

LEGISLATION COMMENTS

THE SMALL CLAIMS TRIBUNALS ACT 1984

Introduction

THE Small Claims Tribunals Act 1984¹ has finally been unveiled. Suggestions that such a Tribunal should be set up in Singapore were made as far back as 1976, when a Member of Parliament proposed its introduction in Parliament.² At the same time, the Consumers' Association of Singapore (hereafter referred to as "CASE") made representations to the government, which, however, did not follow up on them. CASE nevertheless, did not drop the idea completely but continued its quiet lobbying and consultations with the appropriate government agencies. Momentum for its introduction picked up over the last few years, the underlying factors for which are varied. They probably include the increasing sophistication of consumers both in terms of tastes as well as awareness of rights, resulting in an increase in the number of serious consumer complaints and a greater desire to see these rights vindicated;³ the exploitation of unwary consumers, particularly tourists, by unscrupulous traders, thus adversely affecting Singapore's image as a shopping paradise;⁴ and the increase in the caseload of the Subordinate Courts. Now, eight years after the idea was first mooted, the vindication of consumer rights in a Small Claims Tribunal may soon become a reality.⁵

Before discussing the Act's provisions, it may be useful to examine the government's overall philosophy towards consumer protection and its perception of the Tribunal's role in this scheme of things. In moving the Bill at its second reading in Parliament, the Honourable Minister for Labour and Second Minister for Law and Home Affairs Professor

¹ No. 27 of 1984. At the time of writing, the Act had not yet come into operation as the Minister had not, by notification in the Gazette, fixed the appointed date. (S.1). The Rules Committee appointed by the Chief Justice under S.69(4) of the Subordinate Courts Act (Cap. 14) was then finalising the Rules relating to the functioning of the Tribunal. (S.44(1)).

² See *New Nation*, 20 March 1976. The suggestion was made by Mr. Ivan Baptist, then executive secretary of the Consumer's Association of Singapore and then Member of Parliament for Potong Pasir.

³ CASE'S Consumer Complaints Department dealt with 834 written complaints and obtained cash refunds amounting to \$44,500 between March 1982 and March 1983. In the year ending March 1984, the number of written complaints had increased to 979 with a significantly disproportionate increase in the amount of cash refunds obtained — \$83,855. These figures indicate that serious complaints are becoming more frequent.

⁴ The Trade Development Board has compiled a list of about forty traders against whom foreign buyers have complained. These complaints related to cheating and other malpractices. See *Sunday Monitor*, 25 November 1984.

⁵ Although the Act was passed by Parliament on 24 August 1984 and assented to by the President on 11 September 1984, at the time of writing, the Act had not yet come into operation as no notification in the Government Gazette had been made. *Supra*, n. 1.

S. Jayakumar reiterated that "the Government believes that the consumers are best protected through free trade and competition in a free market" and urged consumers to be vigilant and to be aware of their rights. In this context, the Tribunal was "a new institution to help consumers to protect themselves."⁶ The government therefore felt that the Tribunal would supplement the two courses of action presently open to the aggrieved consumers, namely, to seek the help of CASE or to seek redress or remedies in the courts.⁷ After mentioning the shortcomings of these alternatives, Professor Jayakumar concluded that there was a "clear need for a cheaper and less formal forum to deal with small claims"⁸ and said that "this Bill represents an important milestone in the field of consumer protection."⁹

The Act's Provisions

1. Preliminary Remarks

Three observations are in order before we set out to examine the structure and other features of the Tribunal. First, the legislation is timely and to be welcomed. Its introduction is consistent with the overall philosophy of "self-help".¹⁰ Sufficiently publicised and utilised, it should discourage malpractices in the market place. Secondly, whilst small claims tribunals are not new in the jurisprudence of dispute-settlement processes, having existed in such countries as the United States, Australia, Canada and Hong Kong,¹¹ it is clear, insofar as Singapore is concerned, that we are only at the experimental stage. We should therefore keep an open mind to the possibility of refinements and improvements. Thirdly, the legislative draftsman must be commended for drafting a piece of legislation that is eminently readable. After all, as legal representation is barred,¹² the layman is expected to read and understand what the statute requires him to do in order to press his rights before the Tribunal. The clear and concise manner in which the provisions are drafted is therefore refreshing and to be welcome.

