list-style-type: none"> <li>* Title</li> <li>* Freedom from Encumbrance</li> <li>* Fitness for Purpose</li> <li>* Fulfillment of Description</li> <li>* Quiet Possession</li> <li>* <u>Durability</u> - ... the product and any components thereof will be durable for a reasonable period of time ... In determining a reasonable period of time ... regard shall be had to all relevant circumstances...</li> <li>* <u>Acceptable Quality</u> - ... that the product is of such quality, and as fit for the purpose or purposes for which products of that kind are normally used as it is reasonable to expect having regard to the seller's description, if any, the price, when relevant, and all other relevant circumstances ...</li> </ul>
EXPRESS WARRANTY	<p><u>Terms</u> - Any written, oral or advertised claim made by retailer, manufacturer or agent/employee.</p> <p><u>Written Form</u> -</p> <ul style="list-style-type: none"> <li>* Name and address of warrantor</li> <li>* Parts covered by warranty</li> <li>* Obligations of claimant</li> <li>* Costs borne by claimant, if any</li> <li>* Recourse procedure</li> <li>* Length of warranty</li> <li>* Name and address of repair facility</li> <li>* Statement that written warranty is in addition to statutory warranty</li> </ul>	<p><u>Terms</u> - Any written, oral or advertised claim made by merchant, manufacturer or representative.</p> <p><u>Written Form</u> -</p> <ul style="list-style-type: none"> <li>* Name and address of warrantor</li> <li>* Who may invoke the warranty</li> <li>* Obligations of warrantor</li> <li>* Recourse procedure</li> <li>* Length of warranty</li> </ul>	<p><u>Terms</u> - Any written, oral or public claim made by seller or agent/employee acting within usual authority.</p> <p><u>Written Form</u> -</p> <ul style="list-style-type: none"> <li>* No specific requirements</li> </ul>
PAROL EVIDENCE	Admissible, even where it adds to, varies or contradicts a written contract.	No specific mention	Admissible, even where it adds to, varies or contradicts a written contract.

Selected Sections from United States Uniform Commercial Code

Uniform Commercial Code §2-313: Express Warranties by Affirmation, Promise, Description, Sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Uniform Commercial Code §2-314: Implied Warranty: Merchantability; Usage of Trade . . .

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

Uniform Commercial Code §2-315: Implied Warranty: Fitness for Particular Purpose . . .

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Uniform Commercial Code §2-316: "Exclusion or Modification of Warranties

(1) . . .

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

The code permits modification or exclusion of implied warranties, but other state legislation and the Magnuson-Moss Act limit these provisions to varying degrees.

The individual states have in some instances passed further legislation on product warranties, a detailed review of which is beyond the scope of this report. For example, the Californian Song-Beverly Warranty Act (1973) allows the implied warranties of merchantability and fitness to be disclaimed only if no express warranty is given, and only if a warning label advising such is clearly affixed to the product. The act further requires that repair facilities for all but certain excepted products must be provided within the state by anyone making express warranties for the product. Willful failure to comply with the provisions set down gives rise to a possible award of treble damage plus reasonable attorney fees.

#### Summary

Warranty legislation in both Canada and the United States is undergoing significant review and revision. In the U.S., major emphasis has been placed on requiring disclosure of information intended to assist consumers both pre- and post-sale. Although enabling legislation has been passed at the federal level in the U.S. to allow promulgation of very specific warranty rules, thus far this power has not been used meaningfully. In Canada, federal law affecting warranties is embedded in broader law affecting all forms of marketing representations. Such law is designed to deal with false or misleading information, rather than requiring disclosure of specific information. Whereas in the U.S. the major changes in warranty law have occurred at the federal level, in Canada the major changes have occurred at the provincial level. These changes in Canada have been primarily aimed at strengthening and expanding implied warranty rights and at stipulating what information must be contained in an express warranty if it is to be offered.

In the next chapter, we will categorize the various options that exist for governmental authorities in Canada in the field of consumer warranties.

CHAPTER TWELVEOPTIONS FOR FURTHER PUBLIC POLICY INITIATIVES  
REGARDING CONSUMER WARRANTIESIntroduction

We began this project with no preconceived ideas of what, if any, changes in the warranty system for consumer products would be desirable. Further, our mandate clearly requests options, not recommendations, for public policy consideration. Accordingly, we have organized this concluding chapter around seven basic policy thrusts. We found it exceedingly difficult not to favour some approaches over others and therefore, the reader will see in the text our own action suggestions for serious considerations by public policy officials. Before discussing these options, we have some comments to make on the following topics:

- . Is there a significant problem?
- . Is more general research required?
- . Are the research and comments generalizable?
- . Options for whom?
- . How can changes in the complex system be managed?

In Chapter Two we discussed the question of whether there is, or not, an issue in the consumer warranty area worthy of public policy attention. In that chapter, we developed the notion of a gap between consumer satisfaction and business system performance in the whole field of consumer products warranties. We concluded -- and in general consumers, business executives, and government officials with whom we talked agreed -- that yes, there is a set of important problems which have resulted in a meaningful satisfaction-performance gap. Further, we discovered that this gap has occurred for a large variety of interrelated reasons. The implication of this finding is that no one group or action, in itself, will eliminate this gap. Instead, consumers, business, and governments can all meaningfully effect its diminution in a variety of ways.

The steps taken in recent years by consumers, business, and governments have, for the most part, already helped to narrow this gap. Unfortunately, frequently the efforts of members of one group have

been negated or reduced by the efforts of another group. We conclude that the major problem with approaches attempted thus far is not so much one of intent on the part of interested parties, but rather one of implementing that intent appropriately in a complex interest group situation.

We remain convinced that consumer product warranties deserve the attention of business and public policy officials, but certainly it is not a problem area of importance equal to Canadian international competitiveness, regional balance, economic efficiency, etc. At the same time, however, we argue that consumer satisfaction with marketplace transactions is at the foundation of a strong economy. Warranty practices by all parties obviously can and have affected this consumer satisfaction in Canada.

We do not believe more general research is required to establish whether a problem exists. However, should there be any broad-based serious disagreement among governments, businesses, and consumers as to the appropriateness of the problem set in Chapter Ten, further more specific research may well be required to provide information to resolve these differences. Further, most of the specific optional "solutions" to the problem can and should be field-tested to ensure their appropriateness and to fine-tune them whenever possible to have maximum effectiveness.

We believe that our findings and comments based upon research in the new automobile and major household appliances industries are generalizable to all consumer major durable purchases. Certainly some differences in industry structure and practice exist within this broad range of product categories. These differences will determine the need for and/or resistance to any public policy initiatives in the warranty field.

