

# **MINORS, CONTRACTS AND CONSEQUENCES**

Final Report of the Project  
Presented to Industry Canada's  
Office of Consumer Affairs



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Union des consommateurs is a member of the International Consumer Organization (ICO), a federation of 234 members from 113 countries.

*The masculine is used generically in this report.*

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## Union des consommateurs, Strength through Networking

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Union des consommateurs is a non-profit organization whose membership is comprised of several ACEFs (*Associations coopératives d'économie familiale*), *l'Association des consommateurs pour la qualité dans la construction* (ACQC), as well as individual members.

Union des consommateurs' mission is to represent and defend the rights of consumers, with particular emphasis on the interests of low-income households. Union des consommateurs' activities are based on values cherished by its members: solidarity, equity and social justice, as well as the objective of enhancing consumers' living conditions in economic, social, political and environmental terms.

Union des consommateurs' structure enables it to maintain a broad vision of consumer issues even as it develops in-depth expertise in certain programming sectors, particularly via its research efforts on the emerging issues confronting consumers. Its activities, which are nation-wide in scope, are enriched and legitimated by its field work and the deep roots of its member associations in the community.

Union des consommateurs acts mainly at the national level, by representing the interests of consumers before political, regulatory or legal authorities or in public forums. Its priority issues, in terms of research, action and advocacy, include the following: family budgets and indebtedness, energy, telephone services, radio broadcasting, cable television and the Internet, public health, food and biotechnologies, financial products and services, business practices, and social and fiscal policy.

Finally, regarding the issue of economic globalization, Union des consommateurs works in collaboration with several consumer groups in English Canada and abroad. It is a member of Consumers International (CI), a United Nations recognized organization.

## 1. Introduction

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As is well known, parents sometimes have the impression of not seeing their children grow up, so fast is their race to independence. Between their first purchase of sweets at the corner store and the rental of their first apartment, children become adults at a pace that sometimes amazes us.

Our study's title, *Minors, Contracts and Consequences*, expresses a contemporary reality: minors are highly active consumers, and a fast-growing market. In fact, as we will see, young people enter into contracts with merchants providing them with goods and services, and those contracts have consequences.

What consumer issues are most frequently reported regarding minors? What are the riskiest situations?

Can a child make major purchases without his parents' consent and participation? Is the situation different in the case of a teenager – still a minor, technically and legally?

Young people today are ever more solicited, invited to acquire goods and services that, to the generations targeted, appear almost as essential items, tools they have come to view as necessary to survival (at least social survival). Of course we have to be aware that acts of consumption are extremely common, to the point where often the question of ability to contract does not even come to mind: young people don't surprise anyone when they purchase edible goods (convenience store, supermarket, restaurant), books or magazines, CDs, transportation fare, etc. But we start to wonder when a young person comes home with designer clothes, a high-end bicycle, a tattoo, etc.

At what can a minor acquire a first cell phone (and enter into a service contract to use it), a first multifunction portable reader, or even a first credit card? What remedies does a minor have when a merchant abuses his inexperience (or his lesser ability to resist the call of consumerism)? In such cases, should the parent go to court or should the child himself assert his rights? Does the child even have the legal ability to do so? For his part, does the merchant, when dealing knowingly or unknowingly with a minor, have a right to evoke transaction security?

Are parents and merchants well informed about applicable legal rules? How do they perceive the establishment and application of a framework for the consumerism of minors?

How are the issues surrounding young people's ability to contract dealt with in Quebec, Canada and elsewhere in the world? Are there shortcomings in the legal framework for transactions likely to be made by minors? Are minors more at risk than ever before? If so, what can government do to better protect minors?

Those are a few of the questions to which our study will attempt to find answers. The task is quite daunting, in a field that has hardly been explored by researchers and legal experts. For this reason, our study is relatively descriptive of the context, but also exploratory in an empirical sense, to lay the foundation for future research – necessarily more specific – on the subject.

The first part of the report will describe the issues most often raised about contracts entered into by minors. In subsequent pages, we will present the regulations governing contracts concluded by minors in Quebec, other Canadian provinces and elsewhere.

We conducted a survey of parents of teenagers, merchants and governmental consumer protection organizations, to determine how these various stakeholders perceive or apply the legal framework. The fifth part of our report analyses the results of that survey.

After assessing the issues in the light of the findings, the report concludes with a few recommendations and possible solutions for better protecting minor consumers.

### **Issues not addressed**

As part of this study, we discuss minors' ability to contract as consumers of goods and services. Accordingly, we will not address certain aspects of minors' legal situation that, although interesting, are of secondary importance in our inquiries.

We will therefore not examine regulations governing the ability of minors to consent to medical care, establish their domicile, choose their custodial parent, enter into certain types of non-consumer contracts (child star contracts, for example), etc.

## 2. The Issue

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To research and understand the issues concerning young consumers, we must recognize that multiple aspects are involved.

We thus think it essential to study, in addition to practical problems experienced by young consumers, other realities shaping the context in which minors consume goods and services.

Accordingly, we first examine the specific vulnerabilities of minor consumers, as well as children's socialization as consumers. In particular, we will study certain socio-economic changes that have marked the evolution of the modern family and helped position minors as consumers at an ever-younger age.

From a practical point of view, we will try to identify the consumer problems that minors (and their parents, by extension) are likely to face when purchasing goods or services from merchants.

### 2.1 The Socialization of Minors as Consumers

Children and teenagers don't become consumers all of a sudden, but through a long socialization process that begins at a very young age.

When his parents take him shopping, an eight-month-old baby marvels at the bright colours of the various products on display and is fascinated by this world he is discovering. According to a study, a child has gone shopping over 200 times by the age of two<sup>1</sup>.

The child's wonderment at products on display in department stores is all the greater because those products (and the type of place where they can be obtained) gain the prestige of "being on TV". 60% of 3-year-olds reportedly recognize products advertised on television; the proportion climbs to 84% and 88% of children 4 and 5 years old, respectively<sup>2</sup>.

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<sup>1</sup> ATES, Bayazit Hayta. "Socialization of the Child as a Consumer," *Family and Consumer Sciences Research Journal*, Vol. 37, No. 2, 2008.

<sup>2</sup> *Op. Cit.*, Note 1.



Indeed, we should not underestimate the power of attraction exercised by what is presented on television, a medium so present in children's lives. In this regard, Réseau Éducation-Médias makes the following observation:

*La publicité qui cible les jeunes enfants soulève aussi des problèmes particuliers. La recherche montre que les enfants de deux à cinq ans ne peuvent pas faire la différence entre les émissions de télévision courantes et les publicités. Jusqu'à l'âge de huit ans environ, ils ne comprennent pas que la publicité ne dépeint pas toujours la réalité<sup>3</sup>.*

Children's difficulty in distinguishing between information and advertising is of course a factor that reinforces their desire to possess products advertised on television – if only to make the world in which they live correspond to the fantasy world in which the product is presented to the senses (the idealized physical environment, colours and sounds), emotionally (overflowing joy, affection and pleasure) or physically (people and things often seem to defy the laws of physics).

The Canadian Toy Testing Council observes “*that one of the biggest problems with toy ads is the exaggeration of product claims, so that young children think a toy can actually do a lot more because of the way it is portrayed in advertisements*”<sup>4</sup>.

Without perceiving all the nuances, children quickly understand the role of money in obtaining the products advertised on television and displayed on store shelves, as a study indicates:

*A 4-year-old child cannot count money; however, he or she knows that money can be exchanged for nice things. Children in the age of 5 to 8 years find it exciting to possess money; they find pleasure in counting and managing money. A child of 9 years or older is familiar with using money, and it does not excite him or her to have money<sup>5</sup>.*

Children's first experience with money features spending, no saving. And conflicts quickly arise with parents over the choice of buying or not certain goods or services (or over the choice of a particular item rather than another). 41% of families report conflicts with their children before the latter reached the age of two. This proportion rapidly increases with age. It reaches 59% among families with children 2 to 5 years of age, and even 70% among families with a 5-year-old child<sup>6</sup>.

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<sup>3</sup> Industry Canada. *The Consumer Trends Report*, 2004, [Online], [http://www.ic.gc.ca/eic/site/oca-bc.nsf/vwapj/EN\\_CTR.pdf/\\$FILE/EN\\_CTR.pdf](http://www.ic.gc.ca/eic/site/oca-bc.nsf/vwapj/EN_CTR.pdf/$FILE/EN_CTR.pdf) (consulted on February 25, 2011).

<sup>4</sup> *Op. Cit.*, Note 3.

<sup>5</sup> *Op. Cit.*, Note 1.

<sup>6</sup> *Op. Cit.*, Note 1.

Disputes between parents and children often result from young children being more likely to exaggerate the importance of a product's ancillary aspect (containing a free toy, for example) as opposed to considerations usually guiding parents: economic criteria, product quality, etc.:

*For children in early childhood, free gifts such as small toys with the main product are more attractive than promotions such as price discounts or payment facilities. For instance, a child of 5 years old in the perceptive thinking phase prefers expensive crisps with a toy in it to a cheaper packet of crisps, just as the famous McDonald's restaurants ensured brand loyalty by attracting children of this age to its products with its tiny toys promotions for long years. This situation has two negative effects on child consumers. The first of these is that the child makes a choice based on a criterion not related to the product itself but based on the free gift; the second is that the child may select a low quality product by choosing based of free gifts<sup>7</sup>.*

Still, parents continue playing a structuring role in the development of their children's consumer habits. Consciously or not, intentionally or not, parents reportedly use five different techniques to teach their children how to become consumers:

- prohibiting certain activities;
- giving consumer advice;
- exchanging ideas on consumer decisions;
- being a good example to their children;
- allowing children to learn from their own experience<sup>8</sup>.

Children obviously absorb such learning in a highly personal and individual manner. One author points out children less than 18 years of age should not be considered a homogeneous group:

*Children are often treated as a homogeneous social group of apparently impressionable and pressurized individuals rather than as diverse in terms of age, abilities, sense of self/agency and knowledge of, and experience with, material and consumer culture<sup>9</sup>.*

After the age of 10, a child begins being able to plan for the future, to a certain extent. He can thus understand the importance of not spending all of one's money immediately, and becomes somewhat able to save for the future<sup>10</sup>.

Moreover, at that age the child develops a desire (or a need) to appear mature. Marketing experts – who haven't failed to notice this – say that at that stage a child has one foot in the world of childhood, and another in the adult world<sup>11</sup>.

This is particularly true for young girls 9 to 14 years old, who are tend more to search for consumer information in magazines apparently addressed to an older public<sup>12</sup>.

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<sup>7</sup> *Op. Cit.*, Note 1.

<sup>8</sup> *Op. Cit.*, Note 1.

<sup>9</sup> MARTENS, Lydia, Dale SOUTHERTON and Sue SCOTT. "Bringing Children (and Parents) into the Sociology of Consumption: Towards a Theoretical and Empirical Agenda," *Journal of Consumer Culture*, vol. 4, No. 2, 2004, pp. 155-182, DOI: 10.1177/1469540504043680.

<sup>10</sup> *Op. Cit.*, Note 1.

<sup>11</sup> BROOKES, Fiona and Peter KELLY. "Dolly girls: tweenies as artefacts of consumption," *Journal of Youth Studies*, vol. 12, No. 6, 2009, pp. 599-613.

<sup>12</sup> *Op. Cit.*, Note 11.

Marketers are of course not passive in the face of this process whereby children learn to be consumers; the commercial discourse even seeks to reformulate the sociological discourse to its own advantage.

*Consumer culture is deliberately targeting children from a young age with messages about what is beautiful and who is cool and at the same time making materialistic and appearance norms and values a key focus of children's socialization experience. Childhood has become increasingly commercialized and children are no longer seen as outsiders to contemporary consumer culture. When childhood is described with play, fun and toys, the children's market is naturalized and sacralized by making toy makers a part of the landscape of childhood.*

*According to Cook (2007) the concept of child consumer arises from discourses that are produced by marketers, retailers, researchers and advertisers. Marketers have positioned the social meaning of their goods and brands between parents and children. Cook (2007) conceptualizes the child consumer as "a social construction – i.e. an assemblage of qualities, beliefs and conjectures concerning the "nature" and motivation of children regarding commercial goods and meanings"*

*When studying market actors' discourses in North America they describe children as free market actors (i.e. as consumers), which therefore serves to make marketing to them a morally acceptable practice. [...] Discourses on commercialization and commercial marketing to children draw on wider arguments that see children as competent social subjects who have the right to participate in society and have an influence over their own lives. Childhood is embraced by a new kind of naturalness, it is replacing the earlier assumptions of development that strictly evolves through ages and in stages<sup>13</sup>.*

This acute interest in the youth market, and the means taken to have children participate in the consumer world, might alone justify the need for legislative intervention to maintain a balance between this consumerist onslaught and minors as vulnerable consumers.

A major aspect of minors learning their consumer role is pragmatic, however, with the simple presence of children in shopping centres, in the company of persons with whom they want to take part in a shopping activity because they consider them more experienced. The average teenager spends up to 3.5 hours a week in shopping centres<sup>14</sup>.

As the child grows up, he acquires experience in the consumer world as elsewhere, and develops a critical ability in the face of offers made to him. But it should never be forgotten that teenage consumers remain, in a sense, in a probationary period, since his young age and limited experience prevent him from having all the necessary perspective for correctly judging

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<sup>13</sup> VÄISTÖ, Terhi "Children and brands in consumer culture. The formation of private and social identities," Marketing Master's thesis (2009), p. 17 and following, [Online], [http://hsepubl.lib.hse.fi/Ethesis/pdf/12183/hse\\_thesis\\_12183.pdf](http://hsepubl.lib.hse.fi/Ethesis/pdf/12183/hse_thesis_12183.pdf) (consulted on June 22, 2011).

<sup>14</sup> CRUTSINGER, Christy, Dee KNIGHT and HaeJung KIM. "Teens' consumer interaction styles: the impact of assertive and aggressive behaviour on attitudes towards marketing practices," *International Journal of Consumer Studies*, Vol. 34, 2010, DOI: 10.1111/j.1470-6431.2009.00846.x.

the marketing messages communicated to him<sup>15</sup>, particularly given the enormous peer pressure<sup>16</sup>.

Still, the teenage consumer's judgement may vary depending on the information source and means of acquisition available to him:

*Teens are more likely to purchase products based on quality, value and utilitarian function if they read printed media and interact with their parents. However, teens who rely on friends and television advertising for product information tend to be more brand and fashion conscious and impulsive in their product selections<sup>17</sup>.*

Thus, peer pressure proves a very poor source of advice when a young person's other sources of consumer information are too limited or are nonexistent.

The fact that young people will continue playing an important role in the consumer world appears inexorable, despite their difficulty in understanding all the whys and wherefores. The growing place of young people – especially teenagers – in the consumer world is explained in large part by a simple reality: they have the means.

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<sup>15</sup> MCGREGOR, Sue L.T. "Portraying the Canadian population as consumers," *Canadian Home Economics Journal*, Vol. 51, No. 1, 2001, pp. 36-40, [Online], [http://www.consultmgregor.com/documents/research/Canadian\\_consumer\\_profiles.pdf](http://www.consultmgregor.com/documents/research/Canadian_consumer_profiles.pdf) (consulted on June 22, 2011).

<sup>16</sup> CRUTSINGER, Christy, Dee KNIGHT and HaeJung KIM. "Teens' consumer interaction styles: the impact of assertive and aggressive behaviour on attitudes towards marketing practices," *International Journal of Consumer Studies*, Vol. 34, 2010, DOI: 10.1111/j.1470-6431.2009.00846.x.

<sup>17</sup> *Op. Cit.*, Note 17.

## 2.2 The Growth of Minors' Discretionary Spending

### 2.2.1 Children's Contribution to the Family Till

It is well known that the role of children and teenagers, and their place in the family structure, have been greatly evolving for several decades. The statement remains correct and relevant for the purposes of our study.

One of the most striking changes is the increase, particularly among teenagers, in the amounts of money that young people can spend in an essentially discretionary manner, more or less without parental supervision or intervention, to satisfy their own desires or needs.

This contrasts with the days when the family was conceived as a solidary unit serviced almost exclusively by its members, who sought to fulfil the family's needs rather than their own, as Ali de Regt points out in an article on the evolution of children's role within the family:

*Over the course of the 20th century, the position of children in the family economy has changed fundamentally. Children are no longer co-providers in the family, nor do they supply labor power to the family as a whole. [...] Teenagers do not contribute to the family income even when they get paid for out-of-school work<sup>18</sup>.*

According to this researcher, these changes are explained mainly by families' improved living conditions and available income since the end of the Second World War. Given that parents depend less on their children's financial contribution to the family, the economic role of children within the family has been redefined.

*For increasingly more parents, it became normal and desirable that their children made no active economic contribution to the family, as had been the standard for members of the elite in the past. The direct economic reciprocity between the generations changed into a one-way flow from the older to the younger generation<sup>19</sup>.*

We note here how this change in values applies: not only is children's contribution to the family till no longer required, it even becomes, from the parents' viewpoint, socially undesirable, as though abandoning reciprocity constitutes a new benchmark of economic and social success. One author sees this as the result of a generation of children educated by parents more prosperous than in the past, but poor as never before in terms of time<sup>20</sup>.

In addition, parents are very aware that, in a consumer society such as ours, their children have relatively expensive tastes. Parents don't have the financial resources to satisfy all those desires, so allowing their children to spend their own money in a discretionary manner is a tempting solution for many parents:

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<sup>18</sup> DE REGT, Ali. "Children in the 20th-century family economy: From co-providers to consumers," *History of the Family*, Vol. 9, 2004, pp. 371-384.

<sup>19</sup> *Op. Cit.*, Note 18.

<sup>20</sup> SCHAEFER, Allen D., Charles M. HERMANS and R. Stephen PARKER. "A cross-cultural exploration of materialism in adolescents," *International Journal of Consumer Studies*, Vol. 28, No. 4, 2004, pp. 399-411.

*Parents do not expect their children to give part of their earnings as a contribution to the family budget. Yet they value the money their children earn. They realize that they themselves would not be able to provide money to keep up the lifestyle their adolescents demand. The status competition amount young people calls for participation in an expensive consumer culture. And though public opinion is often critical of the high consumption level of teenagers, parents feel their opposition might leave their children excluded from their peer group<sup>21</sup>.*

Of course, the ability of minors to acquire the goods and services they desire does not depend solely on their parents' generosity or financial resources, as emphasized in another study, which explains that differences in parents' resources are not necessarily reflected in the total resources available to their children for their own expenses:

*Also, teenagers can work to a certain extent and earn their own money. Thus, in spite of parents' primary contribution, it is not obvious that the economic level of the children is determined by the parents' resources. Moreover, the allocation of resources within the family can differ as a function of economic situation. Swedish studies have shown that children in economically vulnerable homes have a poorer situation compared with other children in several respects (e.g. own cash margin, own room), but in other areas (e.g. pocket money and owning a mobile phone) they are partly or totally compensated and therefore to some degree indemnified for their parents' poor situation<sup>22</sup>.*

We observe a reversal here in the family situation: the child, who used to share those revenues with the family, is now subsidized by the family, even in economically difficult times.

Moreover, as opposed to what one might have believed, children's power within the family has not suffered – quite the contrary – from this redefinition of roles whereby children no longer contribute to the family till:

*Relations within the family became less hierarchical; children were treated more as equals; their demands were taken more seriously; and more of their wishes were met. [...] Behavioral demands are less strictly enforced, and parents and children negotiate about acceptable behavior. Loss of economic function has not weakened the power of children in the family<sup>23</sup>.*

Given the historically advantageous position of today's children within their family, it is not surprising to observe, as does the Vanier Institute, that young people *"Increasingly, young people are leaving home at older ages – and coming back. Leaving home has become a longer process wherein 'close ties with the family home are unravelled slowly rather than being cut quickly'<sup>24</sup>.*"

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<sup>21</sup> *Op. Cit.* Note 18.

<sup>22</sup> OLSSON, Elin. "The Economic Side of Social Relations: Household Poverty, Adolescents' Own Resources and Peer Relations," *European Sociological Review*, Vol. 23, No. 4, 2007, p. 471-485, DOI: 10.1093/esr/jcm016.

<sup>23</sup> *Op. Cit.*, Note 18.

<sup>24</sup> VANIER INSTITUTE. *Family Counts: Profiling Canada's Families*, 2010, [Online], <http://www.vifamily.ca/media/node/371/attachments/FamiliesCountFINAL.pdf> (consulted on March 29, 2011).

Although this number does not directly pertain to minors, it is interesting to note that in 2006, about 60% of young adults 20 to 24 years of age were living with their parents – an increase of 40% compared to 1981<sup>25</sup>.

92% of Canadians 15 to 19 years of age were living with their parents in 2006<sup>26</sup>.

A teenager leaving the family nest at the age of 16 to go to work is thus an extreme case (except perhaps in Nunavut, where the proportion is about 80%)<sup>27</sup>.

This information is important, because it demonstrates that we should not analyse the rules governing the ability of minors by considering as the norm the case of a minor who leaves family home to live in complete independence; that is statistically rarer than previously. In other words, given the situation of most young people today, the desire to ensure the legal security of transactions concluded by minors, which would result from the necessity to give independent minors the possibility of acquiring things essential to their subsistence, should not take priority over concerns to protect the other minors, still dependent on their parents.

As we will see, this comment applies particularly to regulations for the ability of minors to contract in Canadian provinces (except Quebec), where protection granted to minors is reduced when they contract for “necessities”<sup>28</sup>. From a critical viewpoint, we should remember that the typical situation of independent minors as a justification for the exception in the case of *necessities* – which was developed in an era when the age of majority was much higher – thus applies only to 8% of Canadian minors. Therefore, we find it questionable to reduce protection for the remaining 92% of minors who live with their parents, in the name of legal security (whose necessity does not appear to be proven) that is useful only to 8% of minors. In Quebec law, the possible emancipation of the rare minors who now leave the family home allows us, to a certain extent, to avoid this trap<sup>29</sup>.

It would be useful to keep these paradigm changes in mind when examining legal frameworks for protecting minors in contractual situations, and to determine how laws frequently designed in a very different social context can apply to the current situation and how they adapt to it.

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<sup>25</sup> *Op. Cit.*, Note 24.

<sup>26</sup> *Op. Cit.*, Note 24.

<sup>27</sup> *Op. Cit.*, Note 24.

<sup>28</sup> See our analysis of laws and regulations for contracts entered into by minors in Canadian provinces.

<sup>29</sup> Sec. 167 and foll. CCQ

### 2.2.2 The Teenage Employment Rate

More teenagers are working nowadays than in the past. In fact, more and more teenagers have paid employment, even during their high school studies.

In this regard, the Vanier Institute reports the following facts:

*In 2005, among teens going to school full-time, one in five (21%) had a paid job. [...] The average time spent working at a paid job in 2005 was 0.7 hours on school days and 1.7 hours per day on weekends, an overall increase of 2 hours per week since 1986<sup>30</sup>.*

The Institute also notes that teenage participation in household chores slightly diminished between 1986 and 2005, from 28 minutes to 23 minutes per day<sup>31</sup>.

Opinions differ on the increased involvement of young people in the labour market. Some of them see this as an opportunity to develop their skills and sense of responsibility, whereas others often view it as a certain form of exploitation, with a “McJob” as the archetype. An American researcher states that the lack of pressure felt by teenagers to contribute to the family income – and thus the fact that they have lesser needs, especially since essential needs are ensured by the family unit – results in their criteria for appreciating a job – and not just economic criteria – may not be the same as with adults:

*Unlike the adults who would otherwise fulfill these positions, affluent teenagers are less concerned with having benefits, and the less than full-time hours are less problematic for teenagers. Therefore, low wages and lack of benefits that are typical characteristics of exploitive jobs are not necessarily considered exploitative by the teenagers who come from affluent backgrounds with ample allowances and health benefits though their families<sup>32</sup>.*

As we will see, it is also clear that legislators have generally sought to favour youth employment. In Quebec, for example, the Civil Code considers minors, without exception, as adults when contracting in the course of their employment (sec. 156 CCQ). Another revealing example: student loans and bursaries are calculated in good part on the assumption of earned income during school break months<sup>33</sup>.

Once it is recognized that the work of minors is a way for them, free of the need to contribute to the family's direct/collective income, to acquire a social identity by becoming familiar with and integrating into the consumer culture for the sole purpose of satisfying their own needs or desires (whether shaped or not by that same consumer culture), the occasionally harmful effects of teenage paid work should not be minimized. The Vanier Institute, among others, raises this concern:

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<sup>30</sup> *Op. Cit.*, Note 24.

<sup>31</sup> *Op. Cit.*, Note 24.

<sup>32</sup> BESEN, Yasemin. “Exploitation or Fun? The Lived Experience of Teenage Employment in Suburban America,” *Journal of Contemporary Ethnography*, Vol. 35, 2006, pp. 319-340, DOI: 10.1177/0891241606286817.

<sup>33</sup> Regulation respecting financial assistance for education expenses, RRQ, c A-13.3, r 1.



*Teens lead busy lives and many report feelings of stress. One in six considered themselves “workaholics”, 39% felt under constant pressure to accomplish more than they can handle, while 64% reported that they cut back on sleep to get things done<sup>34</sup>.*

We can conclude that today’s teenagers do more paid work (two hours more per week than in 1986) but less housework (35 minutes less per week) and have more money to spend as they like, since they generally don’t have to share their income with the rest of the family. So it’s obvious why marketing experts are more and more interested in children and teenagers. And it’s important to clearly define the framework for the ever more numerous contractual obligations implied by the greater participation of young people in commercial activities.

### **2.2.3 A Few Numbers on the Financial Resources of Minors**

Clearly, today’s minors have greater financial resources than in the past and can use them as they wish. But determining exactly how great those resources are remains more difficult.

In Canada, a study conducted in the mid-nineties found that teenagers 12 to 17 years of age have an average disposable income of about \$500 a month. At first sight, this number is surprising; we assume that the average is raised by the group’s older members, more of whom work<sup>35</sup>.

It should also be recalled that minors’ disposable income does not derive entirely from work, but also from their parents, who delegate certain purchases to their children:

*Earlier American research shows that teens annually spent more than \$60 billion (US) of their own money, and more than 30 billion (US) of their parent’s money, in the early 90s<sup>36</sup>.*

On the macro social level, the growing importance of minor consumers is confirmed. A study reports that American teenagers spent about \$141 billion in 1998, i.e., almost double the amount in the previous decade. For their part, Canadians 10 to 19 years of age spent \$13.5 billion on various goods and services in 1998<sup>37</sup>.

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<sup>34</sup> *Op. Cit.*, Note 24.

<sup>35</sup> More-recent data available from Statistics Canada only deal with employment income earned by 15-19-year-olds, thus unfortunately excluding amounts from other sources (allowances, gifts, etc.) and including the employment income of young adults 18 and 19 years of age. This is why we cite the following study, even though it may begin to be dated:

MCGREGOR, Sue L.T. “Portraying the Canadian population as consumers”, *Canadian Home Economics Journal*, Vol. 51, No. 1, 2001, pp. 36-40, [Online],

[http://www.consultmccgregor.com/documents/research/Canadian\\_consumer\\_profiles.pdf](http://www.consultmccgregor.com/documents/research/Canadian_consumer_profiles.pdf) (consulted on June 22, 2011).

<sup>36</sup> *Op. Cit.*, Note 35.

<sup>37</sup> *Op. Cit.*, Note 35.

Another study states that in 2002, 12-19-year-olds consumed \$170 billion in the United States, and that teenagers spent on average over \$100 per week (including spending delegated by their parents)<sup>38</sup>.

Already in 1997, Info-Press Magazine indicated that:

*Les ados québécois dépensent globalement 1,5 milliard \$ par an et influencent pour six milliards d'achats dans leur foyer*<sup>39</sup>.

In the light of the socio-economic changes that have affected the family in recent decades, and which we have discussed, these statistics are not surprising.

Certainly, the consumer role of minors is a reality in today's society. But does this mean that minors have become expert consumers?

## 2.3 Contracts Pertaining to Minors' Ordinary Needs

Given that minors have more and more money in their pockets, they naturally consume all kinds of goods and services. Show tickets, online music, clothing, restaurant meals, over-the-counter medications, etc. – the spending opportunities (and incentives) are not lacking.

As part of our research, we focused on certain types of contracts entered into by minors; traditional and digital media, according to research we conducted in various databanks and on the Web, are most often mentioned.

The following pages present the main issues raised by these types of contracts, notably regarding minors' ability to contract and the ways of protecting them.

Those expenditures are sometimes not important, economically or otherwise, whereas at other times a minor's decision to acquire a certain good or service is more likely to entail consequences of varying seriousness. Minors' need for protection will thus also vary according to the stakes involved in the various contracts they enter into. In some cases, those stakes go beyond consumer protection to include such considerations as respect for parental authority or the minor's psychosocial well-being, or even his safety.

When minors' ability to contract is discussed, the reference to a "contract" may lead us to believe that the discussion is limited to situations where minors acquire goods or services under terms entailing major obligations, i.e., a high price.

However, as explained below in this report, the term "ability to contract" covers practically all transactions made between minors and merchants, including the most benign. Legally, a child who buys a few sweets "contracts" to the same extent as a teenager buying a car: in both

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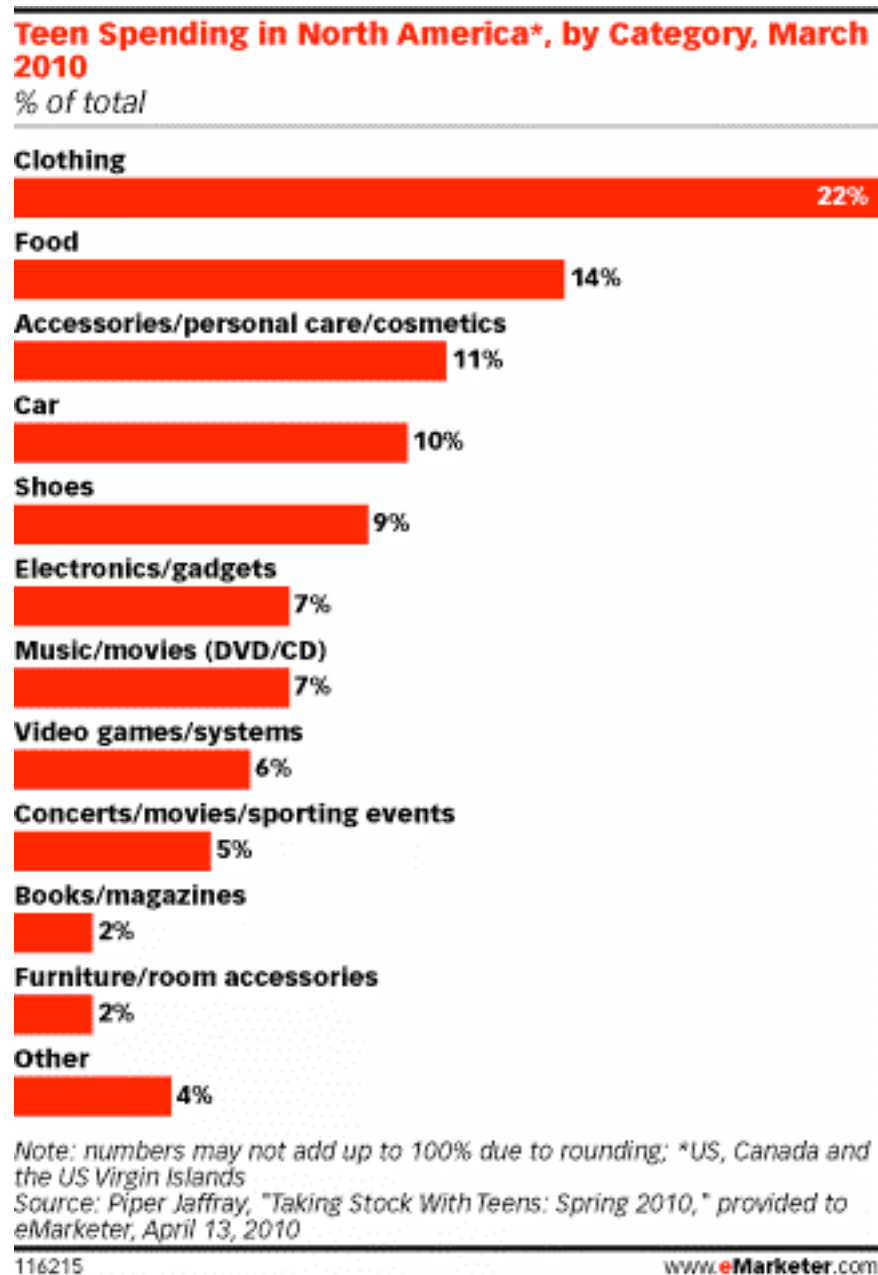
<sup>38</sup> SCHAEFER, Allen D., Charles M. HERMANS and R. Stephen PARKER. "A cross-cultural exploration of materialism in adolescents," *International Journal of Consumer Studies*, Vol. 28, No. 4, 2004, pp. 399–411.

