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THE APPLICATION OF THE PLAIN AND UNDERSTANDABLE LANGUAGE REQUIREMENT IN TERMS OF THE CONSUMER PROTECTION ACT – CAN WE LEARN FROM PAST PRECEDENT?

1 Introduction

In many instances consumers enter into contracts when buying goods or services. These contracts are extremely important as they contain the terms under which the contract is concluded. The terms may also be contained on the reverse side of a receipt or, on occasion, in a separate document which is given to them either when they conclude the contract or at a later stage. In addition to written contracts which contain terms and notices placed at business premises warning consumers of various hazards or consequences also bind consumers. However, consumers will seldom read the contractual documents that they sign and notices are also often ignored.

A variety of reasons for this can be put forward; amongst others, consumers are commonly more interested in obtaining the goods rather than the consequences of the purchase. They may feel that they trust the business that they are dealing with to deal honestly, or they may simply believe that they will not be able to understand the terms and conditions, so they do not bother to read them. Van den Bergh (*Readable Consumer Contracts* (1985) 1) proposes that one of the reasons for the latter may be that the terms or notices are written in a manner which is unattractive and unintelligible to consumers. A possible solution to this is to try and ensure that all written material is in a format and style which is easy to read and in a language which is easy for the consumer to understand. This is the objective of plain and understandable language requirements in legislation.

2 Why the need for plain language?

Quite commonly contracts are “unreadable” both typographically and linguistically (see Newman “The Role of Language and Structure in the Readability of Contracts” 2010 31(3) *Obiter* 735 735–745 for an explanation of these concepts). Typographic readability refers to the visual presentation of a printed contract. Quite often the contract is physically illegible because of the font size and the type of font that is used. The colours utilized both of the paper and the print may be dull and unattractive and may dissuade somebody from attempting to read it. This is in stark contrast to any advertising which the business may do to attract the consumer’s attention.

When advertising, a business makes use of a variety of colours, print sizes and layouts in order to ensure they attract the attention of the consumer.

Linguistic readability refers to the syntactic formulation of the terms contained in the contract. When considering the syntactic formulation of contracts, Van den Bergh (*Readable Consumer Contracts* 31) identifies a number of factors which cause confusion, such as the use of the third person, overly lengthy sentences, legal terms and phrases and passive verbs.

While there may be a variety of opinions on what exactly plain language comprises, there is some uniformity as to a basic approach, which is to simplify the language and structure of contracts.

3 The common-law approach to problems of language

Traditionally, courts, when examining the enforceability of a consumer contract, had very little scope to set aside a contract based on objective factors relating to the contract itself. These objective factors refer to the structure, layout, wording and language usage in the contract. The only traditional common-law basis for setting aside a contract on the basis of these objective factors was misrepresentation or mistake. For example, a misrepresentation on the basis that the contract contained a term which one would ordinarily not expect to find in such a contract or unilateral mistake on the basis that the contractant made an error reading or understanding a term because of the layout or language of the contract. (The basis for this was that the error was "*iustus*", *ie*, that a reasonable person in the same situation would have been similarly misled.)

In light of the fact that often a contract would contain a term which explicitly acknowledged that the signatory had read and understood the terms and conditions of the contract, it was seldom that a claim of misrepresentation or mistake was successful. Any subjective factor, such as the level of education or home language of a contractant was similarly difficult to utilize as the courts would simply rely on the doctrines of "caveat subscriptor" or "pacta sunt servanda" to enforce the contract. Ultimately then, the common law allowed little relief for an unwary or ignorant contractant.

It is common practice amongst businesses to utilize standard form contracts which are often lengthy and contain legal jargon. This creates a situation where, due to the structure or language used, onerous or unfair terms can be "hidden" in the contract. Consequently, legislators have stepped in to introduce internationally recognized consumer rights in the form of the Consumer Protection Act 68 of 2008, wherein provision is made for the use of plain and understandable language in all written dealings with consumers (s 22). The Consumer Protection Act goes further than a mere plain language requirement and allows courts to look at the fairness and reasonableness of contractual terms (s 48), the conduct of the business in contractual dealings with consumers (s 40, 41 and 49), and also subjective

factors relevant to the individual consumer which may affect the contract (s 22(2), 40(2) and 52(2)(b)).