We are not as confident about the generalizability of our research to consumer non-durables, services, and industrial marketing situations. We sense that changes in warranty are appropriate in these fields as well -- particularly in circumstances of a small businessman buying from another seller, a situation we think quite comparable to a consumer purchasing a durable product. We did not explicitly examine these topics which were beyond the scope of our mandate. However, we encourage policy makers to broaden their considerations to these circumstances as well when thinking about warranty systems and public policy initiatives.

We have categorized public policy initiatives into seven basic classifications:

- . No basic change from current situation
- . Voluntary change by industry
- . Required information disclosure
- . Government-sponsored consumer education
- . Government-operated dispute handling mechanisms
- . Legislative change in warranty rights and obligations
- . Direct government specification of product characteristics and performance

These options are neither mutually exclusive, nor we suspect, collectively exhaustive. Some of the options can be pursued simultaneously. All of the options listed above are actually headings of more detailed sets of options. We explicitly did not explore options which would involve new tax and other financial arrangements with governments. The options listed are based on suggestions made by those we interviewed, initiatives and proposals in other jurisdictions and, of course, our own thoughts.

On the whole, we would argue for a process of planned gradual change in the public policy stance towards warranties with frequent monitoring to ensure that expected net improvements in the marketplace are in fact occurring.

Before embarking on an option by option discussion, we will provide our thoughts about the "change process" which evolved as consumers, businessmen and government officials shared with us their hopes, expectations, and frustrations in seeking warranty system improvements.

### Making Changes

The "interest group" diagram for consumer product warranties in Canada is actually considerably more complicated than that shown in Exhibit 2-1. Because of this, it is difficult to get consensus on the need for change, agreement on the method of change,

co-operation in the implementation of change. Further, the answers to the question who should take the initiative (e.g. level of government, business or government, etc.) vary according to whom one addresses the question. We conclude that as policy makers address the options of who should be change agent and what that change agent do that they would be well-advised to consider the following questions.

1. Who is in the best position to effect meaningful change?

For example, government legislation is more powerful in regulating the warranty promise than the delivery against that promise. Technically knowledgeable but company independent individuals are better able to judge product performance disputes than legally trained specialists. Further, the Registrar of Motor Vehicles in Ontario has far more direct clout over the automobile industry than an official in the Department of Consumer and Commercial Relations. In general, as we have discovered, a brand owner has far more at stake in a particular brand's post-sale performance than a distributor of several brand names.

2. What "benefits" can be expected from a particular action and how will they be distributed amongst the various interest groups?

In this respect, we maintain the following general principles apply:

- . Benefits, even economic ones, will be valued differently by different system members. Economic benefits in particular are subject to a "What have you done for me lately?" phenomenon.
- . Psychic (non-economic) benefits tend to be undervalued because they are not easy to relate to financial outlays.
- . If duration and/or extent of change in benefits is not clear, system members will tend to act as if no change has occurred. Passing on benefits, then having to withdraw them, creates ill-will among system members.

- . Without compulsion to "pass through" benefits, benefit pass-through will be primarily based on the bargaining position of various system members.
  - . As a benefit passes through a complex system it is subject to a reduction factor. Either each system member takes "his share" and/or each passing through action has cost which is deducted from the benefit.
3. What "costs" can be expected from this action and how will they be distributed amongst the various interest groups?

Again, here are several general principles we believe apply:

- . Any action that increases fixed costs and/or is a significant increase in variable costs will hurt small business relatively more than large business. This comment is particularly important in view of our findings in Chapters Five and Nine concerning changes in industry structure due to increased use of electronics, changes in retailing methods, costs of gathering and maintaining records, sales staff training, and parts inventories. The small business individual is in a bind if, on the one hand he must bear the fixed administrative costs of these systems, and on the other hand compete on price with larger organizations who can spread their costs over greater volume. Therefore, any policy initiative that requires small business to incur greater fixed costs in order to improve warranty offerings (e.g. parts inventories, information disclosure campaigns), will place him at a competitive disadvantage to larger, more financially able firms.
- . Any action that increases system costs will most likely shift those costs to the consumer if possible, and/or to the weakest system member, such as the small retailer or manufacturer.



Any action whose costs are uncertain will result in hedging practices by system members to protect themselves. Such hedging may be well in excess of the costs expected by the action initiator and in excess of the short-run costs incurred.

Costs are subject to a multiplier effect in complex systems. The main reason for this is information handling and other administrative difficulties.

Actual costs may never be measurable because of differing accounting methods, administrative slack, market condition changes, and so on.

4. Based on the balance between costs and benefits, who will support and who will oppose change?

Rather than accept support and opposition as "givens" it is often possible to work with interest groups to gain and mobilize their support, or at least diminish their opposition. For example, a recent major study in the United States<sup>1</sup> reported that one third of consumers surveyed believed inadequate guarantees or warranties worried consumers a great deal, and one quarter of the consumers reported at least one occasion in the previous twelve months when they did not buy a product because the warranty or guarantee was judged as inadequate. This is in contrast with the perspective held by businessmen, where only three per cent of senior managers surveyed believed inadequate guarantees or warranties worried consumers a great deal. Obviously, if this is the prevailing belief of business people, then an argument for dramatic change in warranty practice -- and resultant cost increases -- will be resisted until those business people are first convinced there is a need for change. Similarly, as we have pointed out particularly in Chapters Four and Nine, in order to improve consumer satisfaction, it is necessary to work with the realities of consumer information processing, purchasing, and usage behavior. To do otherwise is futile.

In this regard, we suggest that this report and its accompanying appendix on the focus groups be distributed to business executives, consumer groups, media, etc. for two reasons. First, it is a relatively simple, and inexpensive method to get comment, agreement or disagreement, and elaboration on our findings

and opinions. Second, it can be used as a starting point in exploring change options in a dialogue fashion.

Option 1: No Organized Change

No organized change in public policy actions regarding warranties can actually be subdivided into two alternatives:

- . Do nothing--let the system participants each proceed on their own.
- . Work with existing legislation and dispute handling mechanisms.

The first option is appealing if one values avoidance of further government intervention, if one believes in the merit of decentralization or the futility of provincial-federal co-operation, or if one believes that the system can resolve and is resolving warranty problems efficiently and in a timely manner. It is not appealing, however, if one believes the problem is important and unlikely to be resolved soon or well without some overall public policy co-ordinating effort and resource commitment.

The second option refers to using existing law more. For example, it is our observation that the Combines Investigation Act, existing trade practices acts (especially sections regarding unconscionable practices), and sale of goods acts may be used more effectively than at present to eliminate at least the more objectionable warranty practices. The difficulty with this option from the perspective of some public policy formulators is the conservative tradition of "case law" that has been built, particularly in the sale of goods act field. The courts are unlikely to move as far or as quickly as these public policy formulators would like without more explicit legislative mandates. However, there remains much to be tested under "misleading and deceptive" representations and trade practices.

