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CHAPTER 326B

FAIR TRADING COMMISSION

An Act to provide for the establishment of a Fair Trading Commission to safeguard the interests of consumers, to regulate utility services supplied by service providers, to monitor and investigate the conduct of service providers and business enterprises, to promote and maintain effective competition in the economy, and for related matters.

2000-31.
2001-36.

[2nd January, 2001] Commence-
ment.
2001/2.

1. This Act may be cited as the *Fair Trading Commission Act*. Short title.

PART I

Preliminary

2. In this Act

Interpreta-
tion.

"business enterprise" includes companies, statutory corporations, unincorporated associations, partnerships and persons trading as sole traders;

"Commission" means the Fair Trading Commission established under section 3;

"Commissioner" means a member of the Commission appointed by the Minister in accordance with paragraph 1 of the *First Schedule*;

First
Schedule.

"document" includes

- (a) anything on which there is writing;

(b) a map, plan, drawing or photograph;

(c) anything from which sound or visual images are capable, with or without the aid of a device of being reproduced, and also includes a part of a document as so defined and a copy, reproduction or duplicate of a document or part thereof; and

(d) a record, a security, any electronic data, computer programmes, computer tapes, computer discs and microfilm;

"Minister" means the Minister responsible for Consumer Affairs;

Cap. 282. "Public Counsel" means the Public Counsel appointed under section 8 of the *Utilities Regulation Act*;

"principles" mean the formula, methodology or framework for determining a rate for a utility service;

"rates" include

(a) every rate, fare, toll, charge, rental or other payment to a service provider;

(b) a rule, practice, measurement, classification or contract of a service provider relating to a rate; and

(c) a schedule or tariff respecting a rate;

"service provider" means

(a) a statutory corporation;

Cap.308. (b) a company incorporated under the *Companies Act*; or

(c) any other entity

which provides a utility service;

"standards of service" means the quality and extent of service supplied by service providers;

"statutory corporation" means a company or a corporation established by or under an enactment;

"utility service" means a service specified in the *Second Schedule* and includes the supplying or furnishing of any commodity derived directly from the activities in which a service provider is engaged, but does not include any other activity of the service provider which is not connected with a service specified in that Schedule. Second Schedule.

PART II

Appointment and Establishment of Fair Trading Commission

3. (1) There is established a Commission to be known as the Fair Trading Commission. Establishment of Commission. First Schedule.

(2) The *First Schedule* has effect with respect to the constitution of the Commission and otherwise in relation thereto.

(3) The Commission is a body corporate to which section 21 of the *Interpretation Act* applies. Cap. 1.

4. (1) The functions of the Commission are to enforce the *Utilities Regulation Act* and any laws relating to consumer protection and fair competition which the Commission has jurisdiction to administer. Functions of the Commission. Cap. 282.

(2) The Commission shall carry out its functions in such a manner as to

- (a) promote efficiency and competitiveness amongst; and
- (b) improve the standards of service and quality of goods and services supplied by,

service providers and business enterprises over which it has jurisdiction.

(3) The Commission shall, in the performance of its functions and in pursuance of the objectives set out in subsections (1) and (2),

- (a) establish principles for arriving at the rates to be charged by service providers;
- (b) set the maximum rates to be charged by service providers;

- (c) monitor the rates charged by service providers to ensure compliance;
- (d) determine the standards of service applicable to service providers;
- (e) monitor the standards of service supplied by service providers to ensure compliance;
- (f) carry out periodic reviews of the rates and principles for setting rates and standards of service of service providers;
- (g) hear and determine complaints by consumers regarding billings and the standards of service supplied by service providers;
- (h) keep commercial activities under review;
- (i) receive and evaluate consumer complaints;
- (j) educate and assist consumers in resolving complaints; and
- (k) investigate whether business enterprises are engaging in anti-competitive business practices.

(4) The Commission shall, in performing its functions under subsection (3)(a), (b), (d) and (f) consult with the service providers, representatives of consumer interest groups and other parties that have an interest in the matter before it.

(5) The Commission shall do all that is necessary and expedient for the proper performance of its functions and shall inform persons engaged in trade or commerce and consumers in general of its functions and powers as are set out

- (a) in this Act;
- (b) in the *Utilities Regulation Act*; and
- (c) in any laws relating to consumer protection and fair competition which the Commission has jurisdiction to administer.

