

Adequacy of Legal Warranty Plans in Canada

Executive summary
June 2012

A consumer can be confident when purchasing goods and services only if he can be sure that they meet certain minimal expectations: adequate operation, reasonable durability, conformity with the description appearing in the contract or with representations made to him, etc. Without those basic warranties, a consumer would likely not agree to enter into a contract. Legislators have attempted to define such warranties and have imposed them on merchants. However, ignorance – by consumers and often by merchants – of the existence and scope of the legal warranty, merchants’ lack of cooperation when the time comes to apply legal warranties, consumers’ obligation to go to court to have the warranties honoured, are as many factors that dissuade consumers from relying on legal warranties and incline them rather to purchase, at a high price, the relative certainty of extended warranties sold by merchants. Those factors thus contribute to the relative ineffectiveness of this legal protection plan.

Our study first traces a brief history of legal warranties and puts them in the context of common law and civil law systems. Then, by examining legislation adopted in Canadian provinces and territories as well as Europe, the United States, Australia and Brazil, we draw a portrait of the various types of warranties, recourses and remedies that have been developed to implement such protection. Surveys of consumers and of provincial entities responsible for applying the law complete this study of the issues.

Our research leads us to conclude that improving Canadian legal warranty plans does not necessarily depend on a complete overhaul of laws and plans, but rather on specifying and improving the rights and remedies, and on clarifying certain key concepts of legal warranty plans. It is high time that legal warranties be fully upheld, that they meet their legitimate objectives, that consumers be able without difficulty to avail themselves of their rights, and that merchants be seriously induced to meet their obligations without being prodded.

On the basis of the data collected and our analysis of the issues observed, our report proposes a model that could be adopted by legal warranty plans with regard to usage warranties, quality warranties, conformity warranties and hidden defects warranties, in view of greater efficiency with regard to the scope of warranties and to the recourses and remedies available to consumers.

Our recommendations also address issues of how to inform and raise the awareness of consumers and merchants.

From now on, with regard to legal warranties, it should be clear that “The customer is always right.” Merchants should be put on notice not to evade their obligations or complicate life for consumers!

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