A related part of this second option involves using existing non-legal dispute handling mechanisms more. The complaint handling/mediating services of provincial and federal governments, industry groups, media "action lines" and others all can be allowed fuller rein to pursue objectionable warranty promises

and inadequate delivery against promises. This "moral suasion" approach can be extremely effective when (a) it is based on fact not supposition, (b) the business concerned is given a relatively non-public opportunity to deal with the problem before the full power of public exposure is used, and (c) the complaint handler/mediator acts in as fair and neutral a way as possible. All too often recently, these conditions have not been the case. Many business people we talked with recounted instances of unfair treatment of business by such agencies and indicated their belief that the result has been and would continue to be less, not more co-operation with such agencies from business. One option that deserves careful consideration is a two-sided complaint handling mechanism that gives the "defendant" more due process. As long as some complaint handlers act on the basis of "guilty until proven innocent", the effectiveness of existing non-legal dispute handling mechanisms will never be realized. If non-legal mechanisms are ineffective, we will then see a continued pressure on legal mechanisms such as small claims courts to handle such problems. The disadvantages of this trend are many and obvious.

#### Option 2: Voluntary Change by Industry

Voluntary change by industry refers to a variety of initiatives undertaken by business without legal compulsion. Such changes may be undertaken totally independently of public policy officials or as a result of government involvement. To the extent that there is government involvement, it would be primarily encouragement/persuasion and/or assistance/co-operation. The nature of the changes could include all aspects of the warranty system from product design through to delivery against the warranty promise in the service system.

Our research led us to the conclusion that the "best" companies are enlightened already on the warranty offer and delivery issues and have changed and will continue to change without any government involvement. However, such changes are often beyond the financial capability, knowledge, or system power base of the small business. In such situations, government involvement may be necessary.

The starting point will be getting agreement that there is a meaningful problem, one that individual companies can and should deal with. We believe that

one approach would be to share with businessmen government's understanding of the consumer expectations-performance gap, the apparent sources of that gap, and the view that a variety of measures designed to shape reasonable expectations and to ensure reasonable performance can and should be undertaken. For example, government might approach this task by designing an information campaign aimed at business, not consumers, which outlines typical problems, their costs to business and consumers, and some sample methods of avoiding these problems. Throughout this report we have mentioned these warranty problems (e.g. lack of consumer knowledge how to operate the product), their causes (e.g. low consumer involvement at time of purchase in post-purchase issues), and solutions tried by some companies (e.g. visit few days later to instruct in use; owner's manual to read between car purchase and delivery). Such an information campaign either in print or in fact-to-face "seminars" with appropriate executives could be directed first at brand owners of consumer durables and later modified and expanded to other businesses. It would not only serve to encourage and assist industry voluntary change, but also would send another important message: public policy officials are attempting to deal constructively and flexibly with business-consumer issues. There is one major problem with this approach. Recommended solutions will only be accepted if there is agreement that a problem exists and if the individual businessman can be convinced he is better off financially to implement a voluntary change. However, from the business perspective, the relevant time frame is not independent of the firm's financial resources. Those firms which are relatively weak in financial resources, and this includes a great many small businesses, may not be willing to implement voluntary change unless they perceive a very short term payback.

Secondly, public policy officials will find business far more receptive if public policy is aimed not only at making business more responsive and responsible, but also at making the consumer behave similarly. For example, industry efforts at dispute resolution will get far more attention, we believe, if government ensures that consumers must give these mechanisms a reasonable trial before going to "third party" mechanisms. Similarly, public policy that has the effect of allowing the consumer to purchase "risk-free" is only likely to result in a variety of business practices to ensure all consumers bear the financial risk of such a philosophy, not a constructive problem-solving approach to reducing unreasonable risk.

Thirdly, here is a brief list of some of the initiatives business could voluntarily undertake to reduce the expectations-performance gap.

- . More attention, clarification, and communication of what a reasonable consumer can and should expect for his/her money in terms of product performance and post-sale obligations of the seller. For example, if the warranty is not a reasonable basis on which to have product longevity expectations, what is? Further, if the manufacturer maintains trim parts for two years and functional parts for ten years, why not say so? If parts are much more expensive, centrally warehoused, and take four weeks to get across the country, why not say so at the time service is being discussed? Business should realize that consumers do have some reasonable expectations, but that much of their expectation set is based either on lack of good information from those in the best position to provide it, or on information provided in advertising designed to get the sale, not to keep a satisfied customer.
- . Testing of the communicability of seller-initiated information. All consumers are not alike in their ability to process information so one "formula" is unlikely to be ideal. At the other extreme, expecting each seller, especially small business, to do consumer research is naive. However, some organizations, particularly those that are large and vertically integrated have good, relatively inexpensive opportunities to ensure that their sales promotion, warranty, owner's manual etc. communicates what is intended. If changes are made by such sellers and rewarded by consumer patronage, other competitors will follow suit.
- . Distinguish more carefully between "general" information to the buyer and very "specific" information. For example, until consumers change dramatically when taking delivery of a new car, it is inappropriate at that time to discuss warranty policy. Similarly, consumers who think they know

how to operate a product based on previous experience will not read the owner's manual thoroughly if it begins by reinforcing this assumption with known information.

Rather, such a manual might get more attention by focusing on the "new" procedures that an experienced consumer may not know about. These of course are generalizations on our part based on our work and constitute empirical questions for the sellers involved. On the whole, however, one viable option is to improve the quality of the information offered to consumers rather than its quantity.

- Engage more in marketing and less in selling. For example, it often appears that problems result when companies change behavior and attitude towards the customer once the sale is consummated. Service staff lack of courtesy frequently is the starting point of post-sale problems. Similarly, tests of the product could be based not only on laboratory inputs, but also on average consumer operating knowledge, usage patterns, etc. Finally, many firms seem to have lost sight of the inexperienced consumers' problems in making choices amongst complex expensive products.
- Behave in accordance with the claim that the warranty is regarded as a marketing tool. In particular, if the competition's "promise" cannot be bettered without creating unrealistic expectations, then focus on differential advantage in "delivery" against that promise. In fact, should government choose to require some information disclosure in the warranty offer such as in the United States, then it would be possible to improve on this by disclosing one's "delivery" record.
- Realize that most consumers are suspicious about post-sale service, especially by the selling dealer/retailer. No amount of breast-beating promotion will convince consumers that dealers are not "ripping someone off" and/or doesn't care about the consumer if instances of both are visible to

consumers. Industry would have more credibility if it engaged in company-independent monitoring of their service systems, the results were in some way visible, and sanctions visibly imposed. In this way, subsequent public assertions by sellers would have some credibility. This sort of within-industry co-operation should be allowed under the Combines Investigation Act and should be explicitly communicated to industry groups who may mistakenly fear prosecution for illegal conspiracy. Done properly, this co-operation should not result in any undue lessening of competition and certainly should be in the public interest and the interest of economic efficiency.