(6) The Commission may on its own initiative or on the request of any person carry out any investigation that it considers necessary or desirable in connection with matters falling within the provisions of this Act, the *Utilities Regulation Act* and any laws relating to consumer protection and fair competition which the Commission has jurisdiction to administer. Cap. 282.

5. (1) A panel of 5 Commissioners shall sit to hear and determine matters relating to utility regulation in accordance with this Act and the *Utilities Regulation Act*. Panel of Commissioners.
Cap. 282.

(2) Notwithstanding subsection (1), for the purpose of exercising its jurisdiction the panel shall be constituted in accordance with the directions of the Commissioners and may consist of an uneven number of Commissioners, such number being not less than 3.

(3) A decision of the panel on a hearing is as valid and binding as if it were made by the Commission.

6. (1) The Commission shall, with the approval of the Minister, appoint a Chief Executive Officer for a term not exceeding 5 years and on such terms and conditions as the Commission may determine. Appoint-ment of Chief Executive Officer.

(2) The Chief Executive Officer shall be eligible for re-appointment.

(3) The Chief Executive Officer

(a) shall be responsible to the Commission for the administration of

(i) this Act;

(ii) the *Utilities Regulation Act*; and Cap. 282.

(iii) any laws relating to consumer protection and fair competition which the Commission has jurisdiction to administer;

(b) shall be an *ex-officio* member of the Commission; and

(c) shall be responsible for the supervision of the work and staff of the Commission.

(4) The Commission shall, with the approval of the Minister, pay the Chief Executive Officer such remuneration and allowances as the Commission determines.

Appoint-
ment of
Directors.

7. (1) The Commission shall, with the approval of the Minister, appoint

(a) a Director of Utility Regulation;

(b) a Director of Consumer Protection; and

(c) a Director of Fair Competition,

who shall each serve a term not exceeding 5 years, and who are each eligible for re-appointment.

(2) The Directors appointed under subsection (1) are employees of the Commission and shall perform the functions assigned to them by the Chief Executive Officer.

(3) The Commission shall, with the approval of the Minister, pay each Director such remuneration and allowances as the Commission determines.

Disclosure
of Commis-
sioner's
interest.

8. (1) A Commissioner who has an interest

(a) in a service provider or business enterprise; or

(b) in a competitor of a service provider or business enterprise

under investigation or deliberation by the Commission shall disclose to the Commission the particulars of the interest; and the details of the disclosure shall be recorded in the minutes taken at the meeting at which the disclosure is made.

(2) No Commissioner shall be deemed to have an interest in a service provider by reason only of the fact that that Commissioner is a subscriber to the service provider.

- (3) For the purposes of this section, "interest" includes
- (a) personal, pecuniary or proprietary interest in a matter being considered or under investigation by the Commission;
 - (b) proprietary interest in a share, stock, debenture or other security of a service provider or business enterprise;
 - (c) beneficial interest in a contract or an agreement for the construction of works or the provision of a service for a service provider or business enterprise; and
 - (d) beneficial interest in any device, appliance machine, article, patent or patented process, or any part thereof that is required or used by any service provider or business enterprise for the purpose of its equipment or service.

(4) A Commissioner who fails to comply with this section is liable on summary conviction to a fine of \$25 000 unless he proves that he did not know that the service provider or business enterprise in which he has an interest was the subject of consideration at the meeting.

9. Where a Commissioner discloses his interest in a service provider or business enterprise in accordance with section 8, the Chairman and the other Commissioners shall

Procedure
after
disclosure.

- (a) determine whether the interest is significant, and whether the Commissioner should be precluded from the investigation or deliberation;
- (b) disclose the Commissioner's interest to the public, whether that interest be significant or not;
- (c) preclude the Commissioner from taking part in the investigation or deliberation where the Chairman and other Commissioners determine that the interest is significant; or
- (d) permit the Commissioner to take part in the investigation or deliberation where the Chairman and the other Commissioners determine that the interest is not significant.

Temporary
membership.

10. (1) Where a Commissioner

- (a) is precluded by the Commission from taking part in an investigation or deliberation pursuant to section 9; or
- (b) is unable to act by reason of illness, absence from Barbados or any other reason,

the Minister may appoint a person to act as a Commissioner in his place for that investigation or deliberation or until the termination of the disability.

