

## Regulating distance contracts: Time to take stock

*Executive summary*  
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Contracts concluded at a distance between merchant and consumer have been of great interest to international organizations (OECD, UN, etc.) and governments since the arrival of the Internet. The issue remains current, particularly because new purchasing methods are developing and proliferating (e.g. the variety of purchases made on mobile telephones).

In 2012, over half of Canadian Internet users ordered goods or services online, either for themselves or their household. This way of purchasing at a distance is more and more widespread among Canadian consumers. Online shopping is popular for several reasons, such as: the ability to purchase at any time of the day or night, from anywhere; the wide selection of products; the ease of comparing the prices of various merchants; quick and easy access to comments from other Internet consumers about the same product...

Our study examines the regulations adopted by Canadian provinces regarding distance contracts, and focuses on Internet contracts. We analyse those regulations in the light of the *Internet Sales Contract Harmonization Template*, but also in reference to the new European Directive, 2011/83/EU, adopted to update the rules for this type of contracts, eliminate inconsistencies, and correct shortcomings in member countries.

Eight Canadian provinces have chosen to regulate in their own way all or some types of distance contracts. Some provinces, according to the narrow frame of the Harmonization Template, have decided to regulate only contracts concluded on the Internet. Other provinces have adopted distinct provisions depending on the means of communication used for concluding the distance contract. Others have chosen to regulate all distance contracts with rules that, ideally, would apply irrespective of the means of communication used, based on a principle of technological neutrality.

Our research leads us to conclude that regulations of online trade (E-commerce) in Canada should be harmonized and, more importantly, modernized. In addition, the regulatory framework for distance contracts, which applies mainly to the merchant's information requirements and to the consumer's right to cancel the contract if those requirements are not met, should take into account the peculiarities of each medium.

One of the goals of regulating online contracts was to reassure consumers in order to foster the development of this transaction method. However, a survey of 1,020 Canadians reveals that Consumers currently have almost no knowledge of the protections afforded to them regarding distance contracts. Moreover, most of the provincial agencies responsible for monitoring and applying those laws have confirmed that they conduct no active information, education or awareness-raising campaigns among consumers with regard to such protections, but prefer to disseminate information on their websites.

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An investigation of 30 transactional websites revealed merchants' widespread disregard of the regulatory framework. While most of the information they are required to disclose is found on most of the websites studied, it is often scattered, difficult to find, and submerged in an ocean of other information so that it's almost impossible to discern what is essential. Additionally, one out of three descriptions of goods and services sold online is incomplete, with absent or confusing information, etc. Almost none of the websites we visited complied with obligations to highlight mandatory information and ensure consumers' understanding of it.

Our case law research also reveals shortcomings in the implementation of the regulatory framework studied, along with the courts' misunderstanding of E-commerce peculiarities.

Our study leads us to recommend a modernization and clarification of rules applicable to contracts concluded on the Internet. The adoption of measures similar to those favoured abroad should be considered as a priority, including the right of withdrawal.

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