

## THE TRUTH BEHIND THE OBLIGATION TO TAKE BACK RETURNED ITEMS: return policies or take-back times for in-store purchases

*Executive summary*  
June 2015

Canadian consumers can choose to make purchases in person or at a distance. Statistics show that despite the advent of distance purchases – particularly on the Internet – in-store purchases are still preferred. But what happens when someone regrets a purchase and wants to return the item?

Canadian consumers share a belief that consumer protection laws entitle them to unconditional returns within a given period. But this is a myth, because no Canadian provincial law gives them such a generalized right.

It should be pointed out that whereas provincial laws don't regulate in-store ERR policies, they impose, for certain types of contracts, extreme return policies, i.e., a period of grace or a reflection period when consumers can change their minds. This is notably the case for door-to-door sales, for which an automatic right of cancellation and return within ten days following the transaction or the remittance of certain mandatory documents has been conferred to consumers (in the five provinces we studied, i.e., Quebec, Ontario, Alberta and Nova Scotia), etc. In addition, consumers who purchase online benefit from rights of cancellation and return, and sellers have explicit obligations of disclosure about their policies of cancellation, termination, exchange, return and refund.

Accordingly, in Canada, exchange, return and refund (ERR) policies are left to the merchant's entire discretion – apart, of course, from returns motivated by a lack of conformity that would entail the application of the legal warranty. Merchants are thus free to adopt the policies that suit them.

Our study is largely based on an examination of Canadian provincial laws (in 5 provinces, i.e., Quebec, Ontario, Alberta, Manitoba and Nova Scotia) and of certain foreign laws (in the European Union, the United States and Australia); on surveys among provincial agencies mandated to apply consumer protection laws, and among merchant associations; and on a field survey conducted among a hundred of businesses in Canada.

Our study of foreign laws found that numerous American States have regulated the disclosure of ERR policies and provide sanctions for merchants' noncompliance.

The provincial consumer protection agencies we surveyed admit not actively raising the awareness of consumers or merchants on the issue of ERR policies – although information about the subject can be found on their websites. Unfortunately, that doesn't appear to suffice, given the number (two provinces declaring between 5,000 and 13,000 complaints or questions over five years, and another one 10,000 annually) and the type of questions that consumers address to those agencies.

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The field study conducted in a hundred stores located in 5 provinces, i.e., Quebec, Ontario, Alberta, Manitoba and Nova Scotia, reveals that only around half of businesses display their ERR policies and their limits and conditions of application.

Around half of the stores that don't display their ERR policies reported not notifying consumers of the existence or scope of those policies before purchases; the policies are most often found on the cash receipt – provided after the purchase, of course – or on their website... Some merchants mentioned that such policy information is provided verbally when consumers ask the question themselves. So consumers have to ask the right questions and will then have only their memories as proof of the policies' existence or scope.

Therefore, given that many consumers falsely believe that the law gives them a right of return without having to give a reason when purchasing directly in-store, and that merchants' exchange, return and refund policies are often not displayed and are thus often unknown to consumers prior to purchase, it appears that merchants should be obliged to inform consumers of their rights and obligations under ERR policies. This would allow consumers purchasing in-store to benefit from protection equal to that provided to consumers making distance purchases.

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French version available.

Union des consommateurs received funding from Industry Canada's Contributions Program for Non-profit Consumer and Voluntary Organizations. The views expressed in the report are not necessarily those of Industry Canada or the Government of Canada.