(2) The Minister shall fix the remuneration of the person so appointed.

(3) Any person so appointed may complete any unfinished business of the Commission in which he has taken part, even if the Commissioner in whose place he was acting is now able to act.

Confidential
information.

11. (1) In this section, "confidential information" means information of any kind and in any form that relates to one or more persons and that is obtained by or on behalf of the Commission for the purpose of administering or enforcing this Act or any law that the Commission has jurisdiction to administer or enforce, or that is prepared from such information, but does not include information that does not directly or indirectly reveal the identity of the person to whom it relates.

(2) Every

- (a) Commissioner;
- (b) officer and employee of the Commission; and
- (c) expert retained to assist the Commission

shall keep secret all confidential information coming to his knowledge during the course of the administration of this Act or any other Act that the Commission has jurisdiction to administer or enforce, except insofar as disclosure is necessary for the administration of this Act or insofar as the Commission authorises that person to release the information.

(3) Where

(a) a person claims that confidential information

(i) made available, or to be made available by or on behalf of the person, whether in oral evidence or in a written statement, submission or other document, at the hearing; or

(ii) furnished, or contained in a document produced by the person

is information the disclosure of which would be injurious to the interest of the person; and

(b) the Commission is satisfied that the claim is justified and is not of the opinion that disclosure of the confidential information is necessary in all the circumstances,

the Commission shall take all reasonable steps to ensure that the confidential information is not, without the consent of that person, disclosed in the proceedings or by the Commission to a person other than a member of the staff of the Commission who receives the relevant information in the course of his duties.

(4) Any person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 2 years, or to both.

12. (1) The Commission may appoint or engage persons having special or technical knowledge to assist the Commission in carrying out its functions. Experts.

(2) A person engaged pursuant to subsection (1) shall receive such remuneration as the Commission determines.

13. Notwithstanding section 6 and section 7, the Commission may appoint and employ such other officers and employees as it deems necessary, on such terms and conditions as it thinks fit. Appoint-
ment and
remunera-
tion of
officers.

Functions of officers and employees.

14. The officers and employees appointed pursuant to section 13 shall investigate such matters as are stipulated by the Chief Executive Officer and shall report their findings to the Chief Executive Officer.

Obtain-
ing the
services of
employees
of the
Crown.

15. For the purpose of any enquiry or examination conducted by it or in the performance of any of the other duties assigned to it by this Act, the Commission may, with the consent of the Governor-General, utilise the services of any public officer or other employee of the Crown.

Pension
rights and
service.
Cap. 25.

16. (1) Where a public officer is seconded or temporarily transferred from a pensionable office within the meaning of section 2(1) of the *Pensions Act* to perform any service with the Commission, his service with the Commission shall, unless the Governor-General otherwise decides, count for pension under that Act as if the officer had not been so seconded or transferred.

1947/20.

(2) If the services of a person employed by the Commission are on loan to the Government, that person is entitled to such benefits and terms of employment as are applicable to the post which that person occupies, and the service with the Commission shall be taken into account as continuous service with the Government and the *Pensions Act* and the *Pensions Regulations, 1947* shall apply to that person as if his service with the Commission were service within the meaning of that Act.

(3) Where a public officer is transferred to the service of the Commission in accordance with subsection (4), the Commission shall refund to the Consolidated Fund all moneys payable as pension in respect of the service of that officer with the Commission.

(4) Where

(a) a public officer is transferred to an office in service of the Commission; or

(b) an officer of the Commission is transferred to an office in the public service,

the *Pensions Act* shall apply to that officer as if that officer's service with the Commission were other public service within the meaning of that Act, and the *Pensions Regulations, 1947* shall apply to that officer accordingly. 1947/20.

17. The Minister may after consultation with the Chairman give the Commission directions of a general nature in respect of the policy to be followed by the Commission in exercising its functions in respect of utility regulation, consumer protection matters and fair competition matters, and the Commission shall comply with those directions. Directions.

18. The appointments of

- (a) the Chief Executive Officer;
- (b) the Director of Utility Regulation;
- (c) the Director of Consumer Protection; and
- (d) the Director of Fair Competition,

Publication
in the
*Official
Gazette.*

and the termination of their appointments whether by death, resignation or otherwise, shall be published in the *Official Gazette*.

