MEDIATION IN MALAYSIA:
THE LAW AND PRACTICE

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Mediation in Consumer Claims
CHAPTER 10

ADR FOR CONSUMERS: AN APPRAISAL OF THE TRIBUNAL FOR CONSUMER CLAIMS MALAYSIA

by
NAEMAH AMIN & ELISTINA ABU BAKAR

ABSTRACT

A proper system of resolving consumer disputes is one of the most important components in consumer protection law. Since most consumer claims consist of small claims with low value, a redress system that is simple, cheap and instant is highly desirable. In this respect the ordinary court system is obviously unable to handle consumer claims effectively due to its high cost, time-consuming and formal procedures. Thus the establishment of the Tribunal for Consumer Claims in 1999 may be considered as a major landmark in the development of consumer protection law in Malaysia. The Tribunal has been in operation for merely ten years and has successfully settled thousands of consumer disputes. Despite its commendable performance, there are yet many improvements to be made. This paper seeks to examine the operation of the Tribunal for Consumer Claims and its effectiveness in providing informal, faster and cheaper procedures to consumers. The discussion focuses on the current deficiencies of the Tribunal and suggests any improvements for the benefit of the consumers. As a matter of
PART VII: Mediation in Consumer Claims

comparison, the statutes of other countries relating to consumer tribunals are referred to which include the Consumer, Trader and Tenancy Tribunal Act 2001 (Act 82 of 2001) (New South Wales) (CTTT), the Commercial and Consumer Tribunal Act 2003 (No 30 of 2003) (Queensland) and the Disputes Tribunals Act 1988 (No 110) (New Zealand).

INTRODUCTION

Among the rights of consumers that have been prescribed by the Consumers International (previously known as the International Organisation of Consumer Unions) is the right to get redress.¹ Malaysian legal systems also have provided various rights to consumers in cases of defective and unsatisfactory goods or services under contract law, tort law as well as the Consumer Protection Act 1999 (Act 599) (the CPA).² The rights, however, are worthless in the absence of an effective redress mechanism which is suitable, practicable and inexpensive to enforce. In addition, consumer disputes also require solutions from a specialised body with expertise in the nature and magnitude of consumer-related problems.

In response to the call for a proper redress system for consumers, the statutory tribunal to deal with disputes between consumers and suppliers of goods and services has been established under Part XII of the CPA. Section 85 of the CPA provides “there shall be a tribunal to be known as the “Tribunal for Consumer Claims””. The Tribunal for Consumer Claims (TCC) which came into being on 15 November 1999 provides for an alternative redress mechanism to consumers in a cheap, quick and relatively informal manner. It aims to overcome the failure of the court system in providing redress to consumers which is proven to be expensive, complex and worrisome.³ Below are the statistics of claims that have been filed in the TCC for the past eight years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of claims</th>
<th>Types of claims</th>
<th>Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Goods</td>
<td>Services</td>
</tr>
<tr>
<td>2000</td>
<td>291</td>
<td>221</td>
<td>70</td>
</tr>
<tr>
<td>2001</td>
<td>1155</td>
<td>821</td>
<td>334</td>
</tr>
<tr>
<td>2002</td>
<td>2649</td>
<td>1489</td>
<td>1160</td>
</tr>
<tr>
<td>2003</td>
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<td>2284</td>
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<td>2006</td>
<td>7607</td>
<td>4109</td>
<td>3498</td>
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</table>

Chapter 10: ADR for Consumers: An Appraisal of the Tribunal for Consumer Claims Malaysia

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of claims</th>
<th>Types of claims</th>
<th>Settled</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Goods</td>
<td>Services</td>
</tr>
<tr>
<td>2007</td>
<td>8101</td>
<td>4317</td>
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<tr>
<td>2008</td>
<td>7440</td>
<td>3938</td>
<td>3502</td>
</tr>
</tbody>
</table>

Source: the Tribunal for Consumer Claims, Putrajaya.