<sup>39</sup> InfoPresse, Marketing et consommateurisme, Montreal, May 1997, on the Réseau Éducation-médias website. [Online] <http://www.media-awareness.ca/francais/parents/marketing/index.cfm> (consulted on June 14, 2011).

cases, a contract is entered into by a minor. The fact that the child's contract is verbal or that special rules apply to certain transactions changes nothing in the general rule: in both cases a sales contract is entered into.

The following graphic presents the results of an American study<sup>40</sup> identifying minors' main items of expenditure:

**Graphic 1**



<sup>40</sup> EMARKETER. "Social Shopping Draws Teens," [Online], <http://www2.emarketer.com/Article.aspx?R=1007850> (consulted on November 10, 2010).

As shown by the graphic, most purchases made by minors are for relatively common goods and services.

Indeed, 22% of minors' purchases are for clothing and 14% for food. Given that parents are generally responsible for their minor child's nutrition (so long as the latter lives in the family home, which is statistically most often the case), we may conclude that the 14% more specifically represents spending on restaurant meals or other treats.

We also note that most of the expenditures identified in the graphic are not for durable goods. Combined expenditures to maintain the minor's appearance represent 42% of all his spending (22% on clothing, 9% on shoes, 9% on accessories, 11% on cosmetics).

With regard to petty expenses, we might assume that general consumer protection issues apply more than issues specifically concerning minors, given the small scope of those contracts. In other words, we might believe that the protection of minor consumers with regard to petty expenses will be adequately ensured if all consumers, all ages taken together, are equally well protected by laws governing merchants and consumers.

However, as we have seen, certain consumption aspects should be addressed in the case of a contract with a minor, with a particular bias. Indeed, for a contract to be valid, the person entering into it must be able to understand its nature. The amount or nature of damage that a minor could suffer after entering into a contract whose scope he is unable to understand – not because the merchant did not disclose important facts or made false representations, for example, but simply because his co-contractor, given his young age, did not have the necessary capacity – changes nothing. As we will see below, determining the existence of an injury (or, where the common law applies, the doctrine of unconscionability) requires an analysis of the consumer's subjective conditions; the scientific literature on the child psychology has long recognized that the judgement of minors regarding consumption is defective, whether for reasons of development or socialization. Those relative incapacities are the basis of the specific legal framework for contracts concluded with minors.

## **2.4 Contracts That Are Particularly Problematic for Minors**

In this section of the report, we will examine a few examples of contracts particularly likely to pose a problem for minors. Below is our analysis of those situations and, in annex, information and additional information reported by the media.

### **2.4.1 The March toward Independence**

Although not always smooth, the minor's progress toward independence is essential. As pointed out by the Justice Minister in his comments on the new Civil code of Québec, "*l'être humain est ainsi fait qu'il acquiert graduellement science, jugement, maturité et sagesse*"<sup>41</sup>.

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<sup>41</sup> MINISTÈRE DE LA JUSTICE DU QUÉBEC, *Code civil du Québec : Textes, sources et commentaires*, Livre I, Québec, Éditeur officiel, 1992, p. 93. Cited in DELEURY, Édith and Dominique GOUBAU. *Le droit des personnes physiques*, Cowansville, Yvon Blais, 4<sup>th</sup> edition, 2008, subsection 473.

The first major contracts entered into by minors are often related to their march toward independence. Indeed, the legal and practical ramifications of signing a first housing lease or buying a car are not the same as those of buying a compact disc, for example.

A 17-year-old teenager who leaves the family home has to acquire, apart from housing, a certain number of essential goods and services – a car, furniture, electricity, telecommunication services, etc.

To acquire some of those goods, a minor may want to contract a loan or use some form of credit<sup>42</sup>.

As opposed to contracts involving petty expenses, a lease, a subscription for residential telephone service, or paying for utilities (electricity, gas) entail major consequences of which an inexperienced minor may not be aware when contracting: substantial and recurrent fees, whether fixed or additional (long distance, for example, a stain on the record if there is a default of payment (credit record, service companies). In the case of young people living with co-tenants, joint or several liability may also prove problematic, should one of them leave or not pay his due, for example.

A popular Quebec daily recently reported<sup>43</sup> the story of a young girl who found herself in a situation she certainly had not foreseen when accepting, through naivety and inexperience, to contract for a service on behalf of a third party. She agreed to contract in her own name a subscription for telephone service at the address of a classmate she hardly knew. As the daily reports:

*Émilie Demers a 17 ans tout juste. À l'insu de sa mère, en août 2009, elle s'abonne chez Bell, pour aider une amie. Pas de contrat. Pas de signature. Huit mois plus tard, l'amie refuse de payer une facture de 600 \$. Émilie a un problème.*

[...]

*Émilie, de Lachute, étudiante et sans emploi, raconte : "Je suivais un cours avec cette fille. Elle a environ 27 ans et deux enfants. Quand elle m'a dit qu'elle n'avait pas les moyens de payer le téléphone pour appeler sa mère malade et m'a demandé de l'aider, je me suis sentie mal, je n'ai pas pu refuser. Je pensais qu'elle payerait."*

*Le compte était enregistré au nom d'Émilie, à l'adresse de l'amie. Le temps a passé. Puis, un week-end, Émilie a eu un doute. Elle a téléphoné chez Bell et a appris que le compte, totalisant 566 \$, restait impayé.*

*"J'ai appelé la fille, reprend Émilie, mais elle m'a raccroché la ligne au nez."*

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<sup>42</sup> TISON, Marc. "Maman! Moi aussi, je veux une carte de crédit!," *Cyberpresse*, June 18, 2007, [Online], <http://lapresseaffaires.cyberpresse.ca/economie/200901/06/01-676390-maman-moi-aussi-jeveux-une-carte-de-credit.php> (consulted on February 2, 2011). It should be noted that financial institutions do not have the practice, in Canada, of issuing credit cards to minors. Bill 24, introduced on June 8, 2011 in the Quebec National Assembly, would legislatively end the possibility for young people less than 18 years of age to have a credit card without parental authorization.

<sup>43</sup> LABROSSE, Serge. "Mineure, elle se fait avoir par une amie et par... Bell," *Journal de Montreal*, March 27, 2010, [Online], <http://fr.canoe.ca/infos/societe/archives/2010/03/20100327-095300.html> (consulted on January 6, 2011).

Once she found out, Émilie's mother's reaction was: "*Émilie commence tout juste dans la vie et n'a pas d'expérience en affaires. Je ne veux pas que son nom soit terni pour ça.*"

The comments of Internet users on the daily's website, in reaction to this affair, give us an idea of how the public perceives such a situation. As had Émilie's mother, many were surprised that a telephone company would agree to contract with a 17-year-old teenager (we are reproducing excerpts of the comments as they were published):

*Premièrement, Bell n'a pas le droit de faire des ententes avec des personnes mineures. L'employé de Bell était au courant de l'âge de l'adolescente, car il lui a demandé son permis de conduire et sa carte d'assurance maladie. Tout à fait irresponsable de sa part, il devrait être réprimandé sinon congédié pour avoir enfreint la loi.*

*Deuxièmement, vous accepteriez, vous, en tant que parent, ce genre de situation? Si l'on considère que l'adolescente est aux études et n'a pas d'emploi, alors ce sera vous, le parent, qui devrez payer.*

*Troisièmement, vous jeter la pierre rapidement à cette adolescente, qui j'en conviens, a fait une erreur de jugement, mais qui voulait rendre service à une personne, semble-t-il, démunie. C'est souvent le bon Samaritain qui est pénalisé.*

And:

*Je crois que c'est de la faute aux deux et mêmes je dirais au trois. Pour moi, toutes bonnes compagnies qui acceptent les mineurs devraient demander un consentement d'un tuteur majeur. Je crois que celui qui a répondu à la jeune fille a été totalement irresponsable d'avoir ouvert un compte à un mineur et de plus sans faire signer de contrat à personne. (S'il est vrai qu'il connaissait l'âge de la jeune mineure [...]).*

However, others emphasized the minor's accountability for her decision to vouch for someone she vaguely knew:

*Bonjour. Je ne crois pas que ce soit à Bell de faire une exception quelconque dans ce cas là. Malheureusement, la jeune fille aurait dû en parler à ses parents avant de faire un truc comme celui-là. À 16 ans, on devrait être en mesure de savoir ce qui est bien. La naïveté, c'est triste, mais c'est un fait. Bell n'a pas à payer pour ça. Ou va s'arrêter les cas d'exception et/ou les cas de clients malveillants?*

The daily published excerpts of an interview with a company spokesperson, who described the business policy regarding minors:

*“Normalement, on ne permet pas que des personnes sous l'âge de la majorité signent un contrat ou activent un compte mensuel. Mais dans certains cas extrêmes, il se peut qu'on le permette.”*

*L'exception évoquée serait “le cas d'une personne qui vit seule et à qui il faut un moyen de communiquer. Mais c'est vraiment rare et il faut avoir la preuve que c'est le cas,” dit-elle<sup>44</sup>.*

As we will see, the perceptions of Internet users are not necessarily accurate. As we explain in our analysis of the Quebec legal framework, the real issue in such a circumstance is not whether the company had the right to contract with the minor or not, but whether the contract is abusive (or unconscionable). The Internet users' way of analysing the situation – by advocating a restrictive approach to minors' ability to contract – is also observed in parents we questioned, as shown by the data we collected, presented below in this report.

For the purposes of our study, this case is an interesting illustration, because it reveals several aspects at the basis of our findings in the preceding chapter: the minor's inexperience as justification for the necessity of protecting him, the public's vague perceptions of a young person's ability to contract alone and of the possible consequences of such a contract, and the relatively uneasy position of companies on this issue.

Telecommunication services are today among the most coveted by young people, who communicate more and more by cell phone, whether vocally or through text messages. If cell phones are now legion among children and teenagers, it's because the cell phone has become a supreme symbol of independence in the eyes of many teenagers: an irresistible device for children and teenagers seeking an independence now available, they believe, through a contract involving monthly payments.

A study by Option consommateurs notes the symbolic importance of cell phones:

*Le téléphone cellulaire est un objet fait sur mesure pour les adolescents. Rempli de promesses d'indépendance et de liberté, il leur permet de s'évader du giron familial et d'être en contact avec leurs amis en tout temps. Pas surprenant que, durant les dernières années, les entreprises de téléphonie cellulaire, qui avaient d'abord eu pour cible les adultes, se sont intéressées à cette clientèle. Elles ont mis sur le marché des produits susceptibles de leur plaire, elles ont réalisé des publicités destinées à les séduire, et elles ont multiplié les efforts pour les fidéliser<sup>45</sup>.*

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<sup>44</sup> *Op. Cit.*, Note 43.

<sup>45</sup> OPTION CONSOMMATEURS, “Publicités des entreprises de téléphonie cellulaire : Des adolescents influencés, mais mal informés,” June 2007, p. iii, [Online], [http://www.option-consommateurs.org/documents/principal/fr/File/rapports/pratiques\\_commerciales/oc\\_cellulaire\\_jeunes\\_200704.pdf](http://www.option-consommateurs.org/documents/principal/fr/File/rapports/pratiques_commerciales/oc_cellulaire_jeunes_200704.pdf) (consulted on January 18, 2011).



It is surprising to hear that telecommunications companies would systematically refuse to enter into cell phone service contracts. The account is customarily registered in the parent's name, and the parent will thus be solely responsible in the provider's eyes<sup>46</sup>. However, a teenager can still acquire a cell phone and then access a provider's network by using prepaid cards.

### **2.4.2 Consumption of High-End Products**

In our discussion of the socialization mechanisms of minors as consumers, we described the importance of the consumer society's effects on the minor's behaviour.

So we should not be surprised that minors, like adults, are at times tempted by luxury goods, even to the point of conspicuous consumption. In fact, as is commonly known, marketing campaigns push consumers to evaluate their personal and social success according to the ability to acquire certain goods and services considered, rightly or wrongly, to be prestigious.

Given their inexperience and their sometimes non-Cartesian motivations, minors can find it very difficult to ascertain rationally whether the purchase of a luxury item is truly a sound choice and whether the expense proves reasonable in relation to their financial resources. We might believe that, generally, a minor will consult his parents before making such a purchase. But we would thus be underestimating the desire to declare his independence as a motivation for this type of purchase – an independence that would be annihilated by a prior request for benediction from parental authority.

There is the story of a father who, after learning that his daughter had made this type of purchase, felt compelled to go to small claims court to cancel the contract. The case of *Lajeunesse v. Rosenstein Chaussure Inc.*<sup>47</sup> concerned a 15-year-old girl who had bought \$640 shoes. The evidence on the record demonstrates that the vendor had not seen fit to give the young consumer a bill, and that the shoes in question... were too small for her! However, the evidence does not report the vendor's arguments for her to agree to pay such a price for shoes that did not fit her.

We can only speculate about the reasons that led a 15-year-old to make such an expensive purchase. AS the teenager was accompanied by her boyfriend at the time, we can easily suspect that she wanted to impress him; the marketing messages guarantee such a result. The court's ruling also pointed out the pressure exercised by the vendor, which was certainly effective (since the shoes were not only terribly expensive, but not even the right size).

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<sup>46</sup> BOUCHARD, Carole. "Mon premier cellulaire," *Légitime dépense* program (Télé-Québec), Montreal, Canada. [Online], <http://legitimedepense.telequebec.tv/occurrence.aspx?id=6> (consulted on January 6, 2011).

<sup>47</sup> *Lajeunesse v. Rosenstein Chaussure Inc.*, 2006 QCCQ 12123.



What most strikes us in this affair akin to a caricature is the father's difficulty in having the merchant cancel the sale. It seems obvious that such an egregious case should have been resolved simply and informally without the need to go to court.

For the purpose of our research, we therefore have to ask what the reasons are for such difficulty in having a minor's rights be recognized.

The issues raised by a minor's purchase of high-end goods can arise in other contexts. Some sporting goods can cost several thousand dollars: if a 14-year-old decides, without consulting his parents, to acquire a mountain bike for \$2,500, do his parents have the right to have the sale cancelled if they are opposed to the purchase? The growing popularity of some electronic devices, such as tablet computers, also begs these questions. Could a teenager decide on his own to buy such a product, at a cost of several hundred dollars? Are the teenager or his parents aware of the circumstances that could enable them to dispute the sale's validity?

These questions deserve to be raised, because consuming luxury, ostentatious or high-end goods is not always to the minor's advantage and is likely, given the high cost of those items, to involve a considerable financial burden (current and future) for the minor.

### **2.4.3 Virtual Worlds and Other Online Games**

So far, we have discussed consumption issues that are more likely to affect teenagers – minors approaching the age of majority. According to our findings on the ground and to media coverage of the subject<sup>48</sup>, there is another issue: contracts for the “purchase” of avatars or other virtual “goods.”

Certain websites invite children to create an identity in a virtual world, where they can play certain games online with other participants. Registration to those websites is generally free of charge, but the young people involved are the targets of constant solicitation for them to buy all kinds of virtual “extras.” And the bill can increase fast, because those sites often use a 1-900 billing system enabling the child to commit amounts without necessarily informing his parents (or even being fully aware himself of the amounts accumulating on the phone bill).

Many such cases have attracted media attention. For instance, a 10-year-old girl spent, through a 1-900 billing system and without her parents' consent, the tidy sum of \$472 in a very short time, by playing doll online for “free”<sup>49</sup>.

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<sup>48</sup>[http://www.radio-canada.ca/emissions/la\\_facture/2010-2011/blogue.asp?idEmission=115&post=132136](http://www.radio-canada.ca/emissions/la_facture/2010-2011/blogue.asp?idEmission=115&post=132136)

<sup>49</sup> CODERRE, Jean-François. “Une facture de 472 \$ pour un jeu de poupée en ligne,” Rue Frontenac, Montreal, August 1, 2010, [Online], <http://ruefrontenac.com/nouvelles-generales/114-technologie/26022-le-paiement-partelephone> (consulted on January 6, 2011).

On the website VoxConso, a forum between journalists and Internet users that was set up by Protégez-Vous magazine, an Internet user even reports a case where over \$900 was billed to parents for their child's online games<sup>50</sup>. What this Internet user reports reflects well the public's perception of this type of services:

*J'ai un ami qui s'est fait facturer un montant de 922 \$ par Voxtel suite à des appels effectués à un numéro 1-900 par ses enfants âgés entre 8 et 11. Il s'agit à la base du site Blablaland (qui vise directement les enfants en très bas âge) incitant les enfants à appeler à ce numéro pour avoir de la monnaie virtuelle. Les appels coûtent 5 \$ chaque et il est possible d'en placer 2/minute donc imaginez la vitesse à laquelle augmente le compte de téléphone! Et pas trop trop gratuit le site pour enfants. C'est d'abord Allopass (compagnie française) qui offre ce mode de paiement à l'exploitant du site et c'est d'ailleurs sous ce nom qu'apparaissent les frais. Voxtel est la compagnie québécoise qui se charge de facturer la compagnie de téléphone de l'abonné qui elle facture son abonné.*

*Ah oui, j'oubliais! Sur le site de Blablaland, il est aussi possible de participer à des loteries pour gagner de la monnaie virtuelle! Tout un jeu d'enfant! [VOXCONSO]*

It should be noted that even if the parent will be responsible for the bill in the end (since 900 bills are billed to the local telephone account of the household from which the 1-900 call was made), it is the child who contracts directly with the website in question, since the child alone accepts the site's offer.

The fact that the child contracts with those websites raises serious questions, both because by contracting the child commits the responsibility (for paying the bill) of a third party – the telephone account holder – and because the child spends hundreds of dollars to acquire those goods... that don't exist. If the parent truly is responsible for the actions of his minor child, can that responsibility be invoked in cases where the child, who is not always old enough to understand that he is committing substantial amounts to purchase virtually nothing, is to a certain extent tricked by dubious marketing techniques?

Fortunately, legal mechanisms exist for obtaining a cancellation of costs committed during 1-900 calls, as we will explain below. But those somewhat approximate mechanisms (regarding all 1-900 services and not specifically their use by minors) do not pertain at all to the issue of this type of contract entered into with minors.

#### **2.4.4 Subscriptions to Paid Text Messaging Services**

As noted above, cell phones are now legion among children and teenagers. One of the most popular features of cell phones among young people is sending and receiving text messages, also known by their technical designation of "SMS" (for "Short Message Service").

SMS technology makes it possible to subscribe to SMS Premium services, billed by the provider through the phone bill and enabling the subscriber to receive various types of messages, which may concern a stock portfolio, news, the weather, etc., or offering horoscopes, jokes, simple

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<sup>50</sup> LYNCH, Cynthia, "Publicité internet pour enfants," Vox Conso, Protégez-vous magazine, Montreal, Canada [Online], <http://www.voxconso.ca/publicite-internet-pour-enfants.html> (consulted on June 7, 2011).

quizzes, or gossip. Of course, charges apply to each text message sent, several times a week or even everyday – charges of up to \$5 per message.

This SMS feature used by “added value service providers” attracts attention by the low value of the content offered, by the high price of the SMS messages thus sent, and by the dubious practices of some content providers to incite young people to contract with them. Among the stratagems used: the intelligence test – to receive the results of a test completed online (a test obviously not addressed to Mensa candidates), you have only to enter your cell phone number; a text message will then be sent to you. Another stratagem: the contest. Online participation in the contest is of course free of charge – you could win a highly coveted item, such as an iPad. To fill out the entry form, just indicate your cell phone number.

An Internet user who has thus given his cell phone number is subscribed to a text messaging service called Premium, and begins, to his great surprise, to receive a batch of SMS messages for which, to his even greater surprise, he is charged considerable fees. To avoid those surprises, the Internet user was advised to read the small characters indicating that his participation in the free contest or his request for the results of the free test constituted in fact a request to subscribe to those chargeable services. The companies offering those services swear that it is impossible to thus subscribe without having first been clearly advised (by means of the small characters in question) of all the terms. However, the media report many cases of consumers who were billed for participation in such contests and assure they had never been directed to any page where the terms appeared in even the smallest characters<sup>51</sup>.

Children and teenagers who have a cell phone are particularly vulnerable to this type of practice: the products offered as part of the contests, for example, target them specifically. Moreover, minors are more likely to fall into the trap of these pseudo contests, given that they don't always have the necessary experience to understand that the offer is too good to be true.

Indeed, in a study on young people and the Internet, Union des consommateurs found that young people are at times not very concerned with preserving their personal information when taking part in an online contest:

*Les jeunes ont tendance à donner les informations demandées lorsqu'il y a possibilité de gains (ex. lorsque la collecte d'information est liée à la participation à un concours) et à ignorer les demandes lorsque rien n'est offert en retour<sup>52</sup>.*

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<sup>51</sup> CHARRON, François. “Concours par SMS ou Textos sur Facebook et Internet: Attention!,” the author's blog, Montreal. [Online], <http://www.francoischarron.com/concours-par-sms-ou-textos-sur-facebook-et-internet:-attention/-/x3GibBNi8E/menu/> (consulted on January 6, 2011).

<sup>52</sup> UNION DES CONSOMMATEURS. *Les jeunes sur l'internet : étude sur les problématiques commerciales posées par le Web*, 2005, the organization's website, Montreal, Canada. [Online], [http://www.consommateur.qc.ca/union-des-consommateurs/docu/protec\\_conso/07-internetj-bf.pdf](http://www.consommateur.qc.ca/union-des-consommateurs/docu/protec_conso/07-internetj-bf.pdf) (consulted on June 4, 2011).

It is interesting to note how the recreational aspect of the Internet (and of some cell phone features) has been seized upon by companies proposing new payment methods that are more and more dematerialized and bear less and less resemblance to payment. Indicating a cell phone number on a website does not resemble a credit card payment made through a process specifying the transaction amount and requesting payment confirmation. It would be interesting to further study the effects of these new approaches, but that is not the object of the present study.

### 2.4.5 iTunes and Other Online Entertainment Shops

On April 25, 2009, La Presse journalist Stéphanie Grammond reported on a teenager who had made \$2,207 worth of purchases on iTunes<sup>53</sup>. These are the details of her surprising report:

*Sylvain, par exemple, a eu une très mauvaise surprise. Sa fille a l'habitude de télécharger de la musique à partir du site web d'Apple, iTunes. Elle utilise normalement des cartes prépayées. Au début de février, toutefois, elle lui a demandé sa carte de crédit afin d'acheter un jeu pour son iPod Touch (ces logiciels ne peuvent être achetés avec une carte prépayée). Sylvain a accepté. Sur l'ordinateur, il a entré les informations de sa carte de crédit et a réglé l'achat de 9,99 \$.*

*“Au début mars, j'ai presque fait un infarctus en voyant le solde de ma carte,” raconte Sylvain. Sur son relevé de compte figurait une ribambelle d'achats de chansons au magasin iTunes, pour un total de 2207 \$.*

*Sa fille, atterrée, lui a expliqué la méprise : comme elle avait réussi à télécharger de la musique au-delà de la limite de sa carte prépayée, elle a cru qu'elle pouvait l'obtenir gratuitement. Une réaction très naïve, il faut bien le dire. Elle en a donc profité pour télécharger autant de chansons que possible sur son iPod.*

*Sylvain a déduit qu'Apple avait conservé les informations de sa carte de crédit et a continué de débiter son compte... à son insu. Il a appelé immédiatement l'émetteur de sa carte de crédit afin de dénoncer cette pratique. Mais on lui a répondu que pour renverser les transactions, il devait porter plainte pour fraude contre sa propre fille!*

*Il s'est rabattu sur Apple. Un responsable du magasin iTunes lui a expliqué gentiment la politique du magasin : les ventes sont non remboursables. “Mais je peux très bien comprendre à quel point la situation est démoralisante pour vous,” lui a-t-il écrit. Faisant une entorse à la règle, il a accordé à notre correspondant un remboursement partiel de 607 \$, soit plus du quart de la facture.*

*[...]*

*Sylvain jure que s'il avait compris la portée des conditions d'achat de iTunes, jamais il n'aurait donné son numéro de carte de crédit.*

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<sup>53</sup> GRAMMOND, Stéphanie, Son ado flambe 2207 \$ sur iTunes à son insu, La Presse, Business section, Montreal, April 26, 2009. [Online] <http://lapresseaffaires.cyberpresse.ca/finances-personnelles/bons-comptes/200904/26/01-850429-son-ado-flambe-2207-sur-itunes-a-son-insu.php> (consulted on June 14, 2011).

*Pour obtenir davantage, Sylvain devra tenter sa chance aux petites créances. La cause n'est pas gagnée, "mais c'est jouable," avance Vincent Gautrais, titulaire de la chaire de l'Université de Montréal en droit de la sécurité et des affaires électroniques. Selon les nouvelles règles sur les contrats à distance de la Consumer Protection Act, le commerçant doit présenter l'information de manière claire et évidente.*

#### **2.4.6 Prepaid Credit Cards**

For some time, the Visa and MasterCard companies have been putting on the market prepaid cards with all the properties of a traditional credit card: they are accepted practically everywhere, allow online purchases and provide their holders with certain advantages (including zero liability in the event of fraud) and even look like traditional credit cards<sup>54</sup>.

In fact, these cards are extremely easy to access, and are sold as gift cards in most large drugstore chains. Once paid and activated, these cards can be used by the holder.

Apart from questions about the fees entailed by the use of such cards, they do not, at first sight, constitute a payment method more reprehensible than any other.

The question may be different with regard to children and teenagers. The problem raised by many is that, historically, credit cards have had the function, in addition to ensuring payment, of enabling verification of the purchaser's identity and age during online purchases. This is understandable since, with rare exceptions, only adults may hold a credit card in Canada.

The features of Visa or MasterCard gift cards now offer minors the possibility of acquiring goods or services normally reserved to adults, given that online commerce prevents merchants from visually estimating the customer's age and that is generally assumed that only an adult can hold a credit card. In fact, many online merchants free themselves of the obligation to check the consumer's age, and simply ask the Internet user to indicate whether he is an adult or to declare that he is.

Some merchants still require an identity to be associated with the card before proceeding with the transaction. But nothing prevents the minor to bypass this formality by simply giving false information on the identity registration form provided by the card issuer.

Because it is a simple payment method, nothing prevents the sale of prepaid Visa or MasterCard credit cards to minors. Many parents worry about how, unbeknownst to them, their children might use such cards. For example, some parents fear that these cards enable teenagers, or even children, to subscribe to Internet gambling sites.

Prepaid MasterCard or Visa cards are also criticized for promoting to minors the use of credit cards, so that they will be likely to acquire a real credit card when they reach adulthood.

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<sup>54</sup> See about those cards: LA FACTURE. "Les cartes-cadeaux," [TV program], report broadcast on September 8, 2009 by Radio-Canada, [Online] [http://www.radio-canada.ca/emissions/la\\_facture/2009-2010/Reportage.asp?idDoc=87148](http://www.radio-canada.ca/emissions/la_facture/2009-2010/Reportage.asp?idDoc=87148) (consulted on June 2, 2011).

KRUGEL, Lauren. "Les cartes prépayées favoriseraient l'indépendance financière des jeunes," [Online], *Cyberpresse*, <http://lapresseaffaires.cyberpresse.ca/economie/services-financiers/201101/23/01-4362887-les-cartes-prepayees-favoriseraient-lindependance-financiere-des-jeunes.php> (consulted on June 2, 2011).

In English Canada, there is strong criticism of prepaid credit cards:

*Among the more insidious ways lenders have devised to get consumers to spend more is the prepaid credit card.*

*[...]*

*Youth marketing expert Max Valiquette, president of Toronto's Youthography, says prepaid credit cards are "pseudo credit cards" that are priming kids to make the jump to real credit cards. However, he defends their use in some situations. Many teens want to purchase items like concert tickets online and can't do so with debit cards, he says. They can download music from services like Apple's iTunes, but must use real credit cards. Valiquette thinks prepaid cards are safer in these situations than real credit cards.*

*Credit Canada executive director Laurie Campbell says anything promoting credit card-like products to teens is potentially dangerous. "In Canada, we have such a lack of education on the wise use of credit that even though these cards are prepaid, it is assuredly an avenue into the world of regular credit cards once they come of age<sup>55</sup>."*

MasterCard, in association with the MuchMusic television network, offers young Canadians less than 13 years of age the possibility of acquiring a prepaid payment card carrying the "MasterCard" name. The following editorial is worth quoting at length because it clearly explains why parents worry about the issuance of such cards:

*MasterCard joue décidément avec les mots avec ce nouveau produit offert aux adolescents canadiens. La carte est destinée aux 16 ans et plus, mais il est possible de se la procurer à partir de 13 ans, avec une permission parentale.*

*MasterCard s'empresse de préciser qu'il ne s'agit pas véritablement d'une carte de crédit, mais plutôt d'une carte prépayée (il faut avoir mis de l'argent dans la carte avant de pouvoir s'en servir). Par contre, le principe d'utilisation est très semblable.*

*Pour garantir un maximum de succès à cette carte, le géant du crédit s'est associé à MuchMusic, l'équivalent de MusiquePlus au Canada anglais. Cette entreprise fait la promotion de la carte sur son site Web et en ondes avec deux publicités (l'une destinée aux jeunes et l'autre aux parents). En fait, tout se passe sur MuchMusic.com : demande de carte, vérification de l'état du compte, etc..*

*MasterCard et MuchMusic se défendent bien de vouloir initier les adolescents au crédit. Ils expliquent la mise en place de la carte par l'intérêt grandissant des jeunes pour les achats en ligne (surtout de la musique), qui nécessitent généralement un numéro de carte de crédit.*

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<sup>55</sup> CHEVREAU, Jonathan, Prepaid Credit Cards May Be Too Handy - Convenience Always Comes at a Price, The Financial Post, Toronto, July 6, 2008. [Online] <http://www.creditcanada.com/inthenews/articles/2011/1/Prepaid-Credit-Cards-May-Be-Too-Handy---Convenience-Always-Comes-At-A-Price> (consulted on June 19, 2011).



*Pour éviter que les jeunes ne demandent la permission à leurs parents chaque fois qu'ils font un achat sur Internet, on leur offre donc une carte qu'ils pourront utiliser eux-mêmes. En ce sens, le slogan de la campagne de publicité de la carte veut tout dire : "it's time to free yourself" (en français, affranchissez-vous). [...]*

*Les deux entreprises soutiennent que cette carte prépayée doit être considérée par les parents comme un outil d'éducation à l'économie et qu'elle encourage les jeunes à faire des choix éclairés. Il est permis de se demander de quelle façon le fait de placer une carte de crédit dans les mains des jeunes peut les responsabiliser en matière de finance. N'oublions pas que bon nombre d'entre eux voient déjà leurs parents surendettés, utilisant régulièrement leurs multiples cartes de crédit sans payer la totalité de leur solde à la fin du mois... [...]*

*De plus, il est vrai que la carte offre la possibilité de faire des achats en ligne, mais, encore une fois, un certain accompagnement parental est nécessaire pour éviter que les jeunes se retrouvent à faire des achats sur des sites non sécurisés. Bref, sans un encadrement serré, un tel outil peut vite devenir source de débordement.*

*Il est évident que MasterCard, en lançant cette carte, voit une manne de jeunes consommateurs qui, une fois majeurs, obtiendront une "vraie" carte de crédit ou même plusieurs. Mais, cette fois, le principe ne sera plus tout à fait le même. L'argent n'aura pas été placé dans la carte au préalable, il faudra l'avoir en poche lorsque le relevé de compte arrivera par la poste. Les jeunes auront-ils été sensibilisés à la différence?<sup>56</sup>*

## **2.4.8 Respect for Parents' Wishes**

When the media discuss the problems experienced by minors as consumers, it is usually from the angle of the essential role parents should play in supervising their children.

Parental supervision of their children's consumption is a many-sided issue. First, as explained above, the discretion minors have in using their personal resources is incommensurate with the standards that prevailed a few decades ago.

