



BP 23/2014

**THE CONSTRUCTION INDUSTRY**  
**AN EXAMINATION OF ITS IMPACT ON CONSUMERS**

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## Executive Summary

The construction of a residence for most consumers is a very costly venture. Therefore, it is important for such projects to be completed efficiently and within the scope of the consumer's budget.

From time to time, consumers have contacted the Commission and expressed the view that some Contractors are over-charging customers, providing poor quality services, not completing the work on time, absconding with monies and not dealing effectively with complaints.

The Commission's objective is to make markets work well for consumers by promoting and protecting consumer interests. If consumers are being misled about the quality of service that they will receive, it is the Commission's legal duty to determine the validity of the allegations and see whether or not there is evidence to support the charges.

Therefore, the Commission launched an investigation, to establish the issues that are affecting consumers, within the construction industry when constructing residential properties or making alterations. The authority for conducting this investigation is Section 4 (6) of the Fair Trading Commission Act, CAP. 326B.

Section 4 (6) states:

*"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, Utilities Regulations Act and any laws relating to consumer protection and fair competition which the Commission has jurisdiction to administer."*

To obtain its objective, the Commission reviewed published information on the matter, interviewed key stakeholders, such as Contractors, Architects, Governmental Agencies and Financial Institutions and conducted a Consumer Survey.

Amongst other things, the research revealed that at the design stage of a building project, Town & Country Planning Development Office (TCPD) has developmental control over the design of the proposed structure. However, this control does not extend to the quality of the work produced by the Contractor when performing his/her duties.

A questionnaire was developed to examine the issues that consumers have encountered within the last five (5) years in the construction industry. The Consumer Survey confirmed that some consumers were experiencing problems when utilising

the services of some stakeholders within the industry. For example, the Consumer Survey showed that twenty percent (20%) of respondents were dissatisfied with the work carried out on their homes because of high cost and delay. Additionally, thirty-five percent (35%) of respondents stated that they paid a higher price than the price originally quoted for the job and thirty-one percent (31%) of respondents stated that the work was not completed in the agreed time.

To remedy the situation, several proposals were forwarded by Stakeholders. Some of the proposals submitted were:

- Consumers seeking to construct private dwellings should ensure that they get multiple written quotations instead of estimates from various Contractors before making a choice. Additionally, consumers should examine work previously undertaken by the selected Contractor and talk to his/her previous clients;
- Consumers should identify all the work to be conducted in a written contract. Each phase of the work should be itemised so that the consumer can evaluate the cost;
- A Building Code<sup>1</sup> and the mandatory registration of Contractors are necessary to alleviate many of the problems which consumers now encounter;
- Consumers should actively monitor the progress of the construction schedule so that early action can be taken, to prevent delays and issues from escalating;
- Consumers should ensure that they pay only for work already completed. Furthermore, before making the final payment, consumers should ensure that the work has been completed satisfactorily; and
- A professional person such as an Architect, Quantity Surveyor, Architect's Technician or Draughtsman should oversee the construction of the project to ensure that it is in conformity with the plans.

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<sup>1</sup> "Building codes are defined as a 'collection of laws, regulations, ...or other statutory requirements adopted by a government legislative authority that is involved in assuring the adequacy of the physical structures and healthy conditions of buildings.'" *Building codes – A Primer*. <http://www.epa.gov>.

## 1.0 Section 1 - Introduction and Rationale for the Study

### 1.1 Background

The construction of a building commences with planning, designing, and financing of the project. Usually, the project is managed by an Architect or a Project Manager. The successful completion of a building project depends on several factors. These include effective planning which must take into consideration the environmental impact of the building, scheduling, budgeting, availability and transportation of building materials.

1.2 Construction work may include new work, additions, alterations or maintenance and repairs. Production responsibilities for work to be conducted are usually specified in (i) contracts with the owners of the construction projects (prime contracts) or (ii) contracts with other sub-Contractors (sub-contracts).

1.3 The Fair Trading Commission “the Commission” has received queries and complaints from consumers alleging that they are dissatisfied with various elements of the service that Contractors are providing.

It is the Commission’s duty to protect the interest of consumers. Therefore, the Commission proposed a study of the construction industry to determine the issues that are impacting adversely on consumers constructing or making variations to their homes.

1.4 The Fair Trading Commission Act, CAP. 326B at Section 4 (6)<sup>2</sup>, authorised the Commission to conduct this study.

1.5 The construction industry in Barbados is divided into three (3) main categories.

- Architects, Engineers (Designers);
- Contractors; Tradesmen and
- Regulators

Consumers utilising the services of this industry will interface with persons within the aforementioned categories. Therefore, the study will look at the roles key stakeholders play within the construction industry, the service they provide to consumers and the challenges that consumers may encounter.

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<sup>2</sup> Please refer to Page 3

- 1.6 In Barbados, Architects operate under the Architects Registration Act, CAP. 366 (ARA). The Architect provides detailed plans of the size, purpose and design of the rooms and the overall aesthetics of the project. The Architect submits drawings to the Chief Town Planner seeking permission to construct the proposed structure.
- 1.7 The Barbados National Standards Institute (BNSI) has responsibility for setting the technical standards for building and construction. The TCPD has responsibility for receiving applications for planning permission in the form of drawings. The Barbados Building Standards Authority (BBSA) currently carries out safety checks on residential apartment buildings. It does not conduct safety checks at domestic residences. However, it is likely that the BBSA will be responsible for the Building Code, when it is enacted. The role of the financial institution is to monitor and facilitate the disbursement of loans to consumers.
- 1.8 **Contractors**
- 1.9 Choosing a good Contractor is important to the successful completion of a building project. In countries such as the United States of America, the United Kingdom and Australia, there is a mandatory register of licensed Contractors. Consumers can check the register, to see if the Contractor under consideration is licensed.
- 1.10 In Barbados, it is not mandatory for Contractors to be registered. Hence, consumers are at a disadvantage, as they cannot readily confirm that a Contractor is reputable. Consequently, consumers in Barbados may have to rely on the references of the Contractor's previous clients and ask them pertinent questions such as, (i) "*Were you satisfied with the quality of the work carried out?*" and (ii) "*Would you re-engage the Contractor again?*" Alternatively, consumers may obtain the names of Contractors from the telephone directory or the Internet.
- 1.11 Without mandatory registration of Contractors, consumers may have to go through a protracted method of selecting a Contractor to avoid persons who are purporting to be Contractors.
- 1.12 Consumers' concerns also suggest that it is necessary for the consumer to get multiple written quotations from various Contractors and make comparisons before making a choice.

On selection of a Contractor, it is important for the consumer to ensure that the full extent of the work is documented and that both parties to the contract clearly understand what is required, prior to commencing the project.

### 1.13 **Building Code**

1.14 Consumers have alleged that the quality of some Contractors' work is sub-standard and that the implementation of a Building Code could raise the standard of a Contractor's work performance.

1.15 Building Codes are defined as a '*collection of laws, regulations, ...or other statutory requirements adopted by a government legislative authority that is involved in assuring the adequacy of the physical structures and healthy conditions of buildings.*'<sup>3</sup>

1.16 These Codes are a necessary part of the construction process, providing safeguards, uniformity of standards and ensures that houses are built to a specific standard to withstand hazardous conditions through sound technical compliance.

1.17 The main contract templates used in the construction industry are from:-

- The Barbados Association of Quantity Surveyors;
- The Barbados Institute of Architects (BIA);
- The Joint Contract Tribunal (JCT) 1997 contracts; and
- The International Federation of Consulting Engineers (commonly known as FIDIC, acronym for its French name Fédération Internationale Des Ingénieurs-Conseils) contract.

### 1.18 **Delays**

1.19 All stakeholders stated that renovations, alterations and repairs generally resulted in the greatest delay. This was identified because the Contractor could not make an accurate assessment of the level of work needed to be carried out, until the job had started.

Several other reasons were cited for delays in construction projects. The most common are force majeure and inclement weather. For example, hurricanes and rainy weather, where it is impossible to carry out any construction work. Delays may also be as a result of external parties not completing their work in a timely manner and the unavailability or the late delivery of materials.

### 1.20 **Cost**

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<sup>3</sup> Building codes – A Primer. <http://www.epa.gov>

1.21 When a consumer constructs a dwelling house, there are numerous costs that the consumer will incur, thus making the undertaking very costly. With a limited budget, the consumer should ensure that he/she stays within their budget.

The major payments to be deducted from the budget can include:-

- Payment to the Architect for the plans,
- Possible payment for Soil Testing,
- The cost of materials,
- The Contractor's fee, and
- The wages for other workers.

1.22 The costs of jobs that the workers will undertake are broken down into various categories. These include excavation of the foundation, supply and pouring of the concrete, building of blocks, plastering the walls, painting and the laying of tiles.

Cost may increase to consumers because they have requested variations to the original plans. In other instances, the Contractor's final request for payment exceeds the price initially quoted, thus increasing the cost.

