

## **The Consumer Protection Act – “Fine Print”, Not So Fine**

For many years, disclaimers have been utilized by service providers across the business spectrum to circumvent their responsibilities to consumers.

Dealing with disclaimers, the Consumer Protection Act (CPA) states in Section 49(1)(a) to (d):

“Any notice to consumers or provision of a consumer agreement that purports to limit in any way the risk or liability of the supplier or any other person; constitutes an assumption of risk or liability by the consumer; impose an obligation on the consumer to indemnify the supplier or any other person for any cause; or be an acknowledgement of any fact by the consumer – must be drawn to the attention of the consumer in a manner and form that satisfies the formal requirements of subsections (3) to (5).”

The formal requirements that disclaimers should satisfy are the following:

- 1) Firstly, the “provision, condition or notice” must be written in plain language. It would be considered to have been written in plain language if the ordinary consumer, with an average literary skill level could be expected to comprehend the content, and essence of the disclaimer.
- 2) Secondly, disclaimers written in barely legible fine print and placed at the bottom of the page is no longer acceptable. The effect and nature of the notice must be drawn to the attention of the consumer in a conspicuous form and manner that will likely attract the attention of an ordinarily alert consumer, bearing in mind the circumstances.
- 3) The CPA also emphasizes that the consumer’s attention be brought to the disclaimer before they enter into the transaction, engages in the activity, enter or gain access to the facility, or is required to offer consideration for the transaction.
- 4) Lastly, the consumer must be allowed adequate opportunity to grasp the import of the disclaimer and understand the consequences that will arise there from.

Therefore, it is evident that service providers should ensure that a rigorous compliance review is conducted into all of its agreements and trading practices, such as terms and conditions, and disclaimers, to guarantee that every aspect of their business will be in compliance with the Consumer Protection Act.