When those discretionary expenditures are involved, it thus becomes difficult for parents to exercise their parental authority. This difficulty is of course exacerbated when minors hold a job, as pointed out in an American study on the issue:

*[I]t is plausible to presume that teenage employment fosters greater independence than parents are comfortable with, increasing discords in the family; interferes with parental surveillance, particularly when teen work hours are long; and gives rise to parental attempts to control teen spending (whether such attempts are successful remains to be seen). Clearly, the evidence suggests that teenagers' work may have important implications for the family that deserve scrutiny in future studies<sup>57</sup>.*

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<sup>56</sup> RIOUX, Martine, Une fausse carte de crédit pour les jeunes, Infobourg, educational advertising agency, Québec City, May 2, 2007. [Online]

<http://archives.infobourg.com/sections/editorial/editorial.php?id=11767> (consulted on June 17, 2011).

<sup>57</sup> MANNING, Wendy D. "Parenting Employed Teenagers," *Youth Society*, Vol. 22, 1990, p. 196, DOI: 10.1177/0044118X90022002004.

We will therefore briefly describe some of these issues, while expressing necessary reservations about their relation to the object of our study. Our finding is that the psychosocial aspect of these issues tends to prevail over their relation to issues traditionally identified as belonging to the defence of consumer rights.

**a) Controlling the Volume of Certain Expenditures**

It goes without saying that one of the first aspects that parents want to control in their minor child's consumption is the number and price of his purchases. The concept of parental authority implies that it is legitimate for parents to try to control to a certain point their child's spending, if only to prevent him from squandering a lot of money on goods or services that he doesn't really need or that constitute unreasonable, even dangerous purchases.

Researchers have observed that parents with a high educational level tend to supervise their children's spending more closely, given that those parents are more aware of advertising's sometimes misleading nature and of the dangers of excessive consumption<sup>58</sup>.

**b) Controlling Certain Types of Expenditures**

Parental control may also mean limiting, or even disallowing, the purchase of certain goods and services because of price or because of what parents perceive as promoting their child's physical and mental well-being. Some parents thus find it desirable not to allow their child to purchase violent video games, view certain types of movies, consume energy drinks, go to a tanning salon, etc.

These interdictions may be based on various motives – the parents' life experience, the advice of relatives and friends, or the results of scientific studies reported in popular magazines.

The case of tanning salons deserves to be described. Currently, it is estimated that 30% of young people less than 18 years of age go to tanning salons. Many organizations, including the Canadian Dermatology Association and the Canadian Cancer Society, have expressed concern about the ability of minors to assess correctly the benefits of artificial tanning in relation to its health effects<sup>59</sup>. The issue has reportedly raised sufficient concern for the Quebec government to consider adopting a law prohibiting minors' access to tanning salons.

This leads us to discuss legal prohibitions. For reasons apparently similar to those of parental authority, legislation has intervened in several areas to prohibit minors' access to certain consumer products that are otherwise legal: for example, alcohol<sup>60</sup>, tobacco<sup>61</sup>, lotteries<sup>62</sup>.

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<sup>58</sup> AHAVA, Anna-Maija and PALOJOKI, Päivi. *Adolescent consumers: reaching them, border crossings and pedagogical challenges*, *International Journal of Consumer Studies*, 28, 4, September 2004, p. 371–378.

<sup>59</sup> ROY, Johanne. "Salons de bronzage interdits aux moins de 18 ans : Une loi cet automne?," *Journal de Québec*, [Online], <http://www.canoe.com/cgi-bin/imprimer.cgi?id=933376> (consulted on June 2, 2011).

<sup>60</sup> Sec. 103.1 and foll., *Act respecting offences relating to alcoholic beverages*, R.S.Q., c. I-8.1.

<sup>61</sup> Sec. 13, *Tobacco Act*, R.S.Q., c. T-0.01

<sup>62</sup> Sec. 25.1, *Act respecting the Société des loteries du Québec*, R.S.Q., c. S-13.



### 3. Quebec Legal Framework

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#### 3.1 Regulations Governing the Ability of Minors to Contract

##### 3.1.1 Majority

Under Quebec law, the age of majority has been established at eighteen years of age (sec. 153 CCQ) since 1971<sup>63</sup>. This means that “On attaining full age, a person ceases to be a minor and has the full exercise of all his civil rights<sup>64</sup>.”

In practice, the expression “has the full exercise of all his civil rights” means that an adult has, on principle, all the required capacity to enter into contracts or make any other decision concerning his person.

For the purposes of our study, we will focus only on the majority under civil law, to the extent that it grants the full capacity to be a party to legal transactions. Of course, other types of rights and responsibilities appear as the minor grows up, and belong to a certain form of majority, but one that is relatively circumscribed (the right to consent to health care or to drive a car, for example). Other rights may be said to belong to “majority,” but they refer to another concept (legal age of marriage (the minimum age to marry) and sexual majority, for example). In addition, there is not necessarily a link with the right to vote – which is a distinct subject related to political rights – or to acquire alcohol, tobacco, etc., even though the age at which those rights are gained is also that of majority.

With regard to majority, Deleury and Goubau comment as follows:

*Les personnes deviennent pleinement capables d'exercer tous les droits civils lorsqu'elles deviennent majeures. La loi fixe l'âge de la majorité à 18 ans. Cette ligne de démarcation entre minorité et majorité implique que, du jour au lendemain, le mineur perd le bénéfice des mécanismes de protection de la loi. Comme toute limite d'âge, celle-ci est arbitraire. Le législateur estime que l'on devient adulte à 18 ans. C'est aussi l'âge auquel l'enfant “échappe” à l'autorité de ses parents. Il y a donc une présomption absolue de maturité dès cet instant... Pourtant, comme le soulignait Louis-Philippe Pigeon, “personne ne peut mesurer avec précision la différence de maturité intellectuelle qui se produit au jour le jour chez le citoyen qui approche l'âge de la majorité”. La sécurité juridique et le principe de non-discrimination exigent évidemment que cette limite d'âge soit la même pour tout le monde<sup>65</sup>.*

The Justice Minister, in his official Comments to Quebec's Civil Law project, summarized why legislators thought it useful to give minors special protection:

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<sup>63</sup> S.Q. 1971, c. 85., as referred to by DELEURY, Édith and Dominique GOUBAU. *Le droit des personnes physiques*, Cowansville, Yvon Blais, 4<sup>th</sup> edition, 2008, subsection 471.

<sup>64</sup> Art. 153 CCQ<sup>65</sup> *Op. Cit.*, Note 83, subsection 470.

*Il a semblé difficile d'attribuer aux mineurs la pleine capacité. Une telle proposition n'a pas semblé réaliste, d'autant plus qu'elle ne répond pas aux lois de la nature. En effet, l'être humain est ainsi fait qu'il acquiert graduellement science, jugement, maturité et sagesse*<sup>66</sup>.

Indeed, it would be difficult to imagine that a 12-year old child, having inherited a substantial amount of money, could, without his parents' approval and consent, enter into a contract with a financial institution to invest his inheritance in the stock market... (or even to give it away or spend it all at once, etc.).

Before the age of majority, only a minor's legal tutors are responsible for contracting on his behalf, when necessary<sup>67</sup>. This is the meaning of section 158 CCQ: *"Except where he may act alone, a minor is represented by his tutor for the exercise of his civil rights."*

The minor's legal ability to contract alone to acquire goods and services is therefore limited. As indicated by sec. 155 CCQ, *"A minor exercises his civil rights only to the extent provided by law."*

Nevertheless, the legislation does not deny minors all forms of independence. Whereas the two sections above stipulate that the only civil rights a minor may exercise acting "alone" are those provided for by the law and only to the extent it allows, it is not always so easy to determine the scope of that sphere of independence.

### **3.1.2 A Few Preliminary Comments on Our Analysis of Quebec Law**

Although a minor's full ability to exercise his civil rights is acquired, as we have seen, only when he reaches majority, the Civil Code states as a general rule that *"A minor may, within the limits imposed by his age and power of discernment, enter into contracts alone to meet his ordinary and usual needs."* (157 CCQ).

We know that minors, particularly teenagers, acquire all kinds of goods and services: they buy music, clothes, restaurant meals, tickets to shows, sporting goods (sometimes very expensive ones), etc. Many teenagers have a job or even become small seasonal entrepreneurs. We also know that in reality, minors are undeniably active consumers and that companies seek to make that role more and more important. The quantity of marketing studies and advertisements concerning children and teenagers demonstrate this.

Does this Civil Code provision really allow this active role of minors as consumers? The following paragraphs present the main provisions granting minors a certain sphere of independence in contractual matters and seeking to determine its scope.

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<sup>66</sup> MINISTÈRE DE LA JUSTICE DU QUÉBEC, *Civil Code of Québec: Texts, sources and comments*, Book I, Québec City, 1992, p. 93, cited by *Op. Cit.*, Note 83, subsection 473.

<sup>67</sup> The tutorship being generally exercised jointly by the parents, we will use the words "tutor" and "parent" interchangeably (art. 192 CCQ).

**a) Emancipation (and other powers granted to minors that are not related to the object of the present study)**

Unless otherwise stated, the legal rules we present concern non-emancipated minors.

We will only briefly discuss minors who are fully or simply emancipated, since they constitute an extreme case seldom encountered in the course of our study (which is mainly interested in minors as consumers of goods and services)<sup>68</sup>. In this regard, as early as 1975, the CCRO (Civil Code Revision Office) had proposed to simply abolish the concept of emancipation for the purposes of the new Code<sup>69</sup>.

Nevertheless, in the Civil code section on emancipation (sections 167 to 176 CCQ), legislators retained the principle of emancipation, the means of access to it and its effects:

*“170. Emancipation does not put an end to minority nor does it confer all the rights resulting from majority, but it releases the minor from the obligation to be represented for the exercise of his civil right.”*

In addition to rights resulting from emancipation, certain other rights are conferred to minors, such as the ability to consent to medical care from the age of fourteen<sup>70</sup>; we will not examine these situations in detail, since they exceed the scope of our study.

**b) Rules for Tutoring Minors**

Given that our study pertains to minors' ability to contract, we will not describe and analyse all the rules for tutoring minors, which focus on how the tutor exercises his obligations toward the minor and on the tutorship council's or court's authorizations that the tutor must obtain in certain circumstances<sup>71</sup>.

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<sup>68</sup> Art. 167 and foll. CCQ

<sup>69</sup> CIVIL CODE REVISION OFFICE, *Report on the Family*, part two, Committee on the Law on Persons and on the Family, Montreal, 1975, p. 72.

<sup>70</sup> Art. 14 and foll. CCQ<sup>71</sup> See for example art. 213 CCQ<sup>72</sup> Art. 1457 CCQ; See on this subject the rulings *Ginn v. Sisson*, 1969 C.S. 585; *Boileau v. Lacroix and others*, 1983 C.S. 1200; *Jean v. Ranch de l'Arabe*, [1998] R.J.Q. 568 (C.S.), as cited by PROVOST, Mario. “La minorité, la tutelle et l'émancipation” in SÉNÉCAL, Jean-Pierre. *Droit de la famille québécois*, Farnham (Quebec), CCH/FM, [CCH online], 2010, subsection 51-085.<sup>73</sup> For the same reasons, these aspects will also not be discussed in our examination of Canadian or foreign law.<sup>74</sup> LLUELLES, Didier and Benoît MOORE. *Droit des obligations*, Montreal, Thémis, 2006, p. 468.

### c) The Extracontractual Liability of Minors

In the context of consumer law, the issue of minors' extracontractual liability<sup>72</sup>, however interesting, is not raised. So our analysis will not focus on that issue either<sup>73</sup>.

### d) The Meaning of the Expression "Ability to Contract"

Before examining the legal ability of minors, we must make a clarification that is not exclusive to Quebec law: when the issue of "ability to contract" is raised, it is necessary to understand clearly what a contract is. In the eyes of many people, entering into a contract implies, by definition, the parties' signature on a document, which is the contract itself. But according to law, the requirement of a written document is the exception rather than the rule: nothing prevents in principle a contract to be concluded verbally between two persons, with no formality other than the exchange consent to be legally bound (sec. 1385 CCQ). Accordingly, a contract consists of the meeting of those consents, it does not consist of the instrument making it official. Subject to rare exceptions where a required format constitutes the only valid one, as soon as mutual agreement is expressed, there is a contract, whatever the format such expression may take.

In fact, almost all our acts of consumption, even when they concern goods or services of little value, belong to the sphere of contracts. Purchasing a pack of gum, a bus ticket, a movie ticket, is the conclusion of a verbal sales contract mutually binding the contractors to obligations varying according to the type contract: from simply providing an item for payment, to providing a seat in a theatre showing a movie in ideal conditions for payment and a commitment not to disturb the other spectators, not to record, etc.

We should thus avoid examining minors' ability to contract while considering only the popular archetype of a contract, i.e., an agreement whereby substantial amounts are generally at play and a signed document bears witness. Just as there is no "stupid job," there is no "stupid contract."

## 3.1.3 The Power of Discernment

The Civil Code of Québec contains two provisions governing the ability of minors to contract:

- provisions of general application, i.e., concerning minors and adults alike, regarding contractual consent (sec. 1385 as well as 1398 and foll. CCQ);
- provisions establishing a framework specific to minors (sec. 155 and foll. CCQ).

Consent is the basis of all contracts (sec. 1385 CCQ). For there to be a contract, there must be mutual consent between persons able to contract. And the consent must be valid.

To give valid consent, one must, notably, be *capable of binding oneself*, i.e., have the intellectual capacity for a minimal understanding of the whys and wherefores of the contract in question (sec. 1398 CCQ). This is what the doctrine calls the power of discernment (or "natural capacity")<sup>74</sup>.

In this regard, there is obviously a gulf between the power of discernment of a 17-year-old teenager and that of a 5-year-old child. The authors agree in considering that a child acquires the power of discernment at about the age of 7, with the exact stage of development varying of

course from one child to another<sup>75</sup>. Indeed, it should never be forgotten that the power of discernment varies according to an individual's psychological condition, as Deleury and Goubau explain:

*On le constate, la notion de discernement est élastique; elle dépend non seulement de la maturité de chaque enfant concerné, mais également du contexte (contractuel, procédural, délictuel, etc.) dans lequel il faut l'appliquer. La notion de discernement est floue et par conséquent les tribunaux jouissent d'un large pouvoir pour apprécier dans chaque cas si un enfant est ou non doué de discernement<sup>76</sup>.*

So long as a child does not have the power of discernment, it is not necessary to refer to specific rules for minors' ability to contract, since the rules for the very formation of a contract already enable us to determine the validity of an agreement. As one author explains, before the power of discernment is acquired, *"tous les actes juridiques posés par le mineur lui-même sont nuls, non pour cause de minorité, mais plutôt pour défaut de consentement<sup>77</sup>."*

After about 7 years, the minor has the power of discernment and can be a party to contracts, within the sphere of independence recognized by the law.

### 3.1.4 Ordinary and Usual Needs

Section 157 CCQ provides that *"A minor may, within the limits imposed by his age and power of discernment, enter into contracts alone to meet his ordinary and usual needs."*

This section, adopted in 1991, represents a historic compromise between the principle that a minor is incapable of contracting (formerly stated in section 986 of the *Civil Code of Lower Canada*) and the opposite principle stated by the Civil Code Revision Office that *"[l]e mineur, doué de discernement, est capable de contracter, sous réserve des dispositions expresses de la loi<sup>78</sup>."*

That section reflects a reality: in today's society, minors in fact consume goods and services to meet their ordinary and usual needs. The law can hardly attempt to prevent minors from making small purchases meeting their needs or to invalidate such acts. As Lluellas and Moore explain:

*La loi trouve normal que le mineur n'ait pas à requérir l'intervention de son tuteur chaque fois qu'il a à satisfaire des besoins de la vie courante. Une autre solution manquerait de souplesse et de réalisme [...] L'intervention du tuteur n'est donc, en ce cas, pas requise, mais à la condition que le mineur puisse réaliser la portée de son acte; ce n'est donc pas tout mineur qui peut agir seul pour la satisfaction de besoins personnels : un certain âge est indispensable. [...] L'article 157, qui est de droit nouveau — et d'application immédiate —, ne précise pas ce qu'il faut entendre par "besoins ordinaires et usuels".*

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<sup>75</sup> GUAY, Gérard. *La tutelle au mineur*, Montreal, Wilson & Lafleur, 2004, p. 3.<sup>76</sup> *Op. Cit.*, Note 83, subsection 480.

<sup>77</sup> *Op. Cit.*, Note 75.

<sup>78</sup> CIVIL CODE REVISION OFFICE, *Report on the Family*, part two, Committee on the Law on Persons and on the Family, Montreal, 1975, p. 72.

<sup>79</sup> *Op. Cit.*, Note 74, pp. 475-476.

*Cette notion évoque vraisemblablement tout ce qui est essentiel à la survie d'une personne : l'alimentation, les vêtements, les études, les soins, la recherche d'un emploi, l'assistance juridique, voire les loisirs s'ils ne sont pas somptuaires. [...] Rien n'empêche d'y inclure le logement, bien que la question fasse l'objet d'une étrange controverse<sup>79</sup>.*

We may doubt that legal aid can be included among a minor's usual needs, and we may hope that cases where those services are essential to his survival will remain the exception rather than the rule. We may also question, on the basis of a textual argument, the assertion that lodging should be included among those needs. These spontaneous reservations on an expert's comments already suggest the extent to which a text that establishes the standard leaves the door open to interpretation and maintains a certain vagueness, which has the merit of allowing case-by-case application, but has the defect of not marking the boundaries of possible interpretations clearly enough.

It should be noted that the ability granted the minor by sec. 157 CCQ to meet his ordinary needs is not exercised by the minor to the exclusion of his tutor's ability: the parents retain the right to contract on behalf of their child, even in such matters.

### **3.1.5 “Professional Emancipation”**

Section 156 CCQ states that “A minor 14 years of age or over is deemed to be of full age for all acts pertaining to his employment or to the practice of his craft or profession.”

Essentially, this section establishes that a minor at least 14 years of age is treated like an adult when contracting in relation to his employment, art or profession. In such cases, he thus cannot benefit from the contract nullity provisions (sec. 161 and foll. CCQ) protecting minors, even if those actions are harmful to him.

As we know, the law constantly attempts to balance contradictory forces and interests, and to grant additional protection to the most vulnerable parties. The legislators chose here to restore – while allowing a minor to do some types of work without his capacity always being questioned – a certain security to transactions made with minors: in certain circumstances, a minor cannot avail himself of the protections otherwise granted to him.

One author, analysing the scope of this provision, goes so far as to call its effect a “professional emancipation:”

*Cette “émancipation professionnelle” remplace les règles de l'ancien droit concernant les mineurs commerçants ou artisans.*

*S'il est facile de concevoir ce qu'est un emploi ou un art, il n'en va pas de même de l'expression “exercer une profession,” surtout pour un mineur ! Ce ne peut être une profession au sens du Code des professions puisqu'elles sont réservées aux majeurs. Il faut donc prendre le mot “profession” dans un sens plus large, soit celui “d'occupation déterminée dont on peut tirer ses moyens d'existence,” ce qui englobe les métiers, dont celui de commerçant.*

*Le mineur étant réputé majeur, il pourra s'engager personnellement, vendre, acheter, souscrire des effets de commerce, grever ses biens d'une sûreté et même ester en justice ou réclamer une indemnité, le tout de la même façon qu'un majeur, pour autant*

*que ces activités s'exécutent dans le cadre de son emploi, de son art ou de sa profession*<sup>80</sup>.

In our approach, which focuses on the minor as consumer rather than worker, it is interesting to note that a minor retains in principle the product of his work (sec. 220 CCQ). If the minor's working income is considerable or if circumstances justify it (imagine the case of a child star), the courts may still set the amounts of which a minor retains management (sec. 220 par. 2 CCQ) to avoid his managing an amount so great that the operations or decisions involved would exceed the minor's abilities<sup>81</sup>.

### 3.1.6 Powers Granted by Certain Specific Laws

Although the *Civil Code of Québec* contains the main provisions governing minors' ability to contract, it is important to mention the various rights granted to minors by certain specific laws.

For example, a minor may:

- open a bank account<sup>82</sup>;
- purchase shares in credit unions<sup>83</sup>;
- take out a student loan as part of the Student Aid Program<sup>84</sup>;
- join a professional union, from the age of sixteen<sup>85</sup>.

## 3.2 The Validity of Contracts Entered into by Minors

### 3.2.1 Minors' Sphere of Independence

What is the value of contracts entered into directly by a minor, i.e., without his parents acting on his behalf? The *Civil Code of Québec* contains three provisions that, read together, suggest a restrictive approach:

- 1) Full age or the age of majority is 18 years<sup>86</sup>;
- 2) A minor exercises his civil rights only to the extent provided by law<sup>87</sup>;
- 3) Except where he may act alone, a minor is represented by his tutor for the exercise of his civil rights<sup>88</sup>.

In reading these provisions, we might think that a minor's sphere of independence is legally very small. A minor's ability is reduced to what the law explicitly authorizes, so logic would appear to dictate that most contracts concluded by minors must be null.

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<sup>80</sup> *Op. Cit.*, Note 75, p. 6.<sup>81</sup> Art. 220 par. 2 CCQ

<sup>82</sup> Sec. 437, *Bank Act*, SC 1991, c. 46.

<sup>83</sup> Sec. 74, *Act respecting financial services cooperatives*, R.S.Q., c. C-67.3.

<sup>84</sup> Sec. 17, *Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3.

<sup>85</sup> Sec. 7, *Provincial Syndicates Act*, R.S.Q., c. S-40.<sup>86</sup> Sec. 153 CCQ

<sup>87</sup> Sec. 155 CCQ

<sup>88</sup> Sec. 158 CCQ<sup>89</sup> Untruncated, section 163 CCQ reads as follows: "An act performed alone by a minor or his tutor without the authorization of the tutorship council although the nature of the act requires it may not be annulled or the obligations arising from it reduced, on the application of the minor, unless he suffers damage therefrom."



Although a contract concluded with a minor who is too young to have discernment may be cancelled on that basis alone (the contract cannot be formed, given the absence of a consensual ability strictly related to age), we must conclude that the solution retained by the *Civil Code of Québec* in other cases is not as simple.

Indeed, we will see that the contract invalidity plan applicable to minors is intended as a compromise between different imperatives: protecting minors from their own inexperience, maintaining the stability of legal relations, limiting the powers of tutors, etc.

**a) Distinction between Absolute and Relative Nullity**

It must first be understood that, depending on the circumstance, a contract's nullity may be absolute or relative. Nothing can revive a contract that is absolutely null. The latter is imposed on all parties. They may find and declare themselves satisfied with an absolutely null contract and thus hope that its validity will be legally recognized. Any interested person may, however, demand that the court declare the nullity of such a contract. In fact, the court is even obliged to take the initiative to cancel an absolutely null contract, even if none of the parties at the hearing demands it (or even if both parties are opposed to the initiative) (sec. 1418 CCQ).

Absolute nullity being the exception, contracts concluded by minors may be declared, most of the time, to be relatively null.

When nullity is relative, nothing obliges the minor or his parents to demand the contract's nullity if, despite the absence of legal capacity, they estimate that the minor's interests are well served by the contract (sec. 1419 CCQ). Relative nullity has a discretionary nature, which however cannot be exercised to the minor's sole benefit – a merchant cannot claim that a contract to which he is a party is relatively null and thus hope to escape his obligations toward a minor.

**b) Voidable Transactions in the Event of Lesion**

Section 163 CCQ applies in the great majority of cases when a minor with discernment acquires a good or service. This section should be cited, to illustrate the conditions and the difficulties of interpretation it raises:

*163. An act performed alone by a minor [...] may not be annulled or the obligations arising from it reduced, on the application of the minor, unless he suffers damage therefrom<sup>89</sup>.*

*We note first that here a transaction “performed alone by a minor” is involved, i.e., without his parents’ consent. The minor may have the contract declared null (or at least have the obligations arising from it reduced), if he demonstrates that the contract is harmful to him. This is a protective measure, mainly to prevent minors’ inexperience from being abused in contractual matters – and also to avoid any contract from being voided on a whim even though the minor suffers no damage from having entered into it.*

The legislator's use of the word “damage” is not ideal, because it creates a certain confusion in terms of terminology; although section 163 CCQ uses the word “damage,” the majority of authors, as well as caselaw, agree that it is in fact lesion, as stipulated in section 1406 CCQ, that the minor should invoke and prove to obtain the nullity of a contract<sup>90</sup>.

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<sup>89</sup> Lluelles and Moore explain the origin of the overlapping between the terms “lesion” and “prejudice” with



*1406. Lesion results from the exploitation of one of the parties by the other, which creates a serious disproportion between the prestations of the parties; the fact that there is a serious disproportion creates a presumption of exploitation.*

*In cases involving a minor or a protected person of full age, lesion may also result from an obligation that is considered to be excessive in view of the patrimonial situation of the person, the advantages he gains from the contract and the general circumstances.*

In his *Précis de droit des jeunes*, Joyal notes that when minors are concerned, lesion as defined in section 1406 has an objective and a subjective aspect:

*Le terme “préjudice” utilisé à l’article 163 réfère en effet à la notion de lésion, telle qu’intégrée aux articles 1405 et 1406 du nouveau Code civil. La lésion, peut-on y lire, “ne vicie le consentement qu’à l’égard des mineurs et des majeurs protégés”. Suit un énoncé des deux significations que recouvre le concept de lésion : la première, objective, renvoie (sic) à une disproportion importante entre les prestations des parties, laquelle fait présumer l’exploitation de l’une par l’autre; la seconde, subjective, s’appuie sur une obligation estimée excessive par le tribunal, compte tenu de la situation patrimoniale de la personne mineure, des avantages qu’elle retire du contrat et de l’ensemble des circonstances. Ces dispositions constituent une codification de la jurisprudence élaborée en cette matière sous l’empire de l’ancien Code civil<sup>91</sup>.*

It should be noted that these two aspects of lesion are found in the first and second paragraphs, respectively, of the relevant section.

Objective lesion, as the name suggests, appears on the very face of the contract or when examining its obligations. Whatever the parties to the contract, a ridiculously high price constitutes exploitation, given the substantial disproportion between the price and the value of the good or service.

The subjective aspect of lesion is directly related to the contracting party that is disadvantaged. For instance, a price may not in itself be so disproportionate that exploitation is clearly apparent; if the price is imposed on a minor who obviously does not have the means to pay it, it may be estimated that there is lesion because the obligation is *excessive in view of the patrimonial*

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regard to minors’ ability to contract: “L’utilisation par le législateur, à la place du terme “lésion”, du mot “préjudice”, aux dispositions relatives aux mineurs et aux majeurs sous régime de protection, pose un problème. Entre la lésion objective du premier alinéa de l’article 1406 et la lésion subjective du second alinéa, le législateur aurait-il inséré une “tierce lésion”, mitoyenne, moins exigeante encore que celle du second alinéa? Selon toute vraisemblance, il y a fort à parier que le Code civil du Québec fait allusion à la lésion, sans créer une catégorie intermédiaire ; l’emploi du vocable “préjudice” n’est sans doute pas des plus heureux, mais il peut s’expliquer: la première version du Projet de loi No. 125 de 1990 ne contenait pas d’équivalent de l’alinéa 2 de l’actuel article 1406, relatif à la lésion sans exploitation (la lésion-embarras ou la “simple lésion” de l’ancien Code). C’est sûrement pour inclure cette lésion légère, au bénéfice des mineurs et des majeurs protégés, que le législateur avait préféré un terme plus général que le mot lésion. Mais, avec l’ajout subséquent du second alinéa, cette précaution cessait d’être nécessaire. Il eût fallu, alors, rétablir le terme “lésion” dans les dispositions en cause, afin d’éviter une source de ‘contentieux artificiel’” (Op. Cit., Note 74, pp. 461-462).

<sup>91</sup> JOYAL, René. *Précis de droit des jeunes*, Tome 1 : Le Code civil, Cowansville, Yvon Blais, 1994, p. 87.

<sup>92</sup> Op. Cit., Note 74, p. 502. <sup>93</sup> Sec. 161 CCQ and 1418 CCQ <sup>94</sup> Op. Cit., Note 74, pp. 465-466.

*situation of the person*. Similarly, if a merchant persuades a minor to purchase a good or service he absolutely does not need, lesion may be invoked since *the advantages he gains from the contract* are nonexistent for the minor as a contracting party. If a minor contracts, for example, following excessive pressure, he may also plead that, in view of *the general circumstances*, his obligation is excessive and equivalent to exploitation.

Of course, if the damage caused to a minor results from accidental and unforeseen events, it would be difficult to blame the minor's cocontractor, and cancelling the contract would not be possible, at least according to section 164, however real the damage; to justify a cancellation application, the damage discussed in this section must result from the act itself or its obligations.

### **c) Acts Prohibited under All Circumstances**

Section 161 CCQ states that "*An act performed alone by a minor where the law does not allow him to act alone or through a representative is absolutely null*". This section has to be read carefully to be interpreted correctly, because its wording indicates that this section covers a very small number of cases.

Only acts that neither a minor nor his representative can perform are null at all times if performed by the minor alone. In legal terminology, such situations involve an "incapacity for enjoyment," to the extent that the law considers the minor, even represented by his tutor, to be incapable in any way to "enjoy" the right to perform those acts – the very fact of performing them is illegal.

Lluelles and Moore explain in this regard:

*Les incapacités de jouissance s'attachent au droit lui-même, et non à sa seule mise en œuvre. La personne qui en est frappée ne détient tout simplement pas le droit de poser un acte déterminé : qu'elle agisse seule ou par l'intermédiaire d'un représentant ou avec l'assistance ou le conseil d'une autre personne, l'acte posé est nécessairement illégal et annulable. Contrairement aux incapacités d'exercice dont l'assiette peut être plutôt large, les incapacités de jouissance sont spécifiques — en termes d'actes juridiques —, et ne peuvent résulter que d'un texte exprès; elles sont d'ailleurs peu nombreuses : il est heureux qu'il en soit ainsi, car une personne qui serait frappée d'une incapacité générale de jouissance serait un non-être juridique, ne pouvant poser aucun acte quelconque<sup>92</sup>.*

When incapacity for enjoyment is involved, the tutor cannot seek authorization from the tutorship council or even from the court in order to perform the act validly<sup>93</sup>, since the mere fact of performing the act is illegal.

The fact that certain acts imply an incapacity for enjoyment can be at times a valuable tool for protecting a minor's interests. Indeed, since a minor's incapacity for enjoyment are sanctioned by absolute nullity, a judge may on his own initiative declare an act to be null, i.e., without his parents demanding it, if the contract in question is mentioned at other proceedings.

Among the acts for which a minor is deemed to have an incapacity for enjoyment is the following:

- marrying before the age of 16 (sec. 373 CCQ and sec. 6 Federal Law—Civil Law Harmonization Act, No. 1, S.C. 2001, c. 4.);
- disposing of any part of his property by will, except articles of little value (sec. 708 CCQ);
- making gifts except gifts of property of little value or customary presents, subject to the rules pertaining to marriage or civil union contracts (sec. 1813 CCQ).

In the consumer context, it is difficult to imagine cases where section 161 CCQ could be applied. The solution to problems that minors experience at times with merchants should therefore be sought elsewhere.

### 3.2.2 A Minor's False Declaration of His Age

The law compels merchants to verify a consumer's age under certain circumstances, since the sale of certain products to minors may be prohibited. However, this is not a general rule. Minors are authorized to contract for their own needs, so merchants have no motive, except in the above mentioned case, to inquire about their age.

But what happens if a merchant legitimately believes, for example after a teenager makes a false declaration, that his cocontractor is an adult? Can the minor or his representative still apply for the contract to be nullified under section 163 CCQ?

In principle, the answer is that a minor's false declaration of his age does not deprive him of his rights; this is explicitly provided in section 165 CCQ: *"The mere declaration by a minor that he is of full age does not deprive him of his action in nullity or reduction of his obligations."*

In this regard, Lluelles and Moore (p. 465-466) explain that:

*La déclaration inexacte ne couvre le mineur que pour autant qu'elle se contente d'être une "simple déclaration" : "malgré les apparences, j'ai bien dix-huit ans!" Il ne devrait pas être nécessaire de distinguer entre la déclaration spontanée et la réponse à une question posée; de même, on ne devrait pas traiter différemment la déclaration verbale et la déclaration écrite sur un formulaire préparé par le cocontractant, "puisque souvent l'une et l'autre peuvent être données en réponse à des pressions exercées sur le mineur, directement ou indirectement"<sup>94</sup>.*

There is an exception to this principle, as the authors add:

*Toutefois, si la déclaration s'accompagne d'un artifice, comme une falsification d'acte de naissance, ou d'un stratagème, comme une lettre que le mineur avait sollicitée de sa mère établissant un âge inexact, on "dépass[e] la limite de l'exception" : le juge ne prononcera aucune sanction, ni annulation ni révision, même si le contrat est, par ailleurs, lésionnaire, puisqu'il y a eu fraude du mineur<sup>95</sup>.*

### 3.2.3 Confirmation of the Act

The *Civil Code of Québec* provides in section 166 that "On attaining full age, a person may confirm an act he performed alone during minority for which he required to be represented." This section requires no formality, so confirmation need not be explicit. This means, for example, that if a teenager contracts a loan or buys on credit at 17 years of age, it will be difficult for him to invoke contract nullity due to lesion if he continues, after reaching adulthood,

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<sup>95</sup> *Op. Cit.*, Note 74, p. 466.