### 1.23 **Aim of the Study**

The main objective of the study is to identify the issues that are adversely affecting consumers and address these issues under the Consumer Protection Act, CAP. 326D.



## **2.0 Section 2 - Methodology**

### **2.1 Research Methods**

A two-tier approach to the research was adopted. The first dimension of the study was a review of academic perspectives contained in literature pertinent to the study. Additionally, the relevant sections of the Act were reviewed.

2.2 The second dimension of the study was to obtain primary sources of information. Therefore, interviews were conducted with Contractors, Architects, Quantity Surveyors, Valuers, Project Managers, the Town & Country Planning Department Office, the Barbados Association of Professional Engineers (BAPE), the Barbados Building Standards Authority (BBSA) and the Barbados National Standards Institute (BNSI).

2.3 To obtain consumers' experiences of the construction industry, when they engaged the services of Contractors to construct or make variations to their dwelling houses, a questionnaire was designed and posted on Survey Monkey™. A link to the questionnaire was placed on the Commission's website, to facilitate consumers completing the questionnaire. Additionally, the questionnaire was distributed to consumers through bulk e-mail, for completion.

2.4 The consumer's response to a question determined which question would be the next to be generated. Therefore, consumers completing the survey would only have been exposed to the questions relevant to their experience.

2.5 A major disadvantage of administering the questionnaire online was that it eliminated consumers, who constructed houses but did not have online access. Another drawback was that some of the consumers attempting the questionnaire had not undertaken any construction work during the period under review.

### 3.0 Section 3 - Roles of the Key Stakeholders

3.1 Designing and building a home can be a complex process. The procedure of creating the right design, navigating the town-planning process, setting a realistic budget, choosing materials, finding the right builder and Contractor and managing the project, are a few of the tasks to be performed. Each task requires specialist skills and disciplines.

#### 3.2 Architects

3.3 In Barbados, Architects operate under the Architects Registration Act, 2003-5. (ARA) The Act states, *“the Registrar shall keep a register to be known as the Architects Register, in which he shall cause to be entered the name of every person entitled to be registered as an architect”*.

Section 5 (3) of the ARA sets out the qualifications entitling a person to be registered as an Architect in Barbados.<sup>4</sup>

3.4 The Architect designs the project in conformity with the consumer’s budget and provides detailed plans of the size of the rooms, the purpose of the rooms, the design of the rooms etc., and the overall aesthetics of the project. The Architect defines the finishes and how the house should be constructed.

The design process of the drawings depicting the impression of the house takes approximately four (4) weeks.

3.5 On completion of the drawings, the Architect submits them with the specific requirements and dimensions to Town & Country Planning Development Office for their approval. Subsequently, the Architect meets with the client on details such as the floor, ceilings, materials and cupboards.

Working drawings and technical drawings are also prepared showing the layout of the house, cupboards and closets. Design details showing the actual specifics, finishes, doors etc. are drawn up. Floor and window schedules are drawn up depicting the finished look and the materials to be used.

3.6 The plan includes the concrete works, elevation of the house, sections inside the house, wall fillings, and the carpentry details. Bedroom details such as mirrors and cabinets are also included. The bathroom details such as the height

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<sup>4</sup> These include when the person:-

1. ... has been awarded a degree, diploma or other qualification granted by a university or school architect...
2. He is registered as an architect by a board ... in a country other than Barbados and ... the overseas body upholds satisfactory standards of architecture...

of the wall, the type of face basins, toilets and doors are also listed. The working drawings show how the house will be physically built. It may also contain specific details such as how to connect the roof to the wall.

- 3.7 The fee charged by the Architect depends on the extent of the service offered. The total sum normally charged by Architects for their services is approximately seven percent (7%) of the value of the job.

After the plans have been completed, some consumers engage a Quantity Surveyor, who assigns cost to the project.

### 3.8 **Quantity Surveyor**

A Quantity Surveyor is trained in construction methods and measures the cost of the construction work to implement the Architect's design. This is done through the Bill of Quantities. The Bill of Quantities is an itemisation of the cost of the concrete, the floor, labour etc.

The Quantity Surveyor can also check the work completed by the Contractor, assign the cost and instruct the client to pay the Contractor.

A Quantity Surveyor's fee is approximately two percent (2%) of the value of the job.

### 3.9 **Draughtsman**

A Draughtsman is a person who practises or is qualified in mechanical drawings. The Draughtsman can prepare detailed scale drawings of machinery, buildings and other devices. Like the Architect, consumers may also engage a Draughtsman to produce plans for the Town & Country Planning Department.

### 3.10 **The Valuer**

They outline deficiencies in the building and encroachments on the land.

The Valuer has a dual role. He is accountable to the financial institution and to the client. The Valuer values the property based on current building sales within a ten (10) mile radius of similar properties. He also quantifies the work being conducted and attributes the cost for the work.

### 3.11 **Financial Institutions**

The role of the financial institution is to facilitate loans and monitor the disbursements of loans to mortgagees. Financial institutions do not

recommend Contractors to clients seeking mortgages but requires them to provide references confirming work previously conducted by the Contractor.

Where the consumer has made an application to a financial institution for a mortgage to construct a house, a Bridging Loan is set up in the interim period.

Most financial institutions charge a higher rate of interest for a Bridging Loan, as a result of the increased risk. Disbursements are normally made to the consumer; however, the consumer can instruct the bank in writing, to make the payments directly to the Contractor.

Before the funds are disbursed to the client, the financial institution requires the submission of a Quantity Surveyor's report as to the value of the proposed construction.

At the completion of each stage of the work, the financial institution will require a Professional Approved Stage Inspection Report, before the disbursement of further funds.

The Quantity Surveyor also advises the financial institution as to whether or not the consumer has made any variations to the original plans submitted. Variations would be considered a breach of the contract between the bank and the consumer and might necessitate the re-negotiation of the contract.

The facility of the Bridging Loan allows construction to commence. However, upon completion of the project, the loan is converted to a mortgage. The following criteria must be met prior to the loan being converted:

- 1) The financial institution must confirm that the house has been completed;
- 2) The consumer must provide the financial institution with evidence that there is comprehensive insurance on the finished structure;
- 3) The consumer must present the Certificate of Compliance issued by the Chief Town Planner, certifying that the house has been constructed in accordance with the approved plans; and
- 4) A valuation from the Quantity Surveyor certifying that the house is completed and the current market value of the property.

When the above criteria have been met and the mortgage document has been implemented, the monthly payments under the agreement will commence.

### 3.12 Governmental Agencies

### 3.13 The Town & Country Planning Development Office

The Town & Country Planning Development Office (TCPD) administers the Town and Country Planning Act, CAP. 240 and grants permission to persons, who submit drawings to the Chief Town Planner, requesting permission to construct a building. This Act:-

*'... makes provision for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities, for the grant of permission to develop land and for other powers of control over the use of land, to confer additional powers in respect of the acquisition and development of land for planning, and for purposes connected with the matters aforesaid'.*

### 3.14 Persons making an application to the TCPD must submit the following documents:-

1. The Location Plan: *'...the exact location of the site on which the building is to be erected or improved. It must show the nearest identifiable landmark'.*
2. The Elevation Plans: *'Plan showing the flat side of the building i.e. 'showing what the building will look like when viewed from any given side'. Two elevations must be submitted; the front of the building and any other side.*
3. The Floor Plan: *These plans 'show the size and shape of the overall building, the layout of all rooms within the building and their dimensions. ... the location and size of all windows and door openings'.*
4. The Site Plan: *This plan 'shows the shape and dimensions of the land on which the buildings will be constructed and how they fit on the land'. Applicants are required to show all roads, other buildings on the site, the provisions for waste water and sewage disposal, among other things.*

If the consumer intends to construct a Chattel House, *'...four (4) copies of a plan in sufficient detail to show the layout of the proposed house in relation to any existing building on the land and to the boundaries of the plot'* must be submitted

### 3.15 Plans submitted to the TCPD in the prescribed manner are usually approved within two (2) months. On average, seventy-five percent (75%) of the plans are approved within three (3) months. After planning permission has been granted, consumers must notify the TCPD in writing of the proposed date for the commencement of the work.

A plan is valid for five (5) years. If construction does not commence within this period, the plans must be resubmitted for approval.

- 3.16 Prior to the excavation of the foundation, an officer from the TCPD visits the proposed building site. The plans must be laid out so that the officer can confirm that construction is in accordance with the approved plan.
- 3.17 On completion of the building, the applicant may request a Certificate of Compliance from the TCPD verifying that the project has been satisfactorily completed. In order for this certificate to be issued, '*... all conditions attached to the planning permission MUST be satisfactorily discharged and the development should be carried out in accordance with the approved plan*'.
- 3.18 Where changes are going to be made to the original plans, consumers are required to re-submit revised plans. If the consumer makes additions to a property without seeking the approval of the TCPD, the consumer may be asked by the TCPD to remove the addition.

