

CHAPTER 2: LITERATURE REVIEW

THIRD PARTY COMPLAINT HANDLING AGENCIES

This chapter is divided into several sections. It provides a background of consumer complaint behaviour and complaint handling of third party organizations. It begins with a brief overview of general information on consumer protection, followed by definitions of consumer protection and consumer rights, important consumer protection achievements in Malaysia during the last twenty years, types of consumer protection laws in Malaysia and consumer protection organizations in Malaysia, and this chapter presents two main third party organizations as consumer protection agencies i.e. Tribunal for Consumer Claims and National Consumer Complaints Centre. Lastly, this chapter discuss the determinants of award (outcome) from the consumer tribunal or consumer court. This present study attempts to investigate whether the TCC is a speedy and effective forum for the consumers, based on the factors including claimant characteristics, issues in dispute, type of claim, amount of claim, duration from filing to hearing case, and evidence of complaints presented in the tribunal records.

2.1 Introduction

Every day, millions of consumers experience dissatisfaction with products and services all over the world. These experiences often cause consumers to have negative feelings towards the company at fault and sometimes lead to abandoning the particular provider altogether (Franklin, 1992). When consumers are dissatisfied with a purchase, they often contact the retailer or manufacturer from whom they purchased the product to obtain

However, few consumers actually complain directly to the provider, so businesses may be unaware of consumer complaint

actions (Day, Grabicke, Schaetzel, and Stauchbach 1981; Stephens and Gwinner 1998).

A US government case study reports that as many as 70% of consumers who have experienced problems with products or services do not complain to the company at fault (TARP 1986). Bolting (1989) found that only about 20% to 44% of consumers voice their complaints directly to businesses about dissatisfied products or services, respectively. From these limited complaints, Oliver (1987), Kowalski (1996), Cornwell, Bligh and Babakus (1991), Vos, Huitema and Lange-Ros (2008) note that complaints offer an opportunity to consumers to vent their frustration, reduce the dissonance caused by the dissatisfactory experience, correct problems, improve products and services and so on. Thus, consumer complaint behaviour is considered as a distinct process, which begins when the consumer has evaluated a consumption experience (resulting in dissatisfaction) and ends when the consumer has completed all behavioural and non-behavioural responses to the experience (public, private, no action) (Day, 1980).

In order to encourage consumer to seek redress for their dissatisfaction, governments and other consumer organizations should work more on consumer protection. Following sections will present consumer protection in general, consumer protection in Malaysia, and some other relevant information about consumer protection.

to purchase goods (e.g. a box of pins, a car, etc.) or request services from other people (e.g. the telephone operator, the plumber, etc.). However, some questions may arise from dissatisfaction with the goods purchased or services received by the consumer, such as whether consumers are able to get the best value for their money. Are the services rendered by the newsvendor or the bus conductor satisfactory? Does the taxi-driver overcharge them? Is his meter in good condition? To address these problems, there is a need to have a means by which the quality of goods sold to consumers can be assured. Consumers pay for the goods and services provided to them. Even when they do not pay for goods and services (i.e. offered free), consumers are entitled to safe and satisfactory products and services that guarantee their well-being. A good example is the service provided by the government (Balasubramaniam, 1984). In other words, consumers need protection, and this type of protection given to the consumer is often called consumer protection (Sinnadurai, 1969).

Balasubramaniam (1984) suggests that protection emanates from laws that are promulgated to give protection where necessary in the form of rights to civil redress or criminal prosecution. Rachagan (1998) argues that consumer protection laws are "the legal manifestation of the desire to protect the consumer's interest" (p. 90). Due to accelerating globalization, consumers have to face many new challenges and threats with respect to goods and services (Fernandez, 2004). Therefore, consumer protection is employed against unscrupulous sellers or uncaring services as well as information

y that could be false or incomplete. However, for free

water and natural surroundings, protection should also be

provided against the polluters of these gifts and exploiters of the natural surroundings (Balasubramaniam, 1984). Therefore, consumer protection should comprise policies and actions involving government intervention to ensure that all consumers obtain what they really want, subject to the limitations of their income (Balasubramaniam, 1984).

The increasing demand for consumer protection is a modern phenomenon, and efforts are being made by governments to obtain greater enforcement from laws. However, as these laws are not seen as being particularly helpful to consumers, amendments to these laws are sought; consumers should be given added protection in statutes, such as trade descriptions (financial services, housing, food, etc), door-to-door sales, distance selling, safety of particular products (electrical goods, children's products, household goods, etc.) (Rachagan, 1998). Several Asian countries have enacted statutes specifically titled as "Consumer Protection Acts/Codes" for solving specific problems, including Malaysia, Singapore, Brunei, Pakistan, Bangladesh, Indonesia and Papua-New Guinea. However, the current study focuses on Malaysia and it is not proposed to describe the consumer protection laws in each of these countries. Based on these new statutes on consumer protection, Rachagan (1998) concludes a number of very progressive features. Some of these features may be noted for this research including:

- a) Rights of consumers as rights that are protected in law such as, rights for safety, choice, information, fair price, representation and redress.
- b) The delivery of both consumer goods and services, and some even include the

l services (doctors, dentists, engineers, architects, engineers,

- c) Special tribunals, with simplified rules of procedure and evidence, were created to hear consumer complaints.
- d) Permit individual consumers to seek redress. Importantly, they confer consumer protection upon public officers.

Before studying the consumer protection situation in Malaysia, the following subsection addresses the definition of consumer protection and consumer rights.

2.3 Consumer Protection and Consumer Rights

Consumer expenditure is the largest expenditure in any country, but the protection given to consumers is not adequate in comparison with that given to producers and the governments are generally more interested in the producers than in the consumers (Sinnadurai, 1969). Consumers have to face new challenges and threats; they are confronted with goods and services flooding local markets as never before. In the face of accelerating globalisation and the great variety of goods available for purchase, consumer protection becomes increasingly important (Fernandez, 2004).

Therefore, consumer protection issues have been raised at both the national and international levels for many years; progress has been incremental on many fronts, from access to basic needs to fairness in the marketplace and consumer rights and responsibilities. All these concerns were raised by the adoption of the United Nations Guidelines for Consumer Protection by the UN General Assembly on 9 April 1985.

These guidelines provide a framework for governments, particularly those of

strengthen their existing consumer protection policies and

new ones where there are gaps (Fernandez, 2004). Thus, this

section presents the definition of consumer protection, consumer rights and consumer responsibilities.

2.3.1 Conception of Consumer Protection

According to Bishan Singh (2002a), a consumer is "a person who consumes goods, services and gifts of nature for his/her satisfaction and general well being" (p. 1). In this definition, a consumer refers to a person, from the king to the pauper and from the young to the old. The consumption of goods, services and gifts of nature include any goods, services, fresh air, clean water and a healthy environment, and the purpose of consumption is for the satisfaction of consumers' wants and needs to ensure general well-being.

The description of consumer protection, as cited from Sinnadurai (1969), is:

"Consumer Protection" is an amorphous conception that cannot be defined. It consists of those instances where the law intervenes to impose safeguards in favour of purchasers and hire-purchasers. Together with the activities of a number of organizations, variously inspired, the object or effect of which is to procure fair and satisfying treatment for the domestic buyer. From another viewpoint, "consumer protection" may be regarded as those measures which contribute directly or indirectly to the consumer's assurance that he will buy goods of suitable quality appropriate to his purpose that they will give him reasonable use and that if he has just complaint, there will be a means of redress." (p. 107)

In view of the above, the definition of consumer protection has linked the consumer movement to human rights and other civic organisations. It has continued to evolve and

over telecommunications, financial services and trade in

4). In 1962, US President John F. Kennedy recognised that consumers were an important economic group in the American economy; initially four rights were recognised in the US Congress ó (1) right to safety; (2) right to choice; (3) right to information; and (4) right to be heard. Without access to basic needs, all other rights are not attainable, thus in 1983, another four rights were added to consumer rights ó (5) right to basic needs; (6) right to redress; (7) right to consumer education; and (8) right to a safe and healthy environment (Fernandez, 2004). Until today, the rights-based paradigm has been embraced by the consumer movement worldwide. Some countries like Malaysia have accepted the eight rights in consumer protection.

2.3.2 Consumer Rights and Responsibilities

Anwar Fazal, as the founder of the World Consumer Rights Day 2001 in Malaysia, said “Consumer rights are about eradicating poverty and social injustice” and these rights form the framework for policies on consumer protection (Fernandez, 2004, p. 4). Basically, these rights involve the consumer’s right to certain expectations regarding safety, quality, price and other characteristics relating to goods and services, as well as the rights to be informed, to choose, the right to representation and participation (right to be heard), the right to recourse and to redress, the right to consumer education and the right to a healthy environment. In Malaysia, Bishan Singh (2002a) (p. 7) explains the following eight rights as the universal rights for consumers:

- a) The right to satisfaction of basic needs to guarantee consumer’s survival, such as adequate food, clothing, shelter, healthcare, education and sanitation.

ers to protection against the marketing of goods or the
t are hazardous to health or life;

- c) The right to information means being protected against dishonest or misleading information, advertising, labelling; and the right to be given the facts needed to make an informed choice.
- d) The right to choice refers to an assurance whenever possible to access a variety of products and services at competitive prices. In those industries in which competition was not workable and government regulation was substituted, an assurance of satisfactory quality and service at a fair price.
- e) The right to representation and participation (the right to be heard) is important to ensure that consumers are represented and/or participate in policy-making bodies so that consumer interests receive full and sympathetic consideration in the formulation of government policies as well as fair and expeditious treatment in government departments.
- f) The right to recourse and redress concerns as correcting the consumer's grievances, complaints or problems, and compensation for misrepresentation, shoddy goods or unsatisfactory services.
- g) The right to consumer education refers to the right to acquire the necessary knowledge and skills to be an informed consumer.
- h) The right to a healthy environment concerns the right to live and work in an environment, which is neither threatening nor dangerous and which permits a life of dignity and well-being.

However, if consumers want their rights recognized, they should first exercise their responsibilities. They have five responsibilities to fulfil (Bishan Singh, 2002) (p. 8):

- a) Critical Awareness: the responsibility to be more alert and questioning about the price and quality of the goods and services that consumers use.
- b) Action: the responsibility to prompt the consumer to act to ensure that they get a fair deal as long as they remain passive consumers.

responsibility to be aware of the impact of consumer citizens, especially disadvantaged or powerless groups, whether in the local, national or international community.

- d) Environmental Awareness: the responsibility to understand the environmental consequences of consumer's consumption. They should recognize the individual and social responsibility to conserve natural resources and protect the earth for future generations.
- e) Solidarity: the responsibility to organize together as consumers to develop the strength and influence the promotion and protection of their interests.

2.4 Consumer Protection in Malaysia

According to the definition of consumer protection, a consumer is defined as a person who acquires or uses goods or services for personal, domestic or household use (Annual Report of Tribunal for Consumer Claims, 1999). Thus, every Malaysian, irrespective of age, gender, title or position in life is a consumer. The typical profile of a Malaysian consumer is one who is mild, timid, docile and ignorant of their rights as a consumer; and who often accepts exploitation and victimization by unscrupulous and unethical traders as their lot as a consumer, rather than stand up for their rights (Annual Report of Tribunal for Consumer Claims, 1999). Thus, Malaysian consumers possess eight consumer rights, but at the same time they also have five responsibilities to fulfil during their consumption as well as to other consumers worldwide. This section will present the important consumer protection achievements in the last twenty years in Malaysia, types of consumer protection laws and the consumer protection association in Malaysia.

2.4.1 Important Consumer Protection Achievements in the Last Twenty Years

rights and responsibilities, the Malaysian government and consumers Associations (FOMCA) have played important roles in the development of consumer protection policies in the last twenty years (see Figure 2.1). The Eighth Malaysia Plan (2001-2005) proposes to achieve more progress in the area of consumer education and consumer protection through the establishment of more schools and community consumer clubs, which enhance the implementation of the Consumer Protection Act, 1999. These practical and policy-setting measures indicate the close attention that the government has paid to consumers' interests and paves the way for a comprehensive and effective consumer protection regime to be developed by the government (Fernandez, 2004). The selected main cases that are relevant to consumer protection and consumer rights are presented in Table 2.1.