<sup>96</sup> DELEURY, Édith and Dominique GOUBAU. *Le droit des personnes physiques*, Cowansville, Yvon Blais, 4<sup>th</sup> edition, 2008, subsection 495.

to make his payments, because he will then be considered to confirm by his actions the contract he entered into when he was a minor.

### 3.2.4 Section 157 CCQ: a Simple Statement of Principle, without Practical Effect?

Section 157 CCQ has generated a great many comments since its adoption in 1991. Far from clarifying applicable law, this section appears to have created more confusion than useful guidelines for determining the contractual independence of minors.

*“A minor may, within the limits imposed by his age and power of discernment, enter into contracts alone to meet his ordinary and usual needs.”*

What are the contracts to which a minor may be a party without his parents' consent? At first sight, section 157 CCQ seems to provide a relatively simple answer: contracts concluded in order to *meet his ordinary and usual needs*. Determining minors' contractual independence would thus depend on identifying contracts meeting his *ordinary and usual needs*. Within that sphere, he may contract if *his age and power of discernment* give him the ability to consent validly. Based on this section, we might conclude on the contrary that any contract not aiming to satisfy a minor's *ordinary and usual needs* would thus be subject to nullification, since the minor could not contract.

But while section 157 is an interesting statement of principle, we must, to understand the scope and effect of a contract concluded beyond that sphere, examine the sanction provided by law for such acts.

It appears that this distinction between acts within or without the sphere defined in section 157 finds no echo in section 163 CCQ: whether or not a contract was concluded to meet “ordinary and usual needs,” a minor or his representative cannot have it nullified without demonstrating that the contract harms the minor.

Deleury and Goubeau give a highly revealing example of the limited use of section 157 CCQ for applying the sanction provided in section 163 CCQ:

*Prenons l'exemple du mineur de 17 ans qui s'achète une auto. Il peut y avoir une discussion fort intéressante sur le fait de savoir si cette auto représente un besoin usuel et ordinaire de ce mineur. Mais, dans la négative comme dans l'affirmative, le mineur peut demander l'annulation de la vente ou la réduction de ses obligations qui en découlent, s'il peut démontrer le caractère lésionnaire du contrat<sup>96</sup>.*

Some will say that such a view of section 157 CCQ contradicts the principle that “Parliament does not speak in vain” — because it is difficult to understand the usefulness of those distinctions drawn by section 157 if they have no consequence when the time comes for a minor to exercise his rights.

According to Deleury and Goubeau, the usefulness of section 157 CCQ is that a merchant cannot refuse, without the risk of his refusal being considered discriminatory, to contract with a minor seeking to meet his usual and ordinary means:

*La distinction entre d'un côté les besoins usuels et ordinaires et de l'autre les besoins extraordinaires ou non usuels n'enlève donc rien à la protection des mineurs. Elle n'y ajoute cependant rien non plus, si ce n'est que, s'agissant de besoins courants, le cocontractant majeur ne pourrait refuser de contracter en raison de l'incapacité du mineur sans risque de se voir reprocher un comportement de discrimination fondé sur l'âge<sup>97</sup>.*

### 3.3 The Consumer Protection Act and Minors

#### 3.3.1 The Absence of a Specific Framework for Minors

The *Civil Code of Québec* contains, as we have seen, a very complete framework for the ability of minors to contract and provides various measures to protect their interests before their majority. It is thus not surprising that the Consumer Protection Act does not in the end contain specific provisions for protecting minors in their dealings with merchants, except for rules restricting children's advertising.

#### 3.3.2 Children's Advertising

Although this prohibition is not specifically related to the ability of minors to contract, it is interesting to note that the *Consumer Protection Act* prohibits in principle any merchant from addressing advertising to children less than 13 years of age (subject to exceptions provided by regulations) (sec. 248 CPA).

Section 249 of Quebec's *Consumer Protection Act* specifies in this regard that:

*To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of:*

- a) the nature and intended purpose of the goods advertised;*
- b) the manner of presenting such advertisement;*
- c) the time and place it is shown.*

*The fact that such advertisement may be contained in printed matter intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over, or that it may be broadcast during air time intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over does not create a presumption that it is not directed at persons under thirteen years of age.*

#### 3.3.3 Distinction between Lesion according to the CPA and the CCQ

Generally, the *Civil Code of Québec* does not recognize that lesion may vitiate consent between persons of full age (sec. 1405), but limits this possible effect to minors or persons under protective supervision. However, this is not the case for the *Consumer Protection Act*, which

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<sup>97</sup> *Op. Cit.*, Note 97, p. 487.

<sup>98</sup> *Op. Cit.*, Note 74, p. 409.

provides, without naming a lesion, that a consumer can always invoke lesion against a merchant, without making any distinction between minor and adult consumers.

Section 8 of the *de la Consumer Protection Act* reads as follows:

*The consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer or where the obligation of the consumer is excessive, harsh or unconscionable.*

Accordingly, a minor contracting with a merchant would be spoiled for choice if he wanted to have a contract nullified or his obligations reduced due to lesion: he could invoke both the *Civil Code of Québec* and the CPA.

Would he have a better chance to win his case with the CPA or the *Civil Code of Québec*? We refer in this regard to Lluellas and Moore on the differences between the objective and subjective aspect of lesion according to the CPA and the Code civil:

*Autre différence avec le droit commun, la lésion subjective du consommateur, prévue à l'article 8 CPA, semble plus exigeante que celle des mineurs et des majeurs protégés : l'emploi des termes "excessif," "abusif" et "exorbitant" indique vraisemblablement "une intention du législateur d'exiger plus que le préjudice que l'on reconnaît généralement dans le cas de lésion du mineur". L'article 9 CPA, en effet, qui doit être lu en harmonie avec l'article 8, laisse supposer que le consommateur devra prouver plus que de l'embarras, des ennuis ou des inconvénients pour obtenir gain de cause<sup>98</sup>.*

It therefore appears on the whole that the criteria for invoking lesion are easier to meet under section 1406 CCQ than in section 8 CPA.

## 3.4 A Few Court Cases

### 3.4.1 Lafrenière & St-Pierre Dental Clinic v. McLean, 2003 CanLII 49466 (QC C.Q.)

The dentists Lafrenière and St-Pierre sued before Small Claims Court the mother of a 16-year-old to recover \$260 for dental care provided to her son.

The case is interesting because the teenager contracted alone with the dental clinic, against his mother's advice. She had accompanied her son to the clinic at first; he was complaining about a particularly painful toothache. The dentist consulted concluded that a root canal treatment was necessary and advised his mother. Deeming the operation too expensive, she refused to follow the dentist's recommendation.

Disregarding his mother's refusal, the dentist succeeded in convincing the teenager to undergo the root canal treatment. The minor promised to pay the dentist in reasonable time.

The promised payment was never made, so the dentist personally sued the mother to recover his fee. It should be noted that his court action was aimed at the mother, not the teenager.

This case raises a very interesting question: **Are a minor's parents responsible for the obligations he contracts alone with a merchant?** The court, clearly establishing a distinction between the parents' estate and their child's rejected the dentist's claim.

Some excerpts from that ruling should be cited:

*Dans un premier temps, il n'est pas superflu de mentionner que le consentement qui a été donné par le jeune Ryan était certes éclairé et valide. Il estimait, selon le conseil d'un spécialiste médical, que le traitement de canal convenait le mieux à son état de santé, et son choix se doit d'être respecté.*

*Mais la décision d'un enfant mineur quant aux coûts qu'entraîne sa décision relative à des traitements médicaux comporte-t-elle forcément l'obligation de l'assumer par sa mère? Nous ne sommes pas de cet avis pour les raisons suivantes.*

*Il nous faut faire une distinction entre le patrimoine de l'enfant et celui de son ou de sa tutrice. En l'instance le jeune homme s'est engagé à rembourser le chirurgien dentiste pour les soins qu'il recevait. Il avait alors la qualité pour conclure un tel contrat et pouvait ainsi engager ses actifs ou son patrimoine. [...]*

*Naturellement l'intimée eut-elle personnellement, expressément ou tacitement autorisé le chirurgien-dentiste à procéder à la fourniture des soins médicaux qui étaient les meilleurs selon ce dernier, qu'alors le recours eût pu réussir. Mais si de façon aussi claire elle lui exprimait son désaccord, il devait alors comprendre que sa créance pour soins médicaux ne s'adressait plus alors qu'à celui qui les recevait. Rappelons-le, elle est en l'instance poursuivie "personnellement"...*

### 3.4.2 Sansoucy (Tutor) v. Cousineau, 2004 CanLII 8510 (QC C.Q.)

In this case, Mr. Sansoucy acted in his capacity as tutor to demand nullification of the sale of a scooter his son had purchased from Mr. Cousineau for \$1,750, because a few days after the sale he noticed that the scooter required repairs of almost \$3,000.

First, Mr. Sansoucy alleged that his son was a victim of false representations from Mr. Cousineau, who he claimed had minimized the magnitude of repairs to be made by pretending during the sale that the scooter was "easily repairable."

The judge did not accept this assumption because the seller had nevertheless disclosed the fact that the scooter was seriously damaged and that the expression "easily repairable" can be interpreted differently from one person to another. In addition, the judge considered that a prudent purchaser, being informed that the scooter was badly damaged, would have had it inspected before buying it, which the plaintiff's son had not done.

The decision is interesting because the judge nevertheless accepted the plaintiff's claim solely on the basis of the rules governing the ability of minors to contract.

Indeed, the judge concluded that even if the requirements for demanding redress due to hidden defects were not met in this case, it remained that the contract concluded by the minor was a cause of lesion to him:



*CONSIDÉRANT qu'il y a lésion en la présente instance à l'égard du mineur François Sansoucy en ce qu'il ne retire aucun avantage de l'achat du scooter, bien au contraire, puisqu'il aura à déboursier une somme supérieure à la valeur du véhicule pour le remettre en état;*

*CONSIDÉRANT de plus que ledit mineur ne possède pas les ressources financières pour assumer de telles réparations ni d'ailleurs les frais d'assurance, d'immatriculation, d'essence, etc., que ledit mineur devra encourir par suite de l'achat du scooter et qui sont en nette disproportion avec ses ressources financières;*

The court thus nullified the scooter's sale and sentenced the defendant to refund the amount paid during the sale (but without interest or additional indemnity, given the court's finding that the merchant had been of good faith).

### **3.4.3 Bédard v. Roussin Parfumerie, 2006 QCCQ 1074 (CanLII)**

Can a merchant be sued for damages for having pierced a young teenager's navel without having obtained her parents' prior consent?

The Court of Quebec answered this question in the *Bédard v. Roussin Parfumerie* case.

When her parents learned that their 13-year-old daughter had had her navel pierced in a jewellery shop, they decided to sue the shop for trespass to the person of their daughter and for the trouble, inconvenience and damages resulting from their parental authority not having been respected.

The judge first rejected the assumption that installing jewellery on a navel is a health care treatment to which a minor alone may consent from the age of 14 under sections 14 and 17 du *Civil Code of Québec* and also ruled that *"le perçage du nombril fait donc partie des besoins ordinaires et usuels d'une jeune adolescente de treize ans et sept mois, capable de juger et d'apprécier avec justesse les conséquences de sa décision de désobéir à ses parents."*

In addition, the court ruled that: *"Le seul problème découlant du perçage du nombril de Chantal Berthelot vise sa relation avec ses parents et elle est la seule responsable de sa décision d'agir à l'encontre de leur volonté"* and that the merchant, in the absence of a contractual fault, cannot be liable for what proves in the end to be an infraction against parental authority.

## **3.5 The Paradox of Minors' Ability to Contract**

The above examination of Quebec's legal rules governing minors' ability to contract may seem highly confusing. Of course, the considerations underpinning those rules largely explain this complexity.

Indeed, with public concern about the need to develop the financial literacy of Canadians, it is easy to admit that a 12-year-old child does not have, for example, the required ability to sign at the bottom of a long and complex securities contract. For this reason, legislators have established a framework whereby, on principle, a minor is represented by his parents in the exercise of his civil rights, until his majority.



However, not all legal contracts are as complex as in our example; aware of this fact, legislators have applied to the general principle of incapacity so many exceptions that it becomes very difficult to know whether or not, generally or case-by-case, a minor may contract alone. Is the framework one of incapacity tempered by exceptions or rather of capacity limited in certain areas?

As pointed out by Deleury and Goubau, “[l]e Code civil du Québec consacre en effet des tempéraments coutumiers au principe de l’incapacité du mineur. Ces exceptions sont même tellement nombreuses qu’on peut en conclure que le mineur doué de discernement est dans un état de semi-capacité et que, finalement, le principe de l’incapacité générale des mineurs n’est vrai que pour les enfants qui, en raison de leur âge physique ou mental, ne sont pas encore doués de discernement<sup>99</sup>.”

More pessimist, the Chambre des notaires had, at the time of the Civil Code’s reform, issued a negative opinion on the new legal framework applicable to minors:

*Selon les hypothèses, le mineur est majeur, presque majeur, pas tout à fait majeur! Bien que la maturité, le sérieux, la sagesse s’acquièrent graduellement, la Chambre des notaires est d’avis que les dispositions qui visent à reconnaître au mineur une “capacité partielle” créeront de l’incertitude et que les dispositions plus libérales risquent de demeurer lettre morte<sup>100</sup>.*

Our study of the various legal provisions governing minors’ ability to contract leads us to conclude, as other authors do, that minors may generally contract... but may not be wronged.

The legislators’ difficulty in formulating clear rules on the ability of minors to contract demonstrates the magnitude of grey areas in this regard (we have only to ponder the real scope of section 157 CCQ). It’s understandable that knowledge and application of those rules is seen, by consumers and merchants alike, as a high-trapeze exercise.

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<sup>99</sup> *Op. Cit.*, Note 97, subsection 486. <sup>100</sup> CHAMBRE DES NOTAIRES DU QUÉBEC. *Mémoires de la Chambre des notaires du Québec : Projet de loi 125 – Code civil du Québec*, 1991, p. 15.

## 4. Canadian Legal Framework

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### 4.1 Age of Majority in Canadian Provinces

In Canada, the age of majority varies from one province to another.

Several provinces set the age of majority at 18 years. In Quebec, for example, the age of majority went from 21 to 18 years in 1971 (it had dropped from 25 to 21 years in 1782).

The following provinces set the age of majority at 18 years:

- Quebec<sup>101</sup>;
- Ontario<sup>102</sup>;
- Alberta<sup>103</sup>;
- Manitoba<sup>104</sup>;
- Saskatchewan<sup>105</sup>;
- Prince Edward Island<sup>106</sup>.

Other provinces and territories have preferred to set the age of majority at 19 years:

- Newfoundland and Labrador<sup>107</sup>;
- New Brunswick<sup>108</sup>;
- Nova Scotia<sup>109</sup>;
- British Columbia<sup>110</sup>;
- Yukon<sup>111</sup>;
- Northwest Territories<sup>112</sup>;
- Nunavut<sup>113</sup>;

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<sup>101</sup> Art. 153, CCQ.

<sup>102</sup> Art. 1, *Age of Majority and Accountability Act*, RSO 1990, c. A.7.

<sup>103</sup> Art. 1, *Age of Majority Act*, RSA 2000, c. A-6.

<sup>104</sup> Art. 1, *Age of Majority Act*, C.C.S.M., c. A7.

<sup>105</sup> Art. 2, *Age of Majority Act*, RSS 1978, c. A-6.

<sup>106</sup> Art. 1, *Age of Majority Act*, RSPEI 1988, c. A-8.

<sup>107</sup> Art. 2, *Age of Majority Act*, S.N.L. 1995, c. A-4.2.

<sup>108</sup> Art. 1, *Age of Majority Act*, RSNB 1973, c. A-4.

<sup>109</sup> Art. 2, *Age of Majority Act*, RSNS 1989, c. 4<sup>110</sup> Art. 1, *Age of Majority Act*, RSBC 1996, c. 7

<sup>111</sup> Art. 1, *Age of Majority Act*, RSY 2002, c. 2.

<sup>112</sup> Art. 2, *Age of Majority Act*, RSNWT 1988, c. A-2.

<sup>113</sup> Art. 2, *Age Of Majority Act*, RSNWT (Nu.) 1988, c. A-2.

## 4.2 Minors' Ability to Contract: Common Law

### Preliminary comments

In Canada, with the exception of Quebec, private relations between individuals are governed by common law, the legal system that Canada as a former British colony inherited from the United Kingdom<sup>114</sup>.

In a common law system, the majority of rules for private relations between individuals follow from principles stated over the years by the courts, according to the disputes before them. The common law is often described as a “*judge-made law*” system. That does not prevent legislators from enacting laws for private relations between individuals. But those laws generally aim to clarify, complete or rectify the rules established by the courts, and not to supplant that approach.

*Les cours de justice sont l'auteur collectif de la common law. Il faut cependant admettre, ajoute un auteur, que plus un tribunal est élevé dans la hiérarchie judiciaire, plus les règles qu'il a élaborées ont de chances de s'intégrer durablement au corps des règles de common law*<sup>115</sup>.

Donald Poirier, one of the researchers of the *Centre international de la common law en français*, comments as follows on the different approaches taken by the common law and civil law in protecting minors:

*Les systèmes de common law ne connaissent pas la notion d'émancipation du mineur. La common law entretient la notion de tout ou rien. Une personne est ou bien mineure ou majeure. Aussi longtemps qu'elle est mineure, elle ne dispose pas de la capacité juridique. Étant donné que la common law ne reconnaît pas la notion de la représentation du mineur par un tuteur, ce dernier ne peut donc autoriser le mineur à poser certains actes. Tous les actes posés par le mineur sont considérés par la common law comme les siens et ce n'est qu'exceptionnellement qu'un parent sera tenu responsable pour les actes de ses enfants.*

We should also be wary of the meaning of words when trying to compare common law and civil law rules. Despite the similarity, and even sameness of the vocabulary and concepts used, we must always keep in mind that these are two autonomous legal systems following different logical paths. For example, there is no perfect correspondence between the civil law concept of “lesion” and the common law criterion of a contract concluded against the child's benefit (*infant's benefit*): lesion is defined by multiple relatively precise criteria<sup>116</sup>, whereas the child's benefit remains in essence a rather vague concept that may be viewed differently depending on the circumstances specific to each case.

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<sup>114</sup> Our observations on the common law are taken from ÉMOND, André and Lucie LAUZIERE. *Introduction à l'étude du droit, Montreal*, Wilson & Lafleur, 2003, p. 98 and foll.

<sup>115</sup> ÉMOND, André and Lucie LAUZIERE. *Introduction à l'étude du droit, Montreal*, Wilson & Lafleur, 2003, p. 100. <sup>116</sup> Sec. 1406 CCQ.

### 4.2.1 Minors' Incapacity on Principle

In the common law, the general rule is that a contract concluded by a minor is simply invalid<sup>117</sup>.

However, it must be recognized, with Professor Poirier, that this statement is rather a statement of principle than an actual description of the legal rules governing minors' ability to contract:

*Le fait qu'une personne mineure n'ait pas la capacité juridique dans les systèmes de common law ne rend toutefois pas compte de toute la réalité. De nombreuses exceptions existent, ce qui fait dire à plusieurs que la règle générale est une passoire qui ne veut plus rien dire.*

*La règle d'incapacité juridique des mineurs, ajoute plus loin cet auteur, peut difficilement être appliquée dans toute sa rigueur, car sinon les personnes n'ayant pas encore l'atteint [sic] l'âge de la majorité auraient des difficultés à vivre de façon autonome dans nos sociétés<sup>118</sup>.*

Two reasons explain Professor Poirier's finding that this incapacity of minors on principle "est une passoire qui ne veut plus rien dire"<sup>119</sup>.

First, under the common law, contracts for providing minors with the necessities of life (*necessaries*) are considered valid and *enforceable* for minors, subject to the contract thus concluded being to the minor's benefit (*infant's benefit*)<sup>120</sup>.

The common law considers that other contracts entered into by a minor are *voidable* on principle at his discretion<sup>121</sup>. But while this possibility for a minor to withdraw from the contract at his discretion may appear advantageous, we will see that exercising this option is subject to a series of conditions with somewhat vague contours in practice.

Like civil law, common law rules for minors' ability to contract seek to maintain a certain balance between the need to protect a vulnerable party and the perverse effect that such protection can entail:

*The protection of weaker parties is an essential part of any civilized law of contracts. It was argued in the chapter on unconscionability that freedom of contract cannot be an absolute value but that other values such as fairness, equity, and the avoidance of unjust enrichment, must weighed [sic] in the balance. For these reasons the law of contracts has always given special protection to minors. On the other hand, some protection is needed for a party dealing with a minor, and entire freedom to avoid contracts might in the long term rebound to the detriment of minors, for few would*

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<sup>117</sup> *Canadian Encyclopedic Digest*, Children - chap. III.1, Toronto, Carswell, subsection 538, [Westlaw].

<sup>118</sup> POIRIER, Donald. *Les personnes physiques et les incapacités*, Cowansville, Yvon Blais (coll. "La common law en poche"), 1997, p. 87.

<sup>119</sup> *Op. Cit.*, Note 118.

<sup>120</sup> *Op. Cit.*, Note 117.

<sup>121</sup> *Op. Cit.*, Note 117.

<sup>122</sup> WADDAMS, S.M. *The Law of Contracts*, Toronto, Canada Law Book, 2005, p. 471.

*advance credit even for necessities to one whose promise to pay was not binding. The complexity of the present law springs from these conflicting objectives*<sup>122</sup>.

Finally, it must be said that the common law faces a renewal challenge, because the rulings that have established its broad principles are older and older and that society has greatly changed over time:

*Before the fairly recent changes in the law of all Canadian provinces governing the age of majority, cases of contracts by “infants” were not uncommon because the age of majority was then 21. When the age was reduced to 18 or 19 the number of cases dropped dramatically. At the same time the very difficult decisions of dealing fairly with both the minor and the person who, in good faith, had dealt with him (all the old cases involved young males) have largely disappeared*<sup>123</sup>.

Our research leads us to the same conclusions. The rulings cited in legal treatises with regard to minors' ability to contract were terribly dated; according to our review of current cases, it turns out that minors today may still face disputes about the contracts they enter into and that they likely conclude a higher number of contracts in proportion to their increased involvement in the consumer market of goods and services<sup>124</sup>. The extreme rarity of rulings on the problems of minors in consumer matters is surprising. The difficulty of common law to renew itself thus appears, at first sight, hard to explain.

## 4.2.2 Rules Applicable to Most Contracts

As mentioned above, the common law considers that contracts concluded by minors are not valid — apart from the case of *necessaries*, a contract entered into by a minor will simply be considered void or voidable, on the minor's initiative<sup>125</sup>.

It should be recalled that a contract for the provision of the necessities of life is valid in principle and enforceable on the minor, unless the contract in question proves not to have been concluded to his benefit.

Among voidable contracts on the minor's initiative, there are two categories:

*Le droit anglais, explique le professeur Poirier, établit une distinction entre deux catégories de contrats annulables : ceux qui ont force obligatoire à moins d'être révoqués et ceux qui n'ont pas force obligatoire à moins d'être ratifiés. La première catégorie comprend des contrats qui se poursuivent et qui demeurent valides aussi longtemps que le mineur ne tente pas de les annuler. [...] L'autre catégorie de contrats comprend ceux qui sont présumés invalides à moins que le mineur les ratifie après avoir atteint sa majorité*<sup>126</sup>.

That being said, whether a contract is repudiated or ratified, the voidable nature of the contract may be questioned under certain circumstances that, it should be noted, are not so rare. Despite the minor's incapacity in principle to contract under the common law, we cannot exclude

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<sup>123</sup> SWAN, Angela. *Canadian Contract Law*, Markham (Ontario), LexisNexis, 2009, p. 861.

<sup>124</sup> Return to the other part of the report.

<sup>125</sup> *Op. Cit.*, Note 117. <sup>126</sup> *Op. Cit.*, Note 118, p. 95.

the assumption that a contract concluded by a minor generates enforceable legal obligations, even if the contract does not seek the provision of *necessaries*. Thus Professor Poirier's comment that the rule of minor's incapacity has become "*une passoire qui ne veut plus rien dire*"<sup>127</sup>.

#### 4.2.3 Contract for the Provision of "Necessaries"

The common law provides that a minor is bound to honour a contract when the latter seeks to provide him with the "*necessaries*," i.e., the necessities of life<sup>128</sup>. The logic behind this exception to the principle of minors' incapacity is to ensure that a minor can obtain the necessary goods and services for meeting his basic needs and that his cocontractor benefits from a certain legal security<sup>129</sup>.

The *Sale of Goods Act*, a uniform law adopted by all Canadian provinces (except Quebec), defines the *necessaries* as "*goods suitable to the conditions in life of the minor or other person and to his or her actual requirements at the time of the sale and delivery*"<sup>130</sup>.

Poirier reports that "*la nourriture, le logement (même l'achat d'une maison), les vêtements, les soins médicaux, le matériel scolaire et même les leçons de billard ou de danse*" have been qualified by the courts as necessities of life<sup>131</sup>.

Attempting a rational approach, another author tries to define the contours of this concept:

*The test of what are necessities appears to be whether the services provided by the adult are vital to the health or other welfare of the minor. Minors may require to be kept healthy, or, sometimes, to be educated, just as they require food and drink (or shelter)*<sup>132</sup>.

It should be pointed out that the possibility of certain goods and services being qualified as *necessaries* does not depend only on the nature of the goods and services in question, but also on the context. In fact, to be qualified as *necessaries*, it must be proven that the minor did not have those goods and services before entering into the contract:

*Everything depends upon the social and economic position of the minor as well as upon what would be regarded as essential for life. Curiously enough, a car has been held not a necessary, even in these days, even as in Pyett v. Lampman where the car was used by the minor in the business of selling fish by which he earned a living*<sup>133</sup>.

<sup>127</sup> *Op. Cit.*, Note 118.

<sup>128</sup> *Op. Cit.*, Note 118, p. 93.

<sup>129</sup> WADDAMS, S.M. *The Law of Contracts*, Toronto, Canada Law Book, 2005, p. 471.

<sup>130</sup> *Sale of Goods Act*, RSA 2000, c. S-2.; *Sale of Goods Act*, RSBC 1996, c. 410.; *Sale of Goods Act*, RSPEI 1988, c S-1.; *The Sale of Goods Act*, CCSM c. S10; *Sale of Goods Act*, RSNB 1973, c S-1; *Sale of Goods Act*, RSNB 1989, c. 408. *Sale of Goods Act*, RSNWT 1988, c. S-2.; *Sale of Goods Act*, RSO 1990, c S-1. *Sale of Goods Act*, RSS 1978, c. S-1; *Sale of Goods Act*, RSNL 1990, c. S-6.; *Sale Of Goods Act*, RSNWT 1988, c. S-2.; *Sale of Goods Act*, RSY 2002, c. 198.

<sup>131</sup> *Op. Cit.*, Note 118, p. 93. <sup>132</sup> FRIDMAN, G.H.L. *The Contract Law in Canada*, Toronto, Thomson/Carswell, 2006, p. 143.

<sup>133</sup> *Op. Cit.*, Note 133, p. 142.

In our view, a near-perfect correspondence cannot be established between common law *necessaries* and the “ordinary and usual needs” mentioned in section 157 of the *Civil Code of Québec*. The “essential for life” nature on which the authors insist in the common law is hardly comparable with the words “usual” and “ordinary” found in section 157 and appears more restrictive. In addition to the range of goods and services covered, the approach to protection is also very different.

If, with Deleury and Goubau, we agree that the primary purpose of section 157 CCQ is to prevent a minor from suffering discrimination when he wants to contract for his usual and ordinary needs<sup>134</sup>, we note that the primary purpose of the concept of “necessaries” rather deprives the minor of the right to disavow the contract at his discretion – a right recognized by the common law for all the other contracts that the minor might enter into. Thus, under civil law, all contracts concluded by a minor may be disputed, including those pertaining to usual and ordinary needs, but only on the basis of lesion (sec. 163 CCQ).

#### 4.2.4 Absolute nullity (Void Contracts)

Many consider that there exists under the common law, regarding contracts entered into by minors, a theory of void contracts, i.e., contracts that are absolutely void, without possibility of ratification by the minor nor any need for the minor to have to raise any other cause for repudiation if he wants to avoid the effects of the contract.

According to some authorities on the subject, the existence of such *void contracts* is beyond doubt and the related rules find application in a relatively broad range of circumstances. In this view, to be enforceable, any type of contract concluded by minors must meet a fundamental requirement: to be to the minor’s benefit (*infant’s benefit*). This requirement applies whether or not the contract involves the provision of the necessities of life.

The *Canadian Encyclopedic Digest*, in summarizing the rules for minors’ ability to contract, takes this view: “Any contract that is not for the infant’s benefit is void. An infant’s contract containing stipulations disadvantageous to him or her is void, as is a release of an infant’s rights<sup>135</sup>.”

According to others, the existence of such *void contracts* remains controversial, and any application of the theory should certainly be more circumscribed:

*Whether there is category of void minors’ contracts has been the subject of some controversy among textbook writers [...]. However two views have since appeared as to when a minor’s contract will be void. According to one, this will occur only when the contract is prejudicial to the minor. According to the other, wider view, this will occur whenever the contract is not for the minor’s benefit. This latter opinion seems too wide for the purposes of any such rule. Moreover it seems to conflict with cases which clearly indicate that a non-beneficial contract may still be capable of being ratified, or even of being valid unless and until repudiated. Hence, it is suggested, the category of void contracts (if required at all, which is debatable) ought to be restricted to those which are*

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<sup>134</sup> DELEURY, Édith and Dominique GOUBAU. *Le droit des personnes physiques*, Cowansville, Yvon Blais, 4<sup>th</sup> edition, 2008, subsection 487.

<sup>135</sup> *Canadian Encyclopedic Digest*, Children - chap. III.4, Toronto, Carswell, subsection 551, [Westlaw].



*clearly prejudicial to the best interests of the minor, and not simply lacking in any benefit to him*<sup>136</sup>.

It is interesting to note that the more-restrictive conception of the test for deeming a contract to be void curiously echoes the provisions of the *Civil Code of Québec* with regard to lesion<sup>137</sup>, although the two concepts remain completely autonomous.

#### 4.2.5 Void Contracts, Subject to Ratification

As we have seen, a minor does not, under the common law, have the capacity to contract. It follows that a contract concluded before the age of majority cannot, in principle, be imposed on him in an enforceable manner.

Thus, with the exception of a contract for the provision of *necessaries*, the common law considers that in most cases, a contract concluded by a minor has no enforceable effect, unless the minor ratifies the act once he reaches the age of majority<sup>138</sup>.

Ratification may follow from a formal act or be deduced implicitly from the circumstances<sup>139</sup>.

#### 4.2.6 Enforceable Contracts, Subject to Repudiation

Under the common law, contracts of successive performance follow different rules when concluded by minors. Like the others, those contracts are voidable if disavowed; but disavowal of this type of contract is submitted to a particular mechanism, which the common law calls “repudiation”. As McDougall explains:

*If , however, the contract is an ongoing type agreement (such as a rental contract or a partnership contract) that was entered into when the person was a child, the person needs to repudiate the contract in a reasonable time after coming into the age of majority, or the contract will be held to be holding*<sup>140</sup>.

However, the common law does not always allow a contract concluded by the minor to be repudiated. When his obligations under the contract have been discharged by the other party, the minor cannot repudiate the contract if he has obtained from it a “real benefit<sup>141</sup>”.

#### 4.2.7 Restitution of Prestations

In a common law system, the terms for a restitution of prestations prove at times difficult to apply, since the rules governing it are not codified – a coherent and structured legislative text would establish a few certainties in the matter.

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<sup>136</sup> *Op. Cit.*, Note 132, p. 150.

<sup>137</sup> Sec. 163 and 1406 CCQ

<sup>138</sup> *Op. Cit.*, Note 118, p. 95.