The TCPD provides the development control of a building. However, this control does not extend to the quality of the finished product.

3.19 **Barbados National Standards Institute (BNSI)**

The Barbados National Standards Institute (BNSI) has responsibility for setting the technical standards for building and construction. However, they do not manage the industry.

Soil testing is a service that BNSI offers to consumers. It allows the Contractor to know the composition of the soil. Therefore, the Contractor can make a more accurate assessment of the design of the foundation and its cost.

A properly designed foundation will support the building and prevent it from moving during natural hazardous conditions.

Upon completion of the design and its submission to the TCPD for approval, the consumer may engage a Contractor to construct the building.

## **4.0 Section 4 - Management of the Project**

### **4.1 Contractors**

*“A building Contractor is an individual who engages in the planning, developing and coordinating of activities which coincide with the building of structures. The building Contractor is the individual who oversees the construction and ensures that all necessary measures are taken to result in the completed finished product”.*

The consumer and the Contractor are the two (2) main key stakeholders when a house is being constructed and it is important for the consumer to select a reputable Contractor.

### **4.2 Registration of Contractors**

#### **United Kingdom (UK), United States of America (USA) and Australia**

In the UK and the USA, Contractors are required to be registered and abide by specific building rules. In Australia, the Building Services Authority (BSA) regulates the building industry. Contractors/Builders seeking to obtain a licence must pass specific technical, experiential and financial proficiency tests.

Amongst other things, the purpose of registration is to raise the performance standards of Contractors and allow consumers to be confident when choosing a Contractor.

### **4.3 Barbados and Registration of Contractors**

In Barbados, it is not mandatory for Contractors to be registered. Therefore, consumers have to refer to the telephone directory or the Internet to get a list of Contractors. Alternatively, they can ask a friend or family member to refer them to a Contractor.

4.4 For the purpose of this survey, only Contractors listed in the yellow pages of the telephone directory and on the Internet were contacted. However, the Contractors used by consumers, in the survey were unknown and not listed in the telephone directory under Contractors.

### **4.5 Contractors, Consumers - Estimates and Quotations**

It is important for consumers to know the difference between an *'Estimate'* and a *'Quotation'* as consumers are sometimes misled into thinking that the Estimate given to them by the Contractor, should not have increased.

*“An estimate is how much the seller thinks the job will cost. The actual price may be more or less...”<sup>5</sup> Conversely, a quotation is “...an offer to do a job for an exact price”<sup>6</sup>. If the consumer accepts the quote, then the supplier cannot charge the consumer more than the agreed price.*

- 4.6 Prior to a consumer selecting a Contractor for a construction project, the consumer should know precisely what the Contractor is required to do. The Contractor should use the plans as the basis for the quotation. If the plans are detailed, this makes it easier for the Contractor to submit a more accurate quotation.
- 4.7 Before selecting a Contractor, the consumer should obtain quotations from several reputable Contractors, talk to various clients of the Contractor and examine the work that they performed.
- 4.8 After obtaining the said quotations, the consumer should ensure that he/she identifies the work to be conducted and how the Contractor intends to carry out the work. Comparisons should then be made to determine which Contractor will be selected. It should be noted that the cheapest price may not be the right quotation to choose.
- 4.9 When the Contractor has been chosen, a written contract should be negotiated with the Contractor, to ensure that all elements of the work and its cost are documented.
- 4.10 **Requirements of the Contract**

The contract between the Contractor and the consumer is an agreement that specifies the rights and obligations of both parties, in relation to the work that will be completed by the Contractor.

The contract should be clear and unambiguous in describing the work.

A list of some of the terms found in consumers’ contracts are list below.

1. The name and address of the consumer and the Contractor;
2. A description of the work to be completed inclusive of the materials to be used;
3. Commencement and Completion dates;
4. Information on the method for settling disputes;

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<sup>5</sup> <http://www.consumeraffairs.govt.nz/for-consumers/services/getting-quotes-and-estimates>

<sup>6</sup> <http://www.consumeraffairs.govt.nz/for-consumers/services/getting-quotes-and-estimates>



5. A payment schedule detailing the time of payments and the amount;
6. Penalties for delays by either party;
7. List any foreseeable eventualities that may affect commencement or completion dates and delivery of materials. e.g. inclement weather or *Force majeure*;
8. Contracts should make preparations for accidents;
9. Contractors' Fees;
10. Definition of terms used within the contract, for example *Job Work*, *Working Week* and *Day Work*; and
11. Variation Clause.

#### 4.11 Changes to the Work

Most contracts have a clause inserted to enable changes to specifications, rather than a re-negotiation of the contract. These clauses are referred to as Variation Clauses.

Where there are changes to the work specified in the contract, both parties to the contract should document the changes in writing and sign the document. Furthermore, the contract should detail the manner in which the variations should be conducted.

#### 4.12 Quotation and Job Pricing

In project management, the factors *Time*, *Cost* and *Quality* play important roles. The hypothesis of this concept is that it is impossible to have all three factors at the same time.

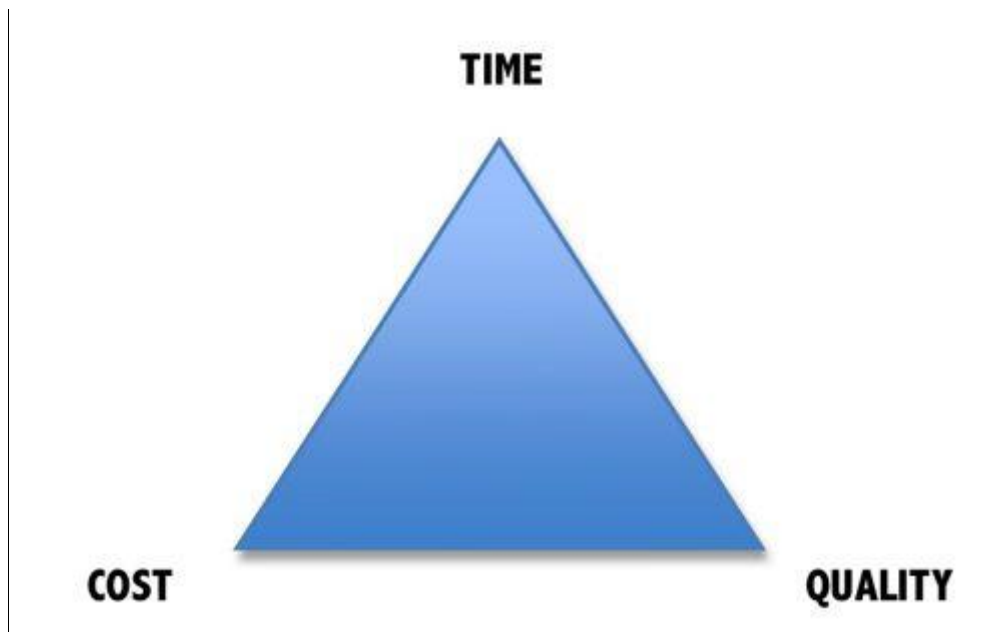
There is always the issue of cost versus quality. For example, the job may be completed cheaply and quickly but at the expense of the quality.

Alternatively, the job may be completed quickly and with good quality materials and workmanship but it will be more costly. Conversely, a good job may be done at a reasonable price but it may take a longer time.

These factors are considered when a Contractor prepares a quotation for a consumer and therefore, consumers should be aware that depending on their needs, the price quoted may vary from Contractor to Contractor.

## Chart 1

Time - Quality - Cost Triangle<sup>7</sup>



### 4.13 Cost and Quality of Materials

An issue that frequently arises in construction relates to the type and quality of materials used. The consumer may assume that the Contractor's quotation includes a certain quality material, only to realise that the Contractor is using much cheaper materials. In instances of this nature, the consumer may request that a more expensive material be used which raises the cost.

Some Contractors stated that if the materials were obtained at a cheaper price than stated in the contract, the consumer would be given a refund and this would be done under a variation order, written into the contract. However, the majority of Contractors stated that the consumer would not be refunded. The money would be viewed as additional profit.

Therefore, it is important for the Contractor to state in the contract, the type of material used to construct the building and its cost.

### 4.14 Insurance Bonds

Where a consumer is concerned about the initial outlay of a large sum of money and the Contractor defaulting, having received the money, the consumer may purchase a Bond of a similar value from an insurance company. A Bond can

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<sup>7</sup> <http://www.the-self-build-guide.co.uk/time-cost-quality-triangle.html>

be defined as a *'surety... issued by an insurance company or a bank to guarantee satisfactory completion of a project by a Contractor'*. There are two (2) main types of bonds:-

1. A Bond to prevent the Contractor from withdrawing the bid; and
2. A Bond to guarantee that the Contractor will not default. For example, if the Contractor fails to complete the project, the Bonder is liable.