- The same comments as immediately preceding this section could apply to changes in information gathering, dispute handling mechanisms, advertising "information" campaigns, etc. that are undertaken on an industry-wide basis.
- Better procedures to identify and deal with consumer problems with product performance resulting in economic loss. Many firms have made notable progress in detecting levels of consumer satisfaction. Such efforts must not be deterred by requiring such information as evidence in legal proceedings. Similarly, some other efforts are notable such as assisting consumers in record-keeping (which as was pointed out in Chapter Four they do not do well usually), in getting access to decision-making personnel in the event of a problem, and such as increasing the speed of response to a consumer with a problem. This effort can be continued and embraced by more sellers. Similarly, while some products have been designed with serviceability in mind, this too often is not the case.
- Provide more options as to the post-purchase relationship of buyer-seller. Service contracts, discussed in Chapter Eight, are an example of this approach.

In addition to the efforts of public policy officials to acquaint business with the nature and magnitude of consumer problems post-sale and some solutions as mentioned previously, government could meaningfully encourage and assist industry voluntary change in the following ways:

- . Assist industry to get customer product and service expectations to a reasonable point by government-business co-operative information gathering and disseminating of product/service experience in terms of reliability, costs, speed of service, and product longevity. Perhaps the least threatening way to begin this process would be by collecting and publicizing economic life costs by product category (not brand) of major purchase items (e.g. over \$500) for say five years at a specified amount of usage (e.g. 100,000 km). Costs would include purchase price, operating costs, maintenance etc. as we outlined briefly in Chapter Three. The impact of both the content of such a campaign and it's manner of presentation should of course be tested to determine future directions.
- . Assist industry in improving service performance by ensuring a continuing stream of qualified technical service personnel as discussed in Chapter Eight. This can be done through existing educational institutions or apprenticeship programs.
- . If particularly concerned about product longevity, develop a Canadian data base and share it with industry.
- . Assist business in dealing with responsible third-party groups. This can be done in two ways. First, do not encourage development via funds provision, etc. of groups that do not meaningfully contribute to the overall problem identification and dispute handling system. Second, provide responsible groups with appropriate system information to ensure they deal with important and controllable shortcomings in business performance.



Option 3: Government Required  
Information Disclosure

As discussed in Chapter Eleven, both the United States (Magnuson-Moss) and several provinces (e.g. Saskatchewan, Consumer Product Warranties Act, Section 17(2)) have opted for required information disclosure by the seller to the buyer. There are several possible ways to approach this notion:

1. Timing of disclosure

- . pre-sale
- . during consummation of sale
- . whenever consumer reads product literature.

2. Disclosure about what information

- . implied rights
- . express rights and obligations
- . the seller's promise in total
- . the seller's delivery against that promise
- . the process of obtaining rights or launching complaints
- . financial responsibilities for economic loss
- . reasonable product performance expectations
- . the warrantor (name, address, etc.)
- . the advisability of enquiring about warranty pre-sale.

3. Extent of disclosure.

- . total
- . partial

4. Method of disclosure

- . in writing - in the product literature, promotion
  - in the express warranty
  - separately
- . verbally
- . imposed on the consumer
- . available on request by the consumer

## 5. Method of communication

- . disclosure made
- . disclosure made and assurance of understanding obtained.

## 6. Extent of standardization of approach

- . one format imposed on warrantor
- . flexible formats may be negotiated.

Because of the many combinations of options possible, we have chosen to make some comments about information disclosure in general and then to say a few words about specific approaches.

On the whole, our research indicates that consumers do want access to warranty information pre-sale (see Chapter Four). However, there was little support for imposing such information on the consumer as opposed to simply making it available for those who were interested. Further, our focus group research indicated quite clearly that consumers are not so much interested in changing the "promise" and its format as they are about increasing the quality of the delivery against that warranty promise. Accordingly, efforts to change the promise or its communication without corresponding efforts to improve delivery will have, as its most likely outcome, an increase in consumer dissatisfaction.

We also know from our own research and extensive work by others, some of which is quoted in Chapter Nine, that consumers process information sequentially, on an as-needed basis. Requiring disclosure of information at a time that the consumer does not believe it relevant may therefore not only be ineffective, but even dysfunctional if more appropriate times are accordingly missed. Therefore, the choice of when to require disclosure is very much inter-related with what information will be required, and when the consumer wants that information.

All consumers are not alike in their information processing behavior. A combination of availability of detailed information for those interested with disclosure of general information to all pre-sale is likely preferable to required disclosure pre-sale of details to all. (For support of this notion, see the section on low and high involvement information search

in Chapter Nine). Consumer demand for information pre-sale may be affected by an extensive consumer education campaign (Option 4), but this will take time and occur slowly. On the whole, demand for disclosure will be highest among consumers engaged in making major purchases where they perceive (a) the risk of economic loss is high, or (b) the risk of economic loss is virtually unknown, and/or (c) the extent of possible economic loss is high and the question of who will bear that loss unanswered. In general, consumers currently want information available when product performance problems arise--that is, post-sale. This argues for at minimum, disclosure of relevant information in the literature accompanying the product. Further, because consumers are very negligent in keeping product records and literature (Chapter Four), required availability of such information at the seller's place of business is also worth serious consideration.

Requiring total disclosure of information is not, in our opinion, a good option for two reasons. First, it removes the possibility for some companies to compete on this dimension of marketing activity. Second, and related to the first reason, this approach is based on the presumption that policy makers have sufficient knowledge and ability to require extensive technical information disclosure in mass market situations. We believe the alternative of partial, indeed "core" disclosure of facts with latitude for additional information is preferable.

The same argument as in the preceding paragraph may be applied to the format of warranty presentation. It is one thing to say what information must be available or communicated; it is another to specify exactly how.

If mandatory disclosure were required, we favour that disclosure be made in writing and in a way that the consumer has his own copy. Requiring the salesman to cover the topic in his sales pitch is not really controllable and thus not sufficient.

We also point to the choice between informing the consumer and informing plus ensuring understanding. For example, it is conceivable that warrantors be required, on request, to demonstrate that their efforts at communication are being properly understood by their customers, much the same as requiring an advertiser, on request, to substantiate his advertising claims. This could be done via conventional research, or in the

extreme, by embodying some form of "release form" ("I have read the warranty, discussed it, and understand it", signed ...) into the contract of sale. Such an approach is likely to encounter both consumer and business resistance as adding consumer costs disproportionate to consumer benefits.

The strongest and most expensive way to approach information disclosure is to require warranty registration with a governmental group. This group could withhold registration if, in their opinion, the extent of information, language, format, etc. did not meet the standards set by the group. Such standards presumably would be set and modified by periodic field research with consumers. Without a registration, the company would be unable to sell its product, or some form of unusual relief to aggrieved consumers (such as product replacement) could be stipulated. Such a program could be phased in by industry, or product category, or model year. Clearly, it would be the option most distressing to business because it places a great deal of power in a bureaucratic group. Therefore, the benefits and costs of such an option should be very carefully delineated, considered and discussed relative to other choices before adoption as a preferred choice.