4 Legislative regulation

The Consumer Protection Act 68 of 2008 has given effect to the widely held perception of unreadable contracts by including a section compelling drafters to write in “plain and understandable language”. Section 22 of the Act holds as follows:

- “(1) The producer of a notice, document or visual representation that is required, in terms of this Act or any other law, to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation –
- (a) in the form prescribed in terms of this Act or any other legislation, if any, for that notice, document or visual representation; or
 - (b) in plain language, if no form has been prescribed for that notice, document or visual representation.
- (2) For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to –
- (a) the context, comprehensiveness and consistency of the notice, document or visual representation;
 - (b) the organisation, form and style of the notice, document or visual representation;
 - (c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and
 - (d) the use of any illustrations, examples, headings or other aids to reading and understanding.
- (3) The Commission may publish guidelines for methods of assessing whether a notice, document or visual representation satisfies the requirements of subsection (1)(b).”

This section refers to, not only the contractual “document”, but also to any “notice or visual presentation” provided or displayed to consumers. This is extremely wide as it refers to any writing which is made available through any manner to a consumer. It is not only a contract that is concluded with the consumer but also any notices displayed to a consumer at the place of business. These will include disclaimers and indemnities. In section 22(3) of the Consumer Protection Act, provision is made for the publishing of guidelines (by the National Consumer Commission) for methods of assessing whether a document, notice of visual representation satisfies the requirements of subsection 1(b), however, no such guidelines have yet been published.

Even prior to the introduction of the Consumer Protection Act, the courts were increasingly considering the structure and wording of a contract when evaluating whether or not an error is “*iustus*” (see amongst others *Keens Group Co (Pty) Ltd v Lötter* 1989 (1) SA 585 (C); *Diners Club SA (Pty) Ltd v Thorburn* 1990 (2) SA 870 (C); *Diners Club SA (Pty) Ltd v Livingstone* 1995

(4) SA 493 (W); *Roomer v Wedge Steel (Pty) Ltd* 1998 (1) SA 538 (N); *Langeveld v Union Finance Holdings (Pty) Ltd* 2007 (4) SA572 (WLD); and *Mercurius Motors v Lopez* 2008 (3) SA572 (SCA)). Many of the factors which the courts have considered when evaluating a contract are mentioned in the Act and should offer some assistance with regard to guidelines for drafting (s 22(2)(a)–(d)). Section 22(2) of the Act also refers to an “ordinary consumer” with “average literacy skills” and “without undue effort” which are undefined subjective concepts and are not considered in this article (see Viljoen and Nienaber *A Plain Legal Language for a New Democracy* (2001) 58-59 on multi-linguism and literacy).

The consistent approach to the plain language requirement seems to be to simplify certain grammatical and syntactical constructions and more clearly set out the contract (see Newman 2010 31(3) *Obiter* 735–745; and Gouws “A Consumer’s Right to Disclosure and Information: Comments on the Plain Language Provisions of the Consumer Protection Act” 2010 22 *SA Merc LJ* 79 91–93). This seems to take care of the factors given in subsection (2)(a) to (d).

However, in terms of the Consumer Protection Act, there are a number of other sections which are noteworthy in their effect on interpreting the plain language requirement, specifically with respect to the fairness of a term in section 48(2)(d)(ii) or, in terms of section 48(2)(d)(i) (without limiting the generality of subsection (1), a transaction or agreement, a term or condition of a transaction or agreement, or a notice to which a term or condition is purportedly subject, is unfair, unreasonable or unjust if – (d) the transaction or agreement was subject to a term or condition, or a notice to a consumer contemplated in section 49(1), and – (i) the term, condition or notice is unfair, unreasonable, unjust or unconscionable; or (ii) the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer in a manner that satisfied the applicable requirements of section 49), and whether or not a term was drawn to the attention of the consumer (48(4) The fact, nature and effect of the provision or notice contemplated in subsection (1) must be drawn to the attention of the consumer – (a) in a conspicuous manner and form that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances; and (b) before the earlier of the time at which the consumer – (i) enters into the transaction or agreement, begins to engage in the activity, or enters or gains access to the facility; or (ii) is required or expected to offer consideration for the transaction or agreement (5). The consumer must be given an adequate opportunity in the circumstances to receive and comprehend the provision or notice as contemplated in subsection (1)). In essence, these sections relate to the conduct of the drafter in drafting the contract and whether or not it was drafted in a manner to deceive the consumer as to what terms it contained; also whether there was a duty on the drafter/business to point out an unusual or limiting term.