The above statistics show that the establishment of the TCC acquires positive response from consumers by referring to the increasing number of claims filed in the TCC. There are only 291 claims reported in 2000 which is small compared to 8101 claims in 2007. The increase indicates that more consumers are aware of its existence and make use of this redress mechanism to solve their problems. The statistic also reveals that most claims have been successfully settled by the TCC and by referring to this number alone shows that the TCC has played a very important role in giving redress to consumers.4

The TCC can be an effective avenue for consumers to get redress since the procedure is simple, cheap and quick.5 In addition, the TCC has established a good reputation as an independent body since its establishment is under the purview of the government with the aim to protect consumers. Consequently, a large percentage of cases filed in the Tribunal were decided in favour of consumers.6 Nevertheless, there are several drawbacks that have been identified and further improvement required to address these issues. Most of these weaknesses stem from a lacuna in the legal framework of the TCC’s existence and functions. These include the tribunal’s jurisdiction, procedures and awards and enforcement of the judgment.

**Tribunal’s Jurisdiction**

The TCC has a limited jurisdiction since there is a monetary limitation stipulating the total amount of the award should not exceed RM25,000.7 If the consumer wants to bring a claim which exceeds RM25,000, he has to abandon the exceed limit and if the TCC awards the settlement, the supplier will be discharged from liability in respect of the abandoned amount.8 Thus, that consumer cannot later bring another action to claim for the exceeded amount. This provision clearly prejudices consumers by asking them to ‘sacrifice’ in order to bring the complaints within the jurisdiction of the TCC.

This monetary boundary limits the effectiveness of the TCC in providing redress to consumers especially if it involves consumer goods which have high value such as motor vehicles. Taking the Australian Consumer, Trader, and Tenancy Tribunal (CTTT) as an
example, its monetary limit is $25,000 for the General Division and $500,000 for the Housing Building Division. However, there is no monetary limit for other divisions, including the motor vehicle division which hears complaints relating to the purchase of old and new vehicles and also includes problems related to motor vehicle repairing. This is due to the value of the subject matter such as motor vehicles can be worth more than $25,000. It appears to be a good move if Malaysia could follow the same steps and revise the monetary limit in the TCC’s jurisdiction.

The TCC is also not empowered to entertain claims arising from personal injury or death since they may not be satisfactorily settled in a simplified manner. On the other hand, this limitation denies consumers the advantages of the TCC in claiming compensation in small personal injury claims; for example where the consumers suffered minor injuries caused by a defective product or unsafe performance of services. There is no other way for them to claim compensation except to file the cases in court. In many instances, they may not pursue the action. Therefore, allowing minor personal injury claimants to go through the TCC process will increase access to justice for many consumers as it will be less expensive, less adversarial and less stressful.

Another limitation is that the TCC can only hear claims based on a cause of action which accrues within three years of the claim. This three year limitation period is not in line with those provided under the Limitation Act 1953 (Act 254) which provides a time limit of six years in filing contract and tort claims. The rationale behind this conflicting limitation period is unknown. As a matter of comparison, the Consumer Claims Act 1998 (Australia) provides a longer limitation period in goods and services claims that is, 10 years starting from the date goods or services to which the claim relates were supplied to the claimant.

**Court’s Proceedings**

To avoid a conflict of jurisdiction between ordinary court and the TCC, section 104(1) of the CPA provides that if a claim was first lodged with the Tribunal, it shall not be the subject of proceedings between the same parties in any court unless the claim before the Tribunal is withdrawn, abandoned or struck out. Similarly if the proceedings before the court were commenced before the claim was lodged with the Tribunal, the Tribunal has no jurisdiction to hear the case unless the claim before the court is withdrawn, abandoned or struck out. This provision has been thoroughly discussed in the case of *Keris Travel & Tour Sdn Bhd v Lee Saw Chan* in which the court awarded a certiorari to strike out the TCC’s decision on the
basis that the chairman had erred in law by giving judgment when the case had commenced in the court before the claim was filed with the TCC.

This provision put the consumers in a detrimental position since they cannot bring the case to the Tribunal if the supplier had commenced action in court. This is based on research carried out in United Kingdom, where many small court claims were filed by the suppliers instead of consumers for recovery of debt.\textsuperscript{18} Even if the supplier is the one who started the proceedings, the consumer dissatisfaction was a prominent feature since they often withheld some or all of the payment particularly in cases where services were unsatisfactory. In this situation, the consumers have no option but to go through the proceedings in court which have been perceived by consumers to be troublesome, scary and complex.\textsuperscript{19}

This is different compared to the practice of the tribunals of other countries. The laws in Australia and New Zealand provide for more flexibility in which the court or tribunal can transfer cases whenever appropriate. For example, section 40 of the Commercial and Consumer Tribunal Act 2003 (Queensland) provides that if the court feels that the tribunal can hear the case, it can transfer the case to the tribunal. Similar provisions exist in Australia and New Zealand legislation.\textsuperscript{20} This shows that if the complaint is related to consumer issues, the court can reject to hear the case and transfer it immediately to the Tribunal. It is hoped that this flexible practice is soon adopted in Malaysian legislation.