2. Jurisdiction

The Tribunal will have jurisdiction to hear and determine any claim relating to a dispute arising from any contract for the sale of

⁶ Singapore Parliamentary Debates, 24 August 1984, Col. 2000.

⁷ A third alternative is to lodge a complaint with the Domestic Trade Section of the Ministry of Trade and Industry. However, in this instance, it is unlikely that the aggrieved consumer will be satisfied as the follow-up action, if any, is more likely to be one of warning and/or prosecution of the offending business party under the relevant legislation rather than the granting of civil redress to the aggrieved consumer, which is his ultimate concern.

⁸ Singapore Parliamentary Debates, 24 August 1984, Col. 2001.

⁹ Singapore Parliamentary Debates, 24 August 1984, Col. 2002.

¹⁰ As Professor Jayakumar indicated, the main thrust of consumer protection in Singapore is consumer education and information. Consumers are educated on their rights and responsibilities and informed as to the malpractices of the market place. Much has been done in this area. Protective consumer legislation, though important, has a defined and limited role to play. In some areas, however, it is recognised that legislation has a useful function. One of these areas is consumer redress. The tribunal is therefore a useful adjunct in that it adds some teeth to the aggrieved consumer's alternatives, who, knowing his rights, will welcome a suitable forum to enforce them.

¹¹ In some jurisdictions, small claims tribunals do not exist as separate entities but work within the framework of existing court systems. Examples are the United Kingdom and New Zealand. See the author's article "Small Claims Process: Some Reflections" (1984) 26 M.L.R. 17.

¹² This point will be further mentioned below.

goods or the provision of services not exceeding \$2000 where one year has not lapsed from the time the cause of action accrued.¹³ The Act's coverage is therefore limited to the paradigm consumer complaint situation, namely, defective goods or services. Other possible situations of conflict do not fall within its jurisdiction, including, for example, traffic accident claims, landlord and tenant disputes, other suits in torts such as negligence claims, false imprisonment and assault and battery suits.¹⁴ Tribunals in New Zealand, United States, Hong Kong and the United Kingdom all have wider jurisdictions.¹⁵ However, as Professor Jayakumar pointed out:

Since this is the first time that such a tribunal is being established in Singapore, its jurisdiction is confined to small claims arising out of contracts for the sale of goods or for the provision of services. After the system has been tried out and found to be successful, consideration may be given to extending the jurisdiction of the tribunal to cover other types of actions.¹⁶

This is a reasonable approach to adopt.

Further, the Act provides that no claim may be split or divided and pursued in separate proceedings before the Tribunal for the sole purpose of bringing the sum claimed in each of such proceedings within the Tribunal's jurisdiction.¹⁷ Joint claims are allowed.¹⁸ Additionally, a representative claim may be lodged if two or more persons have claims against the same respondent.¹⁹ Such a claim is brought in the name of one of such persons.²⁰ However, the Tribunal is empowered to order that the claims of all or any of the persons represented be heard separately if it considers that such representative claims may prejudice the respondent.²¹

3. Structure

The Tribunal will be one of the Subordinate Courts in Singapore as constituted by the President under section 4 of the Subordinate Courts Act.²² One or more such Tribunals may be set up.²³ It will be presided over by a Referee, appointed by the President on the recommendation of the Chief Justice. The Referee will hold office

¹³ Small Claims Tribunal Act (No. 27 of 1984) s. 5. Hereafter all statutory reference made are in respect of this Act, unless otherwise stated.

¹⁴ It is heartening to note that the aggrieved owner of a Housing and Development Board flat who has the misfortune of employing an unscrupulous, disinterested or incompetent renovations contractor can now have the personal satisfaction of exacting his "pound of flesh" before the Tribunal, unless the Tribunal, in accordance with its primary function of reconciling the parties' differences, decides that mercy is to be preferred to justice.

¹⁵ See the author's article, *supra*, note 11, pp. 20-24.

¹⁶ Singapore Parliamentary Debate, 24 August 1984, Col. 2002.

¹⁷ S. 8.

¹⁸ S. 15(4).

¹⁹ S. 24(1).

²⁰ *Ibid.*

²¹ S. 8.