PART III

Finances of Commission

- 19.** (1) The funds and resources of the Commission shall consist of
- (a) such amounts as may be voted for the purpose by Parliament;
 - (b) such sums as are levied on the service providers to meet the annual expenses of the Commission; and
 - (c) all other amounts which may become payable to or vested in the Commission in respect of any matter incidental to its functions.

Funds of the
Commis-
sion.

(2) The total amount levied on service providers should, taking one year with another, be equal to the costs properly attributable to the regulation of utility services provided by the service providers.

(3) The maximum amount which may be levied on a service provider pursuant to subsection (1)(b) is one per cent of that service provider's gross sales.

(4) The amount levied under subsection (1)(b) on a service provider shall be paid by the service provider within one month after the service provider has been notified by the Commission of the amount, and in default of payment the Commission may sue for and recover the same in any court.

(5) The funds of the Commission shall be applied

(a) to defray the following expenditure:

(i) salaries, fees, allowances and other payments due to the staff of the Commission;

(ii) capital and other operating expenses including maintenance and insurance of any property of the Commission;

(iii) any other expenditure authorised by the Commission in the discharge of its duties, functions and contractual obligations;

(iv) any other expenses authorised to be spent in the functioning of the Commission; and

(b) to create any reserves determined by the Commission and approved by the Minister responsible for Finance.

Estimates.

20. The Commission shall, not later than the 15th day of November of each year, in such form as the Minister directs, submit to the Minister for approval

(a) a plan with details of the objectives, strategies and policies of the Commission;

- (b) estimates of the revenue to be earned by the Commission; and
- (c) expenditure for the current financial year and the total estimated recurrent expenditure

for the following financial year.

21. (1) The Commission shall, in respect of its functions under this Act, keep proper accounts and adequate financial and other records in relation thereto, to the satisfaction of and in accordance with the directions of an auditor appointed under subsection (2) for the purpose of auditing the accounts; and shall prepare a statement of accounts in respect of each financial year. Accounts and audit.

(2) The Commission shall submit its accounts for audit to the auditor appointed by the Commission.

(3) The Auditor-General may at any time, and shall on the direction of the Minister responsible for Finance, carry out an investigation or audit of the accounts of the Commission.

(4) The Commission and all other persons concerned with the keeping of its accounts shall grant to the auditor referred to in subsection (2) or the Auditor-General, as the case may be, access to all books, documents and assets relating to those accounts, and shall give the auditor on request all the information within their knowledge in relation to the operations of the Commission.

(5) Any person who fails to comply with the provisions of subsection (4) commits an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 6 months, or to both.

22. (1) The Commission shall, not later than 4 months after the end of each financial year, submit to the Minister Report.

- (a) a report of the activities and operations of the Commission throughout the preceding financial year in such detail as the Minister may direct; and

(b) a statement of the audited accounts of the Commission for the preceding financial year in accordance with section 21(1).

(2) A copy of the report and a statement of the audited accounts of the Commission referred to in subsection (1) shall be printed and laid before both Houses of Parliament and published in the *Official Gazette* not later than 3 months from the date of receipt thereof by the Minister.

PART IV

Complaints, Investigations and Procedure before the Commission

Action to be taken by aggrieved party.

23. Every person who is aggrieved by an act done by a service provider or business enterprise which is contrary to any law which the Commission has jurisdiction to administer, may make a complaint against the service provider or business enterprise.

Complaints.

24. (1) Any person who has a complaint against a service provider or business enterprise may

- (a) make the complaint in writing to the Commission; or
- (b) make an oral complaint before a member of the staff of the Commission designated by the Chief Executive Officer.

(2) Where a person makes an oral complaint pursuant to subsection (1), that complaint shall be recorded in writing by a member of staff of the Commission and

- (a) shall be read and signed by the complainant; or
- (b) where the person is visually impaired, unable to read or unable to write, shall be read to that person and marked by him.

(3) A complaint made pursuant to subsection (1) shall set out any act by any service provider or business enterprise which is in breach of any law that the Commission has jurisdiction to administer.

25. (1) The Commission shall only investigate a complaint made against a service provider or business enterprise where the complainant satisfies the Commission that he has submitted a complaint to the service provider or business enterprise and has failed to obtain reasonable redress. Evaluation of complaint.