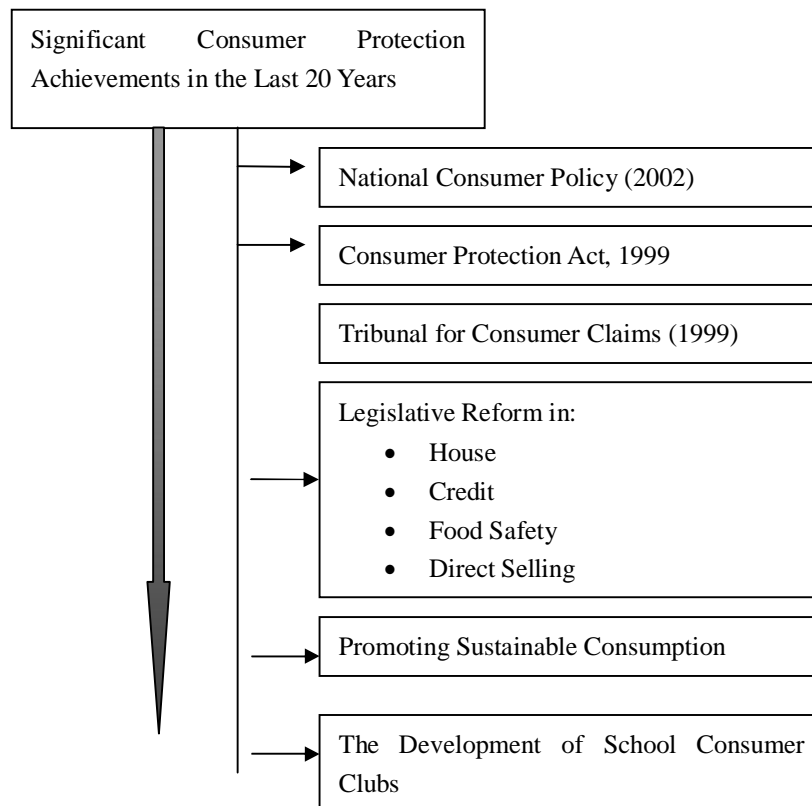


Figure 2.1: Consumer Protection Achievements in the Last 20 Years

Source: Adapted from Fernandez (2004)

Consumer Protection and Consumer Rights in Last 20 Years in Malaysia

	Policy	Area of Consumer Welfare
The National Consumer Policy 2002	Consumer Protection	Protecting Eight Consumer Rights
The Consumer Protection Act 1999	Consumer Protection	Protecting Eight Consumer Rights
The Housing Development Act 2002	House Ownership	Rights to Basic Needs, Information, Safety
Reforming Credit Regulations	Consumer Credit	Consumer Protection on Credit
Food Act	Health	Rights to Basic Needs, Safety.
Direct Sale Act 1993	Industry	Rights to Information, Safety.
Promoting Sustainable Consumption	Environment, Development	The Eight Consumer Rights
The Development of School Consumer Clubs	Consumer Education	The Rights to Consumer Education

Source: Fernandez (2004)

a. The National Consumer Policy (2002)

The objective of the National Consumer Policy is to provide the highest form of consumer protection. It serves to guide the formulation of policies and legislation spanning all forms of transactions and activities affecting consumers. It is premised on the concept of sustainable development and consumption. Additionally, a core principle of the policy is to encourage self-regulation and enhance consumer self-protection through consumer empowerment (Fernandez, 2004). This focus on the formulation of national economic and social policies is aimed at ensuring consumer welfare, raising quality of life standards and encouraging lifelong consumer education for all. The policy underscores the role of NGOs (Non Government Organizations) and the private sector in the promotion of sustainable consumption. The National Consumer Advisory Council, which was established under the Consumer Protection Act, 1999, takes up the task of formulating this policy (Fernandez, 2004).

A comprehensive consumer rights law in the form of the Consumer Protection Act 1999 was introduced because of the perennial problems of Malaysian consumers being cheated, misled, short-changed and exploited in various ways (Fernandez, 2004). Before the Consumer Protection Act, 1999 was established, some existing consumer-related legislation failed to protect the consumers' interest, such as the sale of goods and provision of services that were based on the principle of *caveat emptor*. However, although this principle places the obligation on consumers to ensure that they are not cheated in any transaction, there is no liability accruing to the sellers or producers (Fernandez, 2004).

Unsafe goods and unfair contracts are a common feature in the marketplace. The Trade Description Act, 1972 omits the prohibition of false and misleading trade descriptions relating to services, accommodation and facilities (Fernandez, 2004). Thus, consumers are unable to obtain redress even if they paid a high price or received shoddy goods and services. Neither does this act give the power to enforcement officers to seal premises. This enables guilty traders to destroy evidence before the completion of the investigation. The Housing Developers (Control and Licensing) Act, 1966 also failed to protect consumers as house buyers. House buyers frequently face problems such as shoddy workmanship, delay in the submission of documents by developers and high interest rates on loans (Fernandez, 2004).

Consumer Protection Act, 1999 is the first legislation that specifically deals with enforcement officers, in relation to the supply of goods and services. It has impacted in a significant way on consumer rights. It goes some way towards redressing the forces of inequality and restores some equilibrium between suppliers and consumers (Annual Report of Tribunal for Consumer Claims, 1999). This Act is generally applicable to the supply of goods and services to a consumer in the course of carrying on business. In addition, the enforcement of the Consumer Protection (Amendment) Act 2007 on 15 August 2007, enables consumers who acquire goods or services through electronic means to file claims in the Tribunal for Consumer Claims under the Consumer Protection Act 1999. This will reduce the costs and expedite the disposal of litigation that arises from such transactions. However, a number of key proposals such as health, housing and food are not included in this Act. Based on this legislation, the Tribunal for Consumer Claims was established in November 1999 under Section 85, Part XII of the Consumer Protection Act, 1999 (Annual Report of Tribunal for Consumer Claims, 1999). The detail of process in the Tribunal for Consumer Claims will be presented in a different section.

c. Main Legislative Reform

In the last 20 years, the main legislative reforms in Malaysia that focus on consumer protection concern housing, credit, food safety and direct selling. This sub-section will present legislative reforms one-by-one.

i. Housing

at the highest number of consumer complaints received by
e related to housing, such as insufficient supply of low-cost
houses due to housing developers disinterest in building low-cost housing for lower
profit margins; delay in submission due to developers' failure to provide fully
completed houses as stated in the Sale and Purchase Agreement; poor construction and
defects due to houses not being safe or fit for occupancy and not consistent with the
specifications as stated in the agreement; house financing due to high interest rates on
housing loans burdens house buyers, especially from the lower income group and so on.
To solve the problems faced by house buyers, FOMCA and the House Buyers
Association of Malaysia (HBAM) have introduced better protection for house buyers
through changes to regulations. These include the introduction of a one percent subsidy
by financial institutions and banks on interest for housing loans below RM100,000, in
October 1992, to reduce the burden of a high interest rate for lower income consumers.
Thus, a few new regulations were enacted in Parliament and came into force on 1
December 2002 (Fernandez, 2004), for example:

- Housing Developers (Control and Licensing) (Amendment) Act 2002
- Housing Developers (Control and Licensing) (Amendment) Regulations 2002
- Housing Developers (Housing Development Account) (Amendment) Regulations 2002
- Housing Development (Compounding of Offences) Regulations 2002
- Housing Development (Tribunal for Homebuyers Claim) Regulations 2002

These new rules and regulations establish the new Sale and Purchase Agreement, the
Housing Tribunal, the Housing Development Account and the scheme for compounding
offences to plug loopholes as well as to safeguard both house buyers and developers.

The common forms of consumer credit are private money lending, pawnbroking, hire purchase, personal bank loans and credit cards (Fernandez, 2004). Among suburban and rural consumers, the most popular forms of consumer credit are pawnbroking, personal money lending and hire purchase. Among urban consumers, credit cards are the main form of credit transaction and allow consumers to spend regardless of the amount of cash they hold. This leads consumers to buy on impulse or overspend. Therefore, the Banking and Financial Institutions Act 1989 (BAFIA), which came into force on 1 October 1989 provided new laws for the licensing and regulation of the institutions conducting commercial banking, consumer financing, merchant banking and discount house and money-broking businesses and for the regulation of institutions conducting related financial businesses (Fernandez, 2004).

iii. Food safety

Food safety is another problematic issue faced by consumers in Malaysia, including foreign objects found in food; unhygienic premises; sale of expired food products and products without an expiry date and adulterated food (Annual Report for National Consumer Complaints Centre, 2006). In Malaysia, the primary legislation regulating food is the Food Act 1983 and Food Regulations 1985. These laws fall under the jurisdiction of the Health Ministry. The Food Act 1983 is aimed at protecting the public against health hazards and fraud in the preparation, sale and use of food, and for matters incidental thereto or connected therewith. Based on the Food Act 1983 and Food

regulation the Food (Amendment) Act 2001 was enacted in force on 28 September 2001. However, the National

Consumer Complaints Centre (Annual Report for National Consumer Complaints Centre, 2006) suggests that the government should strictly implement the concept of food courts where waste disposal and water supply is available, as consumers generally have difficulty in lodging complaints regarding problems with food items.

iv. Direct Sale

Direct sale resulted in the second highest number of consumer complaints received by FOMCA and its affiliates (Annual Report for National Consumer Complaints Centre, 2006). Legally, a direct sale means a door-to-door or a mail order sale as defined by the Direct Selling Act 1993. Door-to-door sales are the sale of goods and services by a person with no fixed place of business that goes from place to place to sell products or solicits over the telephone. Mail order sale is the sale of goods or services by accepting an offer for a sale by mail. Direct sale is basically the activity of selling directly to the customers without going through normal marketing channels such as retailers and wholesalers. Some consumer issues faced by consumers that result from direct sale include coercion (high pressure sales techniques), nuisance (door knocking, telephone calls, and the endless stream of literature in the mailbox), inducement selling (offering prizes or lures to entice a buyer into a purchase), non-performance of the contract and delay in delivery of products purchased, lack of appropriate information and lack of notice given by sellers about cooling-off periods (Annual Report for National Consumer Complaints Centre, 2006). However, the Direct Sale Act 1993 does

tion for consumers. It merely provides regulations within
operate. Therefore, it is high time that the provisions

protecting consumers are incorporated in the Direct Sale Act 1993.

d. Promoting Sustainable Consumption

Sustainable consumption is defined as the use of goods and services that respond to basic needs and bring a better quality of life, which minimise the use of natural resources, toxic materials and emissions of waste and pollutants over the products' life cycles, so as not to jeopardise the needs of future generations (Fernandez, 2004). Therefore, promoting consumption patterns and habits is not only taking into consideration individual desires, but also the impact of the choice on society for both present and future generations. Hence, consumer organisations in Malaysia such as FOMCA, are harnessing consumer power to promote sustainable consumption through an environmental citizenship and public education programme. For example, FOMCA undertook a survey of Household and Sustainable Consumption in Malaysia in 1997; the findings of the survey have been widely used in consumer education activities and for advocacy work in the development of sustainable consumption and development policies (Fernandez, 2004).

e. The Development of School Consumer Clubs

There are over 400 consumer clubs set up in schools throughout Malaysia (Fernandez, 2004). The decision to establish school consumer clubs was spearheaded by the Selangor Consumer Association (SCA) during the 1980s. The main reason for the

clubs is to provide a platform for students to participate in

the SCA gets very good support from the students. The SCA

conducts skill-training programmes and educates young consumers on the dangers of junk food, monosodium glutamate and smoking. Other regular programmes are produced through public talks and briefings, exhibitions, workshops, conferences and seminars, and regular radio and television programmes on current consumer issues (Fernandez, 2004).

2.4.2 Types of Consumer Protection Laws in Malaysia

One area of development in the consumer movement is in relation to legislation. Consumer protection in Malaysia is provided for by a number of legislations. Balasubramanisam (1984) suggests that the legislation should deal with three major areas of consumers protection, which are generally classified as follows:

- .. Price and supply of goods and services;
- .. Quality and safety of goods and services; and
- .. Marketing practices and consumer information.

a) Price and supply of goods and services

The main intent of this category of legislation is to assist in the control of prices with the aim of maintaining a stable supply of essential commodities. These legislations are also meant to protect consumers from unscrupulous businessmen cashing in through profiteering (Balasubramanisam, 1984). The following are the legislations under this category:

- 2) The Control of Supplies Act, 1961
- 3) The National Padi and Rice Board Act, 1971
- 4) The Control of Rent Act, 1966, and
- 5) The Road Transport Ordinance, 1958

b) Quality and safety of goods and services

Legislation under this category of quality and safety of goods and services are primarily aimed at protecting innocent consumers from goods and services that may be hazardous or detrimental to body and health (Balasubramanisam, 1984). Major legislations that provide this type of protection include the following:

- 1) The Sale of Goods and Drugs Ordinance, 1952
- 2) The Standards and Industrial Research Institute of Malaysia (incorporated) Act, 1975
- 3) The Factories and Machinery Act, 1967
- 4) The Electricity Act, 1949
- 5) The Environmental Quality Act, 1974, and
- 6) The Pesticides Act, 1974

c) Marketing practices and consumer information

The principle behind this category of legislation is that consumers should have the right to be informed and not subjected to business malpractice. Refusal to disclose or disclosing false information that could affect the consumer's welfare should not be permitted. Furthermore, the business sector should be responsible for the products manufactured by them (popularly known as product liability). In Malaysia, there are

s category, including (Balasubramanisam, 1984):

- 1) The Trade Description Act, 1972
- 2) The Price Control Act, 1946
- 3) The Medicine (Advertisements and Sales) Act, 1956
- 4) The Hire Purchase Act, 1967
- 5) The Weights and Measures Act, 1972
- 6) The Direct Sales Act, 1993, and
- 7) The Consumer Protection Act, 1999

The abovementioned legislations are among the major ones providing consumer protection. However, there are other legislations that have been introduced to protect the consumers. The list of other legislations of interest to consumers is shown in Table 2.2.

2.4.3 Consumer Protection Organizations in Malaysia

In Malaysia, consumer protection movements have witnessed increased momentum. In the government sector, it is the Ministry of Domestic Trade and Consumer Affairs that is mostly concerned with consumer protection and the interest and promotion of the welfare of the consumer. In the private sector, the consumer organisations (i.e. Federation of Malaysian Consumers Associations, Education and Research Association for Consumers) are in the forefront, providing an avenue for consumer grievances and also working to assist the government in the protection of consumers (Bishan Singh, 2002a).