In this regard mention must also be made of section 40 which relates to unconscionable conduct as reference is made in section 40(1)(c) to coercion or unfair tactics in the negotiation or conclusion of a contract (40(1) A supplier or an agent of the supplier must not use physical force against a

consumer, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with any – (c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer). Section 40(2) states that it is unconscionable for a supplier knowingly to take advantage of a consumer because of an inability to understand the language of an agreement. (40(2) In addition to any conduct contemplated in subsection (1), it is unconscionable for a supplier knowingly to take advantage of the fact that a consumer was substantially unable to protect the consumer's own interests because of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor).

As alluded to earlier in this article, the courts have already been grappling with problems associated with the language and structure of contracts on the common-law basis of a misrepresentation or unilateral mistake. It is the author's contention that this judicial precedent is available to utilize when giving effect to the abovementioned sections of the Consumer Protection Act (in particular, section 22, 40, and 48). This article now sets out the various factors that the Consumer Protection Act provides for, and gives examples of existing precedent in this regard.

5 Relevant sections of the Consumer Protection Act

5 1 Section 22

Section 22 is the substantive section which sets out the requirement of "plain and understandable language". In this section one can identify subjective factors, that is, those which relate to the consumer themselves (such as "ordinary consumer", "average literacy skills", "minimal experience" which this note will not deal with), as well as objective factors, that is, those which relate to the contract itself (s 22(2)(a)–(d)). It is these objective factors which are the focus of this note. The following sub-paragraphs of section 22 are relevant in the consideration of and effect of the requirement of "plain and understandable language".

5 1 1 Section 22(2)(a): Context, Comprehensiveness and Consistency

In most cases, by the very fact that the courts are considering whether an error is "*iustus*" or not and what a reasonable person would have expected to find such a term in a contract, the courts consider the context of the contract or the consistency of the terms within the document. In *Royal Canin South Africa (Pty) Ltd v Cooper* (2008 (1) SA 644 (SECLD)), the court outlines the impact of contextualizing a clause:

"I have no doubt that the document is misleading in the extreme ..., the suretyship obligation is contained in a sentence which commences with an acknowledgement that the terms and conditions, being numbered 1–17, have been read and understood" (*Royal Canin South Africa (Pty) Ltd v Cooper and Another supra* 647H–I).

In *Brink v Humphries & Jewell (Pty) Ltd* (2005 (2) SA 419 (SCA)) the court took issue with the use of terms within the contract when stating:

“all that need be said in this regard is that the furnishing of a document misleading in its terms can, without more, constitute such a misrepresentation” (*Brink v Humphries & Jewell (Pty) Ltd supra* 422B).

Later, the court also expressed its view of the effect of the terms within the context of the contract on a party to the contract:

“In my view, the form was a trap for the unwary ...” (*Brink v Humphries & Jewell (Pty) Ltd supra* 426B).

In *Diners Club SA v Livingstone* (1995 (4) SA 493 (W)), the court was far more explicit in its condemnation of the contract when it states:

“The whole get-up of the enrolment form is such as to mislead a person into thinking that only the company was being considered for enrolment” (*Diners Club SA v Livingstone supra* 495G).

In another case involving Diners Club (*Diners Club SA (Pty) Ltd v Thorburn* 1990 (2) SA 870 (C)) and the inclusion of certain terms within the context of their contract, Burger J held:

“I consider it sound in principle that the party who drafts a contractual document would be blameworthy if he did so in such a way as to turn it into a trap containing onerous clauses which would not reasonably be expected by the other party” (*Diners Club SA (Pty) Ltd v Thorburn supra* 875B–C).

From these cases it is clear that, apart from the organization of the document, the court considered whether the presence of terms was consistent with what the document purported to be. In this regard much emphasis was placed on the headings contained in the document and how they led, or misled, a party into believing what a document contained (see par 5 4 below for a discussion on headings in contracts).