#### 4.15 **Costing/Methods of Payment**

##### **(a) Mobilisation Fee**

A mobilisation fee is generally used to procure equipment and reasonable expenses that are incurred before the construction of the building commences. For example, the fee may be used to rent chemical toilets or purchase necessary equipment to commence the work. However, this fee will be subtracted from the payments over a specified period of time.

##### **(b) Cost Plus Fee**

Under this option, the consumer is charged the cost of the materials with a mark-up for the Contractors' fee. The Contractor keeps the invoices and presents them to the consumer as evidence of the cost incurred.

##### **(c) Payment in Stages**

The most common form of payment in the construction industry is payment in stages. After each stage of the work has been completed, the Contractor is paid for the specific work carried out.

#### 4.16 **Consumer Site Visits**

Contractors stated that consumers should be encouraged to visit the site whilst the construction is ongoing. Such visits can reduce the likelihood of the Contractor carrying out work which is contrary to the consumer's specifications. This also allows the consumer to make changes while the work is in progress and can reduce delays and cost.

#### 4.17 **Completion of Property - Checks for Defects by Consumers**

Contracts generally have a defect liability period, where the consumer retains five percent (5%) of the Contractor's fee until an inspection has been carried out to ensure that the building does not have defects.

When the Contractor informs the consumer that the building has been completed, it is important for the consumer to conduct a room by room inspection and draw up a list of defects, if any. After the Contractor has corrected the defects, half of the said percentage is paid. The consumer retains the other two and a half percent (2.5%) for approximately six (6) months, to ensure that there are no other defects. At the end of the period, it is paid to the Contractor.

#### **4.18 Delays in Completion**

Where the house is not completed on time, the redress available to the consumer should be provided for in the contract. Some contracts state that in such cases, the Contractor either provides the rental fee for a house or accommodation in a hotel for the consumer, during the unavailability period of the house. Alternatively, the contract may specify late/liquidated damages or the consumer may be offered a rebate.

## 5.0 Section 5 - General Issues

### 5.1 Financial Institutions - Lending Policies

Many stakeholders in the industry expressed the view that the genesis of some of the issues that consumers are encountering, are related to the financial institutions' lending policies.

Post 1996, consumers were offered mortgages between 50% - 75% of the value of the property. However, the financial institutions changed their policies and after 1996, offered consumers mortgages between 95% - 100%.

Stakeholders further stated that with the increase in the amount that consumers could borrow, a greater number of consumers qualified for mortgages and this led to more houses being built.

With the increase in demand for construction of dwelling houses, more labour was required. This resulted in many apprentices entering the construction industry before they had gained the appropriate skills to effectively carry out the work required.

It should be noted that if there was an in-flux of unskilled workers adversely affecting the construction industry, there is no professional body overseeing the industry that could take necessary action to avert negative issues arising.

### 5.2 Conflict of Information

Contractors have stated that there have been instances where they have been building a house and given contradictory instructions by the husband and wife.

Based on the aforementioned, it may be prudent for the Contractor to take instructions from the party stated in the contract since different parties may make conflicting requests. This can result in delays to the project or increase the cost of the project.

### 5.3 Delays in Construction

According to consumers, Contractors were taking an inordinate time to complete their building projects and this can cause major dissatisfaction amongst consumers.

All participants in the research were asked the question, "*Which type of construction results in the greatest delay?*"

Renovations, alterations and repairs were identified as causing the most delays. Stakeholders stated that there were unknown elements which prohibit Contractors from making an accurate assessment of the level of the work to be performed. Therefore, an inaccurate assessment may be made initially, thus resulting in delay. For example, some Contractors stated that a building may look sturdy but upon commencement of the work discover this is not the case.

There are other reasons that can delay a project. *Force majeure*, inclement weather, changes to the plan, external parties not performing their tasks on time and the homeowner occupying the property during the performance of the work.

#### **5.4 Force Majeure and Inclement Weather**

In relation to *Force majeure* and inclement weather, these are usually outside the control of the Contractor and the parties to the contract should have made allowances for these factors, as they can delay the completion of the project. However, to obtain a more accurate completion date in relation to inclement weather, the Contractor can check with the Metrological Services to establish the rain pattern for the month and verify the number of days that may be affected by rainfall.

#### **5.5 External Parties and Unavailability of Materials**

Delays may be as a result of external parties, for example the Government Electrical Engineering Department may be required to conduct an inspection. In addition, the Barbados Light and Power Company Limited may have to relocate a power cable. These are outside the control of the Contractor and any of these factors may delay the building process.

Unavailability or late delivery of materials may impede the building process. For example, the consumer may have provided the Contractor with incorrect materials or the materials may have been delivered to the wrong address.

#### **5.6 Changing the Scope of the Work**

Delays in construction can occur if consumers change their minds about the scope of the work to be performed. Depending on the level of the change to be instituted, the project may have a critical, costly delay.

#### **5.7 Labour Shortage and Disputes**

Where a specialist cannot be sourced to complete a specific job, this can result in delays. The Contractor may have to wait until the specialist labour becomes available.

Delays can also be attributed to disputes with neighbours and an injunction may be brought against the owner of the building project. Furthermore, a homeowner may have also breached the deed restriction.

#### **5.8 Services Withheld Due to Non-Payment**

Delay in completing the project can occur if the Contractor has completed a stage of the work and the consumer is unable to pay the Contractor due to lack of funds. In such instances, the Contractor may withhold his/her services until payment has been received.

#### **5.9 Delays Due to Soil Composition**

It is important for a soil test to be carried out prior to the foundation being excavated, as this will enable the Contractor to know the composition of the soil and make a more accurate assessment as to the amount of time and the cost of completing this stage of the work. If the Contractor wrongly estimates the time that it will take to complete the foundation, this will cause a delay.

#### **5.10 Concrete Mixture**

It is necessary for the Contractor to properly manage all aspects of the construction process. When concrete is being used on the site, the concrete should not be left for too long, as this can weaken the mixture or may cause it to harden prematurely. Where this occurs, the Contractor may not be able to use the concrete, as it may compromise the integrity of the structure. The time taken to order and pour a new batch of concrete may result in delay.

#### **5.11 Supervision of Staff**

The Contractor may not always be on the construction site to supervise his workers, if he has other projects to supervise. During his absence, the workers may adopt a casual attitude and work slower, leading to the project taking longer than initially estimated.

#### **5.12 Final Stages of the Project**

In the final stages of the project, where the finishes are being applied to the structure for example, artisans are painting and tiling concurrently. The paint may damage the tiles, resulting in the Contractor having to engage personnel to clean them. This may also cause a delay, if this process was not factored into the initial completion date.

#### **5.13 Notification of Delays**

In all circumstances, it is the duty of the Contractor to inform the client that the project will be delayed and provide the client with the reasons for the delay.

#### 5.14 **Reasons for Price Increases after Quotations to Consumers**

##### **(a) Foundation**

The consensus of all persons interviewed was that the foundation was an area where cost was likely to increase. For example, the Contractor may have estimated for a foundation depth of six hundred (600) millimetres but if suitable foundation material was not found until one thousand (1,000) millimetres, this could result in an increase cost. The increased cost may be in the form of excavation and additional materials for the foundation.

To avoid unknown costs of this nature, a Geo-Technical investigation (soil testing) should always be conducted to determine the composition of the soil, thus allowing the Contractor to make an accurate assessment of the cost that the consumer will incur in completing the foundation stage of the structure.

##### **(b) Composition of Concrete Mixture**

In construction there are two (2) types of concrete mixtures, Site Mix and manufactured Ready Mix.

Concrete comprises of Cement, Aggregate, Sand and Water. Where the Contractor is not using Ready Mix concrete but is mixing the concrete on site, the mixture must be combined in precise measurements. If it is not combined correctly, the Contractor may use more cement than was budgeted for and this could lead to an increase in cost.

##### **(c) Final Finishes**

The final finishes to a building can increase cost to the consumer. The contractor may have quoted a price for pickling cupboards, which is generally cheaper. However, the consumer may request painting or staining which is more expensive. In fact, during interviews with Contractors, they stated that twenty percent (20%) to forty percent (40%) percent of the total cost in construction is in the level of the finishes (luxury) that the consumer requested.

##### **(d) Six Day Work Week/Seven Day Work Week**



Problems may occur as the consumer's concept of a '*working week*' may differ from that of the Contractor. If the consumer perceives the working week as seven (7) days, but the Contractor considers it to be six (6) days, the cost will increase, when the workers are required to work a seven (7) day week, as additional monies are required to pay the workers for the additional day.

**(e) Job Work/Day Work**

Another area that may increase cost is whether the workers will be paid for *Job Work* or *Day Work*.

Where a worker performs *Job Work*, he may have the impetus to complete the specific task in a timely manner to move on to another task. However, if he is being paid for *Day Work*, the impetus to complete the task may be reduced, as the worker knows that he will be paid for that day's work. Therefore, *Day Work* may be more expensive for the consumer in comparison to *Job Work*.