The most difficult issue in this set of disclosure options is the question of disclosure about what. Most everyone we talked with agreed that consumers have a right to such basic information as the warrantor's name and address, how to process a warranty claim, and who makes decisions about allocation of economic loss. Again we point to the Saskatchewan Act, Section 17(2), with the exception of (f), as an example of such an approach. Beyond that, there is divided opinion. It is important to note, however, that such information should be available even if no express warranty is offered. Therefore, requiring it to be included in the express warranty is not necessarily the best approach in those situations of "marginal" sellers running on the edge of the law, because the presence of such information would tend to lull consumers into a false sense of security.

Obviously, the extent of uniformity across provincial jurisdictions will have a great bearing on the extent of business co-operation and opposition to any informational requirements. This question of uniformity will be discussed further under Option Six. It is, however, pertinent to raise it here in the

context of requiring warrantors to include in their information a description or explanation of implied/statutory rights. For example, one possibility would be to insist that a warrantor could not offer an express warranty without at the same time describing how that express warranty related to the rights a consumer had already under law. This could have two potential advantages and two potential disadvantages. The advantages are as follows: (a) the warrantor must carefully think through his "offer" in the context of statutory warranty rights and thus, hopefully at least, his offer will be more meaningful to the consumer and (b) the warrantor thus takes on the responsibility of conveying legal rights information to consumers, a task at which governments have not been particularly adept. The disadvantages are that: (a) this educational campaign might have done poorly, resulting in consumer confusion, or that (b) express warranties, as a consequence, become less common. As to the latter concern, we do not believe express warranties will disappear provided governments do not make them totally meaningless or excessively burdensome to offer. Rather, if public policy officials clearly position express warranties as a way in which an individual warrantor can explain his offer and delivery in the context of general law, then it remains in the interest of the warrantor to continue with express statements. On the contrary, if implied rights vary materially by province, or express statements are regulated differently, the likelihood of business and government working together is very much decreased.

Certainly the question of required disclosure could be discussed at greater length. For example, we could go further into the matter of what information is more appropriate pre-sale (e.g. is the warranty portable, such as the problem referenced in Chapter Five, Exhibit 1) or post-sale (e.g. who does one talk to with a warranty question). In general, we think the evidence supports a limited informational disclosure approach pre-sale and more extensive disclosure post-sale. At this point in time, the evidence from the U.S. experiment with information disclosure under the Magnuson-Moss Act is inconclusive. Nonetheless, the approach is probably preferable first to more drastic public policy initiatives.

Option 4: Government Sponsored Consumer Education

As business executives and public policy officials all have discovered, consumer education is not the panacea once thought. Chapter Nine elaborates on why this is so. Further, as pointed out in Chapter Six, marketers have had considerable difficulty in instructing consumers in correct product usage. Instructing them in legal matters is bound to be even more difficult. However, we also uncovered evidence that consumers do understand that variations in usage, user characteristics, etc. have an important effect on product longevity and reliability and hence overall economic life cost (Chapter Four). There are, therefore, reasonable starting points in warranty educational efforts.

The purposes of any educational effort may be quite varied:

1. to induce business change by encouraging consumers to ask for warranty information pre-sale or by discouraging consumers from purchasing in situations where the seller is unable or unwilling to provide such information.
2. to prepare consumers to deal better with business reality by instructing them in what to look for and what to avoid in warranty offers.
3. to convey information to consumers about their legal rights and the variety of methods to ensure such rights are obtained.
4. to affect consumer expectations regarding product performance, economic life cost, and/or post-sale relationships with warrantors.

Each of these objectives is ambitious and must be considered in light of our findings in Chapter Four:

- consumers don't know the difference between warranties and guarantees.
- consumers don't know about express or implied warranty rights.

- consumers don't know about the dispute handling processes etc.

and most important,

- consumers don't much care until they individually have a problem resulting in economic loss.

We believe any educational campaign must be extensive, long-lasting and thus, expensive. Further, its objectives must be focused and capable of being delivered in a general fashion to an audience in a low-involvement state. This is a difficult task. Perhaps the best place to start would be purpose number four above, leaving the other objectives to be accomplished later or in conjunction with other initiatives involving business participation.

The above discussion is concerned with mass communication. There also is the option of dealing with a smaller target audience, opinion leaders/influencers. For example, a provincial government might prepare a communications package about the warranty system to be sent to teachers, consumer organizations, consumer columnists, etc. for use in their activities. This two-stage communications approach frequently is very successful when the objective is to change deep-seated attitudes or behavioral patterns.

#### Option 5: Government-operated Dispute Handling Mechanisms

Comments have been made previously, under Options 1 and 2 especially, about dispute handling-mechanisms. In this section, the focus is on government operated or funded mechanisms as opposed to government-independent groups. Nonetheless, many of the comments made in the last paragraph of the Option 2 section are equally applicable to processes in government groups.

Dispute-handling mechanisms are concerned with reacting to problems that have already occurred. Information disclosure or educational efforts are more concerned with preventing problems. Dispute-handling mechanisms may be legal or non-legal, binding or not on the parties. The disputes dealt with may include:

- . meaning of the warranty offer expressly given.
- . interpretation of the warrantor's obligations in a particular situation.
- . extent to which the "delivery" against the offer matched the warranty "promise".

existence and character of the remedy appropriate in an economic loss situation.

As is immediately obvious from the above, these disputes can be quite technical either in the sense of product technology or in the sense of legal "technology". Frequently, experts skilled in one field (such as judges) are hard-pressed to deal with the other field. Because of this, there is an obvious need for a variety of mechanisms.

Further, according to our findings, the key area not being well-handled currently is disputes about the adequacy of business performance against after-sale obligations (see Chapter Ten for problem listing). We believe this is so because conventional dispute mechanisms such as small claims courts or consumer affairs departments are not sufficiently knowledgeable to make good judgments in such disputes. Unquestionably, industry people are in the best position to deal with this problem, if they can be used in a company-independent fashion. Accordingly, one option worthy of consideration by public policy officials is government funding and co-ordination of industry expert panels to judge warranty disputes. Such panels would have to be rotated, locally available, and provide early decisions to be attractive to both business and consumers. Further, judgments must have an avenue of appeal, particularly if legal procedures are not adequately followed. To add to credibility, perhaps a representative of the public might be placed on each panel. It is quite possible that even if these conditions are met, such panels might not meet with high consumer acceptance because of a preference to move directly to other existing mechanisms such as small claims courts. The area of consumer preference in this matter is one that should be researched well before another level of dispute handling mechanism is institutionalized.

