

the rise of the consumer

*When women are depressed, they either eat or go shopping.
Men invade another country.
- Elayne Boosler*



Tim Brown
Commercial Division

The Consumer Protection Act gives consumers teeth - some say teeth that would do a Great White shark proud, but I suppose it depends on your perspective.

The Act comes into effect in October 2010 and regulations are still to be published giving effect to some of its provisions. In the meantime it is worth taking note of the new rights that will be held by South African consumers.

One of the main changes is the introduction of strict liability for defective products and products supplied without adequate instructions or warnings. Consumers harmed by these products may, with some exceptions, sue any party along the value chain, from the manufacturer, to the importer, the distributor and even the retailer.

Have you ever made enquiries about canceling a contract only to be told that it came up for renewal last month and, in the absence of any indication to the contrary from you, has been renewed for another year? Well, fixed-term contracts are also on the line. Suppliers will have to provide individual consumers with notice that a fixed-term contract is about to expire. The notice must be given between 40 and 80 days before expiry. Unless agreed otherwise at the time it was first signed, a fixed-term contract converts to a month-to-month contract on

expiry and is not auto-matically renewed for the same period as the initial term.

When last did you discover a tattered and ancient pre-paid voucher in your wallet or purse, and wonder if it was still valid? The Act is good news for you, because pre-paid vouchers will remain valid for three years or until they have been entirely redeemed.

And what about spam emails? The National Consumer Commission will be empowered to establish a registry in which frustrated consumers may register a pre-emptive block against direct marketing communications. It seems that direct marketers will be obliged to check their mailing lists against the registry and remove those consumers who have indicated that they do not want to receive direct marketing.

The Consumer Protection Act is huge - it constitutes 186 pages - and has major implications for consumers and for every player in the value chain. Everyone from manufacturers to retailers will need to reassess their business in the light of its provisions.

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LAW LETTER

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coffee with rob

We were initially impressed when we heard about Rob's early morning 'board' meetings in Durban ... until we found that they are generally held (at 5:30 am) at North Pier! We found out more about this all-round litigator and surfing enthusiast...

It gives me a kick to cut through the rubbish and get to the real issues. I enjoy getting to a clear understanding of my clients' rights and providing a realistic assessment of their actual legal position. It is then very satisfying to either negotiate a resolution (the assessment informs whether an offer is attractive), or press on and have my advice vindicated in court.

I like surfing because you can't think of much else when half a ton of water is heading your way. I like the physical exertion; it can be quite brutal at times. I also enjoy the idea that surfing is low tech - you don't need an engine, just a board and some wax.

My litigation work is wide-ranging. I deal with a variety of litigation, from commercial litigation to complaints about bulls jumping a fence to have their way with a neighbour's heifers. One of the nice things about law is that many of the ancient problems and legal solutions still apply today! My work includes commercial and property disputes, liquidations and sequestrations.



Rob Stuart-Hill
Litigation Division

I have built up great friendships with bank executives, having worked in foreclosures for years. The aim with foreclosures is to obtain full value for the bank and, wherever possible, ensure that the homeowner does not have a shortfall. I still keep an eye on foreclosures and help out with technical problems.

More recently, I have taken on responsibility for our Debt Recoveries Call Centre. The 20-seater Call Centre recovers municipal and corporate debt and has made strides since it was established 5 years ago. It has been interesting managing a business, rather than simply providing a professional service - it has given me deeper insight into many of my clients' business problems.

I like 'green' technology. We recently built a house and I enjoyed incorporating energy-saving devices wherever possible. I guess that litigation is 'clean' in some ways - its about taking a complicated, messy situation, teasing out the real issues and pushing for an elegant solution.

electric blues

Michael Faraday, responding to a question from Lord Gladstone, the then Prime Minister of the United Kingdom, regarding the usefulness of electricity:

"Why, sir, there is every possibility that you will soon be able to tax it!".



Redvers Lee
Property Division

The new Electrical Installation Regulations seemed to have arrived without much notice, but the Regulations have significant implications for property owners, both in respect of sales and leases.

Every property owner is obliged to provide a purchaser with a valid Electrical Compliance Certificate. Previously, these certificates were valid indefinitely and could be used for any number of subsequent sales, provided that the electrical installation on the property had not been altered. In addition, a property owner previously remained responsible for the safety of an electrical installation on his or her property, regardless of whether the property was leased out.

Under the new Regulations, an Electrical Compliance Certificate is valid for only two years. The certificate will have to be renewed every two years and will, as before, be required in the event of sale. Property owners with electrical installations that existed prior to 23 October 1992, and who have not sold their properties since 1 March 1994, are exempted. These property owners will only need a new Electrical Compliance Certificate if they plan to sell.

The Regulations also provide owners with the option of transferring responsibility for the safety of an electrical installation to a lessee. This means that a lease agreement, or an addendum to an existing lease agreement, could provide that a lessee is obliged to ensure the safety of electrical installations on the property. Given the severe penalties for failing to ensure safety, and the fact that property owners may not be in a position to regularly inspect their leased properties, we recommend that property owners revise their existing lease agreements and consider an addendum transferring responsibility to their lessees.