**Prohibition of Legal Representation**

In order to ensure that the proceedings in the TCC are carried out in an inexpensive manner, the parties are not allowed to be represented by an advocate and solicitor at a hearing.\textsuperscript{21} Despite of this advantage, the consumers will be in a detrimental position because the supplier may be represented by a legal adviser of the companies.\textsuperscript{22} This reflects the inequality in bargaining power between the two parties in dispute as the consumer personally has to do battle with the body corporate that may be represented by lawyers. Whereas one of the benchmarks for the ideal consumer redress mechanism is that the parties should be allowed to be represented.\textsuperscript{23} In this respect the TCC clearly does not satisfy this requirement.

The finding of a quantitative research conducted in the United Kingdom reveals that the consumers are able to formulate arguments but they usually do not have the evidence to prove the facts that will support these arguments. This appears to stem from
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lack of legal advice prior to the hearing and thus causes potentially successful complaints to be unsuccessful. Even though section 108(4) of the CPA provides that the TCC may impose conditions as it considers necessary to ensure that the party who is not represented is not substantially disadvantaged, this section is very vague in its application and therefore it is doubtful how the TCC in practice can ensure fairness.

Comparing with other countries, the Australian Consumer, Trader and Tenancy Tribunal, the New Zealand Dispute Tribunal as well as the Queensland Commercial and Consumer Tribunal, allow legal representation in certain circumstances. For example, Division 2 of Part 2 of the Fair Trading Act 1987 (Act 68 of 1987) (Australia) allows the parties to get legal assistance and represent them in the tribunal. Section 13 of the Consumer Claims Act 1998 (Australia) also permits the tribunal to make an order to allow legal representation if they believe that there is inequality in bargaining power between the parties to the claim or where the consumers are not reasonably able to protect their interest. Therefore, it is suggested that the TCC should have some discretion to allow exception to the rule on legal assistance in certain situations. Other alternative solution is to allow the parties to be represented by the consumer associations since they have many legal persons as its members who are willing to fight for the consumer’s best interest such as in India.

Unclear Provisions on ADR Process

The TCC has two methods of resolving the disputes, namely, by assisting the parties to negotiate an agreed settlement or by conducting a proper trial. According to section 107 of the CPA before a proper hearing is conducted, the TCC should assess whether it is appropriate to assist the parties to negotiate an agreed settlement in relation to the claim. This provision places the TCC in a different category from the traditional courts which usually rely upon adjudicatory procedures. Furthermore, providing a room for disputes to be settled through negotiations between the claimant and respondent will make the Tribunal’s process not only simpler and faster but exemplifies the true spirit of the ADR concept. Nevertheless, by looking at the statistic from the TCC as summarised in Table 2, only a small percentage of claims have been settled through negotiation. In 2007 only 10.36% of cases were settled through negotiation and in 2008 the percentage only increased to 12.66%.
TABLE 2 – METHOD OF SETTLEMENT IN THE TCC 2007–2008

<table>
<thead>
<tr>
<th>Year</th>
<th>No of claims</th>
<th>Withdrawn</th>
<th>Negotiation</th>
<th>Trials</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>8101</td>
<td>3688 (45.53%)</td>
<td>839 (10.36%)</td>
<td>3574 (44.11%)</td>
</tr>
<tr>
<td>2008</td>
<td>7440</td>
<td>3381 (45.44%)</td>
<td>942 (12.66%)</td>
<td>3102 (38.23%)</td>
</tr>
</tbody>
</table>