**(f) Modifications to Previous Installations**

In cases where work does not meet the agreed specifications of the consumer, it may be necessary for the consumer to purchase additional materials to rectify the matter. For example, a door space was meant to be 36 inches but measurements revealed an error where the door jambs were not taken into consideration. After the door jambs were installed, it was discovered that the door previously purchased was too large for the space.

**(g) Variations to Project**

Where consumers request variations to the original plans, this may increase the cost of the project. Major stakeholders stated that it is cheaper for consumers to make changes while the house was being designed, than to make the changes after construction commenced.

**(h) Unqualified Workers**

Unqualified workers can increase the cost of the project if:

- 1) Measurements are calculated incorrectly;
- 2) They omit to take necessary measurements; and
- 3) They are unable to read the plan correctly and errors are made.

**(i) Contravention of the Consumer Protection Act, CAP. 326D**

Where there has been an increase in the price quoted, it is necessary to carry out an investigation to determine whether or not the increase by the Contractor, contravenes the Consumer Protection Act.

## 6.0 Section 6 - Legal Framework

6.0 The Fair Trading Commission Act, CAP. 326B (FTCA) under Section 4 (1) has empowered the Fair Trading Commission with the authority to administer the Consumer Protection Act, CAP. 326D (the Act). Sections 4 (1) and (2) state as follows:-

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

*"4 (2) The Commission shall carry out its functions in such a manner as to...improve the standards of service and quality of goods and services supplied by, service providers and business enterprises over which it has jurisdiction..."*

### 6.1 CONSUMER PROTECTION ACT, CAP. 326D

The Act came into force on January 16, 2003. Its purpose is to safeguard and protect consumers' rights enshrined therein. The Act is being examined, to determine its adequacy in protecting consumers.

The pertinent Sections of the Act that will be examined are sections 3, 4, 6 7, 8, 9, 12, 13 (a) (g) and Paragraphs 1 (b), 1 (l), 1 (n) of the Schedule to the Act.

The following Sections of the Act state:

#### **Section 3**

*... "contract term" means a term in a consumer contract, being a term that has not been individually negotiated within section 4."*

#### **Section 4 (1)**

*"A contract term is not individually negotiated for the purposes of this Part or the Schedule if it was drafted in advance and the consumer was not able to influence the substance of the term."*

#### **Section 6**

*"A supplier shall ensure that any written contract term is expressed in plain, intelligible language...."*

## **Section 7**

*“A contract term is unfair if, to the detriment of the consumer, it causes a significant imbalance in the rights of the supplier and the consumer.”*

## **Section 8**

*“In determining whether a contract term is unfair, consideration is to be given to the following:*

- (a) the nature of the goods or services for which the contract was concluded;*
- (b) all the other terms of the contract or of another contract on which it is dependent;*
- (c) the interests of the supplier;*
- (d) the interests of the particular class of consumers who are likely to adhere to the contract;*
- (e) all the circumstances attending the conclusion of the contract at the time of its conclusion.*

*(2) In so far as a contract term is in plain, intelligible language, the assessment of its fairness shall not relate*

*(a) to the definition of the main subject-matter of the contract; or*

*(b) to the adequacy of the price or remuneration as against the goods or services supplied in exchange....*

*(4) Without prejudice to the generality of subsection (1), a contract term which is described in the Schedule is unfair.”*

## **Section 9**

*“An unfair contract term is unenforceable against the consumer.”*

## **Section 12 (1)**

*“A person shall not, in trade or commerce as a supplier, engage in conduct that is, or is likely to be, misleading or deceptive.”*

## **Section 13 (a)**

*“A person shall not, in trade or commerce as a supplier, falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or a particular previous use...”*

## **Section 13 (g)**

*“A person shall not, in trade or commerce as a supplier, make false or misleading representations concerning the price of any goods or services.”*

### **4.3 Paragraph 1 (b) of the Schedule**

*“Any contract term which has the object or effect of ... inappropriately excluding or limiting the legal rights of the consumer vis-a-vis the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the contractual obligations of the supplier, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against him...”*

### **4.4 Paragraph 1 (l) of the Schedule**

*“Any contract term which has the object or effect of ...providing for the price of goods to be determined at the time of delivery or allowing a supplier to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded...”*

### **4.4 Paragraph 1 (n) of the Schedule**

*“Any contract term which has the object or effect of ... limiting the supplier’s obligation to respect commitments undertaken by his agents, or making his commitments subject to compliance with a particular formality...”*

## **6.2 An Examination of Issues that can contravene The Consumer Protection Act, CAP. 326D**

### **6.3 Unfair Trade Practices**

An Unfair Trade Practice (UTP) is where a business adopts unfair techniques, or unfair or deceptive practices for the purpose of promoting the sale, use or supply of any goods or services.

The Act provides several examples of UTPs. A False Representation whether written or oral is a UTP. Examples of False Representations are:

- Falsely indicating goods are of a particular standard, quality, quantity, grade, composition, style or model;
- Falsely indicating that services are of a particular standard, quantity or grade;

- Falsely representing second-hand, renovated, reconditioned or old goods as new goods;
- Representing that goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which they do not have; and
- Making a false or misleading representation concerning the need for any goods or services.

Where a business makes a False Representation and misleads a consumer, the business is in breach of the Act.

#### 6.4 Consumer Misled by Estimate

It is important for a consumer to know the difference between an *Estimate* and a *Quotation*. This will prevent a consumer from thinking that he/she has been misled where a Contractor gives him/her an estimated price and subsequently increases the price.

*"An Estimate is how much the seller thinks the job will cost. The actual price may be more or less..."*<sup>8</sup> Conversely, a *Quotation* is *"...an offer to do a job for an exact price"*<sup>9</sup>. If the consumer accepts the Quotation, then the supplier cannot charge the consumer more than the agreed price. It should be noted that some Quotations have expiration dates and therefore, the Contractor should inform the consumer of the expiration period.

Where a Contractor gives a consumer a quotation for specific work and subsequently charges the consumer a higher price, the Contractor has breached Sections 12 and 13 (g) of the Act. However, if the consumer has agreed to the increase in price, for example, due to a variation in the work to be conducted, then the Act has not been breached.

In the case of an Estimate, if the Contractor changes the final price, he has not misled the consumer, since Estimates are subject to increase or decrease.

#### 6.5 Contractor Omitting to Include Work Required by Law

According to Woodroffe and Lowe in their book *Consumer Law and Practice*, Contractors often state that consumers are notorious for requesting variations to the original plans. An example was given by Woodroffe and Lowe of a Contractor omitting to include work legally required by statute to induce the consumer to accept a lower price and subsequently including the work after

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<sup>8</sup> <http://www.consumeraffairs.govt.nz/for-consumers/services/getting-quotes-and-estimates>

<sup>9</sup> <http://www.consumeraffairs.govt.nz/for-consumers/services/getting-quotes-and-estimates>

the contract was concluded. Woodroffe and Lowe believe that it is unreasonable for the Contractor *'to recover any additional payment for this extra work'*.

#### **6.6 Contractor Performs Additional Work without the Consumer's Consent.**

Where a Contractor does work that he was not contracted to do and charges the consumer for this work, the Contractor has breached Section 12 of the Act. For example, if the Contractor was hired to install a roof but installed guttering as well, the consumer is not obligated to pay for the guttering since it was not a part of the contracted work.

#### **6.7 Contractor performs Additional Work with the Consumer's Consent**

On the other hand, where a consumer requests variations to the plans and the Contractor complies and subsequently increases the price to reflect the additional work, the Contractor has not breached the Act.

#### **6.8 Time of Completion of Project**

An issue that may cause confusion in the minds of consumers relates to the definition of 'completion' as it seems to vary from person to person. In some contracts, it is common to find terms such as *'final completion'*, *'substantial completion'* *'practical completion'* or simply *'completion'*. Considering that these terms may be perceived subjectively, it is prudent for the contract to clearly define the term used.

Where a Contractor promises to complete the project in a specific time but exceeds the time, the pertinent question that should be asked is, *"Has the Contractor misled the consumer and contravened the Act by not completing the project in the specified time?"*

Inclement weather and the supplier's inability to provide materials would clearly be outside the control of the Contractor. Contracts normally provide exemptions for foreseeable events of this nature and so, the delay would not be a breach of the Act.

However, if the Contractor exceeds the time for completing the project and there is no valid reason for the delay, the Contractor has misled the consumer with respect to the time of completion.

## 6.9 Contractor Constructs a House that is Different to the Design

Where a Contractor is requested to construct a house to a detailed plan but deviates from the plan and constructs a house that is different, the Contractor has misled the consumer and breached the Act.

*Lewin v Barratt Homes Limited*<sup>10</sup> is a case where a consumer was shown a picture of *Maidstone House* and agreed to purchase a house built to the same specifications. The house that was supplied was substantially different from the house agreed upon. The court held that although Barratt Homes Limited had a disclaimer stating that ‘... details of this property has been amended...’ it did not negate the fact that the consumer had been misled about the house that would be supplied.