<sup>139</sup> *Canadian Encyclopedic Digest*, Children - chap. III.9, Toronto, Carswell, subsection 551, [Westlaw] subsection 564.

<sup>140</sup> MACDOUGALL, Bruce. *Introduction to contracts*, Markham (Ontario), LexisNexis, 2007, p. 171.

<sup>141</sup> *Canadian Encyclopedic Digest*, Children - chap. III.10, Toronto, Carswell, subsection 551, [Westlaw] subsection 568.



This difficulty is exacerbated by the fact that the minor has great discretion in deciding whether or not to disavow the contract; the courts are therefore often tempted to seek practical solutions for all the parties rather than apply the law.

In the course of disputes before them the courts have thus attempted to bring the fairest possible solutions to problems raised by the restitution of prestations.

Because it summarizes well the applicable principles in this regard, it is useful to cite the ruling of *the King's Bench of Manitoba* in *Sturgeon v. Starr*. A minor had defaulted in paying for the motorcycle he had purchased, so the merchant sued to retake possession of it. The court ruled as follows:

*If an infant pays money without valuable consideration he can get it back; and if he pays money for valuable consideration he may also recover it; but subject to the condition that he can restore the other party to his former position<sup>142</sup>.*

From this ruling it follows that the concept of “valuable consideration” occupies a central position in the solution proposed by the court, as does the possibility for the minor to restore his cocontractor to his former position. Professor Poirier explains that this pragmatic solution of Canadian courts contradicts the common law’s traditional position:

*Selon la common law originelle, un mineur n'était pas obligé de restituer les avantages reçus en vertu du contrat qui n'avait pas de force exécutoire contre lui. Aux États-Unis, les tribunaux américains sont restés plus proches de la common law originelle et les mineurs peuvent insister pour que l'argent versé en contrepartie des biens achetés leur soit rendus même s'ils ont consommé, utilisé ou détruit ces biens.*

*La nécessité de protéger le cocontractant adulte contre l'injustice a conduit les tribunaux canadiens à refuser tout redressement au mineur qui ne peut pas restituer les avantages qui lui ont été transférés en vertu du contrat<sup>143</sup>.*

#### 4.2.8 Consequences of a Minor's False Declaration of His Age

Of course, occasionally a minor, absolutely wanting to obtain a good or service that his cocontractor would hesitate to sell to a minor, simply pretends to be an adult. In that case, he might well have to suffer the consequences of his deceit, so long as he has played a more than passive role. But, as pointed out by the *Canadian Encyclopedic Digest*, the loss of protection generally granted to minors then follows from *equity*, and not from common law rules for contracts:

*When an infant has induced persons to deal with him or her by falsely representing himself or herself as of full age, he or she incurs an obligation in equity which, however,*

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<sup>142</sup> *Sturgeon v. Starr* (1911), 17 W.L.R.402, 1911 CarswellMan64 (Man.K.B.). <sup>143</sup> POIRIER, Donald. *Les personnes physiques et les incapacités*, Cowansville, Yvon Blais (coll. “La common law en poche”), 1997, p. 96.

*in the case of a contract, is not an obligation to perform the contract, and must be distinguished from it. In order to establish equitable liability, it must be shown that the infant actually represented himself or herself to be of full age and that the representation actually misled the person to whom it was made. There must be some active conduct on the part of the infant. Merely allowing another person to deal with him or her as if he or she were an adult or doing acts which only an adult can properly do is not sufficient*<sup>144</sup>.

## 4.2.9 Parental Responsibility

Intuitively, many would tend to believe that parents are, generally, personally responsible for contracts entered into by their child. As we have seen, this is not what Quebec caselaw concludes, in clearly drawing a distinction between the child's responsibilities and patrimony and those of his parents<sup>145</sup>.

On this point, there is a parallel between Quebec civil law and the common law. Indeed, the common law retains, as does Quebec civil law, the principle that parents are not more responsible, a priori, for the contractual obligations of their child than is a pure stranger<sup>146</sup>. But there the comparison ends. The common law establishes that the special relation of proximity between a parent and his child leads to an assumption, albeit refutable, that the parent, if he knew that his child was contracting obligations, approved his child's conclusion of the contract<sup>147</sup>.

As noted by Fridman, it remains preferable for the cocontractor to have the parent intervene as a third party to the contract in order to avoid, should the minor default on his obligations, having to fathom the common law rules on the responsibility or obligations that may or may not be imputed to the parents:

*All these problems are avoided if the adult contracting with a minor finds an adult who will undertake primary, not secondary liability on behalf of the minor, for example, by becoming a party to the contract between the adult and the minor*<sup>148</sup>.

## 4.3 The Special Case of British Columbia

In British Columbia, minors' ability to contract is governed by the *Infants Act*<sup>149</sup>. In that sense, British Columbia is distinct from the other Canadian provinces (except Quebec) in formulating rules following essentially from a particular law, rather than from the common law.

### 4.3.1 Principles

Under the *Infants Act*, a contract entered into by a minor is not, in principle, opposable<sup>150</sup>:

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<sup>144</sup> *Op. Cit.*, Note 139, - chap. III.4, Toronto, Carswell, subsection 559.

<sup>145</sup> *Clinique dentaire Lafrenière & St-Pierre v. McLean*, 2003 CanLII 49466 (QC C.Q.).

<sup>146</sup> *Op. Cit.*, Note 139, - chap. III.2, Toronto, Carswell, subsection 543. <sup>147</sup> *Op. Cit.*, Note 139, - chap. III.2, Toronto, Carswell, subsection 543.

<sup>148</sup> FRIDMAN, G.H.L. *The Contract Law in Canada*, Toronto, Thomson/Carswell, 2006, p. 156.

<sup>149</sup> *Infants Act*, RSBC 1996, c. 223.

<sup>150</sup> Sec. 19, *Infants Act*, RSBC 1996, c. 223.

[...] a contract entered into by a minor is unenforceable against him unless it is

- (a) a contract specified under another enactment to be enforceable against an infant,
- (b) affirmed by the infant on his or her reaching the age of majority,
- (c) performed or partially performed by the infant within one year after his or her attaining the age of majority, or
- (d) not repudiated by the infant within one year after his or her reaching the age of majority<sup>151</sup>.

Unless one of those conditions is met, the contract is not enforceable against the person who entered into it when he was a minor. Clearly, those rules are enacted so as to favour the minor's interests, and not to protect his adult cocontractor. For his part, the minor may generally, notwithstanding the above, enforce the contract on his adult cocontractor<sup>152</sup>.

The adult cocontractor may, in a written notice, ask the minor, within a year after the latter reaches the age of majority, to repudiate or ratify their contract<sup>153</sup>. Should the minor receiving such a request fail to respond within 60 days, the contract is automatically repudiated<sup>154</sup>.

#### **4.3.2 Powers of the Court**

When a contract cannot, due to nullity, be enforceable on a minor, the minor himself (or any other part of the contract if the child has repudiated the contract or refuses to execute it) may ask the court to order particular measures to resolve the parties' impasse<sup>155</sup>. The court may then issue all kinds of orders, such as payment of a compensatory amount or returning a good<sup>156</sup>.

In its decision, the court takes into account the context that led to the conclusion of the contract, its object and nature, the value of the good related to the contract, the child's age, the fact that the child did or did not make false representations about his age, etc.<sup>157</sup>

#### **4.3.3 Order to Grant a Minor the Ability to Contract**

In British Columbia, it is possible for a child or a person acting on his behalf to ask the *Public Guardian and Trustee* to grant a minor the ability to contract, whether for a contract to come or for one already concluded or to ratify a contract already concluded<sup>158</sup>. To that end, the person demanding such recognition must demonstrate that the contract in question is to the child's benefit, considering in particular the nature, object and terms of the contract, the child's age and his parents' opinion<sup>159</sup>.

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<sup>151</sup> *Op. Cit.*, Note 149.

<sup>152</sup> Sec. 19 (2), *Infants Act*, RSBC 1996, c. 223.

<sup>153</sup> Sec. 26 (1), *Infants Act*, RSBC 1996, c. 223.

<sup>154</sup> Sec. 26 (2), *Infants Act*, RSBC 1996, c. 223.

<sup>155</sup> Sec. 20, *Infants Act*, RSBC 1996, c. 223.

<sup>156</sup> Sec. 20 (2), *Infants Act*, RSBC 1996, c. 223.

<sup>157</sup> Sec. 20 (3), *Infants Act*, RSBC 1996, c. 223.

<sup>158</sup> Sec. 22 (1), *Infants Act*, RSBC 1996, c. 223.

<sup>159</sup> Sec. 22 (2), *Infants Act*, RSBC 1996, c. 223.

If the *Public Guardian and Trustee* refuses to grant a minor the ability to contract, it remains possible to make the same demand before the court<sup>160</sup>.

## 4.4 Federal Jurisdiction Issues

The issues surrounding minors' ability to contract are of provincial jurisdiction. Those rules will apply when a minor will enter into a contract, whether or not his cocontractor practices an activity of exclusive federal jurisdiction under the Canadian constitution.

It remains that federal frameworks might provide specific rules for contracts concluded by minors in spheres of activity of federal jurisdiction. Because some of those spheres of activity are of special interest to young people, we will briefly examine the issues that may arise, in order to see how specific frameworks might modify in some cases the rules discussed above.

### 4.4.1 900 Charges

In the first section of this report, we pointed out that quite frequently, children or teenagers dial 900 (or 976) numbers, and thus commit through those chargeable calls, unbeknownst to their parents, substantial amounts appearing on the monthly bill related to the telephone line from which the call was made<sup>161</sup>. The account holder, most often the parent, finds out about the existence and amount of the expenditure only once he receives his monthly bill.

As mentioned above, many websites addressed to children use 900 technology as a payment method. To play an online game, a child will, for example, be invited to dial a telephone number to buy a certain quantity of virtual tokens. Several television programs that invite people to enter contests (Call-TV) or vote (Star Académie) also use this payment method.

In a strictly legal sense, it should be mentioned that the minor making the call is the one who contracts directly with the 900 content provider, even if the parent is the one receiving the bill through his telephone service provider.

Fortunately, the CRTC supervises 900 billing to consumers, who benefit from certain guarantees and remedies regarding those charges<sup>162</sup>. CRTC rules provide that the content provider must mention at the beginning of the call that charges will be imposed. The bill on which the 900 charges appear must explain those charges in detail and specify the time, date and duration of

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<sup>160</sup> Sec. 22 (5), *Infants Act*, RSBC 1996, c. 223.

<sup>161</sup> A telephony service provider, Videotron, explains the billing system: "1-900 numbers offer services whose cost is essentially determined by the service provider. Videotron acts only as the call carrier and collection agent." Videotron. Numbers 1-900 and 1-976. [Online] <http://soutien.videotron.com/residentiel/facturation/telephonie/numeros-1-900-1-976> (consulted on April 11, 2011).

<sup>162</sup> See on this subject CRTC decision 2005-19, [Online], <http://www.crtc.gc.ca/fra/archive/2005/dt2005-19.htm> (consulted on April 14, 2011), which determines and explains the warranties we mention.

the call. Moreover, 900 content providers are prohibited from offering services containing, in order to prolong the call and thus increase the charges to consumers, repetitive messages, long call waiting periods, verbiage, or long downloading processes.

The consumer protection measure remains the consumer's right to have 900 charges fully nullified (by the content provider and the telephone service provider) the first time he disputes them reasonably. The fact that a minor has concluded the contract may certainly be invoked as a reasonable motive for disputing the charges.

Apart from those practical considerations, charging 900 fees to a parent's periodic account statement, while his child is the one committing them without his consent, raises interesting legal questions.

Indeed, should the child rather than the parent be considered a party to the contract with a 900 content provider (for example, an automated voting system for a reality TV show)? If so, how can the child commit his parents' responsibility toward their telephone provider, when they are not even a party to the contract between him and the 900 content provider?

However, it should be kept in mind that 900 calls are billed directly to the holder of the telephone line from which the call was made and that he is responsible (as for long distance calls) for all calls made from his line. If a guest (or a burglar) made a long distance call, the account holder would be held responsible. Does the same rule apply if the call is made in order to obtain (or with the effect of obtaining) a service from a third party with whom (as opposed to a long distance call) the holder has made no agreement?

If a 900 call is made by a minor, could it be argued that the parents must be responsible, by the simple fact that they have a duty to supervise their child sufficiently to prevent such an expenditure?

On the assumption that the parents are responsible, could the only remedy open to the parents to recover their money be to sue their own child?

We see that legally, this situation is not simple. We will not claim here to provide answers to these questions. At least we insist that they deserve to be asked.

Another question concerns a 900 service that is prohibited to persons less than 18 years of age and that a minor has contracted with. This situation could be settled more simply and efficiently than through the right to cancel the charges – a first time, “for reasonable motives” – by prohibiting those 900 content providers from offering any service mainly intended for minors, so that all such contracts would automatically be unenforceable on minors (or on their parents, whom they committed in this manner).

#### **4.4.2 Paid text messaging Services (SMS Premium)**

Elsewhere in this report, we discussed the fact that certain unscrupulous companies use various stratagems leading consumers to reveal their cell phone number, in order to force a subscription to a paid text messaging service (also known as “SMS Premium”)<sup>163</sup>. Of course, minors are not

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<sup>163</sup> DUCHESNEAU, Pierre. “‘Textos’ payants: un encadrement, et vite, réclame l'Union,” Protégez-vous, January 30, 2009, [Online], <http://www.protegez-vous.ca/les-nouvelles/2009-01/textos-payants-un->

immune from such dubious practices, and many have their own cell phone. And the “bait” to get consumers to reveal their cell phone number is often designed specifically for young people.

Until a “STOP” or “ARRÊT” message is sent in response to such chargeable text messages, the subscription remains active and the charges accumulate with each message.

What legal remedies are offered to victims (minor or not) of such practices?

First, it should be recalled that telecommunications companies do not contract directly with minors. When a minor has his own cell phone for own personal use, the account’s actual holder is often one of his parents; that parent will be responsible for any charges resulting from his child’s subscription to a paid text messaging service.

However, it is the minor who is contracting with a paid text messaging service provider when disclosing a cell phone number in order, for example, to enter a contest.

The parent thus finds himself in a strange situation: he must incur fees from his cell phone provider for a contract to which he is not a party (the contract entered into by his child to subscribe to the paid text messaging service). In practice, only when receiving his monthly bill does the parent learn the existence of that subscription and of the charges he is now responsible for paying.

It should be noted that the CRTC does not submit paid text messaging services to the same rules as 1-900 charges; it is not possible to obtain a full cancellation of charges related to a subscription to a paid text messaging service simply on the basis of reasonable objection. If he wants to avoid his telephone service being cut or a negative mention in his credit history, a parent whose child has subscribed to a paid text messaging service is thus forced to pay his cell phone provider.

In theory, the parent could afterward go to civil court against the company that sent the chargeable text messages. In Quebec, the parent would have the choice of going to court on his own behalf (being subrogated to the rights of his child) or acting as a tutor on behalf of his child. He could also sue the telephone service provider, which he never authorized to accept and transfer to him the charges imposed by a third party, the content provider – indeed, it is from the minor contracting to obtain content that the text messaging provider accepts the authorization to bill the telephone account.

The legal reasons for suing to dispute the charges of such a contract concluded by a minor are not lacking – absence of consent, lesionary nature of the contract, false and misleading representations, etc. – and direct remedy against the access provider for illegally billing for a service provided by a third party without the account holder’s authorization.

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[encadrement-et-vite-reclame-lunion.html](http://encadrement-et-vite-reclame-lunion.html) (consulted on June 7, 2011).; TISON, Marc. “Pièges à ados sur cellulaire,” Technaute.ca, April 3, 2006, [Online], <http://technaute.cyberpresse.ca/nouvelles/mobilite/200604/03/01-15404-pieges-a-ados-sur-cellulaire.php> (consulted on January 6, 2011).; CHARRON, François. “Concours par SMS ou Textos sur Facebook et Internet: Attention!,” [Online], <http://www.francoischarron.com/concours-par-sms-ou-textos-sur-facebook-et-internet-attention/-/x3GibBNi8E/menu/> (consulted on January 6, 2011).

The problem is more practical, and complicates so many consumer remedies: unless the charges billed are colossal, the efforts to sue and have a court decision enforced (in the event of victory) appear much too great in relation to the possible gains.

Apart from these practical considerations, subscriptions to paid text messaging services billed to a parent's periodic account statement, whereas his child is the one committing the charges without his consent, raises interesting legal questions.

Some of the same questions arise here as for 900 services (how can a child commit his parents' responsibility when they are not even a party to the contract between him and the text messaging content provider? If such a subscription is made by a minor, could it be argued that the parents must be responsible, simply by the fact that they had the duty to supervise their child sufficiently to prevent such an expenditure?), but other questions are different and perhaps even more complex.

It should be kept in mind that subscriptions to chargeable text messages are not billed directly to the holder of the telephone line from which the call was made – in fact, subscription to those services requires the subscriber to provide a cell phone number, to which the text messages will be sent and to whose account the service will be billed. The chargeable text messaging subscription system requires in principle that the phone whose number was provided for receipt of the messages (and for billing) be used for confirming the subscription. It is through a contract concluded not by the telephone line holder, necessarily, but by the minor subscribing to the text messaging service, that authorization is given to bill to the holder's account. Can it be reasonably assumed that parents have authorized a third party, simply by the latter using a telephone, to accept on their behalf that services be billed to their account? Do the parents become responsible simply because they should see to it that their children do not make such agreements?

On the assumption that the parents' responsibility should be retained, should the only remedy offered to parents to recover the amounts they had to pay their telephone service provider be to sue their own child?

We see that, legally speaking, this situation too is not simple. We do not claim here to provide an answer to these questions. We insist that they deserve at least to be asked.

Likewise for questions about a text messaging service prohibited to persons less than 18 years of age, and with which a minor has contracted...



## 5. Foreign Legal Frameworks

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In this section of our report, we will review a few of the approaches taken abroad concerning minors' ability to contract.

### 5.1 Countries of Anglo-Saxon Tradition

The common law is a legal system inherited from the British. As do Canadian provinces (except Quebec), a good number of former British colonies – such as the United States, Australia, New Zealand and Ireland – still use the common law as the main legal system<sup>164</sup>.

Accordingly, the rules we have examined in our presentation of the Canadian legal framework apply, except for a few details, to these foreign jurisdictions. In this regard, the United Kingdom adopted in 1987 the *Minor's Contracts Act* to bring a few clarifications to certain aspects of the common law<sup>165</sup>.

Some of these countries, including Ireland, have set up committees to review the rules for minors' ability to contract<sup>166</sup>. But it appears that the committees' approach was essentially to make well-targeted improvements to rules developed by the common law, rather than question them entirely.

Finally, it should be noted that the issue of minors' ability to contract may at times arise differently from one country to another, given the circumstances of each country.

### 5.2 France

The similarities between the rules for minors' capacity to contract in France and Quebec are not surprising, since the *Civil Code of Lower Canada* (the ancestor of the *Civil Code of Québec*<sup>167</sup>) was largely inspired by the *French civil code* (also called the Napoleonic Code). The French code establishes concepts of lesion, relative nullity, absolute nullity, etc. where the issue of minors ability to contract is involved<sup>168</sup>.

However, the approach taken by the *French civil code* differs in many respects from that retained by the *Civil Code of Québec*.

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<sup>164</sup> For a general introduction to the common law, see: "Common Law" in Wikipedia, [Online], [http://en.wikipedia.org/wiki/Common\\_law](http://en.wikipedia.org/wiki/Common_law) (consulted on June 28, 2010).

<sup>165</sup> *Minors' Contracts Act 1987*, c. 13. Can be consulted online:

<http://www.legislation.gov.uk/ukpga/1987/13> (page consulted on June 19, 2011).

<sup>166</sup> (IRELAND) LAW REFORM COMMISSION. *Report on Minor's Contracts*, 1985, [Online], [http://www.lawreform.ie/fileupload/Reports/rMinors%27Contracts\(1\).pdf](http://www.lawreform.ie/fileupload/Reports/rMinors%27Contracts(1).pdf) (consulted on 20/08/2010).

<sup>167</sup> The Civil Code of Québec, which in 1994 replaced the *Civil Code of Lower Canada*, has not substantially modified the legal framework for minors to contract.

<sup>168</sup> BÉNABENT, Alain. *Droit civil : Les obligations*, Paris, Montchrestien, 2007, p. 31-32.



First, the French code clearly states that a non-emancipated minor has a general inability to exercise his rights, in contrast to sections 155 and 157 of the *Civil Code of Québec*, which, as we have seen, prefer to leave the door ajar on this subject<sup>169</sup>.

In principle, “*l’incapacité du mineur est une incapacité totale d’exercice qui requiert la mise en place par le législateur d’un régime de représentation constante du mineur dans tous les actes de la vie civile*”<sup>170</sup>. However, using a typology of legal acts that has no equivalent in Quebec law, the French code creates exceptions to the principle that a minor is unable to contract alone.

Indeed, in French law, the minor’s actual sphere of independence is determined by distinguishing various types of legal acts<sup>171</sup>. This is illustrated by the following table:

**Table 1**  
**Types of Legal Acts**

Types of Legal Acts	Type of Nullity	Necessity of Demonstrating Lesion
Acts of everyday life	Relative	Yes
Acts of conservation and administration	Relative	Yes
Deeds of settlement	Relative	No
Serious acts	Relative	No
Prohibited acts	Absolute	No

Acts of everyday life include, for example, everyday purchases – of food, clothing, personal care, etc.<sup>172</sup> This is the most relevant category of acts for the purposes of our research, given that most contracts concluded by minors in a consumer context may be qualified as “acts of everyday life” in French law.

Acts of conservation and administration pertain to contracts for the maintenance and day-to-day management of goods (for example, a contract to repair a house’s roof)<sup>173</sup>. As for deeds of settlement, they mainly concern cases where a minor sells a product other than an everyday piece of furniture, as well as contracts committing his property otherwise (through a mortgage, for example)<sup>174</sup>. Serious acts are acts likely to strongly impoverish the minor’s estate: loans, waiving a right, building disposal, etc.<sup>175</sup> Finally, prohibited acts are acts for which a minor clearly has an incapacity for enjoyment, i.e., no one is authorized to even perform those acts on

<sup>169</sup> It should be noted that the Civil Code of Québec states the following:

155. A minor exercises his civil rights only to the extent provided by law.

157. A minor may, within the limits imposed by his age and power of discernment, enter into contracts alone to meet his ordinary and usual needs.

<sup>170</sup> Université Robert Schuman, Droit de la Famille, Strasbourg. [Online] <http://www-cdpf.u-strasbg.fr/Incminluxbrg.htm> (page consulted on June 19, 2011).

<sup>171</sup> The information presented in the following table is taken from BÉNABENT, Alain. *Droit civil : Les obligations*, Paris, Montchrestien, 2007, pp. 31-32.

<sup>172</sup> BÉNABENT, Alain. *Droit civil : Les obligations*, Paris, Montchrestien, 2007, p. 31.

<sup>173</sup> *Op. Cit.*, Note 172.

<sup>174</sup> *Op. Cit.*, Note 172, p. 32.

<sup>175</sup> *Op. Cit.*, Note 172, p. 32.

behalf of the minor (for instance, granting security that would involve the risk of robbing the minor<sup>176</sup>).

French and Quebec law are similar regarding the scope and use of that declaration of inability:

*[...] l'incapacité contractuelle du mineur n'est qu'une incapacité de protection, une incapacité édictée pour le protéger, non pour le brider. La Cour de cassation a par deux arrêts, les 18 juin 1844 et 25 mars 1861, rappelé que l'incapacité du mineur n'est pas de contracter, mais de se léser. Seuls le mineur et ses parents peuvent se prévaloir de cette incapacité, pour faire annuler une transaction où le contractant aurait abusé de la minorité de l'enfant.*

*En outre, l'incapacité du mineur se limite "aux actes de disposition et aux actes d'administration qui causeraient un préjudice pécuniaire".*

*Le mineur capable de discernement peut valablement accomplir seul les actes de la vie courante [...]. L'incapacité contractuelle du mineur n'étant édictée que dans le but de le protéger, elle ne doit pas l'empêcher de contracter valablement dans de multiples situations courantes de la vie quotidienne : au supermarché, chez le disquaire, dans la boutique d'informatique. [...] Un mineur doit pouvoir accomplir les actes autorisés par l'usage. S'il devait se munir de l'autorisation préalable sous seing privé de son père et sa mère à chacun de ses pas, la vie quotidienne deviendrait impossible, autant pour l'enfant que pour les parents<sup>177</sup>.*

### 5.3 Russia

The *Civil Code of the Russian Federation* draws interesting distinctions regarding minors' ability to contract. Under Russian law, minors 6 to 14 years of age are distinguished from minors 14 to 18 years of age<sup>178</sup>.

With regard to children 6 to 14 years of age, the Russian Civil Code considers, as a general rule, that they do not have the required ability to contract<sup>179</sup>. But there are a few exceptions to this principle:

2. *The minors of from 6 to 14 years of age shall have the right to independently effect:*
  - 1) *petty everyday deals;*
  - 2) *the deals, aimed at deriving a free profit, which are not liable to the notary's certification or to the state registration;*

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<sup>176</sup> *Op. Cit.*, Note 172, p. 32.

<sup>177</sup> BARDOUT, Jean-Claude, magistrat. Interdit d'association. Troisième préjugé. Le faux argument de l'incapacité contractuelle. November 19, 2006. [Online] <http://associationdemineurs.blog.lemonde.fr/2006/11/19/troisieme-prejuge-le-faux-argument-de-lincapacite-contractuelle/> (consulted on June 19, 2011).

<sup>178</sup> *Civil Code of the Russian Federation*, Open LLC, <http://www.russian-civil-code.com/>, 2003, art. 26 and 28.

<sup>179</sup> *Op. Cit.*, Note 180, (1).

- 3) *the deals, involved in the disposal of the means, provided by the legal representative or, upon the latter's consent, by a third person for a definite purpose or for a free disposal*<sup>180</sup>.

As opposed to the solution prevailing in Quebec and Canadian law, the Russian Civil Code clearly states that parents are responsible for the contracts their child (6 to 14 years of age) concludes independently, unless they demonstrate that the default on the obligation took place through no fault of their own<sup>181</sup>.

As for minors 14 to 18 years of age, the Russian Civil Code provides that they may, in principle, enter into contracts, subject to the written consent of their parents<sup>182</sup>. If the parents' consent is given subsequently, it has the same legal effect<sup>183</sup>. Exceptionally, minors 14 to 18 years of age may conclude contracts without their parents' consent:

- 1) *to dispose of their earnings, student's grant or other incomes;*
- 2) *to exercise the author's rights to a work of science, literature or art, to an invention or to another law-protected result of their intellectual activity;*
- 3) *in conformity with the law, to make deposits into the credit institutions and to dispose of these;*
- 4) *to effect petty everyday deals, and also the other deals, stipulated by Item 2 of Article 28 of the present Code*<sup>184</sup>.

The Russian Civil Code also provides that minors at least 16 years of age may be members of cooperatives under the laws on cooperatives<sup>185</sup>. With regard to contracts concluded by minors 14 to 18 years of age, The Russian civil Code considers, as does Quebec law, that the minors themselves are responsible, and does not make their parents bear responsibility<sup>186</sup>.

## 5.4 Germany

Like France and Quebec, Germany is a country of codified law. The rules governing minors' ability to contract are set out in the German Civil Code (*Bürgerliches Gesetzbuch*, often abbreviated as BGB).

Under the BGB, children less than 7 years of age are totally unable to contract<sup>187</sup>. Only from the age of 7 years can minors benefit from a restricted ability to conclude legal acts<sup>188</sup>.

It is important to distinguish between acts that minors may conclude alone from that age, without any authorization, along with acts requiring authorization from the legal representative, generally the parents.

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<sup>180</sup> *Op. Cit.*, Note 180, art. 28 (2).

<sup>181</sup> *Op. Cit.*, Note 180, art. 28 (3).

<sup>182</sup> *Op. Cit.*, Note 180, art. 26 (1).

<sup>183</sup> *Op. Cit.*, Note 180, art. 26 (1) par. 2.

<sup>184</sup> *Op. Cit.*, Note 180, art. 26 (2).

<sup>185</sup> *Op. Cit.*, Note 180, art. 26 (2).

<sup>186</sup> *Op. Cit.*, Note 180, art. 26 (3).

<sup>187</sup> FERRAND, Frédérique. *Droit privé allemand*, Paris, Dalloz, 1997 p. 236.

<sup>188</sup> *Op. Cit.*, Note 187, p. 237.

The only legal acts that children 7 years of age or over may conclude alone, without prior authorization, are those exclusively giving them a legal benefit (the BGB refers here to a “legal”, not an economic benefit), i.e., purely neutral acts<sup>189</sup>. An example is land acquisition for free.

All other legal acts concluded by minors must be authorized by their legal representative<sup>190</sup>. The authorization may apply to a specific act or a series of legal acts<sup>191</sup>. However, it remains out the question for a parent to give, in advance, a general authorization granting the minor an ability similar to that of an adult<sup>192</sup>.

The authorization granted by a minor’s legal representative may be revoked at any time so long as the legal act considered has not been concluded<sup>193</sup>.

The authorization will also be considered as having been granted tacitly when a minor uses financial resources made available to him by his parents to meet an obligation<sup>194</sup>. In practical terms, this means that German law considers that parents consent when allowing their minor child to purchase goods and services with the pocket money they gave him.

Although, in principle, authorization from the child’s legal representative must be granted before the legal act is concluded, the representative may subsequently ratify the legal act concluded by the minor alone<sup>195</sup>. The act is in a state of temporary unenforceability from the moment it is concluded by the minor and the moment he receives his legal representative’s ratification<sup>196</sup>.

It should be noted that if he was unaware that his cocontractor was a minor when the contract was concluded, the person contracting with the minor has the right to revoke the contract until it has been ratified<sup>197</sup>. The minor’s cocontractor may also, should he consider it useful to make sure of the contract’s legal validity, solicit ratification of the act from the minor’s legal representative<sup>198</sup>. In such cases, if the representative omits meeting this demand within two weeks after receiving it, the BGB considers that that the representative is refusing ratification<sup>199</sup>.

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<sup>189</sup> *Op. Cit.*, Note 187, p. 237.

<sup>190</sup> *Op. Cit.*, Note 187, p. 238.

<sup>191</sup> *Op. Cit.*, Note 187, p. 238.

<sup>192</sup> *Op. Cit.*, Note 187, p. 238.

<sup>193</sup> *Op. Cit.*, Note 187, p. 238.

<sup>194</sup> *Op. Cit.*, Note 187, p. 239.

<sup>195</sup> *Op. Cit.*, Note 187, p. 239.

<sup>196</sup> *Op. Cit.*, Note 187, p. 239.

<sup>197</sup> *Op. Cit.*, Note 187, p. 240.

<sup>198</sup> *Op. Cit.*, Note 187, pp. 239-240.

<sup>199</sup> *Op. Cit.*, Note 187, p. 240.

## 6. Analysis of Collected Data

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### 6.1 Object and Scope

We have seen that the issues concerning minor consumers are many and complex, particularly in legal terms. At first sight, there is much here to confuse parents, merchants and minors, so we could not conduct our study without including an empirical aspect, to gauge the perceptions of people involved.

Although previous studies of young people as consumers exist, those studies had an entirely different perspective (marketing studies, family sociology, etc.) from ours, which focuses on legal and consumer rights issues.

Given the relatively novel perspective of our research, the ultimate objective of our data collection remains, as will be seen, to contribute to a more nuanced analysis of the dynamic studied, despite our strictly exploratory findings.

While the numbers presented herein demonstrate a certain reality and certain reveal several sociological trends, readers should keep in mind that the results of our investigation may not be totally representative of the issues.

### 6.2 Methodology

We collected data from three distinct groups, notably to obtain their perceptions of the likely issues surrounding contracts concluded with minors, and of actual situations that confronted them. Those groups were constituted as follows:

- parents of teenagers;
- merchants whose businesses are most likely to concern our study;
- governmental consumer protection organizations.

The 3 questionnaires (see annexes) were designed internally, although we previously had occasion to discuss our research avenues with Ms. Marie J. Lachance, professor at the Department of Agri-Food Economy and Consumer Sciences of Université Laval.

Our investigation among parents of teenagers proved most fruitful.

We collected 220 complete answers (out of 265 respondents) to our Web questionnaire addressed to parents of at least one child 12 to 17 years of age. On the assumption that a respondent had more than one child, we asked him to answer the questionnaire while only taking into account the child whose date of birth was most recent.