Source: the Tribunal for Consumer Claims, Putrajaya

There is also ambiguity in respect of the negotiation process in which there are no clear guidelines on how it is to be carried out. Section 118 of the CPA states that the TCC may adopt any procedure as it thinks fit and proper. Therefore, the provision leaves the matter to the presiding officer to use his discretion and the success of the negotiation process is heavily dependent on his skills. The process of the ‘Alternative Dispute Resolution’ in the Consumer, Trader and Tenancy Tribunal Act 2001 (CTTT) is worth being referred to in this respect. Section 54(1) of the CTTT Act 2001 states that it is the duty of the Tribunal to use its best endeavours to bring the parties in the proceedings to a settlement that is acceptable to all parties. The statute provides several ADR options to be applied by the CTTT, namely, conciliation, negotiation or neutral evaluation. The conciliator, mediator and evaluator will be appointed by the CTTT who definitely have skills in their areas of ADR process.\(^{29}\) Similarly, the Commercial and Consumer Tribunal Act 2003 (Queensland) provides thoroughly the mediation process that is going to be carried out by the Tribunal.\(^{30}\) Among the matters that have been provided for are the qualifications of the mediators,\(^{31}\) their responsibilities,\(^{32}\) the method\(^{33}\) and the time limit of mediation process.\(^{34}\)

A Counter-claim Procedure

Section 98(2) of the CPA allows a supplier to raise a debt or liquidated demand as a defence or a counter-claim. This provision puts the consumers in a fragile position and may defeat the purpose of providing an easy redress mechanism to consumers through the TCC. The situation will become worse since section 98(3) of the CPA allows the TCC to determine the counter-claim notwithstanding that the original claim is withdrawn, abandoned or struck out. Therefore, the role of the TCC as an avenue to seek justice for consumers now has been changed to the place for a supplier to recover their debts or claim compensation from the consumers. This is definitely not favourable for consumer protection and this provision may kill the consumers’ spirit to step out in seeking justice.
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Comparing with the practices of other countries, most of the tribunals do not provide for counter-claim in consumer disputes. For example, the Queensland Commercial and Consumer Tribunal only allows counter-claim in limited cases which are mostly not related to the consumers.\textsuperscript{35} Similarly, the Disputes Tribunal Act 1988 (New Zealand)\textsuperscript{36} does not provide for counter-claim and the Consumer Protection Act 1986 (India)\textsuperscript{37} only allows the opposite party to give his version of the case or to deny the allegations contained in the complaint, but does not provide for counter-claim. Therefore, the CPA provision that allows the counter-claim is definitely not in line with other countries’ approaches in providing alternative dispute resolution for consumers.

Appeal Procedure and Judicial Review

Every award made by the TCC is final and binding on all parties to the proceedings and therefore there is no appeal in respect of the decision.\textsuperscript{38} Thus, the consumers who are not satisfied with the TCC’s decisions have no opportunity to make an appeal and there is no way for them to challenge the awards. However, those decisions are subject to judicial review on questions of law.\textsuperscript{39} The number of cases decided by the TCC that have been subjected to judicial review is illustrated in Table 3. The total number of cases from 2000 to 2007 is 205 and the highest number was recorded in 2007 (1.01%). The percentage is perhaps very small but the provision for judicial review provides room for the suppliers who are backed by huge financial resources and legal experts to challenge the TCC’s decisions. On the other hand, consumers who are dragged into the process have to go through the hassle of the court’s proceeding and this will defeat the objectives of the TCC that is to provide a speedy and informal redress mechanism for consumers.

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases</td>
<td>0</td>
<td>3</td>
<td>17</td>
<td>16</td>
<td>53</td>
<td>28</td>
<td>11</td>
<td>82</td>
<td>205</td>
</tr>
</tbody>
</table>

Source- The Enforcement Division of the Ministry of Domestic Trade, Co-operatives and Consumerism, Putrajaya

In *Keris Travel & Tour Sdn Bhd v Lee Saw Chan dan satu lagi*\textsuperscript{40} the High Court issued a *certiorari* order to strike out the TCC’s award due to *inter alia* the decision made by the Tribunal was contrary to the provision under section 104(2) of the CPA. The judge in this case emphasises the importance of giving a reasonable opportunity to both parties to present their case and he agrees with the proposition that ‘justice hurried justice denied’. Similarly, the
High Court in *Telekom Malaysia Bhd v Tribunal Tuntutan Pengguna & Anor*[^1] held that the respondent had elected a wrong forum to bring the dispute to the TCC as it was outside the jurisdiction of the Tribunal. On the other hand Gopal Sri Ram JCA in *Hazlinda bte Hamzah v Kumon Method of Learning Centre*[^2] put high regard to the position of the TCC as an avenue to do speedy justice for consumers. The learned judge observes:

Being a specialist body, the Tribunal has been conferred with extraordinary power to do speedy justice for consumers. As such, its awards should not be struck down save in the rarest cases, where it has misinterpreted some provision of the Act in such a way to produce an injustice.