The Ministry of Domestic Trade and Consumer Affairs (MDTCA) was established on

legal advisory division, the Ministry's objectives are to of ethical domestic trade and the protection of consumers and intellectual property (Bishan Singh, 2002a). The ministry's functions include managing matters related to consumer protection and intellectual property; licensing for manufacturing and sales, direct selling, and selling of petroleum and petrochemical products; implementing weights and measures rules; and registering of trusts companies and businesses.

In the private sector, the Federation of Malaysian Consumers Associations (FOMCA) and the Education and Research Association for Consumers Malaysia (ERA Consumers Malaysia) are the two important representatives. The Federation of Malaysian Consumers Associations (FOMCA) was established by numerous consumer associations from different states. It is a national non-governmental organisation that is voluntary, non-profit, non-political and civic-oriented (Bishan Singh, 2002a). It can be seen as the umbrella body of registered consumer associations in Malaysia. It acts in a cohesive, systematic and integrated manner to better serve the Malaysian consumers, and extend the associations' influence to the national level and make effective representation of consumer interests. It works towards strengthening consumer protection through lobbying, networking, representation, campaigning and education (Fernandez, 2004). The current membership of FOMCA constitutes 11 affiliates (see Table 2.3).

Table 2.2: Consumer Protection Legislations in Malaysia

Legislation	Information	Enforcement Agencies
1. Price Control Act, 1946	To provide powers for the government to control price of goods.	Ministry of Domestic Trade and Consumer Affairs.
2. Control of Supplies Act, 1961	To control supply of goods to ensure there is no shortage.	Ministry of Domestic Trade and Consumer Affairs.
3. Lembaga Padi Dan Beras Negara Act, 1971	To control the supply of padi and rice and to ensure stabilization of price.	Ministry of Agriculture
4. Control of Rent Act, 1966	To provide powers to fix the rate of the rent in respect of controlled premises.	Ministry of Housing and Local Government
5. Road Transport Act, 1987	To control services of public vehicles.	Ministry of Transport
6. Standard and Industrial Research Institute of Malaysia (Incorporation) Act, 1975	To provide standards and research in respect of products marketed in the country	Ministry of Science, Technology and Innovation
7. Food Act, 1983	To control sale of food.	Ministry of Health
8. Prevention and Control of Infectious Diseases Act, 1988	To control and prevent infectious diseases.	Ministry of Health
9. Drugs (Sales and Advertisement) Ordinance, 1956	To control and prohibit use of advertisement in respect of drugs.	Ministry of Health
10. Factories and Machinery Act, 1967	To control the registration and inspection of factories and machinery for safety purposes.	Ministry of Human Resources
11. Pesticides Act, 1974	To control importation, production, sale and storage of pesticides.	Ministry of Agriculture

Table 2.2: Consumer Protection Legislations in Malaysia (Continue)

Legislation	Information	Enforcement Agencies
12. Animals Ordinance, 1953	To control importation, and exportation of animals.	Ministry of Agriculture
13. Sale of Drugs Act, 1952	To control importation, exportation, production, sale and use of dangerous drugs.	Ministry of Health
14. Electricity Act, 1949	The Act allows for fixing of rates/charges by Tenaga Nasional and in respect of licensing procedures to be followed.	Ministry of Energy, Telecommunication and Post
15. Poisons Act, 1952	To control importation, exportation, ownership, manufacturing, storage, transportation, sale and use of poisons.	Ministry of Health
16. Environmental Quality Act, 1974	To coordinate all activities in respect of waste disposal to protect the environmental quality.	Ministry of Science, Technology and Innovation
17. Trade Descriptions Act, 1972	To prohibit misdescription of goods, false statement in respect of services, accommodation and facilities.	Ministry of Domestic Trade and Consumer Affairs.
18. Registration of Pharmacists Ordinance, 1951	To oversee the registration of pharmacists.	Ministry of Health
19. Lembaga Kemajuan Ikan Malaysia Act, 1971	To promote the fisheries industry and to control malpractices in its trading and marketing activities.	Ministry of Agriculture
20. Hire Purchase Act, 1967	To control hire-purchase transactions in terms of forms and contents of the agreement	Ministry of Domestic Trade and Consumer Affairs.
21. Insurance Act, 1963	To control the activities of insurance companies by way of registration.	Ministry of Finance
22. Moneylenders Ordinance, 1951	To control the activities of money lending and licensing procedures.	Ministry of Finance
23. Pawnbrokers Act, 1972	To control and licence the activities of pawnbrokers.	Ministry of Housing and Local Government

Table 2.2: Consumer Protection Legislations in Malaysia (Continue)

Legislation	Information	Enforcement Agencies
24. Sale of Goods Act, 1957	To protect the interest of parties involved in the sale of goods including consumers in terms of suitability and product guarantee.	(Civil Sanctions)
25. Contract Act, 1950	Terms of warranty of the goods ó to determine the obligations of parties in any contract	(Civil Sanctions)
26. Weights and Measures Act, 1972	To establish metric units of weighing and measuring for trade	Ministry of Domestic Trade and Consumer Affairs.
27. Housing Developers (Control and Licensing) Act, 1966	To control and licence housing activities to avoid illegal practices.	Ministry of Housing and Local Government
28. Finance (Banking and Financial Institutions) Act, 1966	To control and licence banking and financial institutions.	Bank Negara Malaysia
29. Direct Sales Act, 1993	To control and licence direct selling companies.	Ministry of Domestic Trade and Consumer Affairs.
30. Consumer Protection Act, 1999	To provide an alternative channel or avenue, apart from the court, to a consumer to claim for any loss suffered in respect of any goods or services purchased or acquired in an easy, cheap and fast manner.	Ministry of Domestic Trade and Consumer Affairs.
31. Electronic Commerce Act, 2006	To reaffirm the validity and legal effect of transactions by electronic means; to remove legal obstacles to e-commerce; to provide certainty in electronic communication.	Ministry of Domestic Trade and Consumer Affairs.

Source: Based on the Personal Communication with the Tribunal for Consumer Claims

Consumer Associations Affiliated to FOMCA

Association Under FOMCA	Establish Year
Consumer Association of Sarawak (CAS)	1965
Consumer Association of Negeri Sembilan (CANS)	1971
Consumer Association of Kedah (CAKE)	1971
Perak Consumers Association (PCA)	1972
Consumer Associations of Malacca (CAM)	1972
Johore Consumers Association (JCA)	1973
Kelantan Consumers Association (KCA)	1973
Pahang Consumers Association (PAC)	1973
Terengganu Consumers Associations (TCA)	1976
Consumer Association of Sabah and Labuan (CASL)	1980

Source: Adopted from FOMCA (2002) and FOMCA (2009)

FOMCA also works with Ministries, Councils and Commissions, Bureaus and Boards for consumer protection and consumer interests (see Table 2.4). It has the following roles and objectives (Fernandez, 2004):

- Serve as the coordinating, consultative and advisory agency of its registered member consumer associations in Malaysia;
- Address and advocate for consumer interests to promote consumer welfare;
- Resolve consumer issues through policy development and advocacy;
- Provide representation for member associations to deal with the Government;
- Disseminate consumer information and undertake consumer education.

The Education and Research Association for Consumers Malaysia (ERA Consumers Malaysia) was founded in 1985. It is a non-governmental organization with the vision of creating self-reliant, empowered community-based groups that can assert and protect themselves as consumers. It seeks to achieve this vision through its research and advocacy work, and at the same time through networking with a wide range of organizations at all levels (Bishan Singh, 2002a). Among its recent achievements is the

project for poor rural farmers, consumers and indigenous

at for the parliamentary debate on the Consumer Protection

Act, 1999 and establishing a corporation watchdog to monitor the impact of corporate globalisation on vulnerable communities in Malaysia (Bishan Singh, 2002a). ERA Consumer Malaysia is currently running three main programmes of consumer education and protection work, the human rights education and advocacy work, and transforming, changing and institutionalizing the development of life-centred and sustainability in Malaysia (Bishan Singh, 2002b).

Table 2.4: Ministries, Councils and Commissions, Bureaus and Boards for Consumer Protection Working with FOMCA

	Name of Organisations
Ministries:	Ministry of Health Ministry of Science, Technology and Innovations Ministry of Education Ministry of Domestic Trade and Consumer Affairs Ministry of Woman, Family and Community Development Ministry of Housing and Local Government Ministry of Finance
Councils and Commissions:	The National Advisory Council for Consumer Protection (NACCP) National Economic Action Council (NEAC) National Economic Consultative Council (NECC) Council of Public and Private Sector Co-Ordination in Agriculture Council of Malaysian Standards and Accreditation Malaysian Design Council Human Rights Commission
Bureaus:	Banking Mediation Bureau (BMB) Insurance Mediation Bureau (IMB)
Boards:	The Standards and Safety Boards The Advertising Regulating Boards

Source: FOMCA (2002), (p. 7-8)

According to the consumer protection organizations of the government and private sector in Malaysia, the Tribunal for Consumer Claims and the National Consumer

ected as third party organizations for redressing consumer
will provide a true picture on these two organisations.

2.4.4 Tribunal for Consumer Claims (TCC)

The right to redress is one of the basic rights of a consumer and is recognized universally. In order to protect consumers' rights against unscrupulous and unethical traders/suppliers, the government enacted landmark law by way of the Consumer Protection Act 1999, to promote healthy and ethical business practices among the business community. Thus, the Tribunal for Consumer Claims (TCC) was established on 15 November 1999. It can be seen as an alternative channel or avenue to the Court, for a consumer to claim for any loss suffered or compensated for any matter that concerns an individual's interest as a consumer (Annual Report of Tribunal for Consumer Claims, 1999). The Tribunal for Consumer Claims (TCC) is known as Tribunal Tuntutan Pengguna Malaysia (TTPM) in Malay. The TCC is an independent body established under the Consumer Protection Act 1999, under the Ministry of Domestic Trade and Consumer Affairs (Annual Report of Tribunal for Consumer Claims, 1999).

However, compared to the TCC, a civil court often involves complicated procedures, protracted trials, high legal fees and other costs and inordinate delays. Consumers are reluctant to pursue their claims against irresponsible suppliers or manufacturers, especially when the amount claimed is small, due to consumers' perception that using a civil court for making a complaint is time consuming (Annual Report of Tribunal for

Perhaps these are some of the reasons why Day and Landon
% consumers report their complaint to the Better Business
Bureau, government official, TV station or newspaper and 3.4% consumers contact a
lawyer, filed a suit, and go to the small claims court in America. Thus, the primary
objective of establishing the TCC in Malaysia is to provide an alternative forum for
consumers to file claims in an easy, inexpensive and speedy manner and at minimal cost.
The total amount claimed must not exceed RM25,000 (Annual Report of Tribunal of
Consumer Claims, 1999).

In order to enable the TCC to provide efficient and speedy services to the consumers,
the Head Office of the Tribunal was initially located in Kuala Lumpur. In 2005, the
Head Office was relocated to PUTRA JAYA under the Ministry of Domestic Trade and
Consumer Affairs while the hearing room is situated on the same floor. The tribunals
have also set up 15 branch offices in the states and in the Federal Territory of Labuan.
For the Enforcement Division of the Ministry, two assistant enforcement officers from
each State were selected and appointed as Assistant Secretary to the Tribunal to perform
and carry out the administrative duties and functions of the Tribunal (Annual Report of
Tribunal for Consumer Claims, 1999). This section will present the procedures,
enforcement of award in the TCC and yearly statistical data from 2000 to 31 August
2009.

a. Complaint Procedures in the Tribunal of Consumer Claims

The complaint procedure in the TCC relates to the filing, registration and hearing of

When consumers take the decision to make the complaint in the Tribunal, if the amount of claim is less than RM25,000, they must file four copies of **Form 1** (Statement of Claim) (see **Appendix A**) with RM5.00 in the nearest registry of the Tribunal in the State. This includes the consumer's (claimant's) name, I/C Number and address, respondent's (the presenter of company or manufacture) name, I/C Number and address, amount of consumer's claim and the reasons for particulars of claim (types of claim and issues about the complaint). Every Form 1 filed with the Tribunal's registry will be dated, signed and sealed with the seal of the Tribunal by the secretary, and two sealed copies will be returned to the consumer for service and the consumer should send one copy to the respondent (company or manufacturer).

The respondent upon receiving a sealed copy of Form 1 from the consumer shall, if he or she disputes the claim, fill out **Form 2** (Statement of Defence and Counter-Claim) (see **Appendix A**) for their defence, with RM5.00 from the same tribunal's office where Form 1 was filed within 14 days of the service of the statement of claim in Form 1. After Form 2 is registered, dated and signed by the Secretary of the tribunal with the seal of the Tribunal, two copies of Form 2 with the seal of the Tribunal will be returned to the respondent for service, and the respondent should serve one copy of Form 2 to the consumer. The consumer has to fill in **Form 3** (Defence and Counter-Claim) (see **Appendix A**) if the company wants to defend the counter-claim at the same Tribunal's office within 14 days after the receipt of Form 2 (Annual Report of Tribunal for Consumer Claims, 1999).