The respondents came from a sample of several thousand subscribers to the mailing list of Union des consommateurs, and the overwhelming majority were Quebecers<sup>200</sup>. The invitation was sent in March 2011 to all subscribers on that list.

Regarding our sample's representativeness, two comments should be made:

First, given our approach's exploratory nature, we did not think it necessary to depend on a probability sample allowing the margin of error to be calculated (particularly since professional polling firms are replacing that sampling technique with others). Second, although our sample size ( $n = 220$ ) is highly appropriate for an exploratory study, it is still possible that the consumers questioned show a particular sensibility and interest, and it may be assumed that they are more vigilant regarding consumer issues, since they subscribe to the mailing list of a consumer rights organization.

Meanwhile, we prepared an online questionnaire addressed to merchants most likely to conclude, with minors, contracts raising consumer protection issues.

We contacted the communications department of companies that seemed likely to be affected by the issues discussed in our study, with the intention of obtaining information about company policies on contracts with minors.

We approached companies that were leaders in six key sectors among those that minors do business with:

- telecommunications;
- furniture;
- sporting goods;
- electronics;
- vehicle repairs;
- financial institutions.

Participation in the study was subject to a privacy and confidentiality policy that accompanied the invitation to answer our questionnaire and that companies could read before responding to the questionnaire. The confidentiality agreement provided that the names of companies having agreed or refused to take part in our study would not be disclosed.

Twenty companies – all of them chains with many outlets – were approached in February and March 2011. Unfortunately, the companies proved not very inclined to participate in our study, despite all our efforts. We will discuss below the possible reasons for the low participation rate of companies.

We also contacted most (7) consumer protection organizations in Canada to invite them to participate in our study. Three of them answered our call and filled out the online questionnaire.

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<sup>201</sup> We may assume that the respondents' desire to provide "the right answer" may have influenced our results, given the evident perspective of our research. It would thus be interesting to compare the data obtained from the parents by asking their teenagers whether they discuss personal finances with their parents.

Comprised of essentially open questions, the questionnaire was intended to obtain information on complaints received about minor consumers, information campaigns conducted, etc.

### 6.3 Parents of Teenagers

First, we observe the relatively uniform distribution of age groups among parents having answered the questionnaire, with the greatest difference being among parents of a 17-year-old (20.6%). Over half of respondents filled out the questionnaire with regard to a child 15 years of age or over (53.3%).

**Table 2**  
**Distribution of Respondents by Their Children's Age Groups**

Are you the parent of at least one child 12 to 17 years of age?	%
11 years or less	1.0%
12 years	18.1%
13 years	15.1%
14 years	12.1%
15 years	14.6%
16 years	18.1%
17 years	20.6%
18 years or over	0.5%

This relative uniformity has the advantage of allowing us to state that the results obtain should, in principle, apply to all parents of a teenager living at home, whatever his age. Obviously, it remains possible that cross-checking the answers to certain questions with the teenager's age reveals a few more-pronounced disparities as to age, but this should prove relatively rare.

In our review of the literature, we reported that in 2005, about one out of five teenagers (21%) had a paying job while attending school full-time [Vanier]. The data from our investigation among parents confirm this trend and, at least in the case of the parents we questioned, go even further. In fact, 35% of parents who took part in our investigation report that their teenager has paid employment.

If we add persons having answered "a lot" or "somewhat", it appears that personal finances are a subject of discussion between parents and teenagers among 71.7% of the persons we questioned:

**Table 3**  
**Proportion of Parents Discussing Personal Finances**  
**with Their Child, in Terms of Degree**

Do you discuss consumption or personal finances with your child?	%
A lot	17.8%
Somewhat	53.9%
Not very much	24.6%
Not at all	3.7%

Inversely, only 3.7% of respondents reported not discussing personal finances with their child at all<sup>201</sup>.

Moreover, most of the parents think they have an influence over their children's purchases, as demonstrated by the table below:

**Table 4**  
**Parents' Degree of Influence over Their Child's Personal Finances**

As a parent, do you think you have an influence over your child's consumer choices?	%
A lot	21.2%
Somewhat	55.6%
Not very much	22.2%
Not at all	1.1%

We use the word "think" because our assessment of parents' degree of influence rests on their own perception. It is thus not an objective indicator. A breakdown of the data collected indicates that the degree of influence diminishes progressively when children go from 13 to 14 years of age (about 29% to 21%) and again from 16 to 17 years of age.

**Table 5**  
**Parents' Degree of Influence over Their Child's Personal Finances by Age Group**

Age / Degree of Influence	11	12	13	14	15	16	17	18	Total
A lot	0%	28.6%	29.6%	20.8%	20.7%	20.6%	10.0%	0%	21.2%
Somewhat	0%	60.0%	37.0%	62.5%	62.1%	55.9%	55.0%	0%	55.6%
Not very much	0%	11.4%	29.6%	16.7%	17.2%	20.6%	35.0%	0%	22.2%
Not at all	0%	0%	3.7%	0%	0%	2.9%	0%	0%	1.1%
Nb of answers	2	35	27	24	29	34	40	0	189
Nb of children	2	36	30	24	29	36	41	1	265
No answer	2	1	3	0	0	2	1	1	10

In addition, beyond simple influence, the parents do not hesitate to supervise their teenagers' expenditures directly. This is the case for 71.4% of respondents, if we combine the parents who answered "a lot" or "somewhat":



**Table 6**  
**Parents' Degree of Supervision over Their Child's Expenditures**

Do you supervise the way your child spends his personal money?	%
A lot	22.2%
Somewhat	49.2%
Not very much	25.4%
Not at all	3.2%

It is interesting to note that only 3.2% of the parents state that they do not supervise their child's expenditures at all. So the fact that today's teenagers have more money to spend in a discretionary way than previously does not mean that minors now spend money without any parental supervision.

Here again, we observe a reduction in supervision as the child ages. The "somewhat" and "not very much" categories of supervision, for their part, follow curves that only a sociological analysis could attempt to explain.

**Table 7**  
**Parents' Degree of Supervision over their Child's Expenditures by Age Group**

Age/Supervision of Expenditures	11	12	13	14	15	16	17	18	Total
A lot	0%	45.7%	25.9%	25.0%	20.7%	11.8%	7.5%	0%	22.2%
Somewhat	0%	40.0%	48.1%	66.7%	55.2%	58.8%	35.0%	0%	49.2%
Not very much	0%	14.3%	22.2%	8.3%	20.7%	23.5%	52.5%	0%	25.4%
Not at all	0%	0%	3.7%	0%	3.4%	5.9%	5.0%	0%	3.2%
Nb of answers	0	35	27	24	29	34	40	0	189
Nb of children	2	36	30	24	29	36	41	1	265
No answer	2	1	3	0	0	2	1	1	10

We questioned the parents of teenagers about the legal rules for minors' ability to contract. Our objective was to learn how they perceive their degree of knowledge of those rules. The table below presents the results:

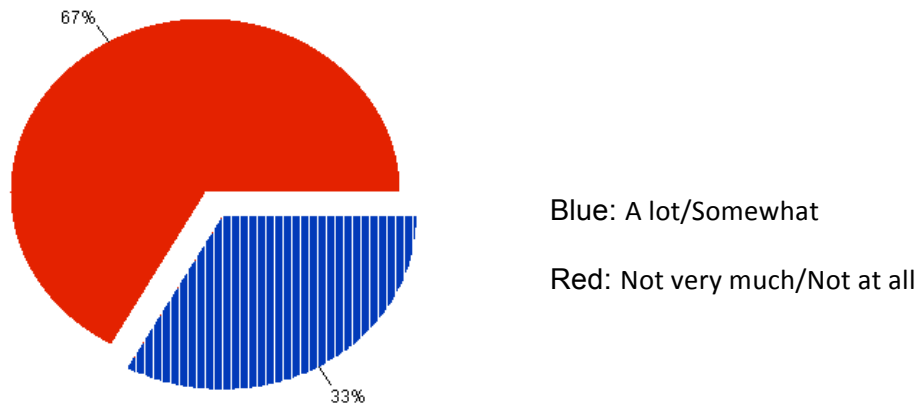
**Table 8**  
**Parents' Perception of Their Degree of Knowledge of Legal Rules**

How much do you think you know about the legal rules that apply to transactions concluded by persons less than 18 years of age to acquire goods and services?	%
A lot	1.1%
Somewhat	31.5%
Not very much	51.9%
Not at all	15.5%

We note immediately that the parents' confidence when asked about their ability to supervise their teenager's consumption or to influence him is not found here. On the contrary, only 1.1% of respondents state that they know "a lot" about applicable legal rules.

If we group the results into two categories, the information deficit that parents estimate they have proves even more striking, as shown by the graphic below:

**Graphic 2**  
**Respondents' Perception of How Much They Know**  
**About Legal Rules for the Ability of Minors to Contract**



This result is in line with our expectations, to the extent that the applicable legal rules are not clear to parents and are rarely invoked or popularized in the media. As we will see, it is difficult to find information on the rules for minors' ability to contract, even on websites whose mission is to inform consumers about consumer issues and on websites dedicated to legal popularization.

When parents are asked about their sources of information regarding legal rules applicable to contracts entered into by minors, we observe that parents rely on various sources, none of which is predominant:

**Table 9**  
**Parents' Sources of Information about Legal Rules**

What are your sources of information about legal rules applicable to transactions made by persons less than 18 years of age to acquire goods and services?	%
Television programs about consumption (e.g.: "la Facture," "J.E.")	54.6%
Legal popularization websites (e.g.: <a href="http://educaloi.qc.ca">educaloi.qc.ca</a> , <a href="http://avocat.qc.ca">avocat.qc.ca</a> )	21.8%
Websites of consumer protection organizations or associations	43.1%
Magazines about consumer issues (e.g.: "Protégez-vous")	33.3%
Newspapers	28.2%
Parents, friends, co-workers	35.1%
I don't obtain information on that subject	22.4%
Other (please specify)	4.0%

It should still be noted that, even in this Internet era, television remains an unavoidable information medium, with almost 55 % of respondents relying on it. Consumer association websites are also a coveted source of information, since 43.1% of respondents say they refer to them. But this finding should be tempered, because our sample is comprised of subscribers to a consumer association's electronic newsletter.

Moreover, 22.4% of respondents say that they do not obtain information on the subject. It may be assumed that even more respondents do not obtain information about this issue, but that they hesitated to admit it, as is often the case in this type of study and perhaps more here, with a survey from a consumer rights group. In the respondent's mind, "I don't obtain information on that subject" is clearly the bad answer here. It is reasonable to assume that if those respondents were to obtain information on this issue, they would use the sources indicated, probably in the same proportions.

Our survey did not ask respondents to classify those various sources of information by order of priority. Given the distribution of answers, this proves to have been a mistake; classification by priority could have been revealing about how reliable the respondents find those various sources.

Only 7.5% of respondents state that their teenager has experienced problems with a merchant with regard to a good or service he had obtained from the latter (11.3% say they don't know and 81.2% answer in the negative).

This information is surprising. Given the issues we have raised in our review of the literature, we might have believed that the parents would have reported a greater number of hassles with merchants. Does this mean that the issues raised herein do not exist, at least in a relatively high proportion statistically?

We should not jump to conclusions. The low number of incidents that the parents reported between merchants and teenagers may reveal other dynamics. For instance, considering that parent-child communication is not always easy at that age, children do not necessarily find it useful to disclose this type of problem to their parents if the amounts of money at play are relatively small. Can it be assumed that the parents who responded to our survey are not necessarily aware of all the problems experienced by their children as consumers? In this

regard, it would be highly useful to conduct semi-structured interviews of the teenagers themselves to confirm or inform our findings.

That being said, certain problems were still raised by the respondents. Among them (about fifteen), we find one case of a fraudulent SMS contest, problems obtaining an extended warranty refund on an item already guaranteed for life by the manufacturer, etc.

When a parent is informed about problems his teenager is experiencing with a merchant, that parent will probably ask himself (but likely not in these terms) whether his child had the capacity to make a commitment to that merchant; the question will probably be raised all the more if the amount in question is substantial or if the minor is particularly young.

To avoid making the question seem too theoretical to them, we found it essential to directly verify parents' perceptions of minors' ability to contract, by attracting their attention to contracts that a young consumer is likely to enter into. So first we asked respondents:

*“Do you have the impression that the law authorizes a minor child to obtain, without his parents' prior consent, the following goods and services?”*

Beyond the purely legal aspect of the question, we wanted to learn whether parents thought it acceptable that minors were able to contract. To that end, we asked the following question, while again giving examples of contracts likely to be entered into by a young consumer:

*“Whatever the law says about it, do you personally find it morally and ethically acceptable for a minor child to acquire, without his parents' prior consent, the following goods and services?”*

The table below groups the answers to those two questions to highlight certain findings.

**Table 10**  
**Parents' Answers on the Acceptability of Transactions Made by Minors in Terms of a Few**  
**Categories of Goods and Services, in Increasing Order of "Yes" Answers**

<b>Ethically</b>		
<b>Categories of Goods and Services</b>	<b>Yes</b>	<b>No</b>
A restaurant meal	94.9%	5.1%
A movie ticket	93.7%	6.3%
Clothing	91.1%	8.9%
An e-payment card (for example, an iTunes or Tim Hortons card)	59.5%	40.5%
A computer	38.0%	62.0%
A cell phone	17.7%	82.3%
Expensive jewellery	15.8%	84.2%
A tattoo	8.2%	91.8%
Housing	5.1%	94.9%
A car	3.2%	96.8%
A snowmobile or ATV	3.2%	96.8%
A credit card	2.5%	97.5%
Real estate	1.9%	98.1%
A personal loan from a financial institution	1.3%	98.7%

**Table 11**  
**Parents' Answers on the Legality of Transactions Made by Minors in Terms of a Few**  
**Categories of Goods and Services, in Increasing Order of "Yes" Answers**

<b>According to the Law</b>		
<b>Categories of Goods and Services</b>	<b>Yes</b>	<b>No</b>
A movie ticket	91.1%	8.9%
Clothing	91.1%	8.9%
A restaurant meal	89.9%	10.1%
An e-payment card (for example, an iTunes or Tim Hortons card)	82.8%	17.2%
A computer	80.5%	19.5%
Expensive jewellery	72.8%	27.2%
A tattoo	58.0%	42.0%
A cell phone	50.9%	49.1%
A credit card	32.0%	68.0%
A car	26.6%	73.4%
Housing	26.0%	74.0%
A snowmobile or ATV	18.9%	81.1%
A personal loan from a financial institution	12.4%	87.6%
Real estate	8.9%	91.1%

**Table 12**  
**Parents' Answers on the Legality or Acceptability of Transactions Made by Minors in**  
**Terms of a Few Categories of Goods and Services, in Increasing Order of "Yes" Answers**

Categories of Goods and Services	According to the Law		Ethically	
	Yes	No	Yes	No
Expensive jewellery	72.8%	27.2%	15.8%	84.2%
Clothing	91.1%	8.9%	91.1%	8.9%
A movie ticket	91.1%	8.9%	93.7%	6.3%
Housing	26.0%	74.0%	5.1%	94.9%
A computer	80.5%	19.5%	38.0%	62.0%
A personal loan from a financial institution	12.4%	87.6%	1.3%	98.7%
A restaurant meal	89.9%	10.1%	94.9%	5.1%
A tattoo	58.0%	42.0%	8.2%	91.8%
A cell phone	50.9%	49.1%	17.7%	82.3%
A credit card	32.0%	68.0%	2.5%	97.5%
An e-payment card (for example, an iTunes or Tim Hortons card)	82.8%	17.2%	59.5%	40.5%
A snowmobile or ATV	18.9%	81.1%	3.2%	96.8%
Real estate	8.9%	91.1%	1.9%	98.1%
A car	26.6%	73.4%	3.2%	96.8%

As we expected, the parents of minors estimate that the right of children to contract without their parents' prior authorization varies according to the type of good or the value of the contract. They seem convinced that the law prohibits, for example, personal loans from a financial institution or purchasing a snowmobile, ATV or real estate (in proportions of 87.6%, 81.1% and 91.1%, respectively) and estimate, in an even greater proportion, that such transactions should be prohibited by law (in the same order: 98.7%, 96.8% and 98.1%).

Almost 75% of respondents think the law does not allow minors to rent an apartment or buy a car without their parents' prior authorization. As for whether the law should allow it, the answers are almost unanimously negative (94.9% and 96.8%, respectively).

A strong majority of parents think the law authorizes a minor to purchase, without prior authorization, clothing (91.1%), movie tickets (91.1%), restaurant meals (89.9%), computers (80.5%); while less than 10% of respondents would prefer a more restrictive approach for clothing, movie tickets and restaurant meals, the opposition is much starker for computers: 62% of respondents think that such purchases should not be allowed without the parents' prior authorization.

Views on the right of minors to contract with regard to credit cards, cell phones, personal loans from a financial institution, expensive jewellery and tattoos are mixed, but they converge on the acceptability of such contracts without prior authorization: over 80% of respondents find it unacceptable that a minor could acquire a telephone or luxury jewellery without parental authorization, and over 90% oppose other transactions – most strongly, almost unanimously, regarding credit cards (97.5%) and personal loans (98.7%). We note that a majority of



respondents also believe that the law already prohibits concluding those two types of contracts with minors without authorization (68% and 87.6%, respectively).

Parents thus have a perception that the law grants their child, regarding several types of transaction, a level of independence that may be higher than they are personally inclined to grant them. It would probably have been interesting to verify whether parents who believe that certain transactions are legal, whereas others are not, believe that precisely because their child has concluded without any obstacle a transaction of that type.

Indeed, it could be interesting to pursue the analysis of parents' motives for finding one transaction more acceptable than another, or what leads them to believe, at times wrongly, that the law authorizes or prohibits this or that transaction when a minor is concerned. However, it appears at first sight that parents find it acceptable for minors to be able to make transactions pertaining to usual needs (restaurant meal, ticket to the show, clothing ) – and that this concept remains relevant as it is set out in the CCQ.

In addition, it appears that parents and the Quebec legislature agree on the issue of credit cards. Credit card issuers have a policy of not issuing cards to minors. Not content with this simple policy, the Quebec legislature introduced in June 2011 a bill to legally prohibit such issuance.

We also wanted to verify whether respondents' perceptions of the legality of contracts concluded by minors may vary not according to the nature or service purchased, but to certain characteristics of the contract or the young contractor. We asked respondents: *“More specifically, do you have the impression that a person less than 18 years of age can, without his parents' prior authorization, legally conclude the following transactions with a merchant?”* The table below draws a portrait of the answers obtained.

**Table 13**  
**Respondents' Perceptions of the Validity of Contracts Concluded by a Minor,**  
**depending on Contracts' Certain Characteristics**

<b>Contract Characteristics</b>	<b>Yes</b>	<b>No</b>
Acquiring goods or services through a “buy now, pay later” plan	17.1%	82.9%
Acquiring goods or services of great value	43.3%	56.7%
Acquiring goods or services, when the minor consumer is at least 16 years of age	82.3%	17.7%
Acquiring goods or services, when the minor consumer is at least 14 years of age	65.9%	34.1%
Acquiring goods or services, when the minor consumer is less than 14 years of age	50.6%	49.4%
Concluding a subscription contract involving periodic payments	41.5%	58.5%
Acquiring goods or services to meet essential needs (for example: furniture, food, transportation, telephone service, etc.)	69.5%	30.5%

As the above table shows, the perception that a contract concluded with a minor is valid increases with the minor's age: 50.6% for minors less than 14 years of age, 65.9% for minors 14 years of age and over, and 82.3% for minors 16 years of age or over.

Even if their viewpoint is not in the majority, a considerable proportion of respondents questioned have the impression that the law does not even allow a minor to acquire goods and services in order to meet his essential needs – the concept of “ordinary and usual needs” in the *Civil Code of Québec* or of “necessaries” in the common law is thus not echoed among the population as a whole.

## 6.4 Merchants

Data collection from merchants did not obtain the results we had anticipated. Despite all our efforts, only two companies agreed to participate in the study, and one of them proved ineligible by declaring in answer to an eligibility question that it does not do business with minors.

We think that several reasons can explain this difficulty in having companies participate in our study.

First – this will eventually be of interest to other consumer associations – we observed that companies seemed wary of participating in a study conducted by a consumer association. This reticence is understandable: consumer associations, including Union des consommateurs, are very involved in class actions. We can imagine a company's fear of “falling into a trap.” In fact, several of the companies we contacted have had trouble in the past with consumer associations before the courts. If our assumption is sound, the confidentiality agreement we offered companies – an agreement guaranteeing anonymity and restricting to the investigation any use of information – was unfortunately insufficient to allay their fears.

The companies' refusal to respond may also reveal the fog surrounding legal rules for minors' ability to contract. Viewed objectively, particularly in Quebec, the ability of minors to contract

does in itself pose an enormous problem for companies, since the only recourse they have to fear in such cases must be based on lesion.

In that sense, the companies' very non-participation in our study constitutes a relevant research finding that reveals the fear apparently generated in companies by the subject and suggests, for future research, that data collection from companies may be done more effectively by researchers less "frightening" to companies – for example, universities.

The fact that our strategy was to contact only major companies with large market shares in their respective niches may also have dissuaded greater company participation. Soliciting small companies, independent from major banners, might have yielded better results.

Since only one eligible company participated, we cannot insist on the data collected. We simply mention that the company in question – a sporting goods retailer – stated that it has no internal policy for purchases made by minors and that it had the general impression that minors are able to contract with it.

## 6.5 Governmental Consumer Protection Organizations

We contacted the majority (7) of governmental consumer protection organizations in Canada and invited them to participate in our study, so as to better understand the situation on the ground in several Canadian provinces and evaluate those organizations' initiatives to defend the rights of minor consumers.

Three of those organizations agreed to participate in our study: governmental organizations from Alberta, Manitoba and Quebec.

The questionnaire submitted to those organizations contained ten questions – open questions, for the most part (see Annex 3). The following section presents the data collected.

**What questions are most often asked or the information most often requested of your organizations with regard to contracts concluded by minors?**

- One organization reports that it doesn't keep statistics on this subject;
- One organization reports that it is particularly solicited to help consumers understand a contract as a whole, its warranty clauses or its mandatory nature;
- One organization reports that it receives a good number of questions on the legal value of a minor's consent to a consumer contract and on the possibility of cancelling because of a minor's age a contract concluded by him.

**What complaints are most often reported to your organization with regard to contracts concluded by minors?**

- One organization reports that it doesn't keep statistics on this subject;
- One organization reports that the most frequent matter of complaint concerns a breach of warranty;
- One organization reports that its computer system cannot cumulate data on consumers' age. However, it observes that complaints often concern claimed abuses making some victims due to their lack of experience and naivety. The organization also notes that the new information technologies have propelled an ever-younger clientele to the consuming world.

**Does your organization keep statistics on those complaints or any other consumer issue regarding contracts concluded by minors?**

- One organization reports that it classifies complaints by type, sector of activity or applicable law; no organization classifies them by age.

**Has your organization published legal information documents about contracts that minors conclude or can conclude?**

- One organization reports that it has not published such documents;
- One organization has published several documents about contracts that minors can conclude: a collection of fascicles on issues related to leaving the family home, as well as a Facebook page specifically intended for young people;
- One organization has put online a series of activities regarding the rights and obligations of young consumers, as well as a guide to activities regarding advertising and intended for primary school students.

**Has your organization carried out awareness projects intended for minors?**

- One organization reports that it has not carried out such projects;
- One organization organizes annually an award ceremony for young people that includes, among others, an award for the best awareness-raising sign. This organization also reports having published information leaflets regarding consumer issues and intended for grade 9 students. A video on identity theft has also been sent to some schools<sup>202</sup>;
- One organization explains that it has developed a presentation for schools that addresses subjects such as exchange and refund policies, cell phones, prepaid cards, legal warranties, used car purchases, etc. The organization has also produced a guide to children's advertising and used a fund to finance certain projects.

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<sup>202</sup> To clarify the respondent's comments, we reformulated this answer by combining two open questions which the organization had answered.

**Has your organization subsidized research projects on contracts that minors conclude or may conclude?**

- Two participating organizations answer this question in the negative;
- One organization specifies that a study is being conducted on the consumer skills of young people 12 to 17 years of age.

**Do you have any other future projects of any kind regarding the conclusion of contracts by minors (e.g.: disseminating information on this subject to the public)?**

- Two of the participating organizations answered this question in the negative;
- One organization plans to establish an exchange network with its province's schools and to update and upgrade its current materials in order to reach this target clientele.

**Generally, what are your main consumer recommendations to minors and their parents?**

- Two of the participating organizations insist on the importance of keeping informed about issues regarding minor consumers, trying to clearly understand what a contract states and its implications before signing it, and not hesitating to contact a consumer protection organization if necessary.
- The other organization's answer deserves to be quoted verbatim: "Consuming begins at the youngest age and must be an integral part of his education. Learning to count, to spend well, learning the value of things, learning to discuss, obtain information, ask questions, read before saying yes to anything and especially before signing anything! All this is part of the fundamentals of a sound and necessary contractual relation in a world where consuming is a daily part of life."

In examining the answers provided by these organizations, we note particularly that the "age" variable is not part of the classification of complaints received by these organizations. This is a serious hindrance to a clear understanding of issues experienced by young people.

Given this lack of statistics, it is impossible for us to map possible differences between provinces regarding the most frequent complaints about contracts concluded by minors.

In addition, no measure has been taken to raise merchants' awareness of the challenges that may arise when they enter into contracts with minors.

## 7. Available Sources of Information

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### 7.1 In Quebec

In Quebec, various resources are available to teenagers. Most often, those resources are incomplete or dedicated to goals other than education in the legal aspects of purchasing.

Below are a few examples of websites disseminating information to consumers. We searched there for information directly or indirectly pertaining to minors' ability to contract and to the possible effects of contracts concluded with minors.

#### 7.1.1 Office de la protection du consommateur (OPC)

The website of the Office de la protection du consommateur previously had a substantial youth section directly addressed to young people. That section was removed from the site a few years ago to be modernized and updated. The section has not yet returned and no return date has been announced.

In the current form of the OPC site, there is a section dedicated to educating young people in various legal aspects of consuming; the section is addressed to teachers and youth caseworkers. It presents various activities to be practiced.

The welcome page reads as follows:

*Bienvenue*

*En tant que consommateurs, les jeunes ne sont pas toujours outillés adéquatement lorsqu'il est question de leurs droits, de leurs obligations et de leurs recours. Ils ne disposent pas nécessairement des connaissances et des habiletés requises pour prendre des décisions éclairées. À titre d'exemple, ils peuvent oublier de poser des questions au commerçant concernant la politique d'échange ou de remboursement d'un produit, la garantie offerte et les termes des contrats qu'ils concluent.*

*Plus que jamais les jeunes consommateurs doivent être informés de leurs obligations et de leurs recours. Pourquoi? Pour qu'ils développent une attitude préventive lorsqu'ils font affaire avec un commerçant.*

*Afin de les aider à aborder la consommation en classe sous l'angle de la protection des consommateurs, OPC Éducation propose aux enseignants divers outils pédagogiques. Inviter un conférencier*

*En plus de ces outils, OPC Éducation offre la possibilité d'inviter en classe un conférencier. D'une durée d'environ une heure, chaque conférence présente un aperçu des éléments de base en matière de protection du consommateur. Les principaux sujets abordés sont les suivants :*

- *les politiques d'échange et de remboursement;*
- *la téléphonie cellulaire;*
- *les cartes prépayées;*

- la garantie légale;
- l'achat d'une voiture d'occasion.

*Pour obtenir plus de renseignements concernant les conférences ou inviter un conférencier, communiquer avec l'équipe d'OPC Éducation.*<sup>203</sup>

It is therefore impossible, for a young person wanting to obtain information quickly about his rights and responsibilities, to find information grouped in one section and easily accessible on the OPC website. In addition, the specific issue of contracts concluded by minors is not addressed on the site.

### 7.1.2 Éducaloi

On the Éducaloi website, a space for young people has been created to inform them about various aspects of the law, particularly criminal justice and civil law. Although the website provides several capsules on a variety of subjects, only one capsule focuses on legal aspects of consumption, and it is not highlighted on the website's home page. Relevant information about contracts concluded by minors is drowned in a rather light text full of fictional examples. The text outlines the following:

**Le droit de contracter des mineurs :** *“la loi considère que les jeunes, peu importe leur âge, ont le droit de faire des achats pour satisfaire leurs besoins «ordinaires» ou «usuels», comme par exemple la nourriture, le transport ou les vêtements. Les besoins de base, quoi!*

*Donc, dans un premier temps, il faut regarder si le bien a été acheté pour satisfaire un besoin ordinaire. Ensuite, il faut considérer deux facteurs qui augmentent la capacité des personnes de moins de dix-huit ans d'acheter en toute légalité : l'âge et le discernement, c'est-à-dire la capacité de faire preuve d'un bon jugement et de prévoir les conséquences financières de son achat.”*

**La possibilité de faire annuler un contrat conclu par un mineur :** *“Le seul fait qu'une personne de moins de dix-huit ans ait fait un achat seule n'est pas suffisant pour le faire annuler. Cependant, l'achat peut être annulé ou le prix de vente remboursé en partie s'il s'agit d'un cas de lésion.*

*La lésion, c'est quand une des personnes qui signe un contrat obtient avec ce contrat beaucoup trop d'avantages par rapport à l'autre. Par exemple, si une personne naïve paye 5 000 \$ pour un vieil ordi sans graveur et sans carte de son, le marchand qui le lui a vendu a obtenu un avantage disproportionné par rapport à lui.*

*On dira aussi qu'un jeune a été lésé (victime de lésion) si il s'engage pour une somme qui dépasse de beaucoup ses moyens ou l'avantage que ça lui donne.”*

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<sup>203</sup> OPC Éducation, website of the Office de la protection du consommateur, Montreal, 2008.  
[Online] <http://www.opc.gouv.qc.ca/WebForms/OPCEducation/Introduction.aspx> (consulted on June 20, 2011).



**Comment faire annuler le contrat :** “Si le marchand refuse, ton père, ta mère ou ton tuteur doit faire une demande au tribunal. Il faut payer des frais. Ça peut prendre du temps.”

**Le droit pour un mineur d'avoir une carte de crédit à son nom :** “La plupart des compagnies de cartes de crédit exigent que le détenteur (responsable) principal de la carte soit majeur. [Un mineur] pourrait cependant, auprès de certaines compagnies, être co-détent[eur] de la carte d'un adulte, son père ou sa mère, par exemple. C'est cet adulte qui serait responsable des factures. La compagnie de carte de crédit pourrait aussi accepter d'émettre une carte à [un mineur] cautionn[é] («endoss[é]») par un adulte. Cela veut dire que si [le mineur] devenait incapable de payer ses factures, la compagnie pourrait venir se servir dans les poches de la personne qui l'a cautionnée.”

**L'obligation des parents de payer à la place du mineur si ce dernier ne peut faire ses paiements :** Les parents ont l'obligation de loger, de nourrir et de combler les besoins de base de leur enfant, pas ses envies de luxe! Le marchand qui conclut un contrat avec un mineur ne contracte pas avec ses parents. Il ne peut donc pas exiger que ses parents le remboursent, sauf s'ils l'ont cautionnée (s'ils ont “signé pour le mineur”).

**L'obligation du marchand de reprendre le bien et de le rembourser :** “Contrairement à la croyance populaire, le marchand n'est pas obligé de reprendre un bien que tu as acheté et de te rembourser. [...] Chaque marchand a ses propres règles en ce qui concerne les retours, les échanges et les remboursements. Celles-ci sont parfois écrites sur la facture, et parfois non<sup>204</sup>.”

### 7.1.3 Protégez-vous<sup>205</sup>

Protégez-vous magazine specializes in consumer issues. It is known for its test stands, detailed records and specialized guides, so it might be assumed that an information section on its website might discuss contracts concluded by minors or might be addressed directly to young people. But no. Subjects of interest to young people are scattered among features about consumer goods or various services: bicycle locks and sports shoes in the Family and Leisure section, a budget course in an Advice section, digital cameras, how to activate “https” on Facebook, Hotmail and Twitter in the Technology section, etc.

But there is nothing about the right to contract or the reasons for cancelling a contract concluded by a minor.

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<sup>204</sup> Jeunes pour jeunes, Éducaloi website, Montreal, [Online] <http://www.jeunepourjeunes.com> (consulted on June 21, 2011).

<sup>205</sup> Protégez-vous, home page, the magazine's website, Montreal, No date. [Online] <http://www.protegez-vous.ca/> (consulted on June 21, 2011).