There is a need for early consideration of small claims procedures (\$ limit, speed of access, need to appear, etc.). This legal mechanism and others like



it are matters of broader concern than just warranty problem-solving. It is a chicken-and-egg question as to whether more demand for access to the courts is a cause or an effect of our legal judicial system. If consumer expectations about the marketplace are not lowered or business performance raised, or both, inevitably there will be continued pressure on all of government's dispute handling mechanisms. Therefore, any moves to make these organizations more efficient or more available will be useful.

Option 6: Legislative Change in Warranty Rights  
and Obligations

The topic of legislative change in warranty rights and obligations is a complex one because it embraces so many issues, many of which are unfamiliar to most citizens. We have organized discussion of this topic under the following headings:

1. Detailed list of options.
2. Who has rights and obligations for what transactions.
3. Period of rights and obligations ("coverage").
4. Minimum rights ("implied warranty").
5. Relationship of implied to express warranty.
6. Legislative draftsmanship.
7. Legislative uniformity.

1. Detailed List of options -

As a way of portraying the options; we have chosen to diagram several choices under several different headings. A detailed discussion follows in subsequent sections.

type of loss covered:

- . direct economic loss
- . consequential economic loss, including property damage
- . personal injury costs.

## rights available:

- . to purchaser only
- . to person given product as gift
- . to subsequent purchaser.

## obligations rest on one or more of:

- . final seller
- . brand owner
- . organization with most financial resources
- . source of economic loss
- . organization that could but did not solve the problem, once discovered.

## application to:

- . new products ) with or without
- . used products ) \$ threshold
- . services - on products and/or pure.

## determination of obligations:

- . with regard to fault or negligence
- . no fault ("strict liability").

## period of rights and obligations:

- . specified in law - early use
  - specific rules
  - later economic life
- . not specified in law.

## ability to disclaim minimum obligations:

- . yes
- . no

## plaintiff:

- . individual with rights only
- . government as well ("substitute actions").

## express warranty role:

- . additional to rights and obligations in law
- . clarification of rights and obligations in law
- . no appropriateness

## types of rules regarding rights and obligations:

- . per se in statutes
- . administrative rule-making authority
- . flexibility in interpretation by courts.

## jurisdictional similarities:

- . uniform code
- . each jurisdiction on its own.

2. Who has rights and obligations for what transactions -

As is well-known, the over-riding principle of traditional warranty law, and other aspects of sale of goods, has been privity of contract. This principle has been eroded dramatically in tort law and all indications are that it is no longer appropriate in economic loss (warranty) law as well. However, if firms and individuals not in privity of contract have obligations and rights, the question arises as to who exactly is involved in any particular dispute. The trend in product liability law regarding obligations has been to strict liability for the organization with the most financial resources, and hence presumably, the greatest degree of control over the problem and least hardship in compensating for injuries. The trend has resulted in what many businessmen view as excessive financial settlements, a booming product liability insurance business, and of course increased costs that all consumers must share. An alternative to this in warranty law would be to place responsibility primarily on the firm that feels it has the most at stake anyway: the brand owner. This brand owner may or may not be a manufacturer. Alternatively, one might place the onus on the firm that was responsible for the problem. This, as discussed in Chapters Six, Seven and Eight, is easier said than done, especially in such complex product categories as automobiles. Similarly, the option of placing responsibility on an "accomplice" -- an organization that was aware of the loss potentially or actually, but did not take possible steps to solve the problem -- is also practically difficult. Perhaps the best approach is a combination of obligations. For example, the brand owner may be responsible for such rights as "merchantability" while the final seller responsible for "sale by descriptions", etc. This could be somewhat complicated in situations where the final seller's actions or lack thereof impact on the brand owner's delivery against these rights -- and vice versa. On the whole, however, those we interviewed supported the notion that individuals and organizations should be held accountable only for situations over which they have substantial control. In this regard, brand owners are usually most in control because they have the most at stake.

It is important to consider what obligations the buyer has as well as the seller or other organization in the distribution network. One alternative is to protect the buyer, even from himself. Another is to

expect the buyer to exercise reasonable care in his purchase choice, usage, and maintenance of a product. Further to this second alternative, both consumers and businessmen supported the notion that the buyer has obligations, dependent upon price paid, age of goods and other circumstances of the sale; upon usage behavior and maintenance and service; and upon the seller's attempts to inform the buyer of product expectations, usage, maintenance, parts availability, etc. Following this reasoning, the rights of a buyer would be balanced against the extent to which he acted responsibly.

As to rights, clearly a limitation to the buyer alone is unrealistic in today's marketplace. Rights should be extended to receivers of gifts. A somewhat more difficult choice involves whether or not a subsequent purchaser should be entitled to rights during the same period that the original purchaser would have right. Consumers support this idea, but businessmen have a concern about the administrative difficulties in keeping track of who has rights in second-purchaser situations. However, if the focus of rights relates to the product, logic leads to the conclusion that transferability should be permitted.

The question of rights about what is also contentious. One approach is to say new product only, perhaps as in the U.S., only those new products above a minimum dollar threshold (selling price). Alternatively, the law might embrace used products -- an approach Quebec has attempted and found very contentious. The difficulty of course is again the matter of who is responsible for what as opposed to who can control what. Consumer expectations for used products are not the same as new products, but on the other hand, some warranty protection is desired and expected. Finally, services may be covered by the law, either services on products (e.g. repair of a product) or pure services (e.g. personal services such as hair styling). We see no serious difficulties in including services, except for the problem of determining "adequate performance" in matters of taste.

### 3. Period of rights and obligations -

Periodically, the question arises as to whether the law should impose a period of coverage on warranty rights and obligations. Usually, this notion is associated with lengthening the period provided for in sellers' express warranties on the basis that such

periods are too short. On the whole, both consumers (Chapter Four) and businessmen (Chapter Six) do not want government to do this. The reason given by both is the cost that all consumers will bear to do this. Added to this argument is the complex set of influences that determine reliability in later product life (recall Chapter Six) and thus the technical difficulty in deciding just what the period of coverage ought to be for each product category. Another option would be to focus the period of rights and obligations on the "period of early use". This period would not need be specified in law exactly, but rather would be phrased as being long enough to ensure that reliability was delivered and flexible enough to cover situations (such as air conditioning in cars) where use is not tied to calendar time from purchase, but climate. Following this approach, it would be up to the warrantor to decide what the specific period of early use is -- a practice not much different from express warranties of one year, 90 days, etc., now. However, the law could strengthen this provision by:

- . providing that if the warrantor does not state a period of early use, the court (or a dispute handling panel) will decide based on industry practice.
- . enabling the buyer to challenge the period of early use based on circumstances, industry practice, etc., bearing in mind any attempts by the seller to communicate his reasoning to the buyer.