5 1 2 Section 22(2)(b): The organization, form and style

It is these factors which courts have most often been required to analyse and are a reference to how a document is set out and includes font size, style, colour and arrangement of terms. In *Keens Group v Lötter* (1989 (1) SA 585 (C)) the court emphasized the factors relating to the organization and font stating:

“While not in a particularly inconspicuous place that obligation is not made particularly conspicuous either. It appears in the same type style and size as the rest of the document” (*Keens Group v Lötter supra* 590F).

While in *Diners Club SA (Pty) Ltd v Thorburn* with regard to the organization and style of the document Burger J held:

“A signatory can be misled by the form and appearance of the document itself just as much as by a prior advertisement or representation” (*Diners Club SA (Pty) Ltd v Thorburn supra* 875B–C).

However, in *Diners Club SA v Livingstone*, the court was far more emphatic in its condemnation of the font size and stated:

“At the back of the enrolment form are a series of conditions in incredibly small print, not designed to be read without the aid of magnifying equipment” (*Diners Club SA (Pty) Ltd v Livingstone supra* 495I).

In *Brink v Humphries & Jewell (Pty) Ltd* the court also commented on the font size stating:

“It is true that the third clause, which contains the personal suretyship, is in capitals (it does not seem to be in bold type ...), but so to are the two clauses which precede it ...” (*Brink v Humphries & Jewell (Pty) Ltd supra* 425F).

In *Roomer v Wedge Steel (Pty) Ltd* (1998 (1) SA 538 (N)) the court considered the use of bold type to draw attention to a clause stating:

“I am of the view that the respondent effectively guarded against the possibility that it would be overlooked amongst other clauses...by printing the suretyship undertaking in heavy type” (*Roomer v Wedge Steel (Pty) Ltd supra* 543G-I).

More recently in *Mercurius Motors v Lopez* (2008 (3) SA 572) the court had to analyze two documents which contained certain exemption clauses. The court took great care in the analyses and sets out in great detail various aspects which it considered in its finding. For example, the court referred to the size of the font used:

“Immediately above the space for a customer’s signature the following appears in fine print ...” (*Mercurius Motors v Lopez supra* 574F).

and:

“Immediately below the space for the customer’s signature appears the following in capitals: NOT RESPONSIBLE FOR LOSS OR DAMAGE ...” (*Mercurius Motors v Lopez supra* 574H).

Further:

“On the left-hand side at the end of the document, the words ‘MERCURIUS MOTORS’ are set out in large and bold letters” (*Mercurius Motors v Lopez supra* 575A).

Lastly the court makes reference to the variation in font size and format:

“It is necessary to record that this print is much smaller than appears hereinabove, is starkly less prominent than the caption referred to in the previous paragraph and does not attract one’s attention” (*Mercurius Motors v Lopez supra* 575C).

It would seem to be clear from these cases that the courts are quite willing and able to consider these factors when considering whether or not to enforce a contract, in particular, whether they make for an error to be considered “*iustus*” or whether a person may be misled.

5 1 3 Section 22(2)(c): The vocabulary, usage and sentence structure

A factor which determines the ease with which a contract is read is whether or not the consumer is familiar with the chosen vocabulary and how it is used. In *Constantia Insurance Co Ltd v Compusource (Pty) Ltd* (2005 (4) SA 336 (SCA)) the court referred to the vocabulary usage stating:

“Finally, the reasonable person would, in my view, have realized that clause 3.5 is not very clearly worded. Instead of saying in plain English ...” (*Constantia Insurance Co Ltd v Compusource (Pty) Ltd supra* 356D).

In *Langeveld v Union Finance Holdings (Pty) Ltd* (2007 (4) SA 572 (WLD)) the court referred to the use of plain language rather than legalese:

“The suretyship section or block hardly skulks away furtively. It is not hidden in ‘fine print’. It is not buried in a mountain of *legalese* or *jargon*” (*Langeveld v Union Finance Holdings (Pty) Ltd supra* 574D).

While in *Mercurius Motors v Lopez*:

“Interpreting the caption ... the wording does not include an exemption in relation to the theft of the vehicle itself” (*Mercurius Motors v Lopez supra* 576E).

The courts have concentrated more on language usage than the length of sentences, but the sentence length is a particular factor that has been identified as being one of the most important aspects determining the readability of a contract (Van den Bergh *Readable Consumer Contracts* 90). It is recommended that the average sentence length should be 22 words and that an average paragraph should not consist of more than 75 words (Van den Bergh *Readable Consumer Contracts* 90; and Dick “Plain English in Legal Drafting” 1980 xviii(3) *Alberta LR* 509 512). If, in future, the courts look at the length of sentences and its relationship to the ability of an average consumer to understand the term then they may consider this recommended length.