The same view has been expressed by the High Court in a recent case of *Sheila Sangar v Proton Edar Sdn Bhd & Anor*[^3] which unfortunately had a reversed effect on consumers because the case was filed by the consumer. The applicant in this case challenged the finding of the Tribunal on a claim for defective car which was based on documentary evidence produced by the respondent. In dismissing the application the court held that it should be wary of examining the merits or substances of the tribunal’s decisions except in a clear case that the tribunal has fallen foul of the acceptable standards of administrative law and justice. However, it is highly questionable whether the court has taken into consideration the fundamental policy rationale of the introduction of the CPA[^4] and the establishment of the TCC in deciding the case. Despite the noble concept of judicial review, it may have an impact on consumers’ confidence in seeking justice through the TCC.

Comparatively, the Consumer Protection Act 1986 (India) provides a model consumer redress mechanism that worth to be considered in this respect. It creates dispute redress mechanism at different stages, namely, District Forum, State Commission and National Commission. The State Commission has revisional jurisdiction and hears appeals from District Forum as the National Commission will hear appeals from the award made by the State Commission.[^5] Therefore, the decision made by these redress commissions are authentic and should no longer be subject for any judicial review. The presence of these three levels of redress mechanism will act as an important safeguard to ensure fair procedures to both parties. Nevertheless, this approach may cause the problems of backlog of cases since each claim is subject to appeal or rehearing and it will not serve the purpose of speedy justice. On the other hand, the Australian CTTT and the New Zealand Dispute Tribunal only allow for the internal rehearing with a condition that specific grounds have to be satisfied before such rehearing is allowed to avoid the tribunal from being burdened with unmerited appeals.
Non-compliance with the Award

Effective benchmark of a good redress mechanism is the parties’ compliance with the award. There is little point if consumers pursue a process which has inevitable time-consuming and emotional cost and later ends with an outcome that makes no difference. This is because in reality, many suppliers do not voluntarily comply with the TCC’s awards. Table 4 shows the number of non-compliance of the TCC’s awards.

<table>
<thead>
<tr>
<th>Year</th>
<th>Award</th>
<th>Non-compliance of the awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>1928</td>
<td>567 (29.4 %)</td>
</tr>
<tr>
<td>2004</td>
<td>2489</td>
<td>794 (31.9%)</td>
</tr>
<tr>
<td>2005</td>
<td>2860</td>
<td>666 (23.28%)</td>
</tr>
<tr>
<td>2006</td>
<td>2717</td>
<td>1110 (40.85%)</td>
</tr>
<tr>
<td>2007</td>
<td>3180</td>
<td>1349 (42.4%)</td>
</tr>
<tr>
<td>2008</td>
<td>2765</td>
<td>1051 (38%)</td>
</tr>
</tbody>
</table>

Source - Enforcement Division of the Ministry of Domestic Trade, Co-operatives and Consumerism, Putrajaya.

The statistic reveals that a large percentage of the TCC’s awards has not been complied with by the traders which indicate serious problems in its enforcement. The problem is due to the provisions in the CPA which do not empower the TCC to enforce its own awards but only to send a copy of the award to the Magistrate’s court to be recorded. The enforcement of the award can be with either party to the proceedings. In cases where the suppliers fail to comply with the awards, the consumer himself would have to go to the court for the execution of the order which is not an easy process. Even though non-compliance of the award is a criminal offence, the duty is on the Enforcement Division of the Ministry of Domestic Trade, Co-operatives and Consumerism to handle the cases. There is doubt in respect of the effectiveness of this procedure since there is a backlog of cases yet to be settled in court. Among the reasons for the delays are the difficulties to trace the traders, either they do not register with the ROC or have been
declared as bankrupt. Table 5 shows the number of cases that have been filed in the court for the year 2007.

<table>
<thead>
<tr>
<th>Total number of cases</th>
<th>Cases filed in the court</th>
<th>Cases yet to be filed</th>
<th>Cases on trial</th>
<th>Settled</th>
</tr>
</thead>
<tbody>
<tr>
<td>1349</td>
<td>39</td>
<td>734</td>
<td>467</td>
<td>109</td>
</tr>
</tbody>
</table>

Source: Enforcement Division of the Ministry of Domestic Trade, Co-operatives and Consumerism, Putrajaya.