(2) Upon the making of a complaint pursuant to section 24, the Commission shall proceed to investigate the complaint unless it is satisfied that

- (a) the complaint is trivial, frivolous or vexatious;
- (b) the complaint is not made in good faith; or
- (c) the complainant does not have *locus standi* in the matter.

26. (1) For the purpose of the discharge of any of its functions under this Act or any law that the Commission has jurisdiction to administer the Commission shall have the power Investigative powers of the Commission.

- (a) to hold inquiries;
- (b) to administer oaths;
- (c) to summon and examine witnesses;
- (d) to compel the production of such books, records, papers and documents as it may deem necessary or proper for any proceeding, investigation or hearing held by it;
- (e) to examine the documents produced;
- (f) to require that any document submitted to the Commission be verified by affidavit;
- (g) to seize documents;
- (h) to adjourn investigations;
- (i) to make test purchases;
- (j) to inspect goods; and

(k) to do all necessary and proper acts in the lawful exercise of its powers or the performance of its duties.

(2) The Commission shall have the power to hear orally any person who in its opinion will be able to furnish the information required by the Commission or who will be affected by an investigation or hearing, and shall hear the person if the person has made a written request for a hearing showing that he is an interested party likely to be affected by the result of the investigation or hearing, or that there are particular reasons why he should be heard orally.

Third
Schedule.

(3) All summonses for the attendance of witnesses or other persons or for the production of documents for the purpose of an investigation may be in the form given in the *Third Schedule*, shall be signed by one of the Commissioners and may be served personally or by registered post.

(4) All persons summoned to attend and give evidence, produce books of account, minutes of meetings or any documents at any hearing of the Commission

(a) shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey summonses issued from the High Court; and

(b) are subject to the same penalties as provided in respect of witnesses summoned by the High Court.

Search and
seizure.

Cap. 282.

27. (1) Where during any investigation the Commission has reasonable cause to suspect that an offence has been committed under this Act, the *Utilities Regulation Act* or under any law relating to consumer protection or fair competition which the Commission has jurisdiction to administer and that any book, document or thing relating to the offence is being kept or concealed in any building or place, the Commission shall lay an information on oath before a magistrate for a search warrant to search and seize that book, document or thing.

(2) Where the magistrate is satisfied by information on oath that

-
- (a) there is reasonable ground for suspecting that an offence has been committed; and
- (b) evidence of the commission of that offence is to be found in any book, document or thing that is likely to be found in any building or place,

the magistrate may at any time issue a search warrant authorising an officer of the Commission named in the warrant, with or without a member of the Police Force, to enter and search such building or place specified in the information, between the hours of 5 o'clock in the morning and 8 o'clock in the night, for such book, document or thing and to seize and take away such book, document or thing.

(3) Any person who without the authority of the said officer alters or interferes with any book, document or thing seized under this Act is guilty of an offence and is liable on summary conviction to a fine of \$40 000 or to imprisonment for 6 months, or to both.

(4) The officer of the Commission referred to in subsection (2) is not personally liable for any loss or damage arising from the execution of a search warrant under this section.

(5) Where the officer has seized the book, document or thing under subsection (2), he shall take it to the Commission, which may retain it, taking reasonable care to ensure that it is preserved, until the conclusion of the investigation.

(6) Where a book, document or thing has been seized under subsection (2), a magistrate may on the application of an interested party order that the book, document or thing be returned to the person from whom it was seized, or the person who is otherwise legally entitled thereto, if the magistrate is satisfied that the book, document or thing will not be required for the purposes of the investigation.

(7) The person from whom any book, document or thing is seized under subsection (2) is entitled at all reasonable times, and subject to such reasonable conditions as may be imposed by the Commission, to inspect the book, document or thing and, in the case of a book or document, to obtain a copy thereof.

(8) The Commission shall be given at least 7 days notice of an application made under subsection (6).

Copies of document or book of account.

28. Where a document or book of account has been seized, inspected or examined by an officer of the Commission under section 27, the officer may make or cause to be made one or more copies thereof; and a document purporting to be certified by the officer to be a copy made pursuant to this section is admissible in evidence and has the same probative value as the original document.

Termination of investigation.