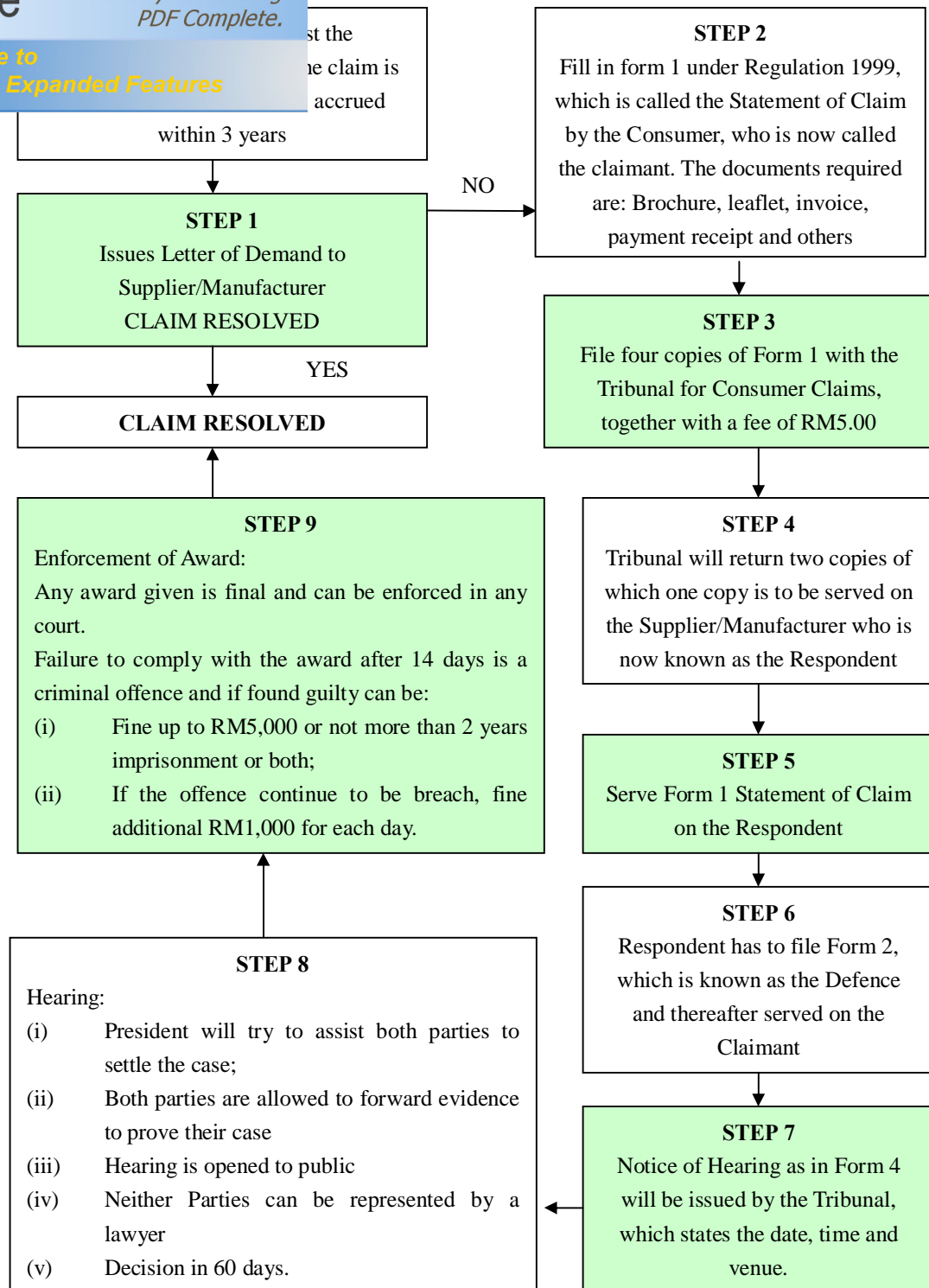


Figure 2.2: Flow Chart of the Tribunal for Consumer Claims

Source: <http://mcaconsumer.blogspot.com/2009/05/consumer-claim-chart.html>

Once a claim is lodged with the Tribunal, the Secretary or Assistant Secretary will issue

place and time of the hearing to both the Claimant and the Respondent (Form 4 should be filled in by the TCC). At the hearing, the

claimant (complainant) and respondent (company or manufacture) can represent themselves without an advocate/solicitor. All proceedings in respect of a claim are open to the public. The award from the Tribunal will be made within sixty days from the first day of registered. Referring to the mode of settlement for claimantø (consumer) complaining in the TCC, three categories can be made: withdraw the case by the consumer, negotiation between the consumer and the respondent before the hearing in the tribunal, dispute in the tribunal at the hearing time with the òpresidentö of the Tribunal. For the hearing case, the òpresidentö of the Tribunal, as a third party, tries to assist the two parties (consumer and respondent) to effect a settlement of the claim by consent (Annual Report of Tribunal for Consumer Claims, 1999).

b. Enforcement of Award in the Tribunal for Consumer Claims

Every agreed settlement recorded by the Tribunal and every award made by the Tribunal should be final and binding on all parties to the proceedings (Annual Report of Tribunal for Consumer Claims, 1999). At the same time, every award made by the Tribunal shall be deemed to be an order of a Magistrateø Court and be enforced accordingly by any party (consumer or respondent) to the proceedings in a Magistrateø Court having jurisdiction in the place where the award was made. Any party (consumer or respondent) who fails to comply with an award make by the Tribunal after 14 days shall commit an offence; he or she shall be liable to a fine not exceeding five thousands Ringgit or to imprisonment for a term not exceeding two years or both. In the case of a continuing

be liable to a fine not exceeding one thousand Ringgit for

during which the offence continues after conviction and will

also have to add the penalties mentioned above (Annual Report of Tribunal for Consumer Claims, 1999).

c. Yearly Statistical Data for TCC

Two categories of yearly statistical data are collected from the Tribunals for Consumer Claims. One is total filed claims and total amount of filed claims by the claimant (consumer) from Year 2000 until 2009. The other one is total claims filed by states and mode of settlement in each year from 2000 to 2009. This section will present this statistical data in detail.

1. Total Filed Claims and Total Amount of Filed Claims

Based on the yearly statistic data, Table 2.5 presents the number of filed cases, the total amount of filed claims by consumers and the percentage of differences from 2000 to 31 August 2009. Due to the Tribunal was established on 15 November 1999, the total filed claims in the initial year of 2000 were only 291, it may be caused by insufficient propaganda on the consumer protection, consumer rights and the procedure of the Tribunal. Regarding to the **filed claims**, the total number of registered files increased from 1155 in 2001 to 8101 in 2007. However, the differences per cent in total filed claims decreased from 129.4 % to 6.5% in the year 2002 to 2007. This result indicated that the numbers of consumer who used the Tribunal for relieving their dissatisfaction were increased, but increasing ratios were reduced yearly. Compare with the year 2007,

reduced to 7440 in 2008. Thus, the ratio decreased 8.2% in

in terms of the **number of filed claims**, the total amount of the registered claims increased from the year 2001 (RM3,541,086.11) to 2006 (RM39,246,656.85). In the year of 2007, the amount of filed claims reduced to RM38,632,270.10, but the total registered filed cases increased 6.5% compare with the year in 2006. This happened because complaining on small amount of registered cases may rise in this year. In the year of 2008, the amount of complaining cases decreased to 9.4% than in 2007 due to the total filed cases reduced 8.2% compare to 2007. The filed cases in 2009 were not fully data. Thus, the data could not compare with the data in other years. According to the increased numbers in registering the complaining in the TCC, more and more people are preferred to fulfil their rights as consumers.

Table 2.5: The Difference in the Total Filed Claims and Total Amount of Filed Claims in the TCC

Year	Total Filed	Total Amount of Claim (RM)	% of Difference in (Total Filed)	% of Difference in (Claim Amount)
2000	291	584,639.07	-	-
2001	1155	3,541,086.11	-	-
2002	2649	7,902,098.08	129.4%	123.2%
2003	4150	14,317,672.37	56.7%	81.2%
2004	5079	20,507,302.81	22.4%	43.2%
2005	6106	26,419,630.12	20.2%	28.8%
2006	7610	39,246,656.85	24.6%	48.6%
2007	8101	38,632,270.10	6.5%	-1.6%
2008	7440	34,984,533.00	-8.2%	-9.4%
31/08/2009	4439	18,707,050.00	-	-

Source: Based on the Personal Communication with the Tribunal for Consumer Claims

2. Total Filed Claims and Total Amount of Filed Claims by States

In terms of the total **filed claims** by states (see Table 2.6), the **three highest** registered

tribunal by the states belongs to Kuala Lumpur, Selangor and Pulau Pinang and 2008. The state Tribunal of Kuala Lumpur, Selangor and Pulau Pinang were the three highest filed complaining in 2003 to 2007. It can be concluded that these results can be accepted because Kuala Lumpur, Selangor, Johor and Penang are metropolitan area. Kuala Lumpur is the capital and largest city where most organisations are located and the surrounding vicinity functions as the trade, administrative and cultural centre for the country. Selangor as one of another modern and advanced region economically and socially in Malaysia compares with the Kuala Lumpur. It is the most industrialized and urbanized of Malaysian state, commerce, industry and services are a major contributor to the economy of Selangor. Pulau Pinang is second largest metropolitan area in Malaysia after Kuala Lumpur although it is the second smallest state. Manufacturing is the most important component in Pulau Pinang. John is one of the biggest industrial logistical and commercial centres of Malaysia. It is connected to Singapore by road and rail via a modern causeway. It is as one of the three main urban centres in the Malaysia after Kuala Lumpur and Penang. Thus, the statistic data of the number of filed complaining cases indicate that the consumers in these four states have higher awareness on consumer rights and consumer protection.

On the other hand, the **lowest three** registered complaining cases in Tribunal by the states were Kelantan, Sarawak and Perlis in 2000 and 2002. However, the filed complaining claims in the Tribunal for Consumer Claims in Perlis, Sarawak and Labuan were the three lowest states in 2001. In 2003, the Tribunal in Labuan, Sarawak and Terengganu were another three lowest states Tribunal. The states Tribunal in Labuan,

the three lowest complaining cases filed in 2004, 2005, Tribunal of Labuan, Perlis and Kelantan were the three lowest registered claims in 2006. According to the statistical data in the Tribunal for Consumer Claims, the results can be summarised that the consumers in the states Tribunal of Labuan, Sarawak, Terengganu, Kelantan and Perlis are short of knowledge of consumer rights, consumer protection and function of the Tribunal. Therefore, the government of these each states should help consumers in those states to create better understanding on consumer rights and the function of Tribunal.

Referring to the total **amount of filed claims** by states from 2000 to 08/31/2009, the highest amount of claims registered in the Tribunal by the states is Kuala Lumpur (2000, 2002 to 2008) and Selangor (2001) (see Table 2.6). This result is reasonable due to Kuala Lumpur and the state of Selangor are the most modern and advanced region economically and socially in Malaysia. These areas have attracted people from all over the country because of job and educational opportunities, infrastructure and other facilities. In addition, Kuala Lumpur is the largest city where most organisations are located and the commercial hub of the country.

Filed Claims and Total Amount of Filed Claims by States, 2000 – 2009

Unlimited Pages and Expanded Features			Total Claim and Total Claimant by Category, Year 2001 - 2004							
			Year 2001		Year 2002		Year 2003		Year 2004	
State	Total File	Total Claim (RM)	Total File	Total Claim (RM)	Total File	Total Claim (RM)	Total File	Total Claim (RM)	Total File	Total Claim (RM)
Perlis	7	10,593.20	3	14,120.00	19	27,863.80	66	135,318.03	41	131,589.99
Kedah	9	28,982.40	63	260,028.14	108	344,723.45	216	666,986.11	219	1,154,975.99
Pulau Pinang	22	16,296.72	145	592,772.86	205	455,557.10	541	1,808,674.23	599	2,793,239.40
Perak	5	10,114.00	83	155,504.60	83	283,968.08	258	928,520.40	349	2,802,212.72
Selangor	26	39,952.98	154	597,576.41	240	743,756.03	347	1,274,202.56	660	1,218,063.29
Kuala Lumpur	70	142,274.07	207	508,466.03	897	2,911,137.02	1525	6,091,599.37	1935	6,084,637.00
Putra Jaya	0	0	0	0	0	0	0	0	0	0
Negeri Sembilan	7	20,097.10	24	109,796.30	83	279,469.75	190	585,684.81	206	1,387,756.94
Melaka	17	37,712.00	75	255,337.87	165	491,895.38	184	590,566.36	167	1,283,841.42
Johor	74	205,899.94	192	509,306.41	346	848,981.70	328	875,168.71	313	417,261.38
Pahang	15	15,640.90	109	232,004.25	84	284,999.03	144	391,232.40	168	1,077,648.09
Terengganu	3	3,910.00	9	29,266.00	117	783,218.22	58	228,380.40	56	242,196.13
Kelantan	1	1,500.00	14	75,044.22	18	31,119.00	65	115,262.58	74	263,696.10
Sabah	22	22,244.60	68	177,519.02	127	331,952.72	173	481,181.75	177	963,986.74
Labuan	8	11,342.24	5	13,266.00	122	31,474.00	16	98,146.61	11	139,178.80
Sarawak	5	18,078.92	4	11,078.00	35	51,982.80	39	46,748.05	101	547,018.82
TOTAL	291	584,639.07	1155	3,541,086.11	2649	7,902,098.08	4150	14,317,672.37	5076	20,507,302.81

ns Filed and Total Amount of Claims Filed by States, 2000 - 2009 (Continue)