Similarly, under the Act, if the same facts were applied to a scenario in Barbados, the Contractor would be in breach of the Act.

## 6.10 Substitution of Materials

Where a Contractor substitutes the materials to be used, especially where the materials substituted are of an inferior quality, the Contractor has breached the Act. Section 13 (a) of the Act prohibits suppliers from making false representations with respect to the quality of a good.

Furthermore, if the type of materials to be used was defined in the contract, it would be clear and compelling evidence that the consumer was promised one thing, but the Contractor delivered something materially different. To circumvent the Act being breached, the Contractor should inform the consumer of the change in material and get the consumer’s written consent.

## 6.11 Unfair Contract Terms and Fairness

*“A standard form contract (sometimes referred to as an adhesion...contract) is a contract between two parties, where the terms and conditions of the contract are set by one of the parties, and the other party has little or no ability to negotiate more favorable terms and is thus placed in a "take it or leave it" position”.*<sup>11</sup>

Standard Form Contracts (SFCs) between consumers and Contractors should be free from Unfair Contract Terms<sup>12</sup> (UCT). Where a term in a SFC has been

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<sup>10</sup> <http://www.consumercrime.co.uk/site.aspx?i=ar3344>

<sup>11</sup> [en.wikipedia.org/wiki/Standard form contract](http://en.wikipedia.org/wiki/Standard_form_contract)

<sup>12</sup> Section 7

*“A contract term is unfair if, to the detriment of the consumer, it causes a significant imbalance in the rights of the supplier and the consumer.”*



deemed unfair, Section 9 of the Act prohibits the Contractor from enforcing the term against a consumer, in a Court of Law.

**A discussion follows regarding contract terms that are detrimental to the consumer and therefore, considered unfair.**

A contract term which is worded to give the Contractor the right to increase the price irrespective of the reason for the increase, is considered contrary to Paragraph 1 (l) of the Schedule of the Act.<sup>13</sup>

However, if the price of the project increases, as a result of a variation requested by the consumer or because additional work has to be carried out to strengthen the foundation due to adverse conditions in the soil, the Act is not breached.

#### **6.12 Arbitrary Increases of the Price of the Project**

Where a term has been worded to allow for unknown cost at a subsequent date, the term would not be deemed unfair. For example, the consumer requests a variation in design which increased the cost. However, clauses that allow arbitrary increases, designed to make the consumer pay more than was originally agreed are unfair under the Schedule of the Act.

#### **6.13 Limits or Excludes Liability**

Terms where the Contractor restricts or excludes responsibility for liability in cases of negligence, shoddy work, preventable delays or damage to the consumers' property are deemed unfair under paragraph 1 (b) of the Act.

A Contractor cannot exclude liability by placing an unrealistic time limit on the consumer to commence a claim for redress. Terms of this nature purporting to deny the consumer the right to redress, where defects are found in the property, fall outside the time limit and are unfair under the Act.

#### **6.14 Contractor Requests Full Payment at the Onset of the Contract**

Contract terms requiring the consumer to make full payment at the onset of a contract, in advance of work being completed, may be considered unfair under paragraph 1 (b) of the Schedule to the Act. Under the aforementioned Paragraph, a consumer can withhold a part of the outstanding money, where the work performed by the Contractor is substandard or uncompleted, until the matter has been rectified.

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<sup>13</sup> Please refer to the Legal Framework at page 29

#### 6.15 **Contractor's Liability for Oral Statements of his Staff**

Contract terms excluding the Contractor's liability regarding oral representations made by his staff are unfair. Paragraph 1 (n)<sup>14</sup> of the Act addresses matters of this nature. Contractors are liable for such statements.

#### 6.16 **A Study of the Main Contracts Utilised in the Construction Industry**

Contractors stated that they used several generic contracts which they adapt for individual usage, since the scope of work varies from client to client.

#### 6.17 **Barbados Institute of Architects' (BIA) Minor Building Works Agreement**

The BIA contract is a SFC and did not contain any unfair contract terms when reviewed.

This contract sets out the obligations of the Contractor in terms of the quality of materials and the standards to be obtained. It lists the commencement and completion dates and details the conditions under which extensions are given. It also contains a clause for damages to be paid by the Contractor, where work has been delayed and the reasons given for the delay are within the control of the Contractor.

Under this contract, the consumer pays the Contractor in stages. When the Contractor informs the consumer that the house is completed, the consumer retains 2.5% of the Contractor's fee and carries out an inspection of the property to ensure that the house has been completed. After the Contractor informs the consumer that the project has been completed, the Contractor, at his expense, has between three (3) to six (6) months to rectify any defects that are found in the project.

Under this contract, the price is fixed and the Contractor is not allowed to increase the cost for labour or materials. Contractors are only allowed to charge consumers additional amounts for changes in taxes and levies.

#### 6.18 **The Barbados Association of Quantity Surveyors' (BAQS) Contract**

The BAQS' contract is a SFC and did not contain unfair contract terms when it was reviewed. It sets out the responsibilities and obligations of the Contractor and the consumer's representative.

This contract sets a commencement and completion date and **only** allows for delays of the work caused by circumstances beyond the control of the

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<sup>14</sup> Please refer to the Legal Framework at page 29

Contractor. There are also provisions for liquidated damages to be paid to the consumer, if the work is not completed within the stipulated time.

Under the contract, consumers can withhold portions of payment until the work has been certified as completed. The contract also states that four (4) months after completion of the project, a list of defects, if any, should be compiled and the Contractor is required to rectify the defects within a reasonable time at his/her own expense.

The Appendix of this contract sets out the Schedule of Stage Payments as follows:-

- Stage 1 - Signing of the Agreement;
- Stage 2 - Completion of the entire Substructure up to and including the Ground floor slab;
- Stage 3 - Completion of the entire Superstructure at Ground Floor level up to and including the First floor slab or the Roof beams;
- Stage 4 - Completion of the Superstructure at First Floor level up to and including the Roof beams;
- Stage 5 - Completion of the roof structure and coverings;
- Stage 6 - Completion of the internal and external renderings and the installation of all windows and doors;
- Stage 7 - Completion of all fixed furniture and fittings; and
- Stage 8 - Practical completion of the Works.

#### **6.19 The International Federation of Consulting Engineers (FIDIC) Green Book Contract**

The FIDIC Green Book contract has elements of an SFC. Parts of the contract are individually negotiated by the consumer, for example, the specifications, the drawings and the Bill of Quantities.

This type of contract is generally used in projects costing less than \$500,000.00 or lasting for a duration of up to six (6) months. It is one of the preferred forms of contracts by many stakeholders in the industry. It is used for simple and repetitive works. It has relatively simple language and the risk-sharing is balanced between the consumer and the Contractor.

It details the obligations of the Contractor and the consumer. It includes the dates for commencement and completion and the remedies available for defects. Furthermore, it includes clauses for the extension of time to be granted,

if the project is delayed as a result of the action or inaction of the consumer. It determines when payments should be made to the Contractor based on the value of the work completed.

The contract makes provisions for variations and also addresses the method of how defaults and disputes should be handled.

#### 6.20 **The Joint Contracts Tribunal Limited (JCT)**

The JCT contract is an intermediate form of a building contract for works of simple content. The contract covers almost all possible issues that can occur in the construction industry. It covers practically all the obligations and responsibilities of all the parties. Therefore, signatories are fully aware of what is required. The signatories to this contract usually delete the clauses that are not applicable.

This contract has a measure of balance and equity in terms of the penalties. In instances where the Contractor does not perform his/her job adequately or fails to complete the job in the stipulated time, a penalty is paid to the consumer. Conversely, where the consumer fails to make the payments to the Contractor at the required time, the consumer must pay a monetary penalty to the Contractor.

This JCT contract makes provisions for variations to the agreement, as requested by the consumer. It also sets out the type of insurance policies that the Contractor should take out to claim for loss or damages, should an incident occur.

The work to be carried out on the project is contained in a Schedule in the contract. This allows the Contractor and the consumer to have written details on the matter which they can refer to, if there is a dispute. Under the JCT contract, disputes are referred to an Adjudicator.

6.21 Some stakeholders felt that the BAQS's contract was too brief and did not contain enough protection for consumers. Others expressed a preference for the JCT or the FIDIC contract. The contract ultimately used depended on the value of the work to be conducted and the preference of the Architect or person responsible for the organisation of the work.

6.22 The contract should make provisions for a Mediator to settle any disputes that may occur between the parties to the contract. Additionally, the names (s) of the Mediator (s) should be stated and that both parties agree to share the costs.

## 7.0 Section 7 - Consumer Survey

- (a) **Have you had any construction work carried out on your home/residence in the last 5 years?**

Sixty-nine (69) respondents completed the survey. Fifty (50)/72.5% respondents answered in the affirmative. Nineteen (19)/27.5% were not involved in the construction process.