29. (1) The Commission may, at any stage, terminate an investigation where it is of the opinion that the matter being investigated does not justify further investigation; and shall make a report in writing stating the reasons for the termination.

(2) A report made pursuant to subsection (1) shall be submitted to the Minister within 3 months of the termination of the investigation.

Service of complaint on parties.

30. Where on the conclusion of an investigation by the Commission

(a) on its own initiative in accordance with section 4(6); or

(b) on a complaint made in accordance with section 23,

Cap. 282.

the Commission determines that there may be a breach of any section of the *Utilities Regulation Act* or any law relating to consumer protection or fair competition which the Commission has jurisdiction to administer, the Commission shall in a timely manner serve a copy of the finding of its investigation, or a copy of the complaint, on the service provider or business enterprise together with a notice requiring the service provider or business enterprise

(i) to satisfy the finding or complaint; or

(ii) to respond to the finding in writing, or answer the complaint in writing,

within such reasonable time as may be specified in the notice.

31. (1) Where a service provider or a business enterprise fails to comply with the provisions of section 30, the Commission shall Fixing of hearings.

- (a) fix a time and place for a hearing in respect of a complaint or finding alleging a breach of any section of a law relating to utility regulation; or
- (b) institute proceedings in the High Court in respect of a complaint or finding alleging a breach of any section of a law relating to consumer protection or fair competition that the Commission has jurisdiction to administer.

(2) At any hearing before the Commission in respect of a breach of any section of the *Utilities Regulation Act* Cap. 282.

- (a) a complainant is entitled to be
 - (i) heard in person; or
 - (ii) represented by an agent or an attorney-at-law; and
- (b) a consumer is entitled to be
 - (i) heard in person; or
 - (ii) represented by an agent, attorney-at-law or by Public Counsel.

(3) For the purposes of this section "consumer" has the meaning given to it by section 9(2) of the *Utilities Regulation Act*. Cap. 282.

32. Notice of all hearings before the Commission shall be given in such manner as the Commission may prescribe. Notice.

33. Hearings of the Commission shall take place in public but the Commission may, Hearings.

- (a) whenever the circumstances so warrant; or
 - (b) whenever it deems appropriate,
- conduct hearings in private.

Decision of
Commis-
sion.

34. (1) At the conclusion of a hearing, the Commission shall make an order which shall state its decision and, where necessary, a time within which the order is to be complied with.

(2) A certified copy of the order shall be served upon the service provider or business enterprise against whom it is made within 14 days of the date the order is made and at that time notice thereof shall be given to the other parties to the proceedings.

Publication
of decisions.

35. The Commission shall within one month of giving a decision publish that decision in writing with supporting reasons.

PART V

Reviews and Appeals

Review by
Commission
of decision
or order.

36. The Commission may on application or on its own motion review and vary or and rescind any decision or order made by it and, where under this Act a hearing is required before any decision or order is made, such decision or order shall not be altered, suspended or revoked without a hearing.

Appeal.

37. (1) An appeal shall lie on a question of law to a Judge of the High Court from a decision or order of the Commission.

(2) The appellant shall give notice of appeal within 14 days of the decision or order of the Commission to the Commission and to the adverse party interested and the parties shall be entitled to be represented by counsel at the hearing of the appeal.

(3) A consumer who is an interested party shall be entitled to be represented by an agent, an attorney-at-law or by Public Counsel at the hearing of the appeal.

Cap. 282.

(4) For the purposes of this section "consumer" has the meaning given to it by section 9(2) of the *Utilities Regulation Act*.

Stay of
proceedings
pending
appeal.

38. No appeal shall of itself stay or suspend the operation of any decision or order of the Commission but a Judge may stay or suspend, in whole or in part, the operation of the decision or order of the Commission pending the appeal, upon such terms as the Judge may think fit.

- 39.** All costs incidental to the hearing of an appeal shall be Costs of appeal.
- (a) defrayed by the parties to the appeal in such manner and proportions as the Judge determines;
- (b) in accordance with the scale of fees in force in respect of civil proceedings in the High Court; or
- (c) taxed and recovered in the same manner as costs are taxed and recovered in that Court.

40. On the hearing of an appeal and the determination of the question involved in the appeal, the Judge shall give his decision to the Commission and the Commission shall make an order in accordance with that decision. Determination of question by Judge.

