

Tuesday, April 3, 1990

## **Law Changes Recommended to Protect Consumers**

The Law Reform Commission recommended a number of legislative changes on sale of goods and supply of services aimed at giving consumers better protection.

The Commission published a report on the subject today (Tuesday).

Chairman of the Commission's sub-committee on Sale of Goods and Supply of Services, Miss Christine Loh, said the report was the result of two years' work by the Commission and a sub-committee of lawyers, consumer organisation representatives and businessmen.

Miss Loh pointed out that although the report was concerned with a relatively small part of the Sale of Goods Ordinance, the Commission was nevertheless recommending important changes in law that would go some way in improving the position of consumers in Hong Kong.

The Commission recommended legislation to control "harsh and unconscionable" terms for consumer sale of goods and supply of services contracts.

A definition of "harsh and unconscionable" had not been recommended but a list of factors to which a court should have regard in considering whether the terms of a contract were such had been proposed.

Miss Loh pointed out that the above recommendation is meant to control extreme cases of unfairness. The Commission hoped that if there was such legislation in place that it would have some restraining effect on corporations when they drafted their sales contracts to ensure that there was a balance between the interests of the corporations and that of consumers.

The Commission had not recommended similar legislative control for commercial contracts because it maintained the view that businessmen were better able to negotiate their business contracts and protect their interests.

Miss Loh also pointed out that Section 13(3) of the Ordinance had the effect that if a buyer accepted defective goods, he lost the right to reject them and could only resort to claiming damages.

One of the situations in which there was deemed to have been acceptance provided under Section 37 of the Ordinance was when the buyer expressly accepted the goods.

In relation to express acceptance, it is common practice for a buyer to be asked to sign a note on delivery of the goods and before the buyer has had a chance to examine the goods.

Section 36(1) of the Ordinance states that a buyer cannot be deemed to have accepted goods which he has not had a reasonable chance of examining.

The Commission recommended that this section be amended to state clearly that the signing of an acceptance note would not result in the loss of the consumer's right to reject unless he had had a reasonable opportunity to examine the goods.

On the obligations of a supplier of services, Miss Loh said that common law principles were applicable with regard to the quality of the services, the time for performance and the consideration for it, but there was no statute in Hong Kong in this area.

The Commission recommended that Hong Kong adopt legislation similar to the English Supply of Goods And Services Act 1982 which set out the main common law obligations.

The Commission examined the existing obligation of a seller of goods under the Sale of Goods Ordinance to supply goods "of merchantable quality and reasonably fit for their purpose" in Section 16.

Section 16, Miss Loh said, was essentially a negative statement with exceptions. In its present form, the section in effect said that except as provided here and in other statutes, there was no implied term as to quality.

The Commission recommended that section 16 be redrafted in a positive form to emphasise the fact that there was positive requirement for goods to comply with the quality standard.

The Commission also recommended that the definition of merchantable quality in Section 2(5) of the Ordinance should be better clarified by including aspects of quality to which a buyer is entitled to expect.

The recommended inclusions were appearance and finish of goods, their freedom from minor defects, durability and safety.

Regarding remedies available to a buyer, Miss Loh said that the buyer had the absolute right to reject defective goods under the Ordinance and that the Commission wished that right to be preserved.

The Commission had not recommended that a seller be given a statutory right to correct defects in goods, although it was aware that the rule might be thought too harsh to the seller if the defect was small and could be easily remedied.

"It would not be easy to devise cure provisions for commercial transactions which are simple to operate. In any case, businessmen generally find solutions through negotiations.

"We are unconvinced that giving the seller a statutory right to cure would help businessmen in the resolution of disputes.

"As for consumer purchases, the general level of consumer education in Hong Kong is relatively low and consumer legislation not well developed.

"There are good grounds for saying that the law should protect the consumer who is often in a weaker bargaining position than the seller.

"We do not want to give the seller any ground for arguing that he has a legal basis to resist rejection of defected goods," Miss Loh said.