State	Year 2005		Year 2006		Year 2007		Year 2008		Year 2009*	
	Total File	Total Claim (RM)	Total File	Total Claim (RM)	Total File	Total Claim (RM)	Total File	Total Claim (RM)	Total File	Total Claim (RM)
Perlis	48	154,845.17	62	282,380.36	48	248,349.89	45	153,170.00	28	59,615.00
Kedah	203	1,109,733.53	215	950,274.99	214	1,168,341.46	136	668,142.00	82	375,890.00
Pulau Pinang	797	3,571,063.09	603	2,898,439.50	540	2,605,820.61	525	1,466,840.00	295	1,329,335.00
Perak	293	1,188,987.67	327	1,659,025.07	433	2,229,641.35	421	1,970,801.00	226	765,061.00
Selangor	597	257,327.47	1024	5,246,721.44	1351	6,199,444.67	1020	5,031,917.00	534	2,417,135.00
Kuala Lumpur	2046	9,849,036.09	2514	12,974,528.62	2669	13,917,231.00	2316	10,147,826.00	1688	6,667,091.00
Putra Jaya	257	1,215,193.55	422	2,072,636.44	527	2,901,515.00	343	1,921,657.00	171	713,915.00
Negeri Sembilan	270	1,096,655.87	377	2,524,870.74	255	1,285,782.52	212	795,958.00	151	646,905.00
Melaka	348	1,942,816.50	352	1,920,343.14	348	1,969,691.83	359	1,298,727.00	149	650,044.00
Johor	401	1,865,365.61	494	1,587,906.38	499	2,509,805.60	792	5,293,028.00	336	1,341,368.00
Pahang	268	1,197,464.72	338	2,872,422.19	327	1,526,191.13	243	1,212,383.00	139	752,294.00
Terengganu	87	392,462.82	191	1,141,889.40	102	462,733.00	88	335,152.00	54	191,986.00
Kelantan	88	326,581.74	91	384,311.26	104	334,924.28	167	717,718.00	128	694,765.00
Sabah	246	1,210,538.58	325	1,557,861.43	372	134,496.00	517	2,442,011.00	286	1,365,260.00
Labuan	7	27,722.61	24	116,278.00	19	8,387.00	49	278,290.00	19	58,880.00
Sarawak	150	1,013,835.10	251	1,056,767.89	293	1,129,914.76	207	1,250,913.00	153	677,506.00
TOTAL	6106	26,419,630.12	7610	39,246,656.85	8101	38,632,270.10	7440	34,984,533.00	4439	18,707,050.00

*Note: For 2009, data collected was from 1 January 2009 until 31 August 2009

Source: Based on the Personal Communication with the Tribunal for Consumer Claim

Mode of Settlement in the Tribunal by States

Generally, consumers feel dissatisfied and seek redress on the goods (product) or services in the TCC. Referring to the award in the Tribunal, it was mentioned earlier that there are three modes of settlement in the Tribunal: withdraw the case, negotiation and hearing the case in the TCC. In terms of the mode of settlement for registered complaining cases by states, the details can be found at **Appendix B** (Table B-1 to Table B-10). Table 2.7 shows that the total filed claims and mode of settlement in the Tribunal from 2000 to August 31 2009. Referring to the **type of claims**, around 76% of the filed complaining cases in 2000 and 71% complaining cases in 2001 were dissatisfied on the products; another 24% and 29% registered cases were complained on the services respectively. However, starting from 2002 to 2009, the filed complaining cases on the products reduced to above 50%, and discontented cases on the services increased around 50%. Especially from 2006, the claims cases concerning services increased faster than those concerning goods. Day and Bodur (1978) suggest that service is an intangible product as it is directly related to the quality of the supplier's performance. The data from the TCC indicates that more and more consumers were dissatisfied with supplier's performance. There is no study to compare the differences about the types of complaining in the Tribunal or Small Claims Court.

Regarding about the **mode of settlement** in the TCC from 2000 to 2004, around 40% registered cases were withdraw by consumers, negotiation cases between consumers and business were settled from 11% to 20%, and around 40% of hearing cases in the TCC were collected together by award and claim dismissed. Award can be announced

After dispute the cases among the consumer, business and the TCC as third party. Claim dismissed can be explained as consumer and business were dismissed together in the hearing time. From the year of 2005 to 2008, filed complaining cases were withdrawn by consumers were around 45%, negotiated dissatisfaction about products or services between consumer and business were about 12%, award announced from the TCC were 40% in the hearing time, and another 4% to 6% registered cases as claim dismissed due to consumers and business absent in the hearing time. Concerning the mode of settlement from the TCC, the statistical data for each year on cases withdrawn (around 40%) by consumers and negotiation cases (around 10%) by consumers and respondents shows that seeking redress in the TCC is a good avenue for reducing the dissatisfaction for consumers, as the process of the TCC can enforce respondents to face or discuss the way of solving the consumer's dissatisfaction in their own way. These results support the suggestion from Zussman (1987) that third party complaint agencies or legal action can play an important role in conflicts between consumers and business. In Malaysia, the TCC as a third party legal complaint agency plays an important role in disputes between consumers and companies or manufactures. No study has been down to make comparative research.

Table 1: Claims and Mode of Settlement, 2000-08/31/2009

Expanded Features			f Claims	Mode Of Settlement				Claims	Balance
	Registered	Goods	Services	Withdraw	Negotiation	Hearing		Settled	
						Award	Claim Dismissed		
2000: Total	291	221	70	107	55	129		291	0
Percentage	100%	75.95%	24.05%	36.77%	18.90%	44.33%		100%	0.00%
2001:Total	1155	821	334	340	225	590		1155	0
Percentage	100%	71.08%	28.92%	29.44%	19.48%	51.08%		100%	0.00%
2002:Total	2649	1489	1160	1088	495	1066		2649	0
Percentage	100%	56.21%	43.79%	41.07%	18.69%	40.24%		100%	0.00%
2003:Total	4150	2284	1866	1685	537	1928		4150	0
Percentage	100%	55.04%	44.96%	40.60%	12.94%	46.46%		100%	0.00%
2004:Total	5076	2781	2295	2030	556	2490		5076	0
Percentage	100%	54.79%	45.21%	39.99%	10.95%	49.05%		100%	0.00%
2005: Total	6106	3762	2344	2667	579	2443	417	6106	0
Percentage	100%	61.61%	38.39%	43.68%	9.48%	40.01%	6.83%	100.00%	0.00%
2006: Total	7610	4073	3537	3365	943	2882	420	7610	0
Percentage	100%	53.52%	46.48%	44.22%	12.39%	37.87%	5.52%	100.00%	0.00%
2007: Total	8101	4317	3784	3688	839	3180	394	8101	0
Percentage	100%	53.29%	46.71%	45.53%	10.36%	39.25%	4.86%	100.00%	0.00%
2008: Total	7440	3938	3502	3389	942	2770	339	7440	0
Percentage	100%	52.93%	47.07%	45.55%	12.66%	37.23%	4.56%	100.00%	0.00%
08/31/2009									
Total	4439	2243	2196	1634	632	1181	126	3573	866
Percentage	100%	50.53%	49.47%	36.81%	14.24%	26.61%	2.84%	80.49%	19.51%

Source: Based on the Personal Communication with the Tribunal for Consumer Claims

2.4.5 National Consumer Complaints Centre (NCCC)

The National Consumer Complaints Centre (NCCC) was officially launched on 13 July 2004 (Annual Report of National Consumer Complaints Centre, 2006). This centre was established by the Education and Research Association for Consumer Malaysia (ERA Consumer Malaysia) and the Selangor and Federal Territory Consumers Association (under FOMCA) in collaboration with the Ministry of Domestic Trade and Consumer Affairs (MDTCA) to promote consumers' rights through the redress mechanism. The NCCC aims to be a complaint centre to help consumers and resolve complaints

focuses on handling consumer complaints as an intermediate body to settle disputes between consumers and manufacturers or service providers. The consumers' complaints show that consumers frequently face difficulties in solving their grievances due to the lack of special institutions to address and channel the complaints to the relevant authorities, and because of the inefficient complaints handling system provided by the manufacturer or seller of goods and services. Thus, the NCCC attempts to provide consumers with an objective and timely resolution of disputes, claims and complaints with regard to their purchase of goods and services (Annual Report of National Consumer Complaints Centre, 2006).

Therefore, to strengthen the business problem-solving, the NCCC works closely with relevant authorities such as the Enforcement Division, Ministry of Domestic Trade and Consumer Affairs, Tribunal for Consumer Claims Malaysia, Tribunal for House buyer Claims Malaysia, the Bar Council, the Financial Mediation Bureau (Annual Report for National Consumer Complaints Centre, 2006). Thus, the NCCC attempts to promote as alternative dispute resolution mechanisms, which are available to the consumers and that are speedy, cheap and fair, compared with the costly and time-consuming litigation process. This section will present the complaints process and the statistical data obtained for 2006 to 2008 from the NCCC.

a. Complaints Process in the NCCC

If consumers fail to address or solve problems on their own, the NCCC will provide assistance in seeking a solution. Consumer complaints are referred to the NCCC by

, e-mail, walk-ins, and through the NCCC website. For complaints lodged with the NCCC consumers are encouraged to copy all communications (such as forms of complaint, correspondence and feedback) with the defaulting trader, company or organisation where the consumer fails to address or solve the problem on his own. Based on this information, the NCCC will provide assistance in seeking a solution for consumers (Annual Report of National Consumer Complaints Centre, 2008).

Each received complaint by the NCCC is logged into a database system. Important information about the complainant such as age, gender and race is collected. Complaints are then classified into two main categories, namely, complaints concerning goods and complaints concerning services. The specific nature of the complaint and the organization involved is noted down to facilitate investigation. Then the NCCC counsels the complainant by making sure that he or she is fully aware of the nature of complaint, the implications arising from the complaint, the various alternative dispute resolution methods available, and the legal action that he or she can take, should he or she be so inclined. The existence of the in-house legal team in NCCC greatly facilitates counselling the complainant on legal remedies (Annual Report of National Consumer Complaints Centre, 2008).

The NCCC begins its work by investigating the complaint, and issues an official letter within 48 hours of the complaint being lodged requesting the organisation involved to resolve the dispute. If no response is received within a period of seven working days

sation, reminders are sent out three times. Each reminder is for a further period of seven days requesting a reply. If the company or organisation still refuses to respond, the NCCC will use a second step by forwarding the complaint to the relevant regulatory authority (i.e. the financial mediation bureau, and Tribunal for Consumer Claims). If this method also fails, the NCCC advises and assists the complainant in filing a claim with the relevant alternative dispute resolution mechanisms, such as the Ministry of Domestic Trade and Consumer Affairs, Tribunal for Consumer Claims, Tribunal for House Buyers Claim, Banking Mediation Bureau, Insurance Mediation Bureau, Public Complaints Bureau, Government Departments, Non-Governmental Organizations and others. If the complaint is handled successfully in solving the problem in the NCCC, complainants are encouraged to inform the NCCC of the solution for recording against the complaint lodged (Annual Report of National Consumer Complaints Centre, 2008). The complaints handling process in the NCCC is shown in Figure 2.3.

b. Statistical Data from 2006 to 2008 in NCCC

Although the NCCC was established in the middle of 2004, the first annual report was only published in 2006; the annual report for 2009 was still not published as of December 2009. Thus, this research presents the statistical data from the NCCC for 2006 to 2008 only. The data for channels used for lodging complaints, ethnicity of complainant, consumers handled by the NCCC and channelled to other organizations in the NCCC will be presented in this section.