41. (1) The Commission may, upon the application of any party or may of its own motion state a case in writing for the opinion of a Judge upon any question which in the opinion of the Commission is a question of law. Case stated upon a question of law.

(2) The Judge shall hear and determine all questions of law arising in any case stated for his opinion by the Commission and shall remit the matter to the Commission with the opinion of the Judge, and the opinion shall be binding on the Commission and on all the parties.

PART VI

Miscellaneous

42. A copy of any rule, regulation, order or other document in the custody of the secretary to the Commission, certified by the secretary to be a true copy and sealed with the seal of Commission, shall be evidence of the rule, regulation, order or document without proof of the signature of the secretary. Evidence of documents.

43. (1) Every service provider or business enterprise that fails or refuses to obey an order of the Commission made under this Act is liable on summary conviction to a fine of \$100 000 and, in the case of a continuing offence, to a further fine of \$10 000 for each day or part thereof during which the offence continues. Non-compliance with order of Commission.

(2) Where it is proved that a service provider or business enterprise has failed to obey an order of the Commission made under this Act, every director and officer of the service provider or business enterprise shall be liable on summary conviction to a fine of \$50 000 or to imprisonment for 6 months or to both unless that individual proves that all necessary and proper means in his power were taken to obey and carry out the order of the Commission and that he was not at fault for the failure to obey the order.

Obstruction
of officer of
Commission

44. Every person who assaults, obstructs or interferes with any Commissioner, officer of the Commission or person in the exercise of the rights conferred or duties imposed by or under this Act is liable on summary conviction to a fine of \$40 000 or to imprisonment for 6 months, or to both.

Wilful
default by
service
provider in
furnishing
information.
Cap. 282.

45. (1) Where the Commission serves a notice on a director or officer of a service provider or business enterprise directing him to furnish to the Commission any information which the service provider or business enterprise may be required to furnish under this Act, the *Utilities Regulation Act* or any other law relating to consumer protection or fair competition that the Commission has jurisdiction to administer, and the director or officer wilfully refuses or fails to furnish the information in the manner directed by the Commission, and at or within the time stated in the notice, the director or officer so at fault is guilty of an offence and is liable on summary conviction to

- (a) a fine of \$50 000; and
- (b) a further fine of \$10 000 for each day or part thereof during which the offence continues.

(2) Where a director or officer served with a notice under subsection (1) does not have knowledge of the information referred to in the notice having regard to his position and authority with the service provider or business enterprise, that director or officer is not liable under subsection (1).

46. (1) The costs of and incidental to any proceeding before the Commission shall be in the discretion of the Commission and may be fixed at a sum certain or may be taxed. Costs in discretion of Commission.

(2) The Commission may prescribe a scale under which costs shall be taxed and may order by whom the costs in any proceedings are to be taxed.

47. The Commission may, with the approval of the Minister, make Regulations Regulations.

- (a) prescribing the fees to be paid in respect of any matter within the jurisdiction of the Commission;
- (b) prescribing any matter or thing that is required by the Act to be prescribed; and
- (c) for giving effect to the provisions of the Act.

48. With effect from 2nd January, 2001 Transitional.

- (a) any contract entered into by or on behalf of the Public Utilities Board before the 2nd January, 2001 shall be deemed to have been entered into by or on behalf of the Commission;
- (b) any right, privilege, duty or obligation conferred or imposed upon the Public Utilities Board existing immediately before the 2nd January, 2001 shall be deemed to be conferred or imposed on the Commission;
- (c) the services of a person who immediately before that date was employed by the Public Utilities Board and who is employed by the Commission established under this Act shall be treated as continuous for purposes of calculating pensionable service; and
- (d) all assets and liabilities of the Public Utilities Board are deemed to be transferred to the Commission.

49. The *Public Utilities Act* is repealed. Repeal.
Cap. 282.

FIRST SCHEDULE

*(Section 3)**Fair Trading Commission*

1. (1) The Commission shall consist of a Chairman, a Deputy Chairman and not more than 5 other Commissioners who shall be appointed by the Minister by instrument in writing.

(2) The Chairman shall be an attorney-at-law of at least 10 years standing or a person who has held high judicial office.

(3) The Chief Executive Officer shall be an *ex officio* member of the Commission.