### 7.1.4 Local Consumer Associations (ACEFs and Others)

Several local consumer associations in Quebec seek to raise young people's awareness of various aspects of consumption. Those associations offer various workshops, particularly on budgeting and consuming, either generally or by specific item (cell phones, taking an apartment, etc.). They also announce that they can hold those workshops in schools, youth centres, on their own premises, etc. A few organizations also offer recreational initiatives to inform and raise the awareness of young consumers: Québec City's South Shore ACEF, for example, has set up an activity called *Les prix du cœur de la publicité*<sup>206</sup> that focuses on marketing ethics.

However, it is still impossible, for young people who want to obtain information quickly on their contractual rights and responsibilities, to find the desired information grouped in a single section on those associations' websites. Here again, there is nothing specific about the right of minors to contract.

### 7.1.5 Automobile Protection Association (APA)

It is not possible, for young persons who want to obtain information quickly on their rights and responsibilities, to find the desired information grouped in a single section on the APA website.

## 7.2 In Canada

In Canada, various resources are available to teenagers. Most often, those resources are incomplete or dedicated to other goals than education in legal aspects of contracts. The following are a few examples of websites disseminating information to consumers; we explored the sites to search for information about minors' ability to contract.

### 7.2.1 Industry Canada's Office of Consumer Affairs (OCA)

On the Office of Consumer Affairs website is a page titled "Consumer Advice for Your Age Group." A young person who wants to obtain information quickly about his rights and responsibilities can find there pieces of the desired information, but nothing about the right of minors to contract or the remedies available in case of problems with a contract concluded by a minor<sup>207</sup>.

Two documents available on the Office of Consumer Affairs website drew our attention.

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<sup>206</sup> *Les prix du cœur de la publicité*, Québec City South Shore ACEF, Lévis, 2011.

[Online] <http://www.prixducoeurdelapub.com/intro.asp> (page consulted on June 21, 2011).

<sup>207</sup> Office of Consumer Affairs, page Consumer Advice for Your Age Group, Industry Canada, federal government, Ottawa, March 31, 2011. [Online] [http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/h\\_ca02279.html](http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/h_ca02279.html) (consulted on June 21, 2011).

**Shopping<sup>208</sup>**

This document offers advice to young consumers. It contains 5 sections: Section 1, Common Consumer Questions; Section 2, Complaining Effectively; Section 3, Be Your Own Financial manager; Section 4, Buying a Vehicle; and Section 5, Cellphones.

**Shopping for Satisfaction<sup>209</sup>**

This document discusses purchases, exchanges and refunds, warranties, down payments and layaway plans, door-to-door, online purchases, identity protection and discounts.

Although interesting, both documents are incomplete: they do not present all the legal aspects of consumption that might be useful to a young consumer. And the information is difficult to find on the Office of Consumer Affairs website.

## **7.2.2 Consumer Measures Committee**

We also find the two above documents on the Consumer Measures Committee website.

On the French-language page of consumer information<sup>210</sup>, the link “Conseils pour jeunes consommateurs” leads to the page “Les aînés et la consommation”; and the link “À vous de choisir - pour les consommateurs de 18 à 30 ans” leads to an error page. However, the same English-language page of consumer information, “Consumer information<sup>211</sup>,” does lead to the resources announced.

Here again, it is not possible, for young people wanting to obtain information quickly about their rights and responsibilities, to find the desired information grouped at a single location of the Consumer Measures Committee website.

## **7.2.3 Canadian Consumer Information Gateway**

At the Canadian Consumer Information Gateway<sup>212</sup>, nothing directly discusses the issue of contracts concluded by minors.

It is not possible either, for young people wanting to obtain information quickly about their rights and responsibilities, to find the desired information grouped at a single location of the Canadian Consumer Information Gateway.

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<sup>208</sup> Office of Consumer Affairs, section 2, Consumer Issues for the Young, Shopping, Industry Canada, federal government, Ottawa, March 31, 2011. [Online] [http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/Teens%20newsletter%202%20ENG.pdf/\\$FILE/Teens%20newsletter%202%20ENG.pdf](http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/Teens%20newsletter%202%20ENG.pdf/$FILE/Teens%20newsletter%202%20ENG.pdf) (consulted on June 21, 2011).

<sup>209</sup> Consumer Measures Committee, Shopping for Satisfaction, Industry Canada, federal government, Ottawa, March 31, 2011. [Online] [http://www.ic.gc.ca/eic/site/cmc-cmc.nsf/vwapj/SHOPPING.pdf/\\$FILE/SHOPPING.pdf](http://www.ic.gc.ca/eic/site/cmc-cmc.nsf/vwapj/SHOPPING.pdf/$FILE/SHOPPING.pdf) (consulted on June 21, 2011).

<sup>210</sup> *Op. Cit.*, Note 209, page [http://www.ic.gc.ca/eic/site/cmc-cmc.nsf/fra/h\\_fe00015.html](http://www.ic.gc.ca/eic/site/cmc-cmc.nsf/fra/h_fe00015.html) (consulted on June 21, 2011).

<sup>211</sup> *Op. Cit.*, Note 209, page [http://www.ic.gc.ca/eic/site/cmc-cmc.nsf/eng/h\\_fe00015.html](http://www.ic.gc.ca/eic/site/cmc-cmc.nsf/eng/h_fe00015.html) (consulted on June 21, 2011).

<sup>212</sup> Canadian Consumer Information Gateway, home page, Industry Canada's Office of Consumer Affairs, Ottawa, No date. [Online] <http://consumerinformation.ca/app/oca/ccig/knowYourRights.do?language=eng> (consulted on June 21, 2011).

### 7.2.4 Office of the Superintendent of Bankruptcy

The Office of the Superintendent of Bankruptcy publishes a guide for the financial education of young people and their parents, “The Financial Guide for Teenagers: Thirteen- to fifteen-year-olds.” In addition to sections on basic concepts (budget, credit, interest, inflation), financial responsibilities and management, savings and investments, the table of contents announces sections on values (Desires versus needs; The real cost of things; Opportunity costs; Developing consumption patterns; The relative cost of things; Sharing expenses; Working with a goal in mind; Shopping) and marketing (*Being Aware*: Marketing and advertising; Internet; Advertising to watch for)<sup>213</sup>.

Our searches for information there on minors’ ability to contract were fruitless.

### 7.2.5 Canadian Bankers Association

YourMoney.cba.ca is a good example of a site entirely dedicated to the financial education of young Canadians. In the “I’m a Student” section are various headings on money, such as: Budgeting, Borrowing, Saving, Your Credit Profile, Investing and Keeping *YourMoney* Safe<sup>214</sup>.

In the “Keeping *YourMoney* Safe” section is a variety of useful information on various aspects of commerce, but no direct discussion of the issue of contracts concluded by minors<sup>215</sup>.

Again, it is not possible, for young people wanting to obtain information quickly about their rights and responsibilities, to find the desired information grouped at a single location of the Canadian Bankers Association.

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<sup>213</sup> Collective, The Financial Guide – Teenagers: Thirteen- to fifteen-year-olds, Office of the Superintendent of Bankruptcy, Industry Canada, 2006. [Online] [http://www.ic.gc.ca/eic/site/bsf-osb.nsf/vwapj/FG\\_13-15\\_E.pdf/\\$FILE/FG\\_13-15\\_E.pdf](http://www.ic.gc.ca/eic/site/bsf-osb.nsf/vwapj/FG_13-15_E.pdf/$FILE/FG_13-15_E.pdf) (consulted on June 20, 2011).

<sup>214</sup> Website of the Canadian Bankers Association, *YourMoney* for Students, Canadian Bankers Association website, YourMoney.cba.ca, I’m a Student section, Toronto, Ontario, no date. [Online] <http://yourmoney.cba.ca/students/inside/> (consulted on June 20, 2011).

<sup>215</sup> Keeping *YourMoney* Safe page, website of the Canadian Bankers Association, YourMoney.cba.ca, I’m a Student section, Toronto, No date. [Online] [http://yourmoney.cba.ca/students/inside/keeping\\_money\\_safe/](http://yourmoney.cba.ca/students/inside/keeping_money_safe/) (consulted on June 20, 2011).

### 7.2.6 Financial Consumer Agency of Canada (FCAC)

The FCAC website portal<sup>216</sup> clearly indicates, on a large red banner, “Youth/Educators”. Young people are invited to click the first resource: Visit the Money Belt. A financial education portal<sup>217</sup>.

Here again is no direct information on contracts concluded by minors.

Linked to the financial education portal is “The City,” a learning program developed by the Financial Consumer Agency of Canada and the British Columbia Securities Commission.

The program gives young people financial information to help them manage their finances and operate in the financial environment when they reach adulthood. Teachers are invited to use the documents and activities. Young people and teachers can consult the modules online or download documents to be used in the classroom<sup>218</sup>. No information is found there on minors’ ability to contract.

## 7.3 In France

A quick search of foreign websites reveals that other jurisdictions have found it relevant to display such information, particularly on minors’ ability to contract. In France, a website is dedicated to various aspects of youth law, notably in matters of consumption. The website is called *50 droits des ados*.

### 7.3.1 50 droits des ados

In the “Consommation” section is a great deal of useful information, including the following about contracts concluded by minors:

*Est-ce qu’un mineur peut conclure un contrat sans ses parents?  
Juridiquement, le mineur est considéré comme “incapable”. Il a des droits, mais ne peut les exercer seul, sans ses parents. Cela signifie normalement que tous les actes passés par un mineur sont nuls. En pratique, la nullité est relative, c’est-à-dire que seul le mineur peut demander la nullité. Cette règle a pour but de protéger le mineur, car il est inexpérimenté.*

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<sup>216</sup> Financial Consumer Agency of Canada, home page, FCAC, Government of Canada, Ottawa, No date. [Online] <http://www.fcac-acfc.gc.ca/eng/index-eng.asp> (consulted on June 21, 2011).

<sup>217</sup> Financial Consumer Agency of Canada and British Columbia Securities Commission, The Money Belt, FCAC, Government of Canada, Ottawa, No date. [Online] <http://www.themoneybelt.ca/belt-clik-eng.asp> (consulted on June 21, 2011).

<sup>218</sup> Financial Consumer Agency of Canada and British Columbia Securities Commission, The Money Belt, FCAC, Government of Canada, Ottawa, No date. [Online] <http://www.themoneybelt.ca/belt-clik-eng.asp> (consulted on June 21, 2011).

*Toutefois, certains actes sans gravité peuvent être passés par un mineur sans être déclarés nuls. Ainsi, il est admis qu'un mineur peut s'engager seul dans les actes de la vie quotidienne pour par exemple : acheter un livre, des vêtements, etc.*<sup>219</sup>

This website makes available online a work with the same title, i.e., “50 droits des ados:”

*Un guide de poche, pratique et convivial, conçu par et pour les jeunes...  
Résultat d'une rencontre entre Martin Hirsch, ancien Haut-commissaire à la jeunesse et aux solidarités actives et les adolescents qui participaient, en 2009, au 5ème forum Adolescences, le guide 50 droits des ados a été réalisé par la fondation Wyeth pour la santé de l'enfant et de l'adolescent avec le soutien de l'ancien Haut-commissariat à la Jeunesse, du ministère de l'Education nationale, du ministère de la Santé et des sports et des éditions Dalloz*<sup>220</sup>.

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<sup>219</sup> Website 50 droits des ados, page Consommation de la rubrique Argent, Paris, France, no date. [Online] <http://www.50droitsdesados.com/vie-quotidienne/argent/article/consommer> (consulted on June 19, 2011).

<sup>220</sup> Pfizer Foundation, company website, Paris, France, 2011. [Online] <http://www.fondation-pfizer.org/language/fr-fr/nos-publications/le-guide-50-droits-des-ados.aspx> (consulted on June 19, 2011).

## 8. Conclusion

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### 8.1 Possible Solutions to the Issues Identified

Minors are fully engaged as consumers in today's society. With substantial amounts of money to spend in a more or less discretionary manner, they obviously represent a choice market for companies.

Minors acquire all sorts of goods and services to satisfy their needs (and desires), which vary greatly according to their age and situation. Like adults, they sometimes face merchants with dubious practices.

As we have seen, minors are in a sense consumers on probation: they do not yet have all the knowledge, judgement and maturity adult consumers. A minor's adult cocontractor – a merchant in our study's perspective – may be tempted to abuse his position of strength or may abuse it without even intending to do so, or being aware that he is.

Our survey of parents of teenagers revealed that the parents had, regarding their child's legal ability to conclude various types of contracts, the impression that the law was relatively restrictive. When parents are asked to make a moral and ethical judgement on the possibility that a minor should have to acquire various types of goods or services, the parents' judgement favours an even more restrictive approach.

The legal rules for minors' ability to contract, in Quebec as well as Canada, reflect our desire to protect minors rather than allowing them to make their own choices. However, the legislators' approach is more flexible than the parents' – even more flexible than what parents seem to believe is legally applicable.

The laws generally allow a minor a certain latitude when he enters into a contract, although the desire to protect him from his inexperience remains a constant in all legal systems. In fact, our overview of foreign legislation demonstrated this.

In Quebec, for example, the applicable rule may be summarized as stipulating that a minor who has the power of discernment may generally contract but may never suffer lesion. While the common law grants more legal security to contracts for the provision of "necessaries," protecting minors remains at the heart of legal rules governing, for example, minors' ability to withdraw from a contract concluded before the age of majority.

### 8.2 Reinforcing General Consumer Protection Measures

Without questioning the necessity of rules specifically governing contracts concluded by minors, it should be noted that the consumer issues most frequently raised regarding minors' consumption acts (as we discussed in the first part of this report) prove less different than might have been thought based on the issues encountered by adult consumers. But given his inexperience and a less-developed faculty to resist or report temptations of immediate gratification, a minor is, as demonstrated by many studies, more likely to fall into traps that adults would be more able to avoid.



For instance, although minors are great users of mobile phones, it is difficult to find consumer problems that minors alone experience. In the field of cellular telephony, the protection of minors depends on improving, to the benefit of all consumers, the consumer protection rules governing the industry. Thus, adult and minor consumers alike would gain if CRTC rules for cancelling 900 charges applied to subscriptions to paid text messaging services, which is not currently the case, as we have seen.

In many of the cases we have presented, the protection of minors proves inseparable from the protection of all consumers, but it would be difficult to justify the usefulness, for example, of adding to consumer protection laws a section establishing a plan specifically benefiting minor consumers.

It remains that minors have specific needs for protection that are not necessarily the same as those of adult consumers. Given their inexperience and still-limited consumer skills, it is essential that minors be able, as provided by the Civil Code of Québec, to invoke lesion at any time or, as provided under the common law (with some reservations), to cancel in a discretionary manner the contracts to which they are a party. Specific measures to protect minors should also provide a protection mechanism enabling parents to exercise their role to supervise in a relatively simple and effective way their child's consumption of goods and services.

### 8.3 Clear Rules to Help Minors Exercise Their Rights

Moreover, one of the main challenges posed by the conclusion of contracts by minors rests on a vast confusion about the applicable rules in such circumstances, whether in Quebec or the other Canadian provinces.

In our legal analysis, we observed that the law neither clearly affirms nor clearly negates the ability of minors to contract. So not surprisingly, about 2 out of 3 parents estimate that they know little or nothing about the legal rules for their child's ability to contract.

This difficulty to understand the exact contours of the ability to contract of children and teenagers is not without practical consequences. In our view, the public's ignorance of those rules does not favour an amicable settlement of disputes that may arise with merchants. Indeed, a merchant is not expected to know that lesion, in the meaning of the *Civil Code of Québec*, has both an objective and a subjective aspect, and that a contract concluded with a minor may be evaluated according to those concepts, which themselves may have an uncertain application. Nor is a merchant expected to know all *common law* exceptions to the rule that a minor may cancel the contract at his own discretion. Parents too would be hard pressed to master all those legal subtleties in trying to assert the rights of their child.

The same goes for rules regarding parents' responsibility for the obligations their minor children may contract. Spontaneously, parents may believe themselves to be responsible for contracts concluded by their children, but the legal realities generally prove more nuanced.

Ideally, the rules for contracts concluded by minors should, in general terms, be known to the public, particularly merchants, so as to improve their effectiveness. We may question whether, in the *Lajeunesse v. Rosenstein Chaussure Inc.* case, the merchant would have dared sell a

pair of shoes for \$640 to a 15-year-old had he known that she could invoke lesion, and especially whether he would have persisted to the point of having to go to court.

Still, more precision and certainty are not necessarily synonymous with greater protection for minors. Rather, certain clarifications favour the security of transactions. In this regard, we may cite section 156 of the *Civil Code of Québec*, which provides that a minor fourteen years of age and over must be treated as an adult for all acts related to his job, art or profession. In addition, a common law rule stipulates that contracts for the provision of *necessaries* must benefit from increased legal security and thus that the right of minors to withdraw from such contracts must be restricted. It is therefore essential that any clarification of rules for minors' ability to contract be made so as to improve rather than hinder the protection of minors.

Part of the vagueness of legal rules for contracts concluded by minors is thus due to legislators wanting to enact rules sufficiently flexible to adapt to specific situation, so that the decision-maker has a sufficient margin of manoeuvre to take into account particular situations: the minor's age, the nature of the contract, the impact on the child's estate, etc.

Although there is, behind the approach adopted when such rules are established, a wisdom that deserves some deference (under the common law as well as civil law), it must be admitted that this flexibility generates in practice a number of grey areas and thus confusion.

In addition, the higher courts rarely deal with rules for contracts concluded by minors, given the relatively small amounts usually at stake. Thus, most such rulings made in Quebec come from the Court of Quebec Small Claims Court Division, which does not help clarify the law. For their part, the common law sources are based on such old rulings that it becomes difficult to see how the facts and circumstances reported there correspond to situations provoking disputes nowadays.

All this implies that the rules for minors to contract could certainly be improved so that, notably, consumers could better assert their rights without having to go to court. To that end, we think that certain clear and objective rules would make the legal consequences of minors' consumption acts more foreseeable.

In the light of our research findings, two suggestions appear inevitable regarding the ability of minors to contract:

In Quebec, as we have seen, to have a contract cancelled that he has concluded alone, a minor must generally prove that it is lesionary toward him. Contrary to popular belief, cancellation is thus not automatic, in principle. Accordingly, if a minor's parents judge that a contract he has concluded should be cancelled, they can expect that the merchant will refuse to cancel the sale; it will be difficult to have the merchant spontaneously and graciously admit the lesionary nature of the contract concluded. Similarly, in common law provinces, it will be difficult to pressure the merchant with any assurance of having the contract cancelled, since he could invoke a variety of exceptions to the rule that contracts concluded by minors may be cancelled at their discretion.

We think a reasonable solution to this problem would be to have the *Civil Code of Québec* provide a right of withdrawal for any contract concluded by a minor without his parents' assistance. The period during which withdrawal would be possible should be sufficiently long to give parents time to take cognizance of the contract concluded by their child and exercise their rights, but also sufficiently brief to prevent a sword of Damocles from hanging too long over a

contract and inciting merchants to refuse to contract with minors. The right of withdrawal could thus be exercised, according to the legislators' good judgement, over a period of 10, 30 or 90 days, for example. Beyond this period, the contract would remain cancellable, but only on proof of lesion, as is currently the case.

This solution may seem original, but such a right of withdrawal would neither be a first for the *Civil Code of Québec* nor entirely revolutionary. In fact, the Code already provides such a right with regard to the promise of buying a residential building (sec. 1785 CCQ). Other examples of a right of withdrawal are found in the *Consumer Protection Act*, which states that a contract concluded between an itinerant merchant and a consumer may be dissolved within 10 days.

Under the common law, the situation is more complex because in principle, a minor may withdraw from contracts he enters into. However, his power to withdraw from contracts is so limited by the many exceptions developed over the years by caselaw that it becomes difficult to determine the extent to which this principle is still true or applicable. Certainly, the need to clarify common law rules remains as great as under Quebec civil law. In this regard, the definition of *necessaries* within the *Sale of Goods Act* represents a step in the right direction. Without completely denying the caselaw foundations of common law rules, we think it important to clarify with statutory laws the legal framework for contracts concluded by minors, or even to propose the adoption of a completely new system, as British Columbia has done.

## 8.4 Settling Once and for All the Problem of Chargeable Text Messages

As discussed elsewhere in this report, the media have reported many cases of teenagers who registered, more or less consciously, to paid text messaging services, mainly because of dubious business practices inciting them to subscribe to such services.

A simple, familiar and effective solution would consist of simply extending to paid text messages (also known as SMS Premium) the warranties offered to consumers when 900 charges are billed to them.

Thus, parents who are billed for paid text messages on their child's cell phone account could benefit from the right to cancel the charges after a reasonable challenge.

## 8.5 Promoting the Consumer and Personal Finance Education of Minors

Finally, part of the solution to consumer issues experienced by children, teenagers and their parents may be found in education. Several problematic situations reported in the first section of this report could be avoided through better education in consumer issues and traps.

For instance, greater awareness of the dubious business practices of certain online merchants would reduce the number of cases where young people fall into the trap of subscribing unawares to a paid text messaging service or wasting a lot of money on online games or virtual worlds.

Teenagers who leave the family nest to attend college or vocational school could also receive useful information to better understand the issues involved in renting a first apartment, buying a first used car, subscribing to certain services (electricity, telephone, cable, etc.).

Consumer education appears to play a preventive role in making an adequate legal framework effective, so long as education measures are effective. The main challenge is to spark young people's interest in consumer issues.

According to an American study, young people are four times more likely to search for a person on Facebook than to search for a credit card with a lower interest rate. Similarly, when the teenagers questioned were asked what they would like to know about credit and debt, they expressed, by a proportion of two to one, more interest in knowing how to obtain credit than in knowing the consequences of a poor credit history<sup>221</sup>.

Of course, we may praise the initiatives taken by certain consumer protection organizations who participated in our study. But it's possible to do much more. For example, our examination of the various tools of information available online demonstrates that few organizations offer legal information documents focusing on consumer issues experienced by young people. The information is sprinkled across many websites, and the specific issue of the ability of minors to contract is in general barely outlined.

More education measures are therefore necessary. In this regard, studies show that learning is more effective in a context more concrete than that provided by traditional lectures<sup>222</sup>.

Consumer associations, working in a context where consumer issues are discussed in practical terms, could of course play a major role.

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<sup>221</sup> VARCOE, Karen P. et al. "What Do Teens Want to Know About Money — A Comparison of 1998 and 2008," *Family & Consumer Sciences Research Journal*, Vol. 38, No. 4, 2010, 360–371, DOI: 10.1111/j.1552-3934.2010.00032.x.

<sup>222</sup> *Op. Cit.*, Note 221.

LACHANCE, Marie J. and Jacinthe CLOUTIER. *Les jeunes adultes québécois, l'épargne et l'investissement : Pratiques, connaissances et attitudes* ("Dossier consommation No. 16"), research report published by Université Laval, Quebec, June 2009, pp. 33-34.

## 9. Recommendations

Aucun instrument législatif n'est parfait. Quelles que soient donc les précautions, le polissage et les révisions dont les nouveaux textes auront pu bénéficier avant leur adoption, il est certain que rapidement la pratique du nouveau droit fera ressortir des difficultés, des incohérences, voir même peut-être des contradictions internes.

— Jean-Louis Baudouin<sup>223</sup>

- **Whereas** minors are consumers “on probation” who do not yet have all the skills of adult consumers;
- **Whereas** this skill discrepancy between adult and minor consumers requires the establishment of a distinct legal framework for better protecting more-vulnerable consumers;
- **Whereas** sufficient knowledge on the part of consumers and merchants of the legal rules applicable to a dispute favours its amicable settlement;
- **Whereas** parents, as a minor’s tutors, have a role to play in protecting his consumer interests and that this role should be favoured by enacting clear rules;

### RECOMMENDATION # 1: Establish a right of withdrawal in Quebec law

- **Whereas** under Quebec law, the main consumer protection measure is the possibility of obtaining the cancellation of a contract concluded by a minor alone, subject to demonstrating its lesionary nature;
- **Whereas** determining the lesionary nature of a contract concluded by a minor alone requires a complex analysis of multiple legal criteria, objective as well as subjective;
- **Whereas** any claim that a contract is lesionary may be disputed by the merchant having contracted with the minor, and that the evaluation must be made case by case;
- **Whereas** over 2/3 of the teenagers’ parents we questioned say they know “little” or “nothing” of the legal rules that apply to transactions concluded by persons less than 18 years of age to acquire goods and services;
- **Whereas** 74.1% of the teenagers’ parents questioned state that they supervise their teenagers’ spending “a lot” or “somewhat”;
- **Whereas** parents should, when finding after the fact that their child has contracted obligations they oppose, have a means to renounce that transaction;
- **Whereas** the parents questioned expressed a relatively restrictive view of their child’s ability to be a party to contracts without their prior consent;
- **Whereas** the law in other Canadian provinces (the common law provinces) authorizes in principle a minor to cancel at his own discretion several types of contracts, with certain reservations;
- **Whereas** despite its defects, the lesion test is sufficiently flexible;

<sup>223</sup> COMEAU, Paul-André and Hubert Reid (Dir.). Le nouveau Code civil du Québec : un bilan, Montreal, Wilson & Lafleur, 1995, p. 2.

- **Whereas** the adoption of a right of withdrawal applicable to contracts concluded by minors alone would enable parents to supervise their child's spending and protect his interests, even after the fact;
- **Whereas**, to guarantee a certain security of transactions, the period for exercising this right of withdrawal should be relatively brief;
- **Whereas** after expiry of a determined period for withdrawing from the contract, the lesion test as currently in effect would continue controlling the possibility of cancelling a contract entered into by a minor;
- **WHEREAS** such a right of withdrawal would be a clear and intelligible measure providing the public (tutors and merchants) with better knowledge of applicable rules for contracts concluded by minors, better application of minors' rights and better protection of this category of consumers;
- **Whereas** the likely notoriety of such a right of withdrawal would facilitate an amicable settlement of disputes between consumers and merchants;
- **Whereas** the addition of minors' right of withdrawal would harmonize well with our private legal system, given that the *Civil Code of Québec* and the *Consumer Protection Act* already provide such rights in other contexts;

1. **Union des consommateurs recommends that the Quebec legislature establish in the Civil Code of Quebec, with regard to contracts concluded by minors, a right of withdrawal, to be exercised by the minor or his representative within a period set by law (30 or 90 days, for example);**
2. **Union des consommateurs recommends that the Quebec legislature maintain, should a minor or his representative not exercise said right of withdrawal within the determined period, the current framework allowing a contract to be cancelled by a minor in the event of lesion.**

## **RECOMMENDATION # 2: Statutory clarifications of current common law rules**

- **Whereas** common law rules for the ability of contracts to contract are subject to so many exceptions that their application is extremely difficult;
- **Whereas** it is very difficult for parents and merchants to find their way through such complex and nuanced rules;
- **Whereas** since the age of majority in Canada was lowered to 18 or 19 years (depending on the provinces) and that since then, the common law regarding the ability of minors to contract has difficulty renewing itself, given the correlative reduction in the number of new legal rulings on this subject;
- **Whereas** the *Sale of Goods Act* has codified in part the common law rules for the provision of *necessaries* to minors, thus improving the visibility of laws applicable to such contracts;
- **Whereas** many common law rules for the ability of minors to contract should be clarified, particularly regarding the restitution of prestations;

3. **Union des consommateurs recommends that the legislatures of Canadian provinces other than Quebec adopt statutory provisions in the spirit of the *Sale of Goods Act* in order to clarify certain aspects of the common law, particularly on the issues of restitution and of the applicable criterion for obtaining the cancellation of a contract for the provision of *necessaries*.**

### RECOMMENDATION # 3: Extend warranties in the billing of 900 charges to the billing of paid text messages

- **Whereas** improving protection measures for all consumers irrespective of their age proves useful in settling or preventing certain consumer issues faced by minors, especially in fields where young consumers are particularly targeted;
- **Whereas** many cases have been reported of minors who, following dubious business practices, gave their cell phone number to companies offering paid text messaging services, while believing, for example, that they were participating in a free contest;
- **Whereas** offers of paid text messages often lack clarity on applicable terms and rates;
- **Whereas** many such services target young clienteles in particular;
- **Whereas** the CRTC, to counter a similar business practice, i.e., 900 calls, has developed certain rules enabling consumers, in a relatively simple, quick manner and without going to court, to obtain cancellation of disputed charges;
- **Whereas**, despite the industry's self-regulating mechanisms established by wireless service providers and the Canadian Wireless Telecommunications Association, consumers continue experiencing problems with the billing of non-required text messages;
- **Whereas** it would be entirely relevant, reasonable and realistic to extend to paid text messaging services the warranties offered to consumers for 900 services;

**4. Union des consommateurs recommends that the CRTC extend to paid text messaging services on cellular telephones, with any necessary modifications, the warranties and procedures currently offered to consumers for the billing of 900 charges, and do so for all consumers, irrespective of their age.**

### RECOMMENDATION # 4: Favour consumer and personal finance education in the right of minors to contract

- **Whereas** consumer and personal finance education could raise minors' awareness of consumer issues concerning them and of various business practices of which they are likely to become victims;
- **Whereas** the effectiveness of consumer and personal finance education is more certain if dispensed to young people in a dynamic setting, rather than purely through theory and lectures;
- **Whereas** organizations specializing in consumption and personal finances (such as Associations coopératives d'économie familiale – ACEFs) have vast experience in education and animation, and regularly meet young people;
- **Whereas** those consumer and personal finance organizations would be able, with the necessary resources, to do awareness-raising and educational work with minors and their parents;
- **Whereas** studies show that learning is more successful in a more practical setting;
- **Whereas** consumer and personal finance organizations are, through field experience and roots in their respective communities, able to offer that practical learning context;
- **Whereas** consumer information websites, whether governmental, institutional or community, neglect, in almost all the cases studied, to communicate to minors or their parents the useful information they might need about: minors' ability to contract, remedies, parental responsibility, etc.
- **Whereas** the great majority of consumer information websites studied, whether governmental, institutional or community, and intended for young consumers and their

parents, neglect to dispense simple, clear and sound information to inform the parents of young consumers about the latter's rights;

- **Whereas** in a proportion of 43.1%, parents consult the websites of consumer protection associations for consumer information;

5. Union des consommateurs recommends that governments, both federal and provincial, financially support consumer and personal finance organizations in the latter's development of specific content on the right of minors to contract and in their offer of dynamic education programs for young consumers.
6. Union des consommateurs recommends that all governmental, institutional and community organizations offering consumers information about their rights and recourses include simple, clear and sound information for the parents of young consumers about the latter's rights and the parents' responsibilities and recourses regarding contracts concluded by minors.
7. Union des consommateurs recommends that those organizations ensure that their websites and sections on the rights of minors are easily accessible, that they can be found through the main search engines by simple keywords, that the sites be updated when necessary (particularly when laws are changed) and that they point to various consumer rights resources, notably those through which consumers can lodge complaints.



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## **Annex 1: Questionnaire for Consumers**

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# Mineurs, contrats et conséquences - Questionnaire consommateurs

## Mineurs, contrats et conséquences

Bonjour,

Vous vous apprêtez à participer à l'étude *Mineurs, contrats et conséquences*.

Veillez noter que toutes les données seront recueillies de manière anonyme, c'est-à-dire qu'aucun renseignement personnel ne sera communiqué à Union des consommateurs.

Les données recueillies seront utilisées qu'à des fins strictement de statistiques et d'analyse.

Pour plus de renseignements sur notre politique relative au respect de la vie privée ou si vous avez toute autre question concernant cette étude, veuillez communiquer avec nous par courriel à [dupuis@consommateur.qc.ca](mailto:dupuis@consommateur.qc.ca).

## [Q1] Mineurs, contrats et conséquences

**\* 1. Êtes-vous parent d'au moins un enfant âgé entre 12 et 17 ans?**

- ☐ Oui
- ☐ Non

## [Q2] Mineurs, contrats et conséquences

**\* 2. Combien avez-vous d'enfants âgés entre 12 et 17 ans?**

- ☐ Aucun
- ☐ Un seul
- ☐ Plus d'un

## Mineurs, contrats et conséquences

**Si vous avez plusieurs enfants âgés entre 12 et 17 ans, répondez à toutes les questions de ce sondage en tenant compte uniquement de l'enfant dont la date de naissance sera la prochaine à venir.**

## [Q3] Mineurs, contrats et conséquences

## Mineurs, contrats et conséquences - Questionnaire consommateurs

### \* 3. Quel est l'âge de votre enfant?

- ☐ 11 ans ou moins
- ☐ 12 ans
- ☐ 13 ans
- ☐ 14 ans
- ☐ 15 ans
- ☐ 16 ans
- ☐ 17 ans
- ☐ 18 ans ou plus

### [Q4] Mineurs, contrats et conséquences

#### \* 4. Votre enfant gagne-t-il lui-même des revenus, par biais, par exemple, d'un emploi d'été ou occasionnel (à l'exclusion de tout argent de poche ou cadeau)?