²² Cap. 14 Singapore Statutes 1970 Revised Edition. S. 3 of the Small Claims Tribunals Act. Other Subordinate Courts are the District Courts, Magistrates' Courts, Juvenile Courts, and Coroners' Courts. S. 45 of the Small Claims Tribunals Act makes consequential amendment to s. 4 of the Subordinate Courts Act to provide for this addition.

²³ S. 3.

for such time as may be specified in the instrument of appointment. He may be re-appointed from time to time. His appointment, however, may be revoked at any time by the President on the Chief Justice's recommendation. Only a qualified person within the meaning of the Legal Profession Act may be appointed as Referee.²⁴ He will enjoy the same protection as a Magistrate under the Subordinate Courts Act.²⁵ A Registry of Small Claims Tribunals will be established and maintained in which all records of the Tribunal will be kept.²⁶ A Registrar, a Deputy Registrar, Assistant Registrars and such other officers as may be necessary for the proper functioning of the Tribunal may be appointed by the Chief Justice.²⁷

As one of the Subordinate Courts, the Tribunal will clearly be part of the judicial system in Singapore. This is to be welcomed as it would render the Tribunal more acceptable to those critics who are against its flexible rules of procedure and bases for decision making,²⁸ and who repel against the notion of "palm-tree" justice. Further, two other desirable links with the present court system exist. They are firstly, the enforcement of the Referee's orders under existing procedures available in the Magistrates' Courts,²⁹ and secondly, the High Court's jurisdiction to hear appeals from the Referee's orders.³⁰

It is hoped that sitting magistrates or District Court judges will not be assigned on "tours of duty" as Referee of the Tribunals.³¹ It is preferable that the Referee be a "full time" officer appointed to hear only claims that come before the Tribunal. This is because the role he assumes in the hearing of the claim is a unique one. He is more a conciliator and arbitrator rather than an adjudicator. Adjudication is but one of his functions; one which he assumes when all else fails. Even when this happens and he does hear the stories of both parties in order to adjudicate on the claim, he probably will not play the role of a detached judge. On the contrary, the Referee will be involved in the process of eliciting the truth, assuming an inquisitorial stance, playing an active role in asking questions and directing the flow of proceedings. This involvement by the Referee in the hearing of the claim will require a special approach, more suited to certain types of personalities. Moreover, constant exposure to the process will give

²⁴ "Qualified person" is defined under the Legal Profession Act (Cap. 217) s. 2 to mean any person who —

- (a) has passed the final examination for the degree of Bachelor of Laws in the University of Malaya in Singapore, the University of Singapore or the National University of Singapore;
- (b) is a barrister-at-law of England or of Northern Ireland or a member of the Faculty of Advocates in Scotland; Or
- (c) is a solicitor in England or Northern Ireland or a writer to the Signet, law agent or solicitor in Scotland; or
- (d) is in possession of such other degree or qualification as may be declared by the Minister under section 5A and has obtained a certificate from the Board under that section.

To date, the Minister has not made any notification in the Gazette in respect of (d).

²⁵ S. 41(1).

²⁶ S. 13.

²⁷ S. 14.

²⁸ *Infra*, notes 42, 43 and 49.

²⁹ S. 33.

³⁰ S. 35.

³¹ This is the practice, for example, as regards judicial officers serving as coroners in the Coroner's Court.

the Referee greater confidence which may, in turn, lead to a more relaxed atmosphere during the proceedings. It is unlikely that sitting magistrates or judges who assume duties in the Tribunal on rotation basis will have sufficient exposure or opportunities to develop the requisite skills and mental outlook. Also it may be difficult for them to make the switch from a judge's role in an adversarial setting to that of a Referee in a conciliatory and inquisitorial environment where strict rules of law and procedure may not be applied.

As regards the place where the Tribunal will sit, it is likely, for practical reasons, that the Registry and the first Tribunal will be sited at the Subordinate Courts complex. However, eventually, when the process becomes more established, it is hoped that the possibility of having the Tribunal or Tribunals sit in more accessible, familiar and less formidable physical settings will be explored. One possibility will be designated community centres. Assuming any administrative difficulties caused by decentralisation can be overcome, this move to make the Tribunal's facilities more readily accessible to the man in the street should have a positive impact. The timing of the hearing of claims can also be fixed so as to minimize inconvenience to the parties; for example, hearings could be held in the late afternoons or evenings on weekdays, or on Saturday afternoons.