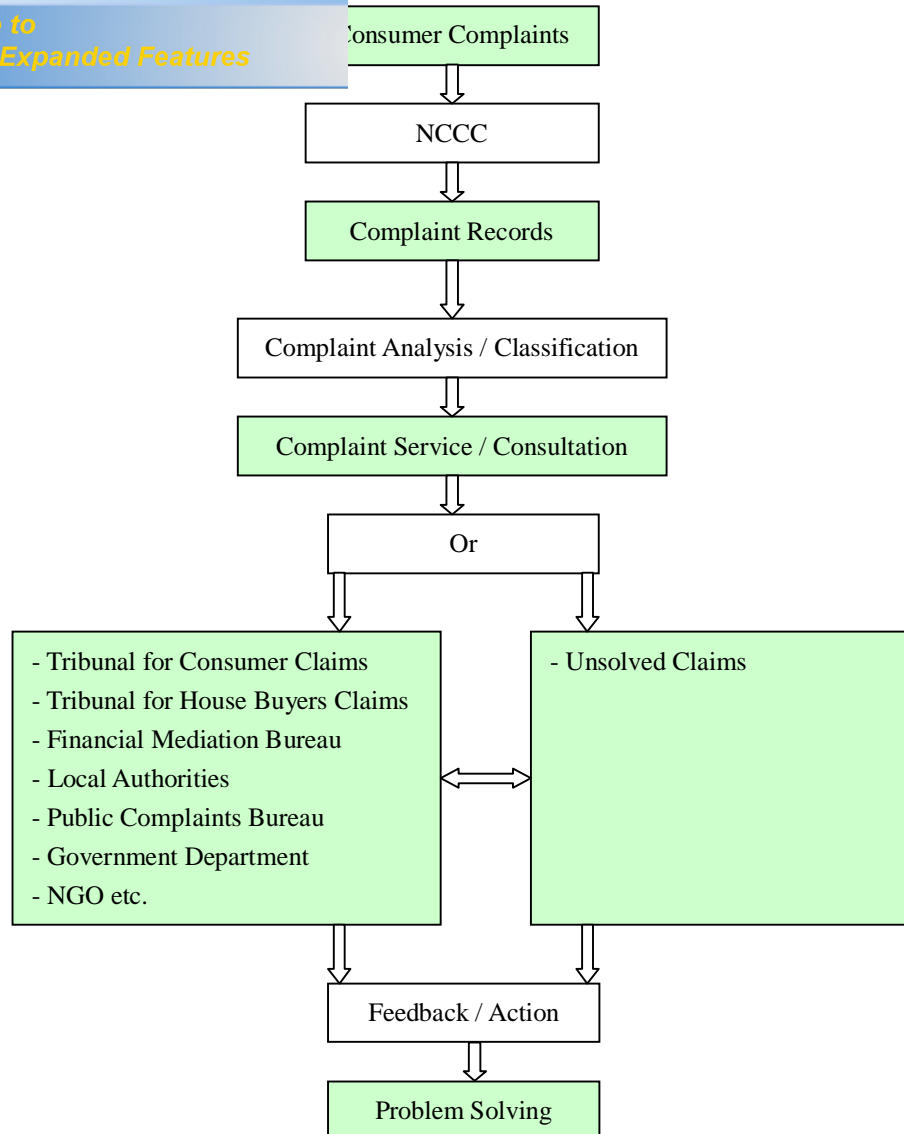


Figure 2.3: Flow Chart of Complaints Handling in the NCCC

Source: www.nccc.org.my

1. Complaint Channels Used in the NCCC

As mentioned earlier in this section, consumers' complaints are referred to the NCCC by walk-in, telephone, letters and facsimile, email and the website of the NCCC.

Table 2.8 shows that the number of complaints lodged with the NCCC increased from 2006 (18,345 cases) to 2008 (28,080 cases). This result indicates that consumers'

increased year by year in the NCCC, it is consisted with the results from the TCC.

Table 2.8: Channels Used for Lodging Complaints in the NCCC

	2006		2007		2008	
	No. of Complaints	%	No. of Complaints	%	No. of Complaints	%
Phone Call	7,323	39.92	8,783	35.31	10,951	39.00
Email	2,662	14.51	4,511	18.14	5,335	19.00
Website	1,764	9.62	3,648	14.67	4,212	15.00
Walk-in	2,620	14.28	3,501	14.08	3,931	14.00
Letters	3,976*	21.67	3,901	15.68	3,370	12.00
Fax	0	0.00%	529	2.13	281	1.00
Total	18,345	100	24,873	100	28,080	100

Source: Annual Report of National Consumer Complaints Centre, 2006, 2007, 2008

*: consumers' complaints by letters in 2006 include letter and fax.

In the overall, the phone call (about 40%) was the highest used channels for lodging complaint in the NCCC among the three years. Filed complaining cases by walk-in was the second most used channel in 2006. However, using Email to registered complaining in the NCCC was the second channel in 2007 and 2008. Letters registered about consumer dissatisfied products or services in the NCCC as the third used channel in 2006 and 2008. But the third used channel to file the complaining in the NCCC was through website in 2008. Along with the popularity of computers and networks widely used in social life, the number of lodged complaining cases through Email and website are increased year by year, it indicates that consumers prefer to seek redress through internet are go up generally. No previous study has been made to compare with the statistical data in this research.

Complaints in the NCCC

In terms of the ethnicity of complainants in the NCCC (see Table 2.9), from 2006 until 2008, the largest ethnicity group were Malay which is around 67% to 68.2%, followed by Chinese were lodged around 23.5% to 24%, 7.2% to 9% complainants were filed by Indian, and others ethnicity group were around 0.5% to 0.9% only. From 2007 to 2008, around 0.2% to 0.1% foreign tourists sought redress through the NCCC. The ethnicity percentages of complainants in the NCCC were consisted with the percentage of Malaysian population by race. No previous study has been made to compare with the statistical data in this research.

Table 2.9: Ethnicity of Complainants in the NCCC

	2006		2007		2008	
	Total	%	Total	%	Total	%
Malay	12,402	67.60	16,612	66.79	19,151	68.20
Chinese	4,315	23.52	5,686	22.86	6,739	24.00
Indian	1,459	7.95	2,354	9.46	2,022	7.20
Others	169	0.92	172	0.69	140	0.50
Tourist			49	0.20	28	0.10
Total	18,345	100	24,873	100	28,080	100

Source: Annual Report of National Consumer Complaints Centre, 2006, 2007, 2008

3. Complaints Handled by the NCCC and Channelled to other Organizations

First, the NCCC investigates and attempts to resolve the complaints based on the information that complainants provide. If the dispute between consumers and the company or manufacturer is not solved by the NCCC, then the NCCC advises and assists the complainant in filing a claim with the relevant dispute resolution body such as the Tribunal for Consumer Claims, Public Sector bodies, or Financial Mediation

ce from the NCCC's in-house legal term. Table 2.9 shows

the numbers of complaints lodged in the NCCC and other relevant resolution bodies through the NCCC.

Table 2.10: Complaints Handled by the NCCC and Other Organizations

	2006		2007		2008	
	No. of Complaints	%	No. of Complaints	%	No. of Complaints	%
National Consumer Complaints Centre	13,724	74.81	20,477	83.58	23,728	84.50
Tribunal for Consumer Claims	2,076	11.32	2,244	9.16	2,331	8.30
Public Sector Bodies	2,110	11.50	1,601	6.53	1,151	4.10
Financial Mediation Bureau	435	2.37	551	2.25	870	3.10
Total	18,345	100	24,501	100	28,080	100

Source: Annual Report of National Consumer Complaints Centre, 2006, 2007, 2008

In the NCCC, the total complaints lodged increased from 2006 (18,345 cases) to 2008 (28,080 cases). The number of complaints solved by the **National Consumer Complaint Centres** increased from 74.8% (13,724 cases) in 2006, 82.1% (20,477 cases) in 2007 to 84.5% (23,728 cases) in 2008. The complaints transferred to the **Tribunal for Consumer Claims** through the NCCC were 11.3% (2,076 cases) in 2006, 9.2% (2,244 cases) in 2007, and 8.3% (2,331 cases) in 2008. Referring to **public sector bodies**, the complaints handled by the NCCC was around 11.5% (2,110 cases) in 2006, 6.5% (1,601 cases) in 2007 and 4.1% (1,151 cases) in 2008. Complaints cases addressed to the **Financial Mediation Bureau** through the NCCC were 2.4% (435 cases) in 2006, 2.2% (551 cases) in 2007, and 3.1% (870 cases) in 2008. Therefore, around 80% filed complaining were solved in the NCCC, about 8% to 11% cases were handled by the

ns through the NCCC, another 4% to 11% solved with the

Public sector bodies and 2% to 3% were discussed with Financial Mediation Bureau.

There is no previous study with which to compare the statistical data from this research.

4. Types of Complaints Received by the NCCC

After the complaints are received by the NCCC, they are classified into two main categories, namely, complaints concerning goods and complaints concerning services.

Based on these two main groups, the NCCC reported 23 categories of complaints for 2006 and 2007, and 24 categories of complaints for 2008. The "Private Higher Education" category was dropped in 2008 as there were only a few complaints in this category for 2008. However, two new categories were added in the 2008 report – "Job Recruitment Agencies" category and the "Healthcare Services" category (Annual Report of National Consumer Complaints Centre, 2006, 2007, and 2008). Based on the statistic data in the Table 2.11, the five highest filed complaining in the NCCC were the "Housing Developers", the "Direct Sales", the "Private Higher Education", the "Management Corporations", and the "Telecommunications" category. This section will specify on these largest five categories, the details on the rest twenty categories about complaining can be found at the Table 2.11.

Complaints Received by the NCCC from 2006 to 2008

No.	Category	2006	2007		2008	
		Total	Total	% Change from 2006	Total	% Change from 2007
1	Housing Developers	1,578	2,076	29.6%	2,316	11.6%
2	Direct Sales	1,499	1,993	27.0%	2,339	21.0%
3	Private Higher Education	1,453	1,856	25.8%	- *	-
4	Management Corporations	1,325	1,739	29.3%	2,021	16.2%
5	Telecommunications	1,297	1,721	30.7%	2,136	24.1%
6	Sub-Standard Products	1,032	1,519	45.1%	1,777	17.0%
7	Cheap Sales	1,003	1,410	38.5%	1,673	18.7%
8	Public Transport	925	1,254	33.5%	1,493	19.1%
9	Financial Institutions	809	1,044	27.1%	1,354	29.7%
10	Hypermarkets	800	975	20.0%	1,146	17.5%
11	Hire Purchase	703	946	32.5%	1,132	19.7%
12	Misleading Advertisements	684	917	32.1%	1,129	23.1%
13	Time Share Facilities	644	892	36.4%	1,008	13.0%
14	Maid Agencies	570	805	39.1%	1,022	27.0%
15	Electricity Supply	550	793	42.0%	926	16.8%
16	Fitness Clubs	547	771	38.8%	971	25.9%
17	Pawnbroking	492	686	37.3%	750	9.3%
18	Insurance	488	686	38.5%	809	17.9%
19	Legal Service	442	646	44.0%	763	18.1%
20	Food	441	664	48.3%	727	9.5%
21	Travel and Tour Agencies	382	587	51.4%	648	10.4%
22	Water Supply Services	350	546	53.7%	635	16.3%
23	Satellite Television Services	331	407	21.1%	445	9.3%
24	Job Recruitment Agencies	-	-	-	650	-
25	Healthcare Services	-	-	-	210	-
	Total	18,345	24,873	33.6%	28,080	13.0%

Source: Annual Report of National Consumer Complaints Centre, 2006, 2007, 2008

*: NCCC did not receive a significant number of complaints for Private Higher Education category in 2008, therefore this category of complaints was dropped.

The highest number of complaints was the "Housing Developers" category (see Table 2.11) for 2006 and 2007. The NCCC received a total of 1,578 complaints in 2006, 2,076 complaints in 2007, and 2,316 complaints in 2008. The complaints increased 29.6% in 2007 based on the figures for 2006. It also increased 11.6% in 2008 based on 2007. The

consumers in this category were booking fees, late delivery, abandoned housing projects, shoddy workmanship and misleading advertisements (Annual Report of National Consumer Complaints Centre, 2006, 2007, 2008).

In 2006 and 2007, **Direct Sales** was the second largest complaint category (see Table 2.11). However, this category had risen to be the top problem for which consumers sought redress in 2008. A total of 1,499 complaints were lodged with the NCCC in **2006**, 1,993 complaints were registered in **2007**, and 2,339 cases were filed in **2008**. Compared with 2006, the complaints increased 27% in 2007. The number of complaints also increased 21% based on 2007. Types of **Direct Sales** complaints were scratch and win scams, payment by credit card, cooling-off period, lack of information and defective products offered (Annual Report of National Consumer Complaints Centre, 2006, 2007, 2008).

For the **Private Higher Education** category (see Table 2.10), a total number of 1,453 complaints were recorded with the NCCC in **2006**, 1,856 cases were received in **2007**. The complaints increased 27% from 2006 to 2007. However, this category was dropped in **2008** as an insignificant number of complaint cases were received. The main grievances of the consumers were the non-accreditation of courses and the lack of recognition by the Public Services Department, twinning programmes, misrepresentation and deceptive advertising, and not providing a suitable learning environment, and so on (Annual Report of National Consumer Complaints Centre, 2006, 2007, 2008).

In terms of the **Management Corporations** category (see Table 2.11), around 1,325 complaint cases were recorded in **2006**, 1,739 cases were received in **2007**, and 2,021 complaints were lodged in **2008**. The number of complaints increased 29.3% from 2006 to 2007, and a 16.2% difference from 2007 to 2008. Residents complained about the right to impose and collect fess, oppressive tactics from management and liabilities of management corporations (Annual Report of National Consumer Complaints Centre, 2006, 2007, 2008).

Concerning the complaints group of **Telecommunications**, the NCCC received a total of 1,297 complaint cases in **2006**, 1,721 cases in **2007**, and 2,136 complaints in **2008** (see Table 2.11). Among the complaints cases received, there was a 30.7% difference in the number of complaints from 2006 to 2007, and a 24.1% change in the number from 2007 to 2008. The bulk of the complaints concerned in this categorical were broadband services, billing disputes, terms of contract and free SIM card (Annual Report of National Consumer Complaints Centre, 2006, 2007, and 2008).

2.5 Background of Consumer Complaint Behaviour

In order to increase individual satisfaction level, dissatisfied consumers choose to directly confront the offending business when they are less than satisfied with the outcome of the purchase decision (see Figure 2.4). If they receive little or no adjustment in the transaction, some of these consumers will stop the issue. These consumers use **‘I will never do business with that company again’** and **‘what a rip-off’** to overcome their

stration. However, they often use negative word-of-mouth

tactics with their friends, relatives or anyone who will listen (Singh and Pandya, 1991).

There are a lot of studies concerning consumer complaints to companies or manufacturers, such as Jacoby and Jaccard (1981), Richins (1982), Bearden and Mason (1984), Singh (1991), Keng, Richond and Han (1995), Kim, Kim, Im and Shin (2003), Phau and Sari (2004), and so on.