- (b) **What was the nature of the construction work conducted?**

Of the consumers indicating that they had work carried out, thirty-two percent (32%) stated that they built new houses. Twelve percent (12%) stated that they had additions to an existing house. Twenty-eight percent (28%) carried out alterations, improvements or remodelled their homes.

Ten percent (10%) of the sample indicated they completed an existing structure while two percent (2%) erected a fence. Six percent (6%) constructed driveways and ten percent (10%) selected other things. These included walkways around the house, re-tiling of a swimming pool and installing new roofs.

- (c) **Was this the first time you were involved in the construction industry?**

Twenty-three (23)/46% of respondents answered the question affirmatively. Twenty-seven (27)/54% of respondents stated that they were previously involved in the construction process.

- (d) **What was the approximate cost for completing the agreed work?**

Forty-one percent (41%) of respondents stated that the cost was less than \$50,000.00. Six percent (6%) stated that the cost was between \$100,001.00 and \$200,000.00. Sixteen percent (16%) indicated a cost of between \$200,001.00 and \$300,000. Twelve percent (12%) of respondents cited the cost as \$300,001.00 and \$500,000.00 and twenty-five percent (25%) did not state an approximate cost.

- (e) **Was the work completed by a Contractor?**

Sixty percent (60%) of the respondents stated that they did not use a Contractor; the other nineteen (19)/40% indicated that they had.

The Contractors utilised were not listed in the telephone directory.

**(f) How did you know of the Contractor or the company?**

Seventy-one percent (71%) of respondents stated that the Contractor was recommended by a friend or family member. Six percent (6%) stated that they had seen work previously conducted by the Contractor. Twenty-three percent (23%) made the selection based on an advertisement.

**(g) Were you given a Quotation for the work to be conducted?**

Eighty-eight percent (88%) of respondents were given quotations. The remaining twelve percent (12%) were not given quotations.

**(h) Was the quotation written or oral?**

Seventy-nine percent (79%) were given written quotations while twenty-one percent (21%) were given oral quotations.

**(i) Did you sign a contract agreeing to the terms and conditions of the work to be conducted?**

Twenty-four percent (24%) of respondents signed contracts, while thirty-two (32)/76% of respondents did not sign contracts.

**(j) Who prepared the Contract?**

All contracts were prepared by the Contractor. However, the consumer's specifications were added to the contract.

**(k) Was the Contract Specific to the work to be conducted?**

With the exception of one (1) person, all the others stated that the contract was specific to the work to be done.

**(l) Was the contract easy to understand?**

Ninety percent (90%) of respondents stated that the contract was easy to understand. However, ten percent (10%) said that they did not understand some parts of the contract.

**(m) Did the contract contain a clause allowing you to get out of the contract without a penalty if the building process was taking too long?**

Fifty percent (50%) of respondents stated that the contract contained such a clause. Thirty-seven and a half percent (37.5%) stated that it did not contain such a clause, while twelve and a half percent (12.5%) stated that they were unsure.

**(n) Was the work completed to your satisfaction?**

Eighty percent (80%) of respondents stated that the work was completed to their satisfaction. Twenty percent (20%) of respondents were dissatisfied. Some of the reasons stated for the consumers' dissatisfaction were:-

1. The quotation indicated a specific person would conduct the work. However, another person completed the work and the price of the work increased.
2. Poor quality materials and unskilled workers.
3. The tiles were improperly laid and so they soon started to crack and had to be replaced.
4. Caulking not done throughout the house.
5. Inferior parts used for toilets resulting in flooding of entire property.
6. Blocked shower drains.
7. Electricity panels and sockets not properly installed as per the original agreement.

**(o) Was the problem rectified by the Contractor/Builder?**

Fourteen percent (14%) of respondents stated that the problem was rectified by the Contractor. Forty-three percent (43%) stated that the problem was partially rectified. Fourteen percent (14%) indicated that the problem was currently being rectified and twenty-nine percent (29%) stated that the problem had not been rectified.

**(p) When was the Contractor paid?**

Forty-seven percent (47%) said that they paid the Contractor in stages. Thirty-nine percent (39%) said that the Contractor was paid when the work was completed. Only fourteen percent (14%) indicated that they made pre-payments to the Contractor before each stage of the work.

**(q) Was there a difference between the price quoted and the final price you paid for the work?**

Sixty-five percent (65%) of respondents stated that they paid the price that was quoted. Thirty-five percent (35%) stated that they paid a higher price.

The reasons given for the increase in price were:-

- The delivery cost for the supplies increased; and
- The clean-up cost increased.

**(r) Were you notified that the price of the work had increased?**

Seventy-seven percent (77%) of respondents stated that they were notified while twenty-three percent (23%) received no notification.

**(s) Were you given a reason?**

Fifteen percent (15%) of respondents were not given a reason. Eighty-five percent (85%) were given reasons.

**(t) What was the reason for the change?**

- Seventy-three percent (73%) of respondents stated that alterations to the design caused an increase in price; and
- Twenty-three percent (23%) of respondents stated that the Contractor underestimated the cost of the work.

**(u) Was the work completed in the agreed time?**

Sixty-nine percent (69%) of the responders said that the work was completed in the agreed time. The remaining thirty-one percent (31%) stated that the work was not completed in the agreed time.

**(v) How soon after the agreed time was it completed?**

Of the twelve (12) respondents who said that the work was not completed in the agreed time, fifty-eight percent (58.3%) stated that the work was completed within three (3) months of the agreed time expiring. Twenty-five percent (25.3%) indicated that the work was completed between four (4) to six (6) months. Eight percent (8.3%) stated that the work was concluded ten (10) to twelve (12) months after the original completion date.

**(w) What was the reason given for the delay in completion?**

Fifty-six percent (56%) of respondents stated alterations. Twenty-two percent (22%) cited inclement weather. Eleven percent (11%) mentioned unavailability of the materials, while eleven percent (11%) stated lack of funds.



**(x) Did you incur any additional cost as a result of the work not being completed on time?**

Sixty-four percent (64%) of respondents stated that there were no additional costs. Thirty-six percent (36%) stated there were additional costs.

**(y) What was the approximate cost?**

Fifty percent (50%) of respondents stated that they incurred costs between \$10,001.00 - \$20,000.00. Twenty-five percent (25%) stated that the cost was between \$5,000.00 and \$10,000.00. The remaining twenty-five percent (25%) stated that the cost was less than \$5,000.00.

**(z) What form of redress was provided when the Contractor did not complete the work on time?**

This question gave respondents two (2) options. These were:

- (i) The consumer receives a refund of monies; and
- (ii) The Contractor pays a penalty.

However, respondents did not select either option. Instead they stated that:-

- No redress was provided;
- The Contractor elected not to charge them for some of the labour;
- The Contractor completed the work without an additional charge; and
- The Contractor refused to complete the work.

**(aa) Did you have a Quantity Surveyor or Project Manager oversee the project on your behalf?**

Eighty-nine percent (89%) of the respondents gave a negative response, while the remaining eleven percent (11%) answered in the affirmative.

**(bb) How satisfied are you with the Job undertaken by the Contractor?**

Forty percent (40%) of respondents stated that they were satisfied. Thirty-one percent (31%) stated that they were fairly satisfied. Twenty-three percent (23%) were very satisfied, while six percent (6%) expressed dissatisfaction.

Some of the reasons advanced for dissatisfaction with the Contractor were:-

- The work was sub-standard;
- The cost was too high; and
- Debris was not cleared from the site.

Respondents expressing satisfaction with their Contractors stated that the job was performed efficiently and in some instances, the cost was reduced.

**(cc) How likely are you to recommend your Contractor to a friend or colleague?**

Thirty-seven percent (37%) stated that they would *likely* recommend the Contractor to a friend. Thirty-four percent (34%) stated that they were *very likely* to do so. Twenty percent (20%) said they were *unlikely* to recommend to the Contractor, while nine percent (9%) were *very unlikely* to do so.

Reasons given for not recommending the Contractor to a friend included:-

- The work was sub-standard;
- The cost was too high; and
- Debris was not cleared from the site.

**(dd) Gender of persons interviewed**

Fifty-eight percent (58%) of the respondents were female while forty-two (42%) percent were male.

**(ee) Which of the following age bands do you belong?**

Forty-four percent (44%) of respondents were between the ages of 41 to 50 years; thirty-one percent (31%) were between the ages of 31 to 40 years. Eight percent (8%) were over sixty (60) years, while six percent (6%) were between the ages of 20 – 30 years.

## 8.0 Section 8 - Data Analysis and Results of the Study

### 8.1 Analysis

8.2 Sixty-nine percent (69%) of respondents confirmed that their construction work was completed on time. In instances, where the work was delayed, valid reasons were given. Reasons included inclement weather and variations to the work. Where there was delay in the completion of the project, sixty percent (60%) of those interviewed confirmed that the work was completed within three (3) to six (6) months of the previous agreed time.