4. *Proceedings Before the Tribunal*

(i) *Lodging the Claim*

Proceedings are begun by lodging with the Registrar a claim in writing on a prescribed form which is signed by the claimant.³² No restrictions exist as to the status of the claimant.³³ The Registrar may permit a claim to be made orally and have it reduced to writing, to be signed by the claimant after it has been read over and explained to him.³⁴ In any joint or representative claim, the Registrar may permit the claim to be filed notwithstanding that it has not been signed by all the claimants or persons represented, on condition that all the claimants or such persons shall do so before the date of hearing. However, the name of a claimant or person represented who has not signed the claim before the hearing may, if the Tribunal so directs, be deleted from the claim and the amount in the claim would be reduced accordingly.³⁵

Appropriately so, lodging a claim is made a simple task as all that is required are the name and address of each claimant and, in the case of a representative claim, the name and address of each person

³² S. 15(1). The fact that the claimant need not appear personally to lodge his claim is useful, especially in the case of an aggrieved tourist who may have returned home. In such event, the Singapore Tourist Promotion Board may lodge his claim for him. The claimant has, nevertheless, to sign the form.

³³ Both consumers as well as non-consumer parties such as retailers, the government and other business concerns may lodge claims with the Tribunal's Registry. The experience of small claims tribunals in other jurisdictions show that non-consumers are the more frequent users. Some of these jurisdictions have had to introduce special features to prevent their small claim processes from becoming convenient avenues available to business concerns for collecting unpaid debts. See the writer's article, *supra*, note 11 pp. 26-28. This point was raised when the Bill was debated in Parliament. (Singapore Parliamentary Debates on 24 August 1984, cols. 2004, 2007-2008).

³⁴ S. 15(3).

³⁵ S. 15(4).

represented; the respondent's (the party against whom the claim is lodged) name and address; the sum of money claimed and such other particulars as are reasonably sufficient to inform the respondent of the ground for the claim and the manner in which the amount claimed has been calculated.³⁶

(ii) *Pre-hearing Conciliation before the Registrar*

After the claim has been filed, a meeting then takes place when the Registrar invites the parties to the dispute for consultation with a view to effecting a settlement acceptable to them. This pre-hearing conciliation session has proven to be very useful in other small claims processes and its potential for reconciling differences at an early stage should be fully maximised.³⁷ Where such a settlement is made, the Registrar shall, upon the claimant's request, make an order giving effect to the terms of the settlement. This order will take effect as if it were an order of the Tribunal.³⁸ Where such attempt at settlement fails, the parties will then appear before the Referee at the appointed time and place.

(iii) *Hearing before the Referee*

Proceedings before the Tribunal will be conducted in an informal manner. They will be held in private,³⁹ where the parties will present their own cases. Where this is not possible, as when a party is the government, a body corporate or a partnership, provision is made for representation by a public officer, a full-time employee, or one of its partners or full-time employees respectively.⁴⁰ In all other situations, representation, either lay or legal, is prohibited.⁴¹ Subject to the Act and to the rules to be made thereunder, the Tribunal has control of its own procedures and in the exercise of this control shall have regard

³⁶ S. 16.

³⁷ See paper entitled "Alternative Forum For The Settlement of Disputes For the Common Man in Singapore" presented by Richard Magnus at the ASEAN Law Association's 1982 General Assembly in Kuala Lumpur, Malaysia from 25 to 29 October 1982.

³⁸ S. 17(2).

³⁹ The writer feels, however, that some hearings may merit publicity, especially in the media. Instances include situations where belligerent or recalcitrant retailers or other business concerns with bad track records are involved in claims brought by aggrieved consumers and claims where wider consumer issues such as general safety are involved. The Act, however, does provide for publication of such particulars relating to proceedings in the Tribunal by the Registrar in such manner as the Minister may direct. S. 42.

⁴⁰ S. 21(2).