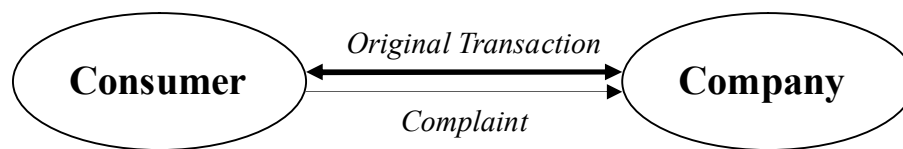


Figure 2.4: Dyadic Relationship between Consumer and Company Including both Transaction and Complaint Situations

Source: Cannon, J.A. (2000)

If consumers are unable to gain a satisfactory response from the company, they can press their complaints further by utilising third party complaint handling agencies, such as the Better Business Bureau (BBB), governmental consumer protection departments, Consumer Agency Help Line, Federal Agency, media-sponsored consumer advocates, or Legal Action (Schibrowsky and Lapidus, 1994; Fisher, Garrett, Arnold, Ferris, 1999; Tipper, 1997). Consumers search out third parties to join their complaint process (see Figure 2.5) as one of the approaches for reducing dissatisfaction. However, only a small portion of dissatisfied consumers will consider other tactics to continuously increase their satisfaction level. Day and London (1976) found that only 5.1% complain to the BBB, government office, TV station or newspaper, and 3.4% of consumers use legal

and Hogarth, Hilgert, Kolodinsky and Lee (2001) also found that the percentage using third party agencies for consumers' dissatisfaction is relatively low, ranging from 1.5% to 9% depending on the type of product or service in question. However, third party agencies still handle thousands of complaints each year (Fisher, Garrett, Arnold and Ferris, 1999).

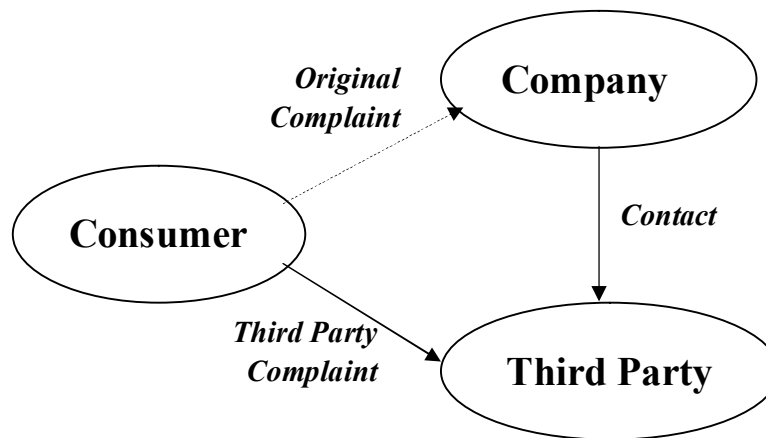


Figure 2.5: Relationships in Third Party Complaint Process and Showing the Major Constructs' Positioning Relative to the Three Parties

Source: Cannon, J.A. (2000)

Along with the cost to the society and the 'focal industry' increase, the globalization of the marketplace provides consumers more opportunity to purchase products or services from national sellers or direct from the international sellers (Singh, 1989). In order to pursue a higher profit from the marketplace, faulty products or defective services are provided by some unscrupulous firms or businesses. Concurrently, the number of complaints and the incidence of legal cases to third party agencies continually increased in the 1980s, (Tipper, 1997; Singh, 1989).

2.6 Complaint Handling in Third Party Organizations

behaviour is defined as complaint actions that are directed towards one or more agencies that are not directly involved in the exchange relationship (Singh, 1989). Dispute resolution with a third party is advantageous to businesses because it enables expeditious, economical, and fair complaint resolution (Cannon, 2002). In fact, government agencies encourage using third-party mechanisms when complaints cannot be resolved directly between the buyer and seller. Singh (1989) argues that most dissatisfied consumers are unable to or do not seek redress from sellers directly, because the business or company is unwilling to listen to the consumer. Thus, several third party complaint agencies (for example, Better Business Bureau) have grown as mediators between consumers and businesses, Cannon (2002) believes that using third party systems can help to make manufacturers or retailers more responsive to solve consumer problems. By submitting disputes to a neutral decision-maker, businesses can demonstrate their goodwill in the form of willingness to seek unbiased solutions to consumer complaints (Fisher, Garrett, Arnold and Ferris, 1999). However, Cannon (2000) observes that only a small number of consumers are willing to choose a third party that they feel offers them the best chance of improving their complaint position, due to time constraints, financial limitations, frustration and anger levels, level of losses, company's reputation and so on.

In a previous study, Ursic (1985) explains the consumer's decision making to seek legal redress through path analysis. Tipper (1997) investigates the characteristics of consumers seeking redress in specific third party agencies in the US, such as complaints to the Better Business Bureau, consumer agency/help line, the state attorney general's

al action. Based on these studies (Singh, 1989; Tipper, 1997 and Ursic, 1985), McAlister and Erffmeyer (2003) conclude that third party actions will be taken by consumers in certain situations: (1) consumer feels dissatisfied about firm or company's initial remedy, (2) all other complaining options have been unsuccessful, (3) consumers hold high expectation levels about the complaint situation, (4) consumers perceive negative attitudes about firm or company responsiveness and reputation, and (5) consumers feel it is easy to access the legal system and other formal agencies.

Generally, if complainants coming to third party agencies indicate that some serious problems happened in the marketplace, such as ineffective complaint management or customer responsiveness, third party consumer agencies suggest that consumers should seek redress from the company or organization first (McAlister and Erffmeyer, 2003). Consumer's complaint action can range from complaining to family and friends to taking legal action. Among these complaint actions, however, third party complaint action can be seen as the most powerful action (Tipper, 1997). Barnes and Kelloway (1980) believe that complaints are first taken to the place of purchase, only a relatively few complaints are made directly to second or third parties such as Better Business Bureaus, consumer affairs departments, and small claims court, however, persistent consumers will turn to these sources if satisfaction is not obtained from the retailer or company. Hence, Feick (1987) proposes that third party complaints are especially important and troublesome to marketers since they represent a higher-order action than complaining to friends, family, the salesperson, or the company. Singh (1988) suggests that third party complaint action is a distinct phenomenon with other approaches (such

tion), it can be seen as one legitimate complaint action and cannot be ignored as one of public actions.

However, third party complaining can also be seen as the one of the logical steps when consumers are discontent with the company's responses or if they feel more comfortable using a third party agency as it does not require direct confrontation with the company or the retailer (Reiboldt, 2003; Liu and McClure, 2001). Third party agencies serve as mediators between consumers and businesses and the complaints lodged with them are important for regulating the marketplace as they disallow businesses to become the authorities on the complaint resolution, which ultimately benefits the consumer (Reiboldt, 2003; Singh, 1989). However, McAlister and Erffmeyer (2003) argue that the number of consumers who take third party actions is small as third party action can result in extensive legal costs, regulatory intervention and corporate reputation problems.

Zussman (1983) argues that third party complaint agencies or legal action (e.g. small claims court) results in a more costly (e.g. more time-consuming) method for resolving a dispute through the mediation process. However, Steel (1977) reports that approximately fifty per cent of consumer problems are settled successfully, which means that the disputes are more often related to a misunderstanding of the products rather than fraud. If this report is correct, the mediation of third party complaint agencies or legal action can play an important role in the conflict between consumers and businesses. Zussman (1983) suggests that consumers and businesses are negotiating

party complaint mediators usually lack enforcement

mechanisms.

Therefore, third parties in the complaint process can improve the consumers' complaint position and give them a unique situation (Fisher, Garrett, Arnold and Ferris, 1999). These third parties can generally be classified into two distinct camps, legal entities and arbitrators/mediators. The legal entities include Small Claims Court, class action claims, states' Attorney Generals, State Consumer Protection Offices or Departments, and civil action suits using an attorney (Best and Andreason, 1977; Singh, 1988, 1989) and Tribunal for Consumer Claims Malaysia. The arbitrators/mediators category includes arbitration or mediation offices and services, for example, the local Chamber of Commerce, Banking Mediation Bureau (BMB), Insurance Mediation Bureau (IMB), Consumer Associations, and National Consumer Complaints Centre in Malaysia.

Some researchers (e.g. Singh, 1989; Bonner and Metzen, 1992; Tipper, 1997) consider Small Claims Court as legal entity for consumer complaint on the small claim in America. In Malaysia, the government uses the Tribunal for Consumer Claims for protecting consumers to replace the name of Small Claims Court. However, all these mediators conduct consumer complaint services that are designed to act as a communication intermediary in the complaint process. Based on the suggestions from Tipper (1997) and Feick (1987) that third party complaint action is the most powerful and high-order action, this research selected the Tribunal for Consumer Claims and the National Consumer Complaints Centre as third party complaint agencies to investigate

Many previous studies have been done on third party handling mechanisms in America, such as Ursic (1985), Singh (1988), Cornwell, Bligh and Babakus (1991), Tipper (1997), Fisher, Garrett, Arnold and Ferris (1999), Hogarth, English and Sharma (2001), McAlister and Erffmeyer (2003). Kosmin (1976) reports the Small Claims Court Dilemma in London. McGuire and Macdonald (1997) discuss the Small Claims Courts in Canada. However, there have been no specific studies done in an Asian country, especially in Malaysia.

2.7 Determinants of Award (Outcome) from the Tribunal or Court

Seeking redress through the legal entity of third party complaint agencies is considered to be a high-order action (Feick, 1987). Although the percentage of consumer third party agencies for consumer complaints is relatively low, complaints handling through the third parties amount to thousands each year (Fisher, Garrett, Arnold and Ferris, 1999). As mentioned earlier, the yearly statistical data in the Tribunal for Consumer Claims Malaysia shows those consumers' complaints cases in Malaysia increased by the thousands from 2000 to 2009. This indicates that more and more consumers are seeking a legal approach to solve and improve their dissatisfaction with the products or services, and the Tribunal for Consumer Claims plays a significant place for protecting the consumers in Malaysia.

Cannon (2000) and Hogarth, Hilgert, Kolodinsky and Lee (2001) found that only a

are willing to choose a third party complaint agency and

that it depends on the type of product or service in question, time constraints, financial limitations, frustration and anger levels, level of losses and so on. Thus, the current research selects the Tribunal for Consumer Claims (TCC) as the presenter of third party legal entity, and attempts to investigate whether the TCC is fulfilling its purpose as a speedy and effective forum for the consumers, this study is not concerned with whether the claimant wins or loses in the tribunal, but whether the claimant feels that justice was done in a fair manner.

According to the complaint process in the Tribunal for Consumer Claims in Malaysia, consumers should first file their complaint cases using Form 1 (Statement of Claim). Based on the information that consumers provide in Form 1, the Tribunal has to prepare the documents for both parties (consumer and respondent) including the date and time to participate in the Tribunal for hearing their case. The award (outcome) of the Tribunal for consumer complaints is made on the spot or within a short time according to the information on Form 1 and the explanation in the hearing at the time of the Tribunal. Thus, the factors concerning the consumer's gender, race, age, issues in dispute, type of claim, amount of claim, duration from filing to hearing the case, and evidence of complaint appear in Form 1 and determine the award (outcome) of the Tribunal. This section will present each factor (see Figure 2.6).

In previous studies, Bonner and Metzen (1992), and Bradley, Sherman and Bryant (1982), through the use of a survey, observe the factors influencing the probability of

Some other studies (Steadman and Rosenstein, 1973; Hollingsworth, Feldman and Clark, 1973; Purdum, 1981) provide a detailed analysis concerning claimants' complaint cases filed in the court through the court records. This section presents previous studies concerning these factors obtained from the Tribunal records. Table 2.12 presents the factors obtained from the Tribunal records.