2. Subject to paragraphs 3, 4 and 5, a Commissioner referred to in paragraph 1 holds office for a period not exceeding 5 years but is eligible for re-appointment.

3. A Commissioner other than the Chairman or Chief Executive Officer may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith cause the same to be forwarded to the Minister; and upon the date of receipt by the Chairman of such instrument, the Commissioner ceases to be a member of the Commission unless some other date is mentioned in the instrument.

4. The Chairman may at any time resign his office by instrument in writing addressed to the Minister; and upon the date of receipt by the Minister of such instrument, the Chairman ceases to be Chairman and a Commissioner unless some other date is mentioned in the instrument.

5. A vacancy arises in the membership of the Commission on the death or resignation of a Commissioner.

6. The Minister may terminate the appointment of any Commissioner other than the Chief Executive Officer if the Commissioner

(a) fails to disclose his interest in

(i) a service provider or business enterprise; or

(ii) a competitor of a service provider or business enterprise

under investigation or deliberation by the Commission;

- (b) fails without reasonable excuse to attend 3 consecutive meetings of the Commission;
- (c) has become bankrupt or has made an arrangement with his creditors;
- (d) is incapacitated by physical or mental illness;
- (e) engages in misbehaviour such as fraud, or has a conflict of interest as a result of engaging in paid employment that conflicts with the functions of the Commission; or
- (f) is otherwise unable or unfit to discharge the functions of a Commissioner.

7. Where a vacancy arises or membership of the Commission is terminated in accordance with paragraph 5 or 6, a person may be appointed in accordance with paragraph 1(1) to fill that vacancy.

8. The Commissioners are eligible for such remuneration, whether by way of fees, travelling or other allowances, as the Minister may determine.

9. The names of all of the Commissioners as first constituted and every change in the membership of the Commission shall be published in the *Official Gazette*.

10. (1) The seal of the Commission shall be kept in the custody of the Chairman, Deputy Chairman, or such other Commissioner as the Commissioners may approve; and may be affixed to documents or instruments pursuant to a resolution of the Commission and in the presence of the Chairman or Deputy Chairman and the Secretary to the Commission.

(2) The seal of the Commission shall be authenticated by the signature of the Secretary to the Commission and the signature of either the Chairman or the Deputy Chairman.

(3) All documents other than those required by law to be under seal, may be signed under the hand of the Chairman, the Deputy Chairman, the Chief Executive Officer or the Secretary.

11. The Commission shall meet at such times as may be necessary or expedient for the transaction of its business, and each meeting shall be held on such days and at such times and place as the Commission determines.

12. The Chairman, or in his absence the Deputy Chairman, shall preside at all meetings of the Commission and, in the absence of both the Chairman and the Deputy Chairman, the Commissioners present and constituting a quorum may elect a temporary Chairman to preside at that meeting.

13. A majority of the Commissioners shall constitute a quorum with respect to conducting the general functions of the Commission.

14. Subject to this Schedule, the Commission may regulate its own procedure and may delegate to any of its members the power and authority to carry out on behalf of the Commission such duties as the Commission determines.

15. The decisions of the Commission shall be by a majority of votes and in the event of an equality of votes the Chairman or the Deputy Chairman presiding at the meeting has a second or casting vote.

16. Minutes of each meeting are to be kept by the Secretary or other person appointed by the Commission for the purpose, and are to be confirmed by the Commission at its next meeting and signed by the Chairman or other person presiding at that meeting.

SECOND SCHEDULE

(Section 2)

Utility Services

1. Supply or distribution of electricity.
2. Supply or distribution of water.
3. Supply of sewerage services.
- 2001-36. 4. Supply of domestic telecommunication services.
5. Supply of international telecommunication services.
6. Supply or distribution of natural gas.

THIRD SCHEDULE

(Section 26(3))

Summons to witnesses

To: AB (name of person summoned, and his calling and residence).

You are hereby summoned to attend before the Fair Trading Commission for the purpose of an inquiry into _____

(state briefly the subject matter of inquiry)

to be held at _____ on the _____
(state place)

day of _____ at _____ o'clock and to give

evidence concerning the matters therein questioned; (if the person is summoned to produce any documents, add) and to bring with you and produce at such time and place (specify the documents, time and place).

Dated this _____ day of _____

Commissioner
Fair Trading Commission.