⁴¹ The writer has argued elsewhere that this prohibition may work against the consumer's interest especially when he is diffident, not highly educated and inarticulate and the other party to the claim is a business concern or government represented by an educated, articulate employee with previous experience in presenting or defending claims before the Tribunal. *Supra*, note 11, pp. 29-30. Furthermore, in the case of claims brought by tourists against errant retailers, this prohibition will necessitate the appearance before the Tribunal of tourists who have already returned home. Thus, extra costs will be incurred, which, if borne by the complaining tourists themselves, will further aggravate their bitter feelings. This will not be good for Singapore's image as a tourist shopping paradise. The alternative is for the Singapore Tourist Promotion Board to bear all expenses incurred. Understandably, this option should be avoided if possible. In the case of these tourists, an exception to the rule of personal appearance and prohibition against representation should be favourably considered.

to the principles of natural justice.⁴² It is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.⁴³ Evidence need not be given on oath, although the oath may be administered and any written evidence given may be verified by statutory declaration when so required by the Referee.⁴⁴ The Tribunal may, on its own initiative, seek and receive such other evidence and make such other investigation and inquiries as it thinks fit. All evidence and information so received and ascertained will be disclosed to every party.⁴⁵

The Referee is not required to keep a record of the evidence but will take notes of the proceedings and such other information as may be required to be recorded by the Tribunal's Registry.⁴⁶ The record of each claim will comprise the claim lodged by the claimant, summaries of the facts of the issue in dispute as determined and recorded by the Tribunal during the hearing of the claim and the order made by the Tribunal.⁴⁷ This record will be made available to any party to the claim upon payment of a prescribed fee.⁴⁸

Clearly, the procedures outlined above are designed to accord flexibility to the Referee. This once again, underscores the importance of appointing a Referee who is sufficiently mature and confident; someone who will adopt a relaxed yet firm approach. After all, he plays an important part in closing any gap, real or apparent, that may exist, between the one-off not-so-educated, diffident, inarticulate consumer and the aggressive, confident full-time employee of the government, body corporate or partnership.

In line with the overall philosophy of according flexibility to the small claims process, the Act provides that the Tribunal "shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal forms or technicalities⁴⁹". The effect of this provision on the parties' decision whether or not to appeal will be discussed below. One other provision of some significance is section 12(1) which states that "the primary function of a tribunal is to attempt to bring the parties to a dispute to an agreed settlement." This simply-worded provision, in the writer's view, exemplifies the spirit of the Act — that which it seeks not to do and that which it seeks to do: it does not seek to promote aggressive, self-seeking citizens, pressing only their own points of view, but rather to provide a convenient, easily accessible forum where grievances may be aired and resolved in an

⁴² S. 27. There are two basic rules of natural justice: firstly, the rule against bias: that no man shall be a judge in his own cause (*nemo iudex in causa sua*), and secondly, a right to a hearing — that no man is to be condemned unheard (*audi alteram partem*). See Wade and Phillips, *Constitutional and Administrative Law* (1977) (9th edition) pp. 598-599. It has been argued that there may be a third rule, namely that justice must not only be done but must be seen to be done. See Paul Jackson, *Natural Justice* (1979), p. 84, where he cites as support, Lord Widgery L.J.'s judgment in *R. v. Home Secretary, ex. p. Hosenball* [1977] 1 W.L.R. 772.

⁴³ S. 25(1).

⁴⁴ S. 25(2)(5).

⁴⁵ S. 25(3).

⁴⁶ S. 25(6).

⁴⁷ S. 13(2).

⁴⁸ S. 13(3).

⁴⁹ S. 12(4).

amicable manner. With the number of consumer complaints over defective goods and services on the rise, such a forum is appropriate, and its introduction at this juncture, most timely. Recognising, however, that the process can be exploited by over-exuberant complainants, the Tribunal is empowered at any time to dismiss claims which it considers to be frivolous or vexatious, and to penalise such parties by awarding costs against them.⁵⁰

5. *Relationship with the Courts*

As noted earlier, the Tribunal will be one of the Subordinate Courts in Singapore.⁵¹ Its proceedings are declared to be judicial proceedings insofar as the question of privileges and immunities of the Referee, parties, representatives and witnesses is concerned.⁵² It is interesting to note that whilst parties giving evidence before the Tribunal are accorded immunity, they may be receiving this benefit without suffering the corresponding liability of default for giving false evidence on oath—simply because they may not be giving evidence on oath in the first place.⁵³