5 1 4 Section 22(2)(d): The use of any illustrations, examples, headings or other aids to reading

The use of headings, preferably in a different font size or style, may be used to assist consumers in reading the contract and finding specific information which they may require (Van den Bergh *Readable Consumer Contracts* 30; and Dick 1980 xviii(3) *Alberta LR* 511). Headings of contracts are only used as a secondary source in interpretation and will be disregarded if the terms under such headings are clear. However, many contracts specifically exclude headings when interpreting the contract. This may be unfair since a heading may give an indication of the content of a contract as was pointed out in *Keens Group (Pty) Ltd v Lötter*, where the court held:

“That document, however, is headed ‘application for credit facilities’ ... The application is one designed to be one by a company ... All this would in my

opinion clearly cause the defendant to believe he was purporting to enter into an agreement on behalf of his company" (*Keens Group (Pty) Ltd v Lötter supra* 590F–H).

But in *Roomer v Wedge Steel (Pty) Ltd* the court complimented the respondent for effectively guarding against any possible misunderstanding by making use of a heading saying:

"by heading the document 'Contract of sale and deed of suretyship ...'" (*Roomer v Wedge Steel (Pty) Ltd supra* 543G–I).

However in *Brink v Humphries & Jewell (Pty) Ltd* the court once again criticized the poor wording of the heading:

"The *prominent heading* of the document proclaims that it is a credit application form – not a credit application and personal suretyship" (*Brink v Humphries & Jewell (Pty) Ltd supra* 425D).

Since the Act (s 22(2)(d)) specifically makes provision for the consideration of headings in establishing plain and understandable language, the drafter of a document will not be able to exclude them from the interpretation of the document as is often done.

5.2 Section 40: Unconscionable conduct

If one considers the statements which are made in the course of decisions based on the construction and terms of contracts, it becomes clear that the court considers the drafting of the contract as conduct on the part of the drafter. In essence, the court is applying the "*contra preferentum*" rule which allows for interpretation against the drafter should the contract term be unclear. The drafter has an opportunity to draft the terms of the contract clearly as well as the layout of the contract. If he/she fails to do this correctly then he/she is responsible for the misrepresentation it creates or it would make an error "*iustus*".

In *Brink v Humphries & Jewell (Pty) Ltd* the court used the term "unconscionable", which we now find in the Act, when describing an attempt to enforce a term:

"The law recognises that it would be unconscionable for a person to enforce the terms of a document where he misled the signatory, whether intentionally or not" (*Brink v Humphries & Jewell (Pty) Ltd supra* 421F).

In *Diners Club SA v Livingstone*, the court held that a signatory could be misled by a document:

"The whole get-up of the enrolment form is such as to mislead a person into thinking that only the company was being considered for enrolment" (*Diners Club SA v Livingstone supra* 495G).

So too in *Diners Club SA (Pty) Ltd v Thorburn* when the court held:

"I consider it sound in principle that the party who drafts a contractual document would be blameworthy if he did so in such a way as to turn it into a

trap containing onerous clauses which would not reasonably be expected by the other party" (*Diners Club SA (Pty) Ltd v Thorburn supra* 875B–C).

5 3 Section 48: Unfair, unreasonable or unjust contract terms

While a number of terms have been classified as being unreasonable in a grey list contained in the Regulations (see reg 44 for the terms), the list is not a closed list. However, for the purposes of this article only section 48(2)(d)(ii) will be considered, which requires that, if a term or notice is subject to section 49(1), then the fact, nature and effect must be drawn to the attention of the consumer in a manner to satisfy section 49 ((d), the transaction or agreement was subject to a term or condition, or a notice to a consumer contemplated in section 49(1). In addition – (i) the term, condition or notice is unfair, unreasonable, unjust or unconscionable; or (ii) the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer in a manner that satisfied the applicable requirements of s 49).

In *Keens Group v Lötter* the court made reference to whether or not a document draws the attention of the reader to a term:

"While not in a particularly inconspicuous place that obligation is not made particularly conspicuous either. It appears in the same type style and size as the rest of the document" (*Keens Group v Lötter supra* 590F).