8.3 Sixty-four percent (64%) of the respondents stated that the delay did not result in additional cost. In the event of a delay, consumers either received a reduction of labour charges or no additional fees were charged.

8.4 Twenty-nine percent (29%) of respondents stated that that there were still outstanding problems to be rectified by the Contractor and fourteen percent (14%) stated that the problems were still being rectified.

8.5 Seventy-six percent (76%) of consumers surveyed stated that they were not given written contracts by the Contractor outlining the work to be undertaken. Where consumers were given written contracts, these contracts were previously prepared in advance by the Contractor and only specific details relating to the project were included.

Therefore, certain aspects of the contract were pre-formulated, whilst other parts were individually negotiated.

It should be noted that ninety percent (90%) of consumers who received a contract stated that the terms were easy to understand.

8.6 The issues raised by consumers generally related to the quality of work they received from the Contractor, for example tiles not installed properly. Consumers also identified some of the issues raised by stakeholders, such as,

- The price of the quotation increased; and
- Inferior quality materials were used.

8.7 The survey revealed that eighty-six percent (86%) of respondents paid the Contractor after each stage of the work. Only fourteen percent (14%) said that they made pre-payments to the Contractor before the work started.

8.8 Sixty-five percent (65%) of the respondents stated that they paid the price stated in the quotation. The other thirty-five percent (35%) indicated that they paid more than the agreed price. However, in instances where the price of the work had increased, seventy-seven percent (77%) of the thirty-five percent (35%) mentioned above, stated that they were notified by the Contractors of the increase in price.

8.9 It should be noted that eighty-five percent (85%) of respondents were given reasons for the price increase. The remainder indicated that they had not been notified of the increase.

Respondents, when asked whether or not they were satisfied with the overall performance of the Contractor, only six percent (6%) expressed dissatisfaction and stated that Contractors charged too much or left debris on the site.

8.10 Some respondents expressed dissatisfaction and highlighted issues such as the Contractor:-

- Grossly underestimated the cost of additional work;
- Failed to complete the job on time;
- Increased the price previously quoted; and
- The quality of work was sub-standard.

8.11 The survey revealed that eighty percent (80%) of respondents would recommend their Contractor to family or a friend. Only twenty percent (20%) indicated that they would not do so.

8.12 A respondent stated that a Contractor was not engaged for the project, instead different artisans such as a Mason, a Carpenter and an Electrician, were employed to undertake their specialist areas. This respondent expressed satisfaction with the work conducted.

A more detailed review of the result can be found under the section Consumer Survey Results.

## 9.0 Section 9 - The Way Forward

### 9.1 Building Codes

Building Codes are defined as a *'collection of laws, regulations,...or other statutory requirements adopted by a government legislative authority that is involved in assuring the adequacy of the physical structures and healthy conditions of buildings.'* <sup>15</sup>

Building Codes are a necessary part of the construction process, providing safeguards and ensuring that there is uniformity of standards in the construction industry. They ensure that houses are built to a specific standard to withstand hazardous conditions through sound technical compliance.

#### (1) Belize

Belize has a Central Building Authority (CBA) which oversees their construction industry. The CBA has the responsibility for enforcing and developing new regulations. The CBA holds workshops for stakeholders, provides training and helped to develop the *'Caribbean Application Documents to adapt the International Building codes for the Caribbean'*.

#### (2) Barbados

At present, Barbados does not have a mandatory Building Code (Code). However, it has had a draft Building Code since 1993. The draft *'building code details the technical standards and requirements for the design and construction of buildings in respect of issues concerning structural sufficiency and durability,...'* <sup>16</sup>.

Its main purpose is to ensure that building works will not collapse under adverse weather conditions. It also sets out the responsibilities of consumers when constructing houses.

Some Contractors follow the guidelines of the draft Code. However, not all Contractors do, as the draft Code is not mandatory. This has resulted in differing standards of work between Contractors.

The draft Code when implemented in Barbados is likely to be administered by the Barbados Building Standards Authority. The draft Code will require the registration of Contractors and state the minimum standards acceptable for the construction of buildings. Punitive sanctions will be imposed on Contractors

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<sup>15</sup> Building codes – A Primer. <http://www.epa.gov>.

<sup>16</sup> <http://www.bnsi.bb>

who contravene the Code. For example, a Contractor's license could be suspended or revoked.

## 9.2 Educational Programmes on Standards for Building

In Barbados, the Samuel Jackman Prescod Polytechnic (SJPP) offers various courses in building, where the students are exposed to the rudiments of the construction industry. In February, 2014, the SJPP offered a new course entitled '*Regional Code of Practice for the Construction of Houses*' for stakeholders in the building industry.

Walbrent College is another local institution offering artisan classes. These classes are geared towards providing stakeholders with a greater understanding of the construction industry.

## 10.0 Section 10 - Conclusion and Recommendations

### 10.1 Conclusion

The main objective of the study was to gain a greater understanding of the construction industry in Barbados and identify the issues that are affecting consumers and address them under the Consumer Protection Act, CAP. 326D.

The Survey revealed that:-

- Consumers are experiencing problems when utilising the services of some stakeholders in the industry.
- Twenty percent (20%) of respondents were dissatisfied with the work performed by their Contractors because of high costs and delays.
- Respondents in the study only utilised Contractors that were not listed in the telephone directory. Therefore, these Contractors could not be interviewed, as they could not be identified. This highlighted the need for regulation of Contractors in Barbados.
- A mandatory Building Code should be implemented, as such a Code could help to alleviate some of the problems in the industry and provide consumers with greater protection.
- Without a Building Code to assist consumers in determining whether or not a Contractor is reputable, consumers are mostly at a disadvantage when choosing a Contractor.
- Consumers should get multiple quotations and make comparisons before selecting a Contractor.
- Consumers should have a written contract signed by the Contractor and themselves, that documents the work to be conducted.
- Consumers should seek to employ someone who understands the construction process and can carry out the work in a proficient manner.
- It may be prudent for consumers to have a GEO-Technical investigation conducted, prior to the commencement of the construction project.
- Consumers should actively monitor the progress of the construction schedule so that action can be taken early, to prevent issues from escalating.

## 10.2 Recommendations

It is recommended that:

### (a) Educational Programme

- Consumers should be made aware of the different aspects of the construction process.

### (b) Building Standards

- A list of certified Contractors is required to create consumer confidence within this industry and sanctions should be applicable where Contractors and Tradesmen fall below the required standard.
- An association of Contractors/Builders should be established. Contractors/Builders should be licensed and have a certified national qualification in house building, to ensure that buildings are constructed to a specified standard. In order to obtain a license, specific technical, experiential and financial proficiency tests should be met by the Contractors/Builders.
- The appropriate Ministry (Ministry of Transport & Works) should be contacted with respect to setting criteria for Contractors/Builders. The Ministry of Industry, International Business, Commerce and Small Business Development should be copied on this matter.
- The Draft Building Code should be proclaimed to ensure uniformity of building standards.

### (c) Pre-Contractual Stage of the Building Project

It is recommended that:

- Consumers should obtain multiple Quotations from various Contractors, instead of Estimates, before selecting a Contractor. They should also examine the work of previous clients of the Contractor, make comparisons and then select a Contractor.
- Consumers should acquire written Quotations for projects as opposed to Estimates. Quotations should specify the elements of



the work to be undertaken, thus eliminating confusion or the issue of consumers being misled about the price.

- Consumers should have a GEO-Technical investigation carried out, prior to the commencement of the construction project, to obtain a more accurate quotation on the cost to complete the foundation.

**(d) Contract**

It is recommended that:

- (a) The consumer should identify all aspects of the work to be conducted in a written contract with the Contractor. The contract should be clear and unambiguous with each party's responsibilities, stated.
- (b) Each phase of the work should be itemised so that the consumer can evaluate the cost of the work.
- (c) Contractors should provide documentation, as to the work completed and the cost.

**(e) The Construction of the Project**

It is recommended that:

- A professional person such as an Architect, Quantity Surveyor, Architect's Technician or Draughtsman should oversee the construction of the project to ensure that it is in conformity with the plans;
- Consumers should be encouraged to visit the construction site on a regular basis and have ongoing discussions with the Contractor as problems can be identified and rectified early;
- Consumers should keep copies of the contract and any variations of work conducted. They should also keep copies of all payments made on the project and ensure that they obtain receipts;
- If there is an increase in the cost outside the control of the Contractor, the consumer should be notified;
- Both parties to the contract should keep accurate records and receipts for all materials purchased;

- Consumers should ensure that they pay only for work already completed. This does not refer to the Mobilisation Fee which allows the project to commence and will be deducted from the total amount to be paid by the consumer;
- All variations to the contract should be documented and signed by both parties to the contract; and
- Before making the final payment to the Contractor, the consumer should ensure that the work has been completed satisfactorily.