

## **Obstacles to Consumer Awareness and Understanding of Consumer Contracts**

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Executive Summary  
June 2008

When merchants promote a product and/or service, they generally insist only on aspects likely to induce the potential customer to sign a contract with them, thus neglecting to inform him adequately about all the terms binding him.

Aware that merchants are not disposed to attract consumers' attention to certain provisions of their adhesion contracts, various Canadian legislatures have adopted regulations intended to improve consumer knowledge of contractual terms and conditions. But despite those regulations, many consumers only find out when claiming their rights that they have agreed, for example, to clauses involving an exclusion of liability (disclaimer), unilateral changes or termination, compulsory arbitration, or prohibitions to launch or participate in class action suits.

Indeed, it appears that a large number of consumers are unknowingly subject to contractual terms and conditions that limit their rights and disregard their interests, and it can prove very difficult for consumers to get the courts to declare such terms invalid. If consumers so often demonstrate ignorance of contractual provisions binding them, it's because numerous obstacles deter them from an awareness and understanding of the consumer contract (for instance: terms accessible only through hyperlinks, terms not sent to consumers or sent only after the contract is concluded, complex legal language, fonts making reading difficult, very long contract documents, provisions allowing the merchant to unilaterally amend a contract's terms after its conclusion, etc.). In addition, those barriers are likely to vary according to the environment (online, by telephone, in the store) in which the agreement was reached.

The research identifies obstacles to the consumer's knowledge and understanding of the consumer contract, while taking into account three environments (online, by telephone, in the store) in which such contracts are generally entered into.

### a) Online purchases

The consumer's awareness or understanding of contract terms during an online purchase may be impaired in many ways. The number and length of documents containing applicable terms and conditions may very well discourage him from reading all the provisions prepared by the merchant. The distribution of terms among several documents may also lead the consumer to conclude, erroneously, that he has read all the terms, whereas some documents may have escaped his attention.

The consumer may well not notice the existence of certain documents, notably because of their location on the Web site. In some cases, through a page that is an integral part of the purchasing process, the company will attract the consumer's attention to the existence of certain documents by indicating that, if he concludes the transaction, he will be bound by their terms and conditions. However, there isn't always a hyperlink giving direct access to those documents. A few companies have integrated the terms within the pages where the consumer must navigate to complete the transaction. But those terms correspond only to a fraction of the provisions of which the consumer absolutely should be aware.

The size and colour of fonts used for hyperlinks located at the bottom of the sites' pages, and for many of the terms and conditions themselves, also don't foster consumer understanding. The names given certain hyperlinks, and some of the accompanying descriptions, are also

highly likely to impair the consumer's appreciation both of the nature of the linked documents and of the importance of reading them before continuing the purchasing process.

Certain provisions (clauses creating an assumption that terms are agreed to, unilateral change clauses, clauses referring to other documents) indicate that there are obstacles to the consumer's knowledge of terms likely to be invoked eventually by the merchant.

To those barriers are added: sentence length, technical or legal vocabulary, language making it difficult to appreciate the scope of the rights the merchant has granted himself.

### **b) Telephone or in-store transactions**

When a consumer makes a transaction by telephone or in the store, his knowledge of applicable terms will greatly depend on information provided by the merchant, which may be deficient and, in some cases, erroneous. The vast majority of merchants reportedly oversimplify the transaction's terms, and often provide, on their own initiative, only information about the amounts to be paid by the consumer for the product or service.

When purchasing in the store, some terms are integrated to paper documents. However, those documents are at times displayed at a location not conducive to their cognizance, and are constructed so that certain provisions may very well not be read by the consumer. Some documents, containing very important provisions, are handed to the consumer after he has agreed to the merchant's offer and given him a lot of personal information.

An examination of the contents of consumer contracts highlights the importance for the consumer to become aware of and understand the provisions which may bind him. Some of the provisions common to consumer contracts, in fact, directly contravene rights that are intended to protect consumers against certain reprehensible merchant practices, and that cannot, even by consent, be set aside or waived by parties to consumer contracts.

The research also examines obstacles that consumer contracts may raise to the consumer's knowledge of his own rights under those contracts.

Although certain provincial legislatures have adopted regulations specifically intended to foster consumer knowledge and understanding of consumer contracts (protection plan applicable to remote contracts, interpretation in consumers' favour, provisions regarding external, incomprehensible or illegible clauses), we observe that those provisions have proven insufficient to protect consumers against the various obstacles identified by the research. Since some consumer contracts contain clauses omitting certain consumer rights, notably those intended to protect consumers against reprehensible merchant practices, a consumer who becomes aware of and understands the scope of this type of clause will be highly likely to be misled about his actual rights and decide not to dispute merchant practices based on those clauses. Accordingly, even in the presence of legislation guaranteeing that the consumer will read and understand applicable clauses before agreeing to them, the consumer is still confronted to a serious obstacle significantly impairing his knowledge of the rights and obligations truly binding both parties to the consumer contract.

Following these findings, the report makes recommendations to provincial governments and consumer protection organizations. Those recommendations pertain to means of information and legislative measures that would be most apt to foster adequate consumer awareness and understanding of the consumer contract, and that would compel companies to clearly indicate to

consumers their rights under consumer protection laws and the limits companies intend to impose on those rights.

Whereas Canadian consumers might, depending on their place of residence, not benefit from the same rights and protections as to knowledge and understanding of consumer contracts, Union des consommateurs also recommends that provincial governments reach a consensus to harmonize laws intended to foster consumer knowledge and understanding of consumer contracts.

Whereas some of the clauses common to consumer contracts directly contravene consumer protection laws, and that consumers, thus misinformed about their actual rights, are highly likely to believe themselves bound by those clauses and therefore not to dispute merchant practices based on those clauses;

Whereas this type of clause adversely affects the collective interest of consumers;

Whereas consumer associations are generally, by their expertise and field work, more likely than the majority of consumers to detect consumer contract clauses that could contravene merchants' obligations and limit consumers' legal rights;

Union des consommateurs also recommends that provincial governments legislate to grant consumer associations the right to act in consumers' collective interest, notably to have clauses violating consumer rights removed from consumer contracts.

This document is the Executive summary of the report

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For more information:  
Union@consommateur.qc.ca  
514 521-6820 ou 1-888-521-6820

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