CONSUMER~KNOW YO

By RØLAND MORRISON

Caveat emptor — let the buyer beware. For centuries, in a market based upon agriculture and hand manufacturing, this maxim held sway. Goods and services were produced locally and consumed locally. The buyer examined the article on the spot before paying out his money, and, due to the simplicity of the construction of the article, he was fully qualified to judge the quality of the article. The *caveat emptor* doctrine arose in an era when most consumer items were household furniture or rudimentary agricultural tools, goods which the average person could understand and grade according to quality.

However, such is not the case today. We have outgrown our agricultural, highly localized market system. Our economy is now based on mass production, mass distribution, mass marketing and mass consumption. The personal contact between the buyer and the manufacturer has disappeared in the maw of the industrial colossus. Many purchasers do not see the item they are buying until after they have actually paid for it, either because they have bought the good through the mail, or the good came in a sealed package, or the good was of such a nature that it could not be adequately examined on the seller's premises. The complexity of many modern consumer items, such as automobiles and television sets, cannot competently be examined by the average consumer, and faults in these items are usually found the hard way — when it's too late to have redress from the retailer.

The many adverse conditions met by the consumer in the modern market has pressured him into seeking mitigation of the *caveat emptor* dictum. The first break came in 1815 when an English court held that, in a sale of goods by description by a person dealing in those goods, there was an implied condition that the goods be of "merchantable quality" — but only if the purchaser had not had a chance to inpect the goods beforehand. A series of cases followed, each gradually shifting the onus onto the seller, culminating in the Sale of Goods Act, which was passed in Britain in 1893. This piece of legislation may be said to be the first consumer protection act in the Western World. All the provinces of Canada, except Quebec which has its own legislation, have Acts identical to the British act of 1893.

This Act implies certain conditions, chief among them which is that the seller is required to offer "merchantable" goods. However, if the purchaser examines the goods before he buys them (he is not obliged to) he can't complain afterwards about a defect he should have discovered.

Under this Act, there are two basic tests which may be applied to ascertain if there has been a transgression of the statute. The first one is that the goods must be fit for the purposes for which they are sold; the second is that the appearance of the goods must be such as to not detract from their "merchantability" — scratched, dirty, and damaged articles cannot be sold for full price. In general, the buyer may assume that the seller is the owner of the goods, and that the goods correspond to their descriptions.

Quebec consumer laws are somewhat different, and are set out in the Civil Code of that province. Article 1522 of the code provides that a seller is obliged to warrant the buyer against apparent defects in the article, defects the seller might have realized himself. Article 1523 says that the buyer is obliged to examine the goods, at least when they are in his presence.

The chief differences between the two systems, Quebec's Civil Code and the common law of the other provinces, would appear to be threefold: (1) The implied warranty in Article 1522 applies to sales by all persons; the implied conditions of quality and fitness in the Sale of Goods Act are limited to sales by persons dealing in goods of the description of the purchased articles; (2) The implied warranty in Article 1522 is limited to latent defects whereas common law rules are not so limited; (3) Quebec law entitles the buyer only to claim the return of his money or a reduction in price except where the seller knows, or is deemed to know, of the defects, as is the case where a manufacturer is assumed to be cognizant of defects in his product; under common law, however, the buyer can always recover such consequential damages as were reasonably foreseeable, whether or not the seller is deemd to know of the defects.

Although Canada has had the Sale of Goods Act for over half a century, consumer protection legislation has only recently come into its own. The Act never really was thought of in the broader concept of consumer protectionism, but was purported to assist one limited class of consumer in establishing ground rules between the buyer and the seller. The wording of the Act is in the language of nineteenth century English commerce, and so far as the consumer is concerned, the Act was contemporary to the *caveat emptor* maxim — let the buyer beware. More and more increasingly, this dictum is being replaced by another dictum, "let the seller beware."

Modern consumer protection legislation began in the courts. The ball began to roll in 1932 or thereabouts with the *Donohue v. Stevenson* case, in which a young lady discovered a partially decomposed snail inside a ginger beer bottle she had just drank from. The court allowed damages against the manufacturer, although there was no contract between the two. But the courts were restricted in extending this doctrine to give effective consumer protection. Damages had to be sufficiently substantial to warrant a lawsuit, or else the consumer would find himself paying more money in court costs than he could recover in damages.

Consumerism in North America received a great boost during the Great Depressio... It was during this time that workers were made aware that their standard of living did not depend solely upon the number of dollars they earned each week, but also depended upon the quality and quantity of goods that these dollars could buy. A magazine called *Consumer Reports* was established by the large American labour unions, and this magazine led the world in publishing the results of comparative tests of different brand name products, including the manufacturer's name and adverse criticism of products, as early as its first issue in May, 1936.

In 1956, pioneer British consumer advocates entered the field, inspired by their American counterparts. They formed the Consumers' Association to publish brand by brand information on competing consumer durables. Some Englishmen felt that it was not quite "cricket" or British-like, to publicly criticize rival goods, brand by brand, yet *Which?*, the Consumers' Association magazine, has rarely been challenged with libel suits.

The British government entered in 1963, following the report of a three-year Royal Commission on Consumer Protection. The Commission, established by the Board of Trade in 1959, recommended several changes in the law. Some of the features recommended by the report were: (1) False advertising would become illegal — ambiguous cases would be clarified by definitions of terminology issued periodically by the Board of Trade; (2) Untrue statements of fact describing goods would become an offence, whether perpetrated by door-to-door salesmen or on nationwide television; (3) False dual-pricing, indicating a non-existent price reduction of any merchandise, would be outlawed. The Board of Trade and certain other agencies would enforce these changes throughout Britain. From these recommendations, the British government passed the Consumers' Protection Bill, nicknamed the "Housewives' Charter", which aimed at bringing to an end the malpractices of the few who unjustly impugn the reputation of the whole business community.

The British government also established a governmental department which would act in the interest of consumers. The Consumers Council, as it was named, continued for seven years to campaign on issues of great significance to the consumer. One of its accomplishments was to establish a star system of rating gasolines, thus creating order in the chaotic system which used such vague terms as "economy" and "super" to rate gasolines. Unfortunately, the British government withdrew its support from the Council in March, 1971.

Today, Canada is the only economically advanced country in the world which has a distinct government department with the word "consumer" in its title. The Canadian Department of Consumer and Corporate Affairs is respected and envied by consumer organizations all over the world. It was in the latter part of 1966 that the Department had its beginnings.

In that year, the Committee of the Senate and House of Commons, jointly chaired by Senator David Croll and Ron Basford, M.P., noted that the responsibility in the consumer

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