#### 4. Minimum rights -

Minimum rights refers to the rights a buyer has in all transactions, regardless of whether or not the seller offers such rights at the time of sale. These statutory rights are ususally referred to as implied rights. In the Ontario Law Reform Commission Report,<sup>2</sup> these minimum implied rights were summarized as follows: the buyer "should be entitled to receive goods the condition of which corresponds to the expectations of a reasonable buyer". It is difficult to argue with this statement conceptually. However, as pointed out throughout this report, the statement is fraught with practical problems in its implementation. On the whole, those we talked to who knew any substantial amount about implied warranty rights focused their concern on understanding what "merchantability" and "fitness for purpose" really

meant. Adding new terms such as "consumer acceptability" did not appear to deal with this concern. We see no need to discuss changes in traditional warranty rights of title, freedom from encumbrance, quiet possession, sale by description, and sale by sample -- except to say that the communicability of what these rights mean to lay people could be markedly improved.

The initiatives in Saskatchewan, New Brunswick and other provinces on implied rights can be crudely classified as expansion and perhaps clarification of "merchantability" plus an additional right to longevity via spare parts and servicing facilities. These efforts are well intended and would be more widely supported, we believe, by business and consumers had they been implemented somewhat differently. First, rather than creating the impression that the government and judiciary would be dictating reliability and longevity standards to business, it would have been possible to follow the approach suggested above under "early use" to say to business "Look, you do something and if it's not appropriate then we reserve the right to step in". Second, had government said more clearly that one rationale for requiring spare parts and servicing facilities was to prevent "knock-off" competition from abroad, not to change dramatically good domestic practices, then again more support would likely come from business. Third, many businessmen believe that there will be unintended economic consequences where legislation does not allow for any form of disclaimer for consequential damages. Where a consumer risk is pooled and the individual consumer perceives that he/she is in a "no risk" or "free good" situation, expectations about and demands on the system will result in system average costs being pushed to an unrealistically high level. We see merit in this perspective and it is an area where government should give careful attention to analysis of effects and/or draftsmanship. Finally, when open-ended standards are legislated, it would be wise to be more careful in describing the process and people who will interpret and enforce those standards to instill greater confidence into business and consumers about the meaningful nature of the effort. Clearly, the implied right on merchantability needs reworking and thus the choice is not whether to do it but how to do it.

The right to third-party dispute arbitration might also be considered as a minimum right. This would be an interim step between unilateral judgment by

the warrantor, and going to the court system. For example, this might require the warrantor to participate in, if not establish, a company-independent dispute handling group for all economic loss claims above a stipulated threshold dollar amount (or proportion of purchase price). This mechanism should only be available to the consumer if he had made a previous effort to resolve the problem directly with the responsible party and the judgment of this mechanism should be appealable to the courts by the consumer or the business organization.

Another minimum right that might be directly incorporated into warranty law is the right to truthful, non-misleading warranty promises. Based on Combines Law (recall discussion Chapter Eleven), this section would embrace all forms of warranty representations. The employer of the spokesperson or the funder of the spokesperson could be responsible in cases of oral representations and written representations could be required to include the identity of the warrantor. This particular section could be used to advantage in situations where the delivery did not match the promise: if not, then the promise was misleading or false.

We suggest also that consideration be given to empowering government to launch substitute actions in instances where minimum rights are not being observed (especially in cases of systematic economic loss), yet individual consumers do not find the dispute/claim process worth pursuing. A model in this regard might be B.C.'s trade practice legislation.

##### 5. Relationship of implied to express warranty -

The relationship between implied and express rights and obligations has been complicated recently by two public policy initiatives: (a) prohibition of disclaimers to implied rights and obligations, previously frequently found in express warranties and (b) the apparent extension of implied rights beyond those offered in express statements. The combination of these two developments has prompted several of those we interviewed to question whether express warranties have any role at all any more. One option is simply to do away with them and require information such as implied rights, address of warrantor or agent, etc., to be disclosed to the consumer in the product literature (recall discussion of Option 3). We would argue that, while simple, this is not a preferable option if the

express warranty can and does get used to make explicit what general implied rights mean to the buyer and seller in those specific circumstances. We think there is reasonable acceptance, with the exception of consequential damages, of the prohibition of disclaimers and strong opposition to lengthening the period of coverage (recall discussion above in 3).

By treating all representations as to product performance, service, etc., as express warranties, this requires the selling organizations to be much more careful in their sales approach. An additional option would be to have a close look at service contracts and decide whether these should be treated separately (as insurance contracts) or as part of the product offer (as express warranties). We do not see this as a particularly attractive option to pursue at the time in that the consumer data in Chapter Four suggests that many consumers prefer to maintain the option of accepting or rejecting risk pooling at a time in product life, where amount, manner and/or style of usage are factors which affect the risk of performance failure.

Further discussion of express warranties in particular has appeared in discussion of earlier options.

#### 6. Legislative draftsmanship -

Throughout the report we've referenced the difficulties vaguely phrased economic regulation law can create. Those who have followed anti-trust law since its inception in North America in 1889 know that vague rules increase legal costs due to protracted court battles and increase system costs as participants hedge against the uncertainty of bearing costs. At the same time, "per se" rules of great specificity are seldom desirable due to the changing and varied characteristics of business practice. General, albeit vague rules provide flexibility in interpretation and thus stand the test of time far better. We believe that this is precisely the same in warranty regulation, and further, that there is no easy solution. Drafting good law is far more difficult than most people realize.

We do suggest consideration be given to greater efforts in communicating the intent of law. Plain language legislation is wonderful whenever feasible. However, more commonly we think a detailed "statement of intent" in laymen's language should be a necessary component of any economic regulation legisla-



tion. Such a statement would explain legal terminology to laymen and guide judicial interpretation in the inevitable "grey" areas embodied in economic law. Such a statement can even be pretested for communicability before wide-scale promulgation. Further, we would argue that if such a statement could not be prepared, the law is not ready for passage. It strikes us as ironic that the lawmakers can pass a law requiring business to communicate better their warranty offers, yet that law is barely comprehensible except to the legal specialist.

We suggest also that consideration be given to consolidating warranty law into one piece of legislation -- a task that will encourage updating, language simplification, and more careful draftmanship at the same time.

Neither consumers nor executives understand or have a clear single meaning associated with the word "durability". We suggest consideration be given to avoiding the word in warranty law.

Most consumers do not know the difference or similarity between the words warranty and guarantee. Consideration ought to be given to either banning the word guarantee or treating it appropriately in law.