The Tribunal does not have exclusive jurisdiction to claims that may be brought before it, as parties to such claims may, if they so wish, pursue their remedies in a magistrate court. However, where a claim has been lodged with the Tribunal, no proceedings may be brought before any other court unless those proceedings were commenced before the claim was lodged with the Tribunal or unless the claim before the Tribunal has been withdrawn or abandoned.⁵⁴ Conversely, a claim may not be brought before the Tribunal if proceedings relating to that claim are pending in or have been determined by any other court.⁵⁵ It is submitted that this may result in abuse by parties who can better afford the greater expense and inconvenience of the court process; such parties may quickly file a suit in a court before the other party has had the opportunity to lodge a claim with the Tribunal. Unscrupulous retailers and other business concerns may find this delaying and bargaining tactic useful to “shake complaining consumers off their trail” or at least to force them to settle their claims.⁵⁶

The Tribunal may, at any time, if it is of the opinion that a claim ought to be dealt with by any other court, transfer the proceedings to that court.⁵⁷ A claim may, for example, be transferred if the Tribunal is confronted with difficult questions of law requiring research and argument by counsel. However, there is presently no express provision in the Act for the reverse situation to occur, that is, a court is not

⁵⁰ S.29.

⁵¹ The Subordinate Courts Act (Cap. 14) will however not govern it unless provided for in the Small Claims Tribunals Act 1984. S. 45(3).

⁵² S.41(2).

⁵³ *Supra*, n. 44.

⁵⁴ S.6(1).

⁵⁵ S.6(2).

⁵⁶ There may, for example, be a dispute between a renovation contractor and a flat owner over the quality of materials and services rendered on the one hand, and, on the other hand non-payment. The former, to pre-empt the consumer from lodging a claim with the Small Claims Tribunal, may issue summons first before a magistrate's court.

⁵⁷ S. 7.

empowered to transfer a case which the judge or magistrate⁵⁸ feels ought to be heard as a small claim before the Tribunal. The Act, nevertheless, does envisage this power being conferred subsequently, when the Rules Committee of the Subordinate Courts formulates detailed rules regulating the practices and procedures of the Tribunal and the enforcement of its orders.⁵⁹ In view of the possible scenario of a “stronger” party filing suit in a court before the “weaker” party lodges a claim with the Tribunal, so as to prevent the Tribunal from having jurisdiction to hear the claim,⁶⁰ it is imperative that, in such an instance, the magistrate hearing the case have the power to transfer the case to be heard before the Small Claims Tribunal.

An interesting innovation of the Act is the set of options available to the Tribunal in deciding the claim. If the Tribunal does not dismiss the claim and decides in favour of the claimant, it may make one of three orders:⁶¹ an order requiring the respondent to pay money to the claimant or some other party;⁶² a work order against the respondent requiring him to rectify a defect in goods or make good any deficiency in the performance of services, by doing such work or attending to such matters (including the replacement of goods or parts thereof) as may be specified in the order;⁶³ or a combination of the two where the Tribunal may make an order requiring the respondent to carry out a work order within a stipulated time and in default of his complying with that order to pay money to the claimant. The Magistrates’ Courts play an instrumental role in the enforcement of these orders.⁶⁴ It is interesting to note that whilst clear provisions exist for the enforcement of the first and third types of orders (as listed above) a lacuna seems to exist in respect of the enforcement of the second type of order (work order simpliciter).⁶⁵

As mentioned previously, an appeal against the Tribunal’s order lies to the High Court on any ground involving a question of law or on the ground that the claim was outside the jurisdiction of the Tribunal. These are, rightfully so, narrow grounds as the attractive attributes of the small claims process such as speed, convenience, economy and

⁵⁸ Considering the \$2000 monetary limitation, such a power would more frequently be exercised by a magistrate.

⁵⁹ S.44(1)(2)(g). The Subordinate Court Rules (s.4/1971) Order 37 rule 1 provides for the transfer of cases from one of the Subordinate Courts to another or to the High Court. (Order 37). However, s.45(3) of the Small Claims Tribunal Act provides that the Subordinate Courts Act does not apply to the operation of the Small Claims Tribunal, unless expressly stated otherwise. *Supra*, n. 51. Order 37 rule 1 states:

“Where the Judge of any Court is satisfied that any proceedings in that Court can be more conveniently or fairly tried in some other Court he may order the proceedings to be transferred to the other Court.

⁶⁰ *Supra*, n. 56.

⁶¹ S. 32.