Comparing with other countries’ approaches, the tribunals take an active role in enforcing their own awards. For example, the Commercial and Consumer Tribunal Act 2003 (Queensland) gives power to the chairman of tribunal to take action to the extent that he can issue a warrant directed to police officers for the arrest of the people to be dealt with according to law. The Consumer Protection Act 1986 (India) also gives powers to the District Forum, State Commission or the National Commission to impose a sentence of imprisonment or fine or both if the suppliers omit to comply with their orders. Ideally, the TCC should be given wide power to ensure the compliance of its own awards so that the consumers will have more confidence in its competency and credibility.

**Accessibility**

The TCC comprises of a headquarters at national level and 15 branches in every state which are mostly located in big towns. As such, they are accessible only to the consumers who reside in urban areas. The rural folks have to go to the nearest town to file a complaint. For example, those who reside in Batu Pahat have to go to Johor Bahru to file a complaint which takes two and half hours of travelling. Obviously, this is not an encouraging factor for consumers to seek redress especially if it only involves a small amount of money. Furthermore the current TCC setup requires the consumer to be physically present at the tribunal office during normal working hours. For self-employed consumers this would mean they have to take a day’s leave and forfeit wages for that day.

In comparison with other countries, for example Australia, it has 100 venues which are located throughout New South Wales alone. Additionally, the Australian CTTT Act 2001 allows the parties to give evidence by telephone, audio visual link or any means of communication. Similarly the Queensland Commercial and Consumer Tribunal also enables the parties to solve the cases through remote conferencing which includes video and telephone conferencing or any method that enable the parties to take part in
the discussion. In addition, the statute also provides for remote mediation through video and telephone conferencing. By the growth of information and communication technology, it is hoped that Malaysia should follows the same steps so that the TCC is easily accessible to consumers. It should be noted that the TCC has recently allowed the claimant to lodge a complaint through e-filing. This at least facilitates the consumers in using the TCC as a channel to seek redress.

Publicity

The statistics from the TCC indicates that an average of 4732 claims is reported each year. This number is relatively small compared to the total Malaysian population of 27.73 million. As a matter of comparison, it has been estimated that the annual workload of the Australian CTTT is 70,000 which is very much higher from the complaints filed in the TCC. It appears that not many Malaysian consumers are willing to make efforts to pursue their consumer rights and therefore necessary publicity should be made to make consumers change this negative attitude. The sentiment of ‘strive for our rights’ should be inculcated in consumers so that they are willing to take actions not because of the amount of losses but more important is to stop the traders from taking advantage of consumers’ ignorance. Publicity is also essential to convey the functions and existence of the TCC to consumers especially in the rural areas.

Another suggestion that can be considered to encourage people to file complaints is to have private proceedings. As an example, the New Zealand Dispute Tribunal is conducted in private but public hearing is allowed to hear two or more claims together if it is convenient to the tribunal and both parties. This is a good approach to be considered since some consumers do not favour their private matters to be discussed openly in the public.

Conclusion

At the first glance, the TCC has successfully provided for a good alternative redress mechanism to consumers, which is cheap, quick and relatively informal. It has to some extent improved accessibility of consumers to justice and has created a climate of ethical trade throughout the nation. Nevertheless after scrutinising further, there are several loopholes in the legal framework of its operation that need further improvements such as its jurisdiction, procedures for ADR and legal representation for consumers. The TCC also needs to improve its operational efficiency, accessibility and improve the
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The general public perception of its operations. Most importantly the Tribunal cannot afford to lose consumers' confidence when its very purpose is to offer them justice. It is important to point out that, in order to have a dispute resolution system which is cheap, fast and informal does not mean that injustice can be tolerated especially if it involves consumers. This paper has highlighted several recommendations for the betterment of the TCC as the ideal consumer redress mechanisms in Malaysia based on practices of consumer tribunals in other jurisdictions.

Consumer International see http://www.consumerinternational.org.

Nevertheless, it should be noted that 'settled claims' refer to cases that have been disposed by the TCC. It does not take into account whether the consumers really received their awards or not. Since the number of non-compliance of awards is great (see Table 4), it is arguable whether those cases are correctly categorised as 'settled claims'.

See the Consumer Protection (the Tribunal for Consumer Claims) Regulations 1999 (PU (A) 479 of 1999).