#### 7. Legislative uniformity -

Time and again, as mentioned throughout the report, the business executives we interviewed strongly asserted that uniformity in warranty legislation (as well as other economic legislation) was highly functional. The alternative is to see more "disclaimers" in express warranties along the lines of "Provincial law may differ. Check with your local Consumer Affairs Office." We believe, as do executives and consumers, that such a situation serves no one well. We see two possible approaches to obtaining greater uniformity in warranty law. The first option is joint draftmanship of critical sections (such as minimum rights) by representatives of the provinces. The fact that this report was commissioned by a Federal-Provincial Task Force is encouragement that this option is viable. A related but somewhat different approach involves development of a "model statute". This approach has been used in the past, notably the Uniform Commercial Code and the Printer's Ink statute in the United States. Such a statute could be developed by a task force composed of provincial representatives and then

offered to all jurisdictions as an appropriate, rationalized solution to some aspects of the warranty problem. This model code would be for provincial adoption although those more skilled in constitutional affairs than us might decide it worthwhile and possible to consider federal law as well. The one note of caution we feel obliged to sound is that such a code must not only be produced, it must be sold to each jurisdictional government as being appropriate, beneficial, and not as an attempted infringement on provincial autonomy or negative comment on provincial law-making competence. We believe, based on our research, that this approach should be examined very seriously by public policy officials as the way in which to implement changes in legislative warranty rights and obligations.

#### Option 7: Direct Government Specification of Product Characteristics and Performance

In the view of many we interviewed, it is a very small step from enabling legislation that appears, at least, to give power to the judiciary to determine reasonable product characteristics and performance to directly specifying those characteristics in legislation or administrative rule-making. This option is certainly contentious as most everyone seems to recognize. In what follows, we have attempted to capture some of the advantages and disadvantages that seem to be associated with such a public policy initiative if it were substantially embraced beyond the already existing use of it.

##### 1. Advantages

This approach reduces the burden on consumers of making product choices by reducing the likelihood and cost of bad choices. It does not require active consumer information search and processing, but rather proceeds on the basis that the consumer will be protected in spite of himself. Brand competition would be still possible, but on other less basic functional characteristics. The legal requirements also could be regarded as the minimum rather than the maximum performance features. Finally, in the short run at least, such standards would reduce resource waste by ensuring that products lasted longer, broke down less often, and in some cases, were safer for the consuming public.

## 2. Disadvantages

Stipulation of explicit standards for many products will be an administrative nightmare unless the standards are set exceedingly low or the penalties for non-obervance exceedingly high. There is an unfortunat tendency for minimum standards, if set relatively high, to become the average, even the maximum for most. This would be contrary to public policy intention. Administrative complications also arise because this approach could well ignore those factors beyond the brand owner's control which have a substantial impact on product longevity and reliability (recall Chapter 6 especially). Thus, costs could well rise well beyond the incremental benefits obtained. Also, such costs fall most heavily on small business.

Further, such an approach, especially if incomplete, may well lull the consumer into a false sense of security. Consumers may believe that they are more protected than in fact they are and thus behave in ways that in net effect, leds to a worsening of consumer welfare.

Second-order effects may also occur. For example, technology may change at a rate greater than the relevant standards, resulting in situations where there are market rigidities which create economic waste.

Finally, there are political and philosophical considerations. On the whole, product standard regulations may be argued to reduce consumer choice and to be direclty in conflict with "free market" philosophy. Such regulations, in the absence of public safety considerations, are difficult to justify in our Canadian society unless (a) industry is obviously negligent and/or (b) industry does not respond to real changes in market requirements.

We have had and will continue to have government stipulation of product performance standards. Experience has shown that it is an involved, politically difficult approach to improving the marketplace and in general is not an appropriate approach unless other public policy initiatives have been tried and found ineffective.

Epilogue

This has been a long discussion of many complicated public policy options. We end this chapter as we began it -- urging all interested groups to work together to improve gradually but steadily the consumer products warranty system in Canada.

CHAPTER NOTES AND REFERENCESChapter Two

1. See Ontario Consumer Issues, Province of Ontario, 1978.
2. Louis J. Romero, Automobile Warranties in North American with Special Reference to the Ontario Situation, 1972. This document is a Master of Laws Thesis and is available from The National Library of Canada.
3. This company is not the only one to do this sort of satisfacton monitoring. However, only one example is provided in the report.

Chapter Four

1. John A. Miller, "Studying Satisfaction: Modifying Models, Eliciting Expectations, Posing Problems, and Making Meaningful Measurement," in H. Keith Hunt, Ed., Conceptualization and Measurement of Consumer Satisfaction and Dissatisfaction, Marketing Science Institute, 1977.

Chapter Five

1. Report on Consumer Warranties and Guarantees in the Sale of Goods, Ontario Law Reform Commission, 1972, page. 89.

Chapter Six

1. Systematic failure can have various definitions, but generally refers to a problem affecting a statistically meaningful number of products. For example, one executive in an automobile company said that systematic failure of a part of one percent is a problem. At three percent, it is a "disaster."
2. This data is from an untitled draft of a Canadian Electrical Appliance Service Association (CEASA) study prepared in 1979.

3. The data in this paragraph appear in The Productivity of Servicing Consumer Durable Products, The Centre for policy Alternatives, M.I.T. Report Number CPA-74-4. The quote is from page 71 of the report.
4. See note 1, chapter five, page 141.
5. The exceptions for appliances are homeowners who move frequently and/or large distances, and especially those in this set who have colour coordinated or built-in appliances.
6. See note 3, chapter six, page 73.
7. Mueller, E., "The Desire for Innovations in Household Goods," in L. H. Clarke (Ed.), Consumer Behavior, Vol. 3, New York: New York University Press, 1958.
8. Cost of Owning and Operating an Automobile, 1976, U.S. Department of Transportation, Office of Highway Planning, Highway Statistics Division.

#### Chapter Eight

1. "Consumer Economics of Appliance Warranties", Jennifer L. Gerner and W. Keith Bryant. A working paper in the Department of Consumer Economics and Public Policy, Cornell University. The paper is undated, but written after January 1977.
2. See note 2, chapter two.
3. See note 1, chapter five.

#### Chapter Nine

1. Peter R. Dickson and William L. Wilkie, The Consumption of Household Durables: A Behavioral View, Marketing Science Institute, 1978.
2. A number of studies are referenced on page 117 of Dickson and Wilkie, 1978.
3. P. J. McClure and J. R. Ryans, "Differences Between Retailers' and Consumers' Perceptions", Journal of Marketing Research, February 1968.

4. A. C. Pennington, "Customer-Salesman Bargaining Behavior in Retail Transactions", Journal of Marketing Research, August 1968.
5. R. W. Olshavsky, "Customer-Salesman Interaction in Appliance Retailing", Journal of Marketing Research, August 1973.

#### Chapter Eleven

1. This is not to say a review of warranty legislation in other countries would not be appropriate. For example, see S. E. Permut, "Consumer Product Warranty Legislation in Western Europe", Proceedings of the American Marketing Association and Marketing Science Institute workshop on Multi-national Product Management, MSI Report, August 1976.

#### Chapter Twelve

1. Consumerism at the Crossroads, Sentry Insurance and the Marketing Science Institute, 1976.
2. See note 1, chapter five, page 59.