⁶² S. 33 (2)(a) states that such “an order ... shall not require payment of money exceeding \$2000.”

⁶³ S. 33 (2)(b) states that “the value of the work required to be performed by the order shall not exceed \$2000”.

⁶⁴ S. 33(1).

⁶⁵ S. 33 covers the enforcement of the first and third types of orders. S. 34 strictly construed, covers only the third type of orders because S. 34(1)(a) and (b) are conjunctive. One plausible manner of filling in the gap is to construe s. 34 liberally and argue that it also applies to the second type of orders (work order simpliciter).

flexibility should not be eroded,⁶⁶ and this may happen if successful parties to claims are constantly exposed to delay and the more complex procedures and questions of law involved on appeal. The High Court may allow or dismiss the appeal, or remit the matter to the Tribunal with such directions as it thinks fit which may include a direction to the Tribunal for a new hearing.⁶⁷ It may not, however, reverse or vary any determination made by the Tribunal on questions of fact or receive further evidence.⁶⁸ The decision of the High Court is final and is not subject to any appeal.⁶⁹

Two peculiar features of the small claims process may make appeals more difficult. First, as mentioned above, the Tribunal need not decide the claim strictly according to law, but "according to the substantial merits and justice of the case."⁷⁰ Given the narrow grounds of appeal a situation may arise when an appeal is made more difficult because the claim has not been decided strictly according to law. Secondly, since the record of a particular claim will consist only of the claim itself lodged by the claimant, summaries of the facts of the issue in dispute as determined and recorded by the Tribunal during the hearing of the claim and the Tribunal's ensuing order,⁷¹ the intending appellant may not have sufficient information to enable him to decide whether or not to appeal and to assess the likelihood of success. In particular, the absence of a requirement on the part of the Referee to give reasons for his order compounds the intending appellant's difficulties.⁷²

Understandably, the Referee's task should not be made too complex. His role of conciliator, arbitrator and judge should not be overly-fettered by any stringent requirement for detailed records that would necessitate the taking of arduous notes on his part. Such preoccupation with pen and paper would distract the Referee from his other more important tasks, especially that of actively seeking a suitable and acceptable compromise to the dispute. However that may be, some mechanism should, nevertheless, be introduced to enable the intending appellant to arrive at a decision on whether or not to appeal, and to realistically evaluate his likelihood of success on appeal.

Conclusion

The Small Claims Tribunal will not be a panacea for all consumer ills. Ultimately, consumers themselves must exercise wisdom, restraint and discretion in their dealings in the market place. Just as there will always be unsuspecting, gullible consumers, there will also always be unscrupulous retailers and business concerns "out to make a kill".

⁶⁶ A parallel situation exists in the arbitration process where the relationship between the arbitration tribunal and the courts has undergone significant changes as a result of amendments to the Arbitration Act (Cap. 16) made by the Arbitration (Amendment) Act 1980 (No. 2 of 1980). The upshot of these changes is that recourse to the courts, often resorted to previously as a delaying tactic has been made more difficult.

⁶⁷ S. 36(1).

⁶⁸ S. 36(2).

⁶⁹ S. 36(3).

⁷⁰ S. 12(4).

⁷¹ S. 13(2). *Supra*, n. 47.

⁷² Procedures are provided for in the Subordinate Courts where grounds of decision are given when the unsuccessful party lodges a notice of appeal. Refer Subordinate Courts Rules (s. 4/1971) Order 49 rule 4.

Consumer education and information must therefore continue, and should be the main thrust in improving the lot of consumers. When all the details regarding the setting up of the Tribunal have been finalised, easy-to-read publicity material should also be made readily available. Any psychological barrier or reluctance on the part of consumers to use the Tribunal's facilities must be overcome.

Efforts should be made to monitor the Tribunal's operation over the next two to three years. Within this time, should any shortcoming be detected, Parliament should not hesitate to amend the Act. Meanwhile, all would-be users of the Tribunal are urged to understand the basic philosophy underlying its operative features and, with an open mind, help to make the Tribunal work. In the final analysis, the successful functioning of the Tribunal will be beneficial to all parties concerned — consumers, retailers, other business concerns, the government — as the market-place rids itself of some of its more obnoxious practices. Shopping in Singapore will then become a greater pleasure for all, locals and tourists alike.

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