In *Diners Club SA (Pty) Ltd v Thorburn* the court was once again outspoken about this aspect:

"A signatory can be misled by the form and appearance of the document itself just as much as by a prior advertisement or representation" (*Diners Club SA (Pty) Ltd v Thorburn supra* 875B–C).

In *Mercurius Motors v Lopez*:

"The trial judge considered that the reference on the left-hand side of the repair order form to the conditions of the contract was printed and located in such a manner so as not to draw the reader's attention" (*Mercurius Motors v Lopez supra* 576F).

And

"An exemption clause such as that contained in clause 5 of the conditions of contract, that undermines the very essence of the contract of deposit, *should be clearly and pertinently brought to the attention of the customer* who signs a standard instruction form, and not by way of an inconspicuous and barely legible clause ..." (*Mercurius Motors v Lopez supra* 578A).

5 4 Section 49: Notice required for certain terms and conditions

This section sets out which terms need to be drawn to a consumer's attention as well as the manner in which they should be drawn to their attention. (1) Any notice to consumers or provision of a consumer agreement

that purports to – (a) limit in any way the risk or liability of the supplier or any other person; (b) constitute an assumption of risk or liability by the consumer; (c) impose an obligation on the consumer to indemnify the supplier or any other person for any cause; or (d) be an acknowledgement of any fact by the consumer, must be drawn to the attention of the consumer in a manner and form that satisfy the formal requirements of subsections (3) to (5). (3) A provision, condition or notice contemplated in subsection (1) or (2) *must be written in plain language*, as described in section 22. (4) The fact, nature and effect of the provision or notice contemplated in subsection (1) must be drawn to the attention of the consumer – (a) in a conspicuous manner and form that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances. The section, however, gives no indication of a style or structure to be used but does refer to section 22 (s 49(3)). In light of this, one may accept that the courts are to be guided by the factors which are mentioned in section 22(2)(a)-(d) and which have been discussed already (par 5.1.1–5.1.4). In so saying, the decisions mentioned above will all be relevant when deciding whether or not a term is conspicuous and has been drawn to the attention of the consumer in some manner.

The fact that there are, as yet, no guidelines as to how this notice must take place when documents are drafted, it will be up to the individual drafter to establish some method to do so. He may decide on a larger font, bold type, upper case, a different colour, a heading or may decide to block these terms in a separate section which will then be signed by the consumer. It may even comprise of a combination of these methods.

The inescapable consequence of the lack of guidelines means that the courts may, at some stage, have to give effect to these sections and doing so may look to past decisions. Section 52 does give the court extensive powers and, in terms of section 52(2), it must consider; subsection 2(d) the conduct of the supplier and the consumer, respectively; subsection 2(e) whether there was *any negotiation between the supplier and the consumer*, and if so, the extent of that negotiation; subsection 2(g) the extent to which any documents relating to the transaction or agreement satisfied the requirements of section 22; subsection 2(h) whether the consumer knew or ought reasonably to have known of the existence and extent of any particular provision of the agreement that is alleged to have been unfair, unreasonable or unjust, having regard to any – (i) custom of trade; and (ii) any previous dealings between the parties. All these are factors which the courts have considered in the past.

6 Conclusion

The Consumer Protection Act is a ground-breaking and important piece of legislation which has, as its main objective, the protection of consumers. In doing so it looks to regulate the terms and conditions which are imposed on a consumer in a contract and by notice. While in some instances the Act may be relatively clear on how a consumer is protected, the protection offered by section 22 and related sections is not particularly clear and will need to be interpreted and given effect. As stated in this article, there is

sufficient judicial precedent when it comes to interpreting the plain and understandable language requirement and it would be unfortunate if courts were to start looking to other jurisdictions for meaning or completely disregard the common-law development of this aspect which they have undertaken. Our courts are suitably equipped to give meaning to this requirement and consider the factors which are mentioned in section 22 and elsewhere. The Act, in the section 2 on its interpretation, does not seek to deny a consumer any existing common-law rights. The precedent developed is based on the consumer's common-law right to escape liability in a contract on the basis of a misrepresentation or mistake. Thus, an application of the Act can be considered as a development or, at the very least the extension of this common-law remedy.

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