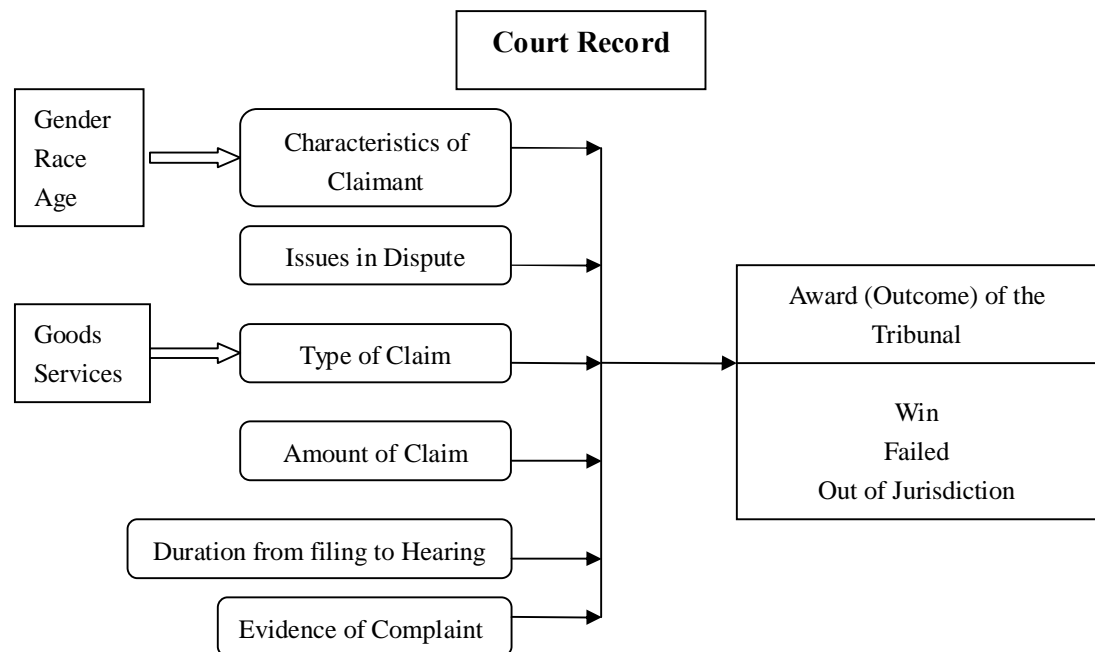


Figure 2.6: Factors Determining the Award (Outcome) of the Tribunal

Table 2.12: Data Obtained from the Tribunal Records

Factors	Definition
Award of the Tribunal	Includes claimant winning by complaint case or by respondent default, settled out of court, dismissal or withdrawal of cases by claimant, and claimant fails.
Characteristics of Claimant	Includes claimant's gender, race and age.
Issues in Dispute	Defined as the reasons for complaint by claimant.
Type of Claim	Includes whether it is a claim concerning goods or services by claimant.
Amount of Claim	The amount of refund the claimant expects.
Duration from Filing to Hearing	The days scheduled from filing the case to hearing the case in the tribunal or court.
Evidence	This is the documented evidence.

2.7.1 Award (Outcome) of the Tribunal (Court)

Bonner and Metzen (1992) suggest that the award or outcome of the tribunal or the court is the collective result of the characteristics and interactions of the claimant and respondent working through the legal system. The tribunal or court offers an opportunity to present a complaint for the claimant and respondent. The award or outcome is made on the spot or within a short time after the judge or president listens to the dispute of both parties. The award or outcomes from the court are defined according to whether the claimant wins the claim case by self or respondent default, claimant and respondent settle out of court and claimant fails. If the claimant abandons the cases voluntarily the complaint case is dismissed or withdrawn (Hollingsworth, Feldman and Clark, 1973). Generally, claimants are interested in the winning judgment from the tribunal including winning the case, settling out of court, negotiation between claimant and respondent, or by respondent default (Bradley, Sherman and Bryant, 1982).

Based on previous studies, in terms of the outcome from the tribunal or the court, there is a high probability of a judgement for the claimant being found if the complaint case goes to court. The likelihood of a claimant winning (including winning the case, by respondent default and settling out of court) has a reasonable rate of success, ranging from 74% to 100% (Downing, Peters and Sankin, 1975; Hollingsworth, Feldman and Clark, 1973; Purdum, 1981; Bradley, Sherman and Bryant, 1982; Steadman and Rosenstein, 1973; Yngvesson and Hennessey, 1975). Claimant winning rates are reported as high, ranging from 71% to 80% even when respondents appear in the court

1973; Hollingsworth, Feldman and Clark, 1973; Purdum, 1981). At least 17% to 78% of cases are won by claimant by respondent default (Bradley, Sherman and Bryant, 1982; Downing, Peters and Sankin, 1975; Steadman and Rosenstein, 1973; Yngvesson and Hennessey, 1975). Bradley, Sherman and Bryant, (1982) found that 34% of complaint cases are settled in the claimant's favour out of court.

To examine the purpose of this study, which is whether the TCC is a speedy and effective forum for the consumers, the current study is not concerned with the probability of the claimant winning. Therefore, in the present study, the award from the tribunal is included as claimant won, claimant failed and out of jurisdiction.

2.7.2 Characteristics of the Claimant

Many studies suggest that demographic characteristics of consumers predict consumer complaint behaviour, such as gender, race, age, occupation and so on. But there not many studies investigate whether the characteristics of the claimant influence the award (outcome) of the Tribunal, except from the studies by Bonner and Metzen (1992), and Bradley, Sherman and Bryant (1982).

a. Gender / Sex

In the study of Boone County Small Claims Court of USA, Bonner and Metzen (1992) suggest that females might be more intimidated by the court system than males, and they are more likely to absent. They found that the justice is blind as female claimants

male partner are less likely to win in examining the winning probability. Perhaps male claimants are more at ease and forceful in presenting their side of contested disputes. This result also infers that the possibility exists that judges favour presentations brought by male claimants. However, Bradley, Sherman and Bryant (1982) believe that the Syracuse Small Claims Court in USA is unbiased as gender does not affect the probability of winning in court. Based on the previous studies, we would likely to propose the study as following:

Proposition 1a: There is significant relationship between the gender of the claimant and the award of the Tribunal.

b. Race / Ethnicity

Referring to the race of claimants, the study of Bonner and Metzen (1992) in USA suggest that a judge may consciously or unconsciously discriminate against non-whites, or that a judge might create reverse discrimination, which leads to an outcome favouring a non-white plaintiff. However, they found that the race of claimants in the Boone County Small Claims Court does not affect the outcome of the court. This indicates that a judge in this Small Claims Courts does not discriminate against non-white. Bradley, Sherman and Bryant (1982) found that race in the Syracuse Small Claims Court of USA does not appear to influence the probability of winning in the court. Based on the crucial finding on race, Bradley, Sherman and Bryant (1982) and Bonner and Metzen (1992) believe that the Small Claims Court is unbiased. According to the previous studies, we would like to propose as following:

Proposition 1b: There is a significant relationship between the race of the claimant and the award of the Tribunal.

c. Age

With respect to the age of claimants, Bonner and Metzen (1992) in the Boone County Small Claims Court of USA suggest that younger claimants may have been exposed to the court process due to their educational experience, which may provide an advantage in deciding which claims are most likely to be won; but life experiences of older claimants may more than offset that possible effect. However, Bonner and Metzen (1992) in USA found that the age of claims does not affect the award of the court. There have been no other studies that consider the claimant's age other than the research from Bonner and Metzen (1992). Based on the previous studies, we would like to propose as following:

Proposition 1c: There is a significant relationship between the age of the claimant and the award of the Tribunal.

2.7.3 Issues in Dispute

Issues in dispute in the tribunal or court refer to the reasons for seeking redress in the tribunal or the court. Bonner and Metzen (1992) found that the reasons for filing claims in the Boone County Small Claims Court include property damage/loss, return of purchase/ security deposit, share of housing costs, goods and services not

personal loans and return of personal belongings and others.

Steadman and Rosenstein (1973) report that home improvements and repairs constitute the most disputes in the Philadelphia Municipal Court (22%), followed by unsatisfactory products (13%), return of a rental deposit (12%), faulty car repairs (8%), other purchase deposits not returned (7%), laundry and dry cleaning disputes (5%), appliance repair and service complaints (5%), and complaint cases in miscellaneous category (18%). Day (1979) found that consumers dissatisfaction with durable products tend to be more concerned with product quality issues.

Hollingsworth, Feldman and Clark (1973) report that the most frequently asserted claims involve property damage resulting from traffic accidents (around 30%), other property damage is 15% from claimants, refunds of rent deposits and other refunds accounted for about 27% in Hamilton County. Purdum (1981) found that the most common complaints in the court are loans from a financial institution (24%), complaints concerning the service (24%), goods (12%), Visa and Master charge (9%), damage to property (7%), labour/materials (6%), overdraft (5%), and rent/security deposit (5%).

Based on these previous studies, the reports indicate that there are various reasons for seeking redress in the small claims court by claimants. The complaints depend on the surroundings and situation in each court. Based on the previous studies, we would like to propose as following:

Proposition 1d: There is a significant relationship between the issues in dispute and the award of the Tribunal.

2.7.4 Types of Claim

According to the TCC records, types of claim are classified into claims concerning goods and claims concerning services. This is closely related with the reasons of complaint, some researchers (e.g. Hollingworth, Feldman and Clark, 1973; Purdum, 1981; Steadman and Rosenstein, 1973; Bonner and Metzen, 1992; McGuire and Macdonald, 1997). However, some studies report the type of claim and reasons of complaint together, for instance, Hollingsworth, Feldman and Clark (1973) report that the most frequently occurring claims are refer to non-payment for goods, services, or a combination of the two. McGuire and Macdonald (1997) found that the most common complaints relate to services rendered, such as insurance companies and travel. Moyer (1985) found that complainers concerning durable products have a more negative perception than non-complainers in the Province of Ontario in Canada and that larger propositions of complainers agree that many household durables products (such as automobiles) break down and insurance claims on the car are not settled promptly and fairly. Thus, complainers only hold a negative attitude with those relatively expensive and complex products. However, no previous studies try to link the types of claims with the win of the Tribunal.

Based on the TCC records, filed claims by claimants are classified into two groups, which are claim on goods and claim on services. In the present study, the durable product and non-durable product are organized into the complaining on the goods. Complaining on the services are included four sections, which are repairs and general

personal services; financial services and insurance and rentals; and public transportation and utilities. The details in the complaining on goods and services will elaborate in following chapter. Therefore, based on the previous studies, we would like to propose as following:

Proposition 1e: There is a significant relationship between the type of claim and the award of the Tribunal.

Proposition 1f: There is a significant relationship between the claim on goods and the award of the Tribunal.

Proposition 1g: There is a significant relationship between the claim on services and the award of the Tribunal.

2.7.5 Amount of Claim

The amount of claim is asked in the form, this amount of claim indicates that consumers are prepared to bring even quite small claims to court, or with the amount which is ranging over the full jurisdictional limit (e.g. less than RM25,000 in the TCC) (Hollingsworth, Feldman and Clark, 1973). Steadman and Rosenstein (1973) in USA found that 22% of the amounts asked were for \$100 or less, 47% of claims were asked for \$200 or less, 15% of claims were filed between \$491 and \$500 at the jurisdictional limit. Hollingsworth, Feldman and Clark (1973) found that 60% of cases were for amounts between \$25 and \$100. Very few complaints were for \$10 or less, 7% were for

and 65% complaints were for amounts between \$25 and

\$100, 5% of cases were for \$150 in the Clermont County.

Bonner and Metzen (1992) suggest that the amount of claim is essential information when making a complaint and it may influence the outcome of the complaint as the judges' decisions may be prejudiced by the view that the smallest claims are a waste of time. However, Bonner and Metzen (1992) found that the amount of claim is not significantly influence the judgment for the claimant in the Boone County Small Claims Court. Bradley, Sherman and Bryant (1982) found that the amount of claim by the claimant determines the respondent's offer to settle out of court and the claimant winning in court. Based on the previous studies, we would like to propose as following:

Proposition 1h: There is a significant relationship between the amount of claim and the award of the Tribunal.

2.7.6 Duration from Filing to Hearing

One of the major aims of any judicial system is the speedy rendering of justice. The rule of the Philadelphia Municipal Court is that the date of hearing must be set within sixty days from the time of the filing of the statement of claims. Steadman and Rosenstein (1973) report that 148 cases are originally scheduled for hearing within the sixty days. However, 452 cases are scheduled within ninety days. Another 8 cases are settled after more than ninety days. Speedy justice is one of the goals for the small claims court, the Ohio Small Claims Court Act requires that claims should be set for trial between two

Hollingsworth, Feldman and Clark (1973) found that over 68% of claims are set for final award within five weeks; only 13% remained undecided after nine weeks in Hamilton County. Purdum (1981) found that the average length of time from filing to pre-trial hearing is 52 days, 78% of all cases reached the pre-trial hearing within sixty days of filing. According to the previous discussion, the current research would like to specify argue that the situation of Malaysia must be same which is set within sixty days from the time of the filing of the statement of claims. There have been no studies done on testing the relationship between the duration from filing to hearing and the award of the Tribunal. Based on the previous studies, we would like to propose as following:

Proposition 1i: There is a significant relationship between the duration from filing to hearing and the award of the Tribunal.

2.7.7 Evidence of Complaint

Bradley, Sherman and Bryant (1982) believe that written evidence should be an important determinant and affects the outcome of the judgement, as no documented evidence by the claimant can be expected to be less favourable than one in which documented evidence is presented. However, the study conduct in USA, they found that a claimant with a convincing story in the court, but with no documented evidence is able to win in a sufficient proportion of the cases. No other studies have been done on this issue; the research would like to speculate the similar condition might in Malaysia. Based on the previous studies, we would like to propose as following:

Proposition 1j: There is a significant relationship between the evidence of the complaint and the award of the Tribunal.

2.8 Chapter Summary

Consumer protection is one approach for the law to deal with unscrupulous sellers or uncaring service providers and also against information regarding prices and quality that is false or incomplete. To protect consumers, the Malaysian government and FOMCA have played an important role in the last twenty years. This chapter discussed the consumer complaint procedures in the third party complaint mechanism, including the TCC and the NCCC. The statistical data from the TCC and the NCCC were also looked through. The yearly statistical data indicates that the TCC plays an important role in consumer protection, and complaints handled by the TCC have numbered in the thousands each year from when it was first set up until the end of 2009. To evaluate the tribunal's performance as an effective and speedy forum of justice and whether the claimant derives a sense that justice was truly done through the tribunal records. This current study investigates the relationship between the characteristics of the claimant including issues in dispute, type of claim, amount of claim, duration from filing to hearing, and evidence of complaint influence and the award (outcome) of the tribunal.