CPA 1999 s 98. However, this monetary limitation can be extended by agreement of both parties. See also CPA s 100.
CPA 1999 s 101. The claims also cannot be split in respect of the same claim, nor more than one claim brought in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the TCC, as per section 102.

The general division will hear complaints relating to general consumer problems. Other division includes home building, tenancy, strata and community, retirement village and residential park, commercial (consumer credit, licensing of travel agents, commission fees of property agents) and motor vehicle.

Consumer Claims Act 1998 (Act 162 of 1998) (Australia) s 14(3) states that $25,000 monetary limit does not apply to vehicle 'substantially for private purposes'.
CPA s 99(3).
CPA s 99(2).

Limitation Act 1953 s 6(1).
Consumer Claim Act 1998 (Australia) s 7(4).
CPA s 104(2).
[2007] 7 MLJ 541.
The research was carried out by means of observation in which sixty three observations were carried out during the period of March-July 2004 in the York County Court. See Lewis, Paul Lewis ‘The consumer’s court? Revisiting the theory of the small claims procedure’ (2006) 25 CJQ 52-69; Mark Mildred. ‘The proposal for a European court of consumer protection’ (2005) 27 CJQ 15-30.
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The yearbook of consumer law 2007 Ed Geraint Howells, Nadhausen, Deborah Parry and Christian Twigg-Flesner (2007) p 52-69. However, there is no similar research carried out in Malaysia.


Disputes Tribunals Act 1988 (New Zealand) s 37 and Consumer, Traders and Tenancy Tribunal Act 2001 (Australia) s 23.

CPA s 108(2) provides that a corporation or an unincorporated body may be represented by its full time employee who may well be a lawyer.

CPA s 108(3).

Principle 9 of the American Consumer Due Process Protocol; Benchmark 1 of the Benchmarks for Industry-Based Customer Dispute Resolution Schemes (Aust); and principle VII Recommendation 98/257/EC (European Commission).

See note 20 supra.

Notably that the Tribunal for Homebuyer Claims of Malaysia also allows a party to be represented by a lawyer if in the opinion of the Tribunal the claim involves complex issues of law. See Housing Development (Control and Licensing) Act 1966 (Act 118) s 16U.

Similarly, Commercial and Consumer Tribunal Act 2003 (Queensland) ss 74 and 75 also allows the party to be represented if necessary such as if the party unable to represent themselves and can afford it. Disputes Tribunals Act 1988 (New Zealand) s 38 also provides for the same provision which allow legal representatives if the tribunal feels that the parties cannot adequately represent themselves.

It is noted that the Ministry of Domestic Trade, Co-operatives and Consumerism is in the process of reviewing the CPA in this respect to disallow the companies from being represented by the legal representative. Thomas Chong ‘Larangan guna peguam di TTPM’ Utusan Malaysia Online July 29 2008.

Consumer Protection Act 1986 (68 of 1986) (India) s 2 which allows the claims to be brought by any voluntary consumer association registered under the Companies Act 1956 (1 of 1956) or under any other law.

CTTT Part 5 (ss 54 -64).

Commercial and Consumer Tribunal Act 2003 (Queensland) ss 117 to 122.

Ibid, s 117(8).

Ibid, s 120.

Ibid, s 118.

Ibid, s 122.


Consumer Protection Act 1986 (India) s 13.

CPA s 116. However, any award obtained where one party does not appear at the hearing may be set aside by the Tribunal on the application of the aggrieved party. Consumer Protection (The Tribunal for Consumer Claims) Regulations 1999 reg 25.

CPA s 113.

[2007] 7 MLJ 541.

[2007] 1 MLJ 626.

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CPA s 116(1)(b).
CPA s 117 states that the offender will be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or both. In the case of a continuing offence, the offender shall be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction on top of the above punishment.
En Riduan Musa, Enforcement officer, Enforcement Division of the Ministry of Domestic Trade, Co-operatives and Consumerism (Putrajaya) interviewed by the writer on 12 December 2008.
Commercial and Consumer Tribunal Act 2003 (Queensland) s 87(4). Section 86(1)(e) states that it is one contempt of the tribunal if without lawful excuse disobey the tribunal decision given at the proceeding.
Consumer Protection Act 1986 (India) s 27.
CTTT s 38.
Commercial and Consumer Tribunal Act 2003 (Queensland) s 47.
Ibid. s 118.
See table 1.
See note 57 supra.
Disputes Tribunals Act 1988 (New Zealand) s 39.