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

### [Q5] Mineurs, contrats et conséquences

#### \* 5. Discutez-vous de consommation ou de finances personnelles avec votre enfant?

- ☐ Beaucoup
- ☐ Assez
- ☐ Peu
- ☐ Pas du tout

### [Q6] Mineurs, contrats et conséquences

## Mineurs, contrats et conséquences - Questionnaire consommateurs

**\* 6. Considérez-vous, en tant que parent, avoir de l'influence sur les choix de consommation de votre enfant?**

- ☐ Beaucoup
- ☐ Assez
- ☐ Peu
- ☐ Pas du tout

### [Q7] Mineurs, contrats et conséquences

**\* 7. Supervisez-vous la manière dont votre enfant dépense son argent personnel?**

- ☐ Beaucoup
- ☐ Assez
- ☐ Peu
- ☐ Pas du tout

### [Q8] Mineurs, contrats et conséquences

**\* 8. À votre connaissance, votre enfant mineur a-t-il déjà eu des problèmes avec un commerçant relativement à un bien ou un service qu'il s'est procuré auprès de lui?**

- ☐ Non
- ☐ Ne sait pas
- ☐ Oui (veuillez préciser)

### [Q8b] Mineurs, contrats et conséquences

**\* 9. Comment ce problème s'est-il réglé?**

**(Par exemple : le commerçant vous a remboursé après quelques discussion, vous avez entamé une poursuite devant les tribunaux, etc.)**

### [Q9] Mineurs, contrat et conséquences

## Mineurs, contrats et conséquences - Questionnaire consommateurs

**\* 10. Considérez-vous bien connaître les règles juridiques qui s'appliquent aux transactions que concluent les personnes de moins de 18 ans pour se procurer des biens et des services?**

- ☐ Beaucoup
- ☐ Assez
- ☐ Peu
- ☐ Pas du tout

### [Q10] Mineurs, contrats et conséquences

**\* 11. Quels sont vos sources d'information au sujet des règles juridiques applicables aux transactions que concluent les personnes de moins de 18 ans pour se procurer des biens et des services?**

- ☐ Émissions de télévision ayant trait à la consommation (par ex. : « la Facture », « J.E. »)
- ☐ Journaux
- ☐ Sites Web de vulgarisation juridique (par ex. : [educaloi.qc.ca](http://educaloi.qc.ca), [avocat.qc.ca](http://avocat.qc.ca))
- ☐ Sites Web d'organismes ou d'associations de protection du consommateur
- ☐ Revues traitant d'enjeux de consommation (par ex. : « Protégez-vous »)
- ☐ Parents, amis, collègues de travail
- ☐ Je ne m'informe pas sur ce sujet
- ☐ Autre (veuillez préciser)

### [Q11] Mineurs, contrats et conséquences

## Mineurs, contrats et conséquences - Questionnaire consommateurs

**\* 12. Avez-vous l'impression que la loi autorise un enfant mineur à se procurer, sans autorisation préalable de ses parents, les biens et services suivants :**

	Oui	Non
Des vêtements	<input type="radio"/>	<input type="radio"/>
Un ordinateur	<input type="radio"/>	<input type="radio"/>
Une voiture	<input type="radio"/>	<input type="radio"/>
Un billet de cinéma	<input type="radio"/>	<input type="radio"/>
Une carte de paiement électronique (par exemple, une carte iTunes ou Tim Hortons)	<input type="radio"/>	<input type="radio"/>
Un tatouage	<input type="radio"/>	<input type="radio"/>
Une carte de crédit	<input type="radio"/>	<input type="radio"/>
Une motoneige ou un VTT	<input type="radio"/>	<input type="radio"/>
Un repas au restaurant	<input type="radio"/>	<input type="radio"/>
Un prêt personnel dans une institution financière	<input type="radio"/>	<input type="radio"/>
Une propriété immobilière	<input type="radio"/>	<input type="radio"/>
Un logement	<input type="radio"/>	<input type="radio"/>
Des bijoux de luxe	<input type="radio"/>	<input type="radio"/>
Un téléphone cellulaire	<input type="radio"/>	<input type="radio"/>

### [Q12] Mineurs, contrats et conséquences

**\* 13. Plus spécifiquement, avez-vous l'impression qu'une personne de moins de 18 ans peut, sans autorisation préalable de ses parents, légalement conclure les transactions suivantes avec un commerçant :**

se procurer des biens ou des services, lorsque le consommateur mineur est âgé d'au moins 14 ans

se procurer des biens ou des services de grande valeur

se procurer des biens ou des services, lorsque le consommateur mineur est âgé d'au moins 16 ans

se procurer des biens et des services qui visent à combler des besoins essentiels (par exemple : meubles, nourriture, transport, service téléphonique, etc.)

se procurer des biens ou des services, lorsque le consommateur mineur est âgé de moins de 14 ans

conclure un contrat de type « abonnement » impliquant des paiements périodiques

se procurer des biens ou des services grâce à un programme de type « achetez maintenant, payez plus tard »

### [Q13] Mineurs, contrats et conséquences

## Mineurs, contrats et conséquences - Questionnaire consommateurs

**\* 14. Peu importe ce qu'en dit la loi, jugez-vous personnellement qu'il est acceptable, d'un point de vue moral et éthique, qu'un enfant mineur se procure, sans autorisation préalable de ses parents, les biens et services suivants :**

	Oui	Non
Une motoneige ou un VTT	<input type="radio"/>	<input type="radio"/>
Des bijoux de luxe	<input type="radio"/>	<input type="radio"/>
Un billet de cinéma	<input type="radio"/>	<input type="radio"/>
Une voiture	<input type="radio"/>	<input type="radio"/>
Une carte de paiement électronique prépayée (par exemple, une carte iTunes ou Tim Hortons)	<input type="radio"/>	<input type="radio"/>
Un téléphone cellulaire	<input type="radio"/>	<input type="radio"/>
Une carte de crédit	<input type="radio"/>	<input type="radio"/>
Un prêt personnel dans une institution financière	<input type="radio"/>	<input type="radio"/>
Un ordinateur	<input type="radio"/>	<input type="radio"/>
Une propriété immobilière	<input type="radio"/>	<input type="radio"/>
Des vêtements	<input type="radio"/>	<input type="radio"/>
Un tatouage	<input type="radio"/>	<input type="radio"/>
Un logement	<input type="radio"/>	<input type="radio"/>
Un repas au restaurant	<input type="radio"/>	<input type="radio"/>

## **Annex 2: Questionnaire for Merchants**

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# Mineurs, contrats et conséquences - Questionnaire commerçants

## Mineurs, contrats et conséquences - Bienvenue

Bonjour,

Votre entreprise s'apprête à participer à l'étude Mineurs, contrats et conséquences.

Veuillez noter que toutes les données recueillies dans le cadre de cette étude le seront de manière anonyme, c'est-à-dire qu'aucun renseignement permettant d'identifier votre entreprise ne sera communiqué à Union des consommateurs. Précisons, à cet égard, que les adresses IP des entreprises répondantes ne seront pas communiquées à Union des consommateurs.

Les données recueillies ne seront utilisées qu'à des fins strictement de statistiques et d'analyse. Tout au plus, les données seront regroupées anonymement selon les secteurs d'activités suivants :

- Entreprises de télécommunications
- Institutions financières
- Détaillants de produits électroniques
- Détaillants d'articles de sports et de plein air
- Détaillants de meubles
- Ateliers de réparation automobile

Conséquemment, il est assuré que les noms des entreprises participantes ne seront pas dévoilés dans le rapport qui fera suite à cette étude.

Pour plus de renseignements sur notre politique relative au respect de la vie privée ou si vous avez toute autre question concernant cette étude, veuillez communiquer avec nous par courriel à [dupuis@consommateur.qc.ca](mailto:dupuis@consommateur.qc.ca) ou par téléphone au 514-521-6820 (poste 262).

## [Q1] Mineurs, contrats et conséquences

**\* 1. Arrive-t-il à votre entreprise de faire affaire avec des personnes de moins de 18 ans (que ce soit régulièrement ou seulement à l'occasion)?**

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

## [Q2] Mineurs, contrats et conséquences

**\* 2. Quels sont les biens et les services que les personnes de moins de 18 ans se procurent le plus souvent par le biais de votre entreprise?**

## [Q3] Mineurs, contrats et conséquences



## Mineurs, contrats et conséquences - Questionnaire commerçants

**\* 3. Votre entreprise a-t-elle, dans les faits, des pratiques particulières envers les personnes de moins de 18 ans?**

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

### [Q3a] Mineurs, contrats et conséquences

**\* 4. Veuillez préciser quelles sont, dans les faits, les pratiques particulières de votre entreprise envers les personnes de moins de 18 ans :**

### [Q4] Mineurs, contrats et conséquences

**\* 5. Votre entreprise dispose-t-elle d'une politique formelle qui encadre ses activités commerciales (l'achat de biens et de services, par exemple) avec les personnes de moins de 18 ans?**

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

### [Q4a] Mineurs, contrats et conséquences

**\* 6. Décrivez les principaux éléments de votre politique formelle envers les mineurs :**

### [Q4b] Mineurs, contrats et conséquences

**\* 7. Cette politique formelle est-elle écrite?**

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

### [Q4c] Mineurs, contrats et conséquences

## Mineurs, contrats et conséquences - Questionnaire commerçants

### \* 8. Cette politique formelle est-elle communiquée aux consommateurs?

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

### [Q4d] Mineurs, contrats et conséquences

### \* 9. De quelle manière votre politique qui encadre les activités commerciales de votre entreprise avec les personnes de moins de 18 ans est-elle communiquée aux consommateurs?

- ☐ Votre politique envers les mineurs est disponible sur le site Internet de votre entreprise
- ☐ Votre politique envers les mineurs est affichée près des caisses enregistreuses
- ☐ Votre politique envers les mineurs est inscrite sur les factures remises aux consommateurs
- ☐ Votre politique envers les mineurs est inscrite dans les contrats conclus avec les mineurs
- ☐ Votre politique envers les mineurs est expliquée oralement lors de vos activités commerciales
- ☐ Ne sait pas
- ☐ Autre (veuillez précisez)

### [Q4e] Mineurs, contrats et conséquences

### \* 10. Votre politique formelle est-elle communiquée aux employés de votre entreprise?

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

### [Q4f] Mineurs, contrats et conséquences

### \* 11. Veuillez préciser comment cette politique formelle est communiquée aux employés de votre entreprise?

### [Q4g] Mineurs, contrats et conséquences

## Mineurs, contrats et conséquences - Questionnaire commerçants

**\* 12. Le respect de cette politique formelle par les employés de l'entreprise est-il surveillé?**

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

### [Q4h] Mineurs, contrats et conséquences

**\* 13. Veuillez préciser comment le respect de cette politique formelle par les employés est surveillé :**

### [Q5] Mineurs, contrats et conséquences

**\* 14. Y-a-t-il des contrats, verbaux ou écrits, que vous refusez ou refuseriez de conclure avec des personnes de moins de 18 ans dans le cadre des activités commerciales de votre entreprise?**

- ☐ Oui
- ☐ Non
- ☐ Ne sait pas

### [Q5a] Mineurs, contrats et conséquences

**\* 15. Veuillez préciser quels sont les contrats, verbaux ou écrits, que vous refusez ou refuseriez de conclure avec des personnes de moins de 18 ans dans le cadre des activités commerciales de votre entreprise :**

### [Q6] Mineurs, contrats et conséquences

**\* 16. De façon générale, avez-vous l'impression qu'une personne de moins de 18 ans peut, sans autorisation préalable de ses parents, légalement conclure des transactions avec votre entreprise?**

- ☐ Oui
- ☐ Non

### [Q7] Mineurs, contrats et conséquences

## Mineurs, contrats et conséquences - Questionnaire commerçants

**\* 17. Plus spécifiquement, avez-vous l'impression qu'une personne de moins de 18 ans peut, sans autorisation préalable de ses parents, légalement conclure les transactions suivantes avec un commerçant :**

Se procurer des biens ou des services grâce à un programme de type « achetez maintenant, payez plus tard »

Se procurer des biens ou des services de grande valeur

Se procurer des biens ou des services, lorsque le consommateur mineur est âgé d'au moins 16 ans

Se procurer des biens ou des services, lorsque le consommateur mineur est âgé d'au moins 14 ans

Se procurer des biens ou des services, lorsque le consommateur mineur est âgé de moins de 14 ans

Conclure un contrat de type « abonnement » impliquant des paiements périodiques

Se procurer des biens et des services qui visent à combler des besoins essentiels (par exemple : meubles, nourriture, transport, service téléphonique etc.)

## **Annex 3: Questionnaire for French-Language Organizations**

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# Mineurs, contrats et conséquences - Questionnaire organismes (FR)

## Mineurs, contrats et conséquences

**\* 1. Quel est le nom de l'organisme de protection du consommateur pour lequel vous complétez ce questionnaire?**

**\* 2. Quelles sont les questions les plus fréquemment posées ou les renseignements les plus fréquemment demandés à votre organisme relativement aux contrats conclus par les mineurs?**

## Mineurs, contrats et conséquences

**\* 3. Quelles sont les plaintes les plus fréquemment rapportées à votre organisme relativement aux contrats conclus par les mineurs?**

## Mineurs, contrats et conséquences

**\* 4. Votre organisme détient-il des statistiques au sujet de ces plaintes ou relativement à toute autre problématique de consommation concernant les contrats conclus par les mineurs?**

☐ Oui

☐ Non

Si oui, veuillez préciser :

## Mineurs, contrats et conséquences

**\* 5. Votre organisme a-t-il publié des documents d'information juridique au sujet des contrats que concluent ou que peuvent conclure les mineurs?**

☐ Oui

☐ Non

Si oui, veuillez préciser :

# Mineurs, contrats et conséquences - Questionnaire organismes (FR)

## Mineurs, contrats et conséquences

**\* 6. Votre organisme a-t-il réalisé des projets de sensibilisation destinés aux mineurs?**

☐ Oui

☐ Non

Si oui, veuillez préciser :

## Mineurs, contrats et conséquences

**\* 7. Votre organisme a-t-il subventionné des projets de recherche portant sur les contrats que concluent ou que peuvent conclure les mineurs?**

☐ Oui

☐ Non

Si oui, veuillez préciser :

## Mineurs, contrats et conséquences

**\* 8. Avez-vous d'autres projets futurs de tout genre concernant la conclusion de contrats par les mineurs (par ex. : la diffusion au public d'information à ce sujet)?**

☐ Oui

☐ Non

Si oui, veuillez préciser :

## Mineurs, contrats et conséquences

**\* 9. Quelles sont, de manière générale, vos principales recommandations en matière de consommation pour les mineurs et leurs parents?**

## Mineurs, contrats et conséquences

## Mineurs, contrats et conséquences - Questionnaire organismes (FR)

**\* 10. Avez-vous d'autres remarques à formuler qui pourraient être pertinentes aux fins de notre étude?**

☐ Oui

☐ Non

Si oui, veuillez préciser :



## **Annex 4: Questionnaire for English-Language Organizations**

---

# Mineurs, contrats et conséquences - Questionnaire organismes (ENG)

## Minors, contracts and consequences

**\* 1. On behalf of which consumer protection organization are you answering this survey?**

**\* 2. What are the most frequently asked questions or the most frequently requested information with respect to contracts made by minors?**

## Minors, contracts and consequences

**\* 3. What complaints do you receive most frequently with respect to contracts made by minors?**

## Minors, contracts and consequences

**\* 4. Does your organization keep statistics on those complaints or other issues with respect to contracts made by minors?**

☐ Yes

☐ No

If so, please explain :

## Minors, contracts and consequences

**\* 5. Has your organization published legal education material about contracts that are or may be entered into by minors?**

☐ Yes

☐ No

If so, please explain :

## Minors, contracts and consequences

## Mineurs, contrats et conséquences - Questionnaire organismes (ENG)

### \* 6. Has your organization implemented outreach projects targeting minors?

☐ Yes

☐ No

If so, please explain :

## Minors, contracts and consequences

### \* 7. Has your organization funded any research project on contracts made by minors?

☐ Yes

☐ No

If so, please explain :

## Minors, contracts and consequences

### \* 8. Does your organization have any future project with respect to contracts made by minors? (for instance: public dissemination of information on this topic)?

☐ Yes

☐ No

If so, please explain :

## Minors, contracts and consequences

### \* 9. What are, in general, your main recommendations for the minors and their parents concerning consumer issues?

## Minors, contracts and consequences

## Mineurs, contrats et conséquences - Questionnaire organismes (ENG)

**\* 10. Do you have any other comments which might be useful for our study?**

☐ Yes

☐ No

If yes, please explain :

## **Annex 5: Parents' Results**

---

## Mineurs, contrats et conséquences - Questionnaire consommateurs











### 1. Êtes-vous parent d'au moins un enfant âgé entre 12 et 17 ans?

		Response Percent	Response Count
Oui		78,5%	208
Non		21,5%	57
answered question			265
skipped question			0




### 2. Combien avez-vous d'enfants âgés entre 12 et 17 ans?

		Response Percent	Response Count
Aucun		1,0%	2
Un seul		66,0%	134
Plus d'un		33,0%	67
answered question			203
skipped question			62





### 3. Quel est l'âge de votre enfant?

		Response Percent	Response Count
11 ans ou moins		1,0%	2
12 ans		18,1%	36
13 ans		15,1%	30
14 ans		12,1%	24
15 ans		14,6%	29
16 ans		18,1%	36
<b>17 ans</b>		<b>20,6%</b>	<b>41</b>
18 ans ou plus		0,5%	1
answered question			<b>199</b>
skipped question			<b>66</b>





### 4. Votre enfant gagne-t-il lui-même des revenus, par biais, par exemple, d'un emploi d'été ou occasionnel (à l'exclusion de tout argent de poche ou cadeau)?

		Response Percent	Response Count
Oui		35,1%	68
<b>Non</b>		<b>64,4%</b>	<b>125</b>
Ne sait pas		0,5%	1
answered question			<b>194</b>
skipped question			<b>71</b>

### 5. Discutez-vous de consommation ou de finances personnelles avec votre enfant?





		Response Percent	Response Count
Beaucoup		17,8%	34
<b>Assez</b>		<b>53,9%</b>	<b>103</b>
Peu		24,6%	47
Pas du tout		3,7%	7
answered question			191
skipped question			74

### 6. Considérez-vous, en tant que parent, avoir de l'influence sur les choix de consommation de votre enfant?




		Response Percent	Response Count
Beaucoup		21,2%	40
<b>Assez</b>		<b>55,6%</b>	<b>105</b>
Peu		22,2%	42
Pas du tout		1,1%	2
answered question			189
skipped question			76



## 7. Supervisez-vous la manière dont votre enfant dépense son argent personnel?

		Response Percent	Response Count
Beaucoup		22,2%	42
<b>Assez</b>		<b>49,2%</b>	<b>93</b>
Peu		25,4%	48
Pas du tout		3,2%	6
answered question			189
skipped question			76

## 8. À votre connaissance, votre enfant mineur a-t-il déjà eu des problèmes avec un commerçant relativement à un bien ou un service qu'il s'est procuré auprès de lui?



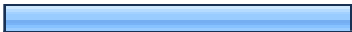

		Response Percent	Response Count
<b>Non</b>		<b>81,2%</b>	<b>151</b>
Ne sait pas		11,3%	21
Oui (veuillez préciser)		7,5%	14
answered question			186
skipped question			79

### 9. Comment ce problème s'est-il réglé?





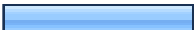



(Par exemple : le commerçant vous a remboursé après quelques discussion, vous avez entamé une poursuite devant les tribunaux, etc.)

		Response Count
		14
answered question		14
skipped question		251

### 10. Considérez-vous bien connaître les règles juridiques qui s'appliquent aux transactions que concluent les personnes de moins de 18 ans pour se procurer des biens et des services?

		Response Percent	Response Count
Beaucoup		1,1%	2
Assez		31,5%	57
<b>Peu</b>		<b>51,9%</b>	<b>94</b>
Pas du tout		15,5%	28
answered question			181
skipped question			84

# 11. Quels sont vos sources d'information au sujet des règles juridiques applicables aux transactions que concluent les personnes de moins de 18 ans pour se procurer des biens et des services?

		Response Percent	Response Count
Émissions de télévision ayant trait à la consommation (par ex. : « la Facture », « J.E. »)		54,6%	95
Sites Web de vulgarisation juridique (par ex. : educaloi.qc.ca, avocat.qc.ca)		21,8%	38
Sites Web d'organismes ou d'associations de protection du consommateur		43,1%	75
Revue traitant d'enjeux de consommation (par ex. : « Protégez-vous »)		33,3%	58
Journaux		28,2%	49
Parents, amis, collègues de travail		35,1%	61
Je ne m'informe pas sur ce sujet		22,4%	39
Autre (veuillez préciser)		4,0%	7
answered question			174
skipped question			91

**12. Avez-vous l'impression que la loi autorise un enfant mineur à se procurer, sans autorisation préalable de ses parents, les biens et services suivants :**

	Oui	Non	Rating Average	Response Count
Un logement	26,0% (44)	<b>74,0% (125)</b>	0,26	169
Une voiture	26,6% (45)	<b>73,4% (124)</b>	0,27	169
Une propriété immobilière	8,9% (15)	<b>91,1% (154)</b>	0,09	169
Une carte de crédit	32,0% (54)	<b>68,0% (115)</b>	0,32	169
Un téléphone cellulaire	<b>50,9% (86)</b>	49,1% (83)	0,51	169
Un repas au restaurant	<b>89,9% (152)</b>	10,1% (17)	0,90	169
Un billet de cinéma	<b>91,1% (154)</b>	8,9% (15)	0,91	169
Un ordinateur	<b>80,5% (136)</b>	19,5% (33)	0,80	169
Des vêtements	<b>91,1% (154)</b>	8,9% (15)	0,91	169
Une motoneige ou un VTT	18,9% (32)	<b>81,1% (137)</b>	0,19	169
Un prêt personnel dans une institution financière	12,4% (21)	<b>87,6% (148)</b>	0,12	169
Des bijoux de luxe	<b>72,8% (123)</b>	27,2% (46)	0,73	169
Un tatouage	<b>58,0% (98)</b>	42,0% (71)	0,58	169
Une carte de paiement électronique (par exemple, une carte iTunes ou Tim Hortons)	<b>82,8% (140)</b>	17,2% (29)	0,83	169
answered question				<b>169</b>
skipped question				<b>96</b>

**13. Plus spécifiquement, avez-vous l'impression qu'une personne de moins de 18 ans peut, sans autorisation préalable de ses parents, légalement conclure les transactions suivantes avec un commerçant :**

	Oui	Non	Rating Average	Response Count
se procurer des biens ou des services grâce à un programme de type « achetez maintenant, payez plus tard »	17,1% (28)	<b>82,9% (136)</b>	0,17	164
se procurer des biens ou des services de grande valeur	43,3% (71)	<b>56,7% (93)</b>	0,43	164
se procurer des biens ou des services, lorsque le consommateur mineur est âgé d'au moins 16 ans	<b>82,3% (135)</b>	17,7% (29)	0,82	164
se procurer des biens ou des services, lorsque le consommateur mineur est âgé d'au moins 14 ans	<b>65,9% (108)</b>	34,1% (56)	0,66	164
se procurer des biens ou des services, lorsque le consommateur mineur est âgé de moins de 14 ans	<b>50,6% (83)</b>	49,4% (81)	0,51	164
conclure un contrat de type « abonnement » impliquant des paiements périodiques	41,5% (68)	<b>58,5% (96)</b>	0,41	164
se procurer des biens et des services qui visent à combler des besoins essentiels (par exemple : meubles, nourriture, transport, service téléphonique, etc.)	<b>69,5% (114)</b>	30,5% (50)	0,70	164
answered question				164
skipped question				101

**14. Peu importe ce qu'en dit la loi, jugez-vous personnellement qu'il est acceptable, d'un point de vue moral et éthique, qu'un enfant mineur se procure, sans autorisation préalable de ses parents, les biens et services suivants :**

	Oui	Non	Rating Average	Response Count
Un logement	5,1% (8)	<b>94,9% (150)</b>	0,05	158
Une voiture	3,2% (5)	<b>96,8% (153)</b>	0,03	158
Une propriété immobilière	1,9% (3)	<b>98,1% (155)</b>	0,02	158
Une carte de crédit	2,5% (4)	<b>97,5% (154)</b>	0,03	158
Un téléphone cellulaire	17,7% (28)	<b>82,3% (130)</b>	0,18	158
Un repas au restaurant	<b>94,9% (150)</b>	5,1% (8)	0,95	158
Un billet de cinéma	<b>93,7% (148)</b>	6,3% (10)	0,94	158
Un ordinateur	38,0% (60)	<b>62,0% (98)</b>	0,38	158
Des vêtements	<b>91,1% (144)</b>	8,9% (14)	0,91	158
Une motoneige ou un VTT	3,2% (5)	<b>96,8% (153)</b>	0,03	158
Un prêt personnel dans une institution financière	1,3% (2)	<b>98,7% (156)</b>	0,01	158
Des bijoux de luxe	15,8% (25)	<b>84,2% (133)</b>	0,16	158
Un tatouage	8,2% (13)	<b>91,8% (145)</b>	0,08	158
Une carte de paiement électronique prépayée (par exemple, une carte iTunes ou Tim Hortons)	<b>59,5% (94)</b>	40,5% (64)	0,59	158
answered question				<b>158</b>
skipped question				<b>107</b>

**Page 10, Q8. À votre connaissance, votre enfant mineur a-t-il déjà eu des problèmes avec un commerçant relativement à un bien ou un service qu'il s'est procuré auprès de lui?**

1	se faire rembourser une garantie prolongée offert par le commerçant dont l'article avait une garantie à vie...	Apr 8, 2011 7:46 AM
2	un site Web demandant un no de cellulaire, qui finit par charger 2\$ par jour pour un concours «gratuit»	Apr 4, 2011 7:43 AM
3	retour de vetement	Apr 3, 2011 8:43 AM
4	achat par internet aux USA	Apr 1, 2011 12:13 PM
5	Produit défectueux et difficulté à faire respecter la garantie	Apr 1, 2011 7:53 AM
6	Mon enfant a un cellulaire, et le fournisseur de service l'a appelée pour lui offrir des options supplémentaires au service de base. Elle a choisi une boîte vocale, gratuite pour le premier mois, et nous avons insisté pour qu'elle voit elle-même à interrompre le service avant de devoir le payer. Ce qu'elle a fait... avec un peu d'aide. Sa carte de guichet a également été clônée au dépanneur situé tout près de son école.	Apr 1, 2011 7:43 AM
7	AMT	Apr 1, 2011 6:09 AM
8	Mauvaise représentation	Apr 1, 2011 5:52 AM
9	Surcharge téléphonie cellulaire. Fausse promesse d'utilisation cellulaire. Salon coiffure: résultats désastreux et frais plus élevé.	Apr 1, 2011 5:46 AM
10	prix affiché incorrect	Apr 1, 2011 4:20 AM
11	cel	Apr 1, 2011 4:07 AM
12	Jeu usage microplay	Apr 1, 2011 3:39 AM
13	je ne sais pas plus que ça	Mar 31, 2011 9:49 PM
14	Future Shop avait une promotion et ils ont attendu 2h à la porte et quand cela à ouvert ils dit non ici à Lachenaie ya pas cette promotion et pourtant elle était dans le circulaire il à fallu que moi j'écrive au bureau chef pour avoir la remise promotionel avec achat!	Mar 31, 2011 7:52 PM

**Page 11, Q9. Comment ce problème s'est-il réglé?****<BR>(Par exemple : le commerçant vous a remboursé après quelques discussion, vous avez entamé une poursuite devant les tribunaux, etc.)**

1	le commerçant vous a remboursé après quelques discussion	Apr 8, 2011 7:46 AM
2	Problème pas réglé. Demandé remboursement. Refusé. Plainte à l'OPC, à la Régie des loteries, etc. (mais je vais peut-être vous appeler aussi, finalement!)	Apr 4, 2011 7:43 AM
3	le commerçant vous a remboursé après quelques discussion	Apr 3, 2011 8:43 AM
4	après plusieurs téléphones	Apr 1, 2011 12:14 PM
5	Le père a du se présenter au commerce et finalement le commercant a remplacé le produit	Apr 1, 2011 7:54 AM
6	Voir la réponse précédente. Je crois qu'elle a bien mené le dossier...	Apr 1, 2011 7:44 AM
7	Tribunal	Apr 1, 2011 6:10 AM
8	Cellulaire: appel pour explications concernant les surcharges impliquant internet. Leur réponse: votre enfant doit accrocher la touche internet. Ma réponse: j'ai exigé qu'on bloque cette touche. On m'a remboursé la moitié des frais, soit 250\$. Notez que j'ai discuté avec plusieurs employés avant d'en trouver un acceptant de bloquer l'accès internet!	Apr 1, 2011 5:54 AM
9	Pas réglé, montant infime (env 25\$)	Apr 1, 2011 5:53 AM
10	pas réglé, mon fils a quitté le commerce	Apr 1, 2011 4:21 AM
11	le commerçant nous a remboursé après quelques discussion	Apr 1, 2011 4:07 AM
12	Remboursement après discussion	Apr 1, 2011 3:40 AM
13	Office protection	Mar 31, 2011 9:49 PM
14	J'ai écrit pour mon fils et je me suis battut pour enfin avoir gain de cause, si cela était inscrit dans le circulaire et bien il devait le respecter car aucun avis contraire n'avait été mentionné tout les autres futures Shop avait honorer la promo sauf Lachenaie	Mar 31, 2011 7:54 PM



**Page 13, Q11. Quels sont vos sources d'information au sujet des règles juridiques applicables aux transactions que concluent les personnes de moins de 18 ans pour se procurer des biens et des services?**

1	etudes en administration	Apr 6, 2011 8:21 PM
2	Cours sur les droits et lois du Québec	Apr 1, 2011 10:35 AM
3	Je travaille dans le domaine de la protection du consommateur	Apr 1, 2011 5:02 AM
4	je n'en connais pas	Apr 1, 2011 4:41 AM
5	ma mere	Apr 1, 2011 4:23 AM
6	Étudiante en droit	Mar 31, 2011 9:50 PM
7	Pour moi qu'il soit ado ou non un achat doit avoir les mêmes droit que moi adulte, un contrat tout dépends si pour achat de cellulaire?? cela ne devrait pas exister avant 18 ans et ce pour tout les contrats.	Mar 31, 2011 7:55 PM

## Annex 6: Cases in the Media

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What the media report as young people's consumer issues

### Cell phones

Cell phones, whether "locked" into the use of a few selected numbers, or prepaid, or smart, are, according to information available on the Web, the main contractual source of frustration and debt among young people and their parents.

This is no doubt explained by the fact that cell phone use by young Quebecers and Canadians is more and more widespread and that the telecommunications sector is barely regulated.

On September 7, 2009, the program *Légitime dépense* broadcast by Télé-Québec discussed the subject of teenagers' first cell phone. On a Web page presenting the program's subject, we learn that:

*Les adolescents d'aujourd'hui sont les plus riches et les plus dépensiers de l'histoire. Les 14-18 ans sont devenus une cible de choix pour les publicitaires. Dans le langage des professionnels de la publicité, ces "prescripteurs d'achats" d'aujourd'hui sont aussi "les clients de l'avenir". Il importe de les fidéliser au plus vite! Depuis quelques années, certaines agences de publicité québécoises, comme Virus 1334 (pour 13 à 34 ans), ont décidé de se spécialiser en ciblant particulièrement la clientèle jeunesse. Si la loi protège les moins de 13 ans, interdisant la pub directe aux enfants en bas âge, les publicitaires ont le feu vert pour courtiser votre jeune ado à partir de l'âge de 14 ans.<sup>224</sup>*

Journal de Montréal columnist Mathieu Turbide reports the following on cell phone use by young people, at the end of an article about youthful debt from cell phone use:

#### QUELQUES FAITS

*Une étude australienne a démontré que les enfants commencent, en moyenne, à utiliser un cellulaire à l'âge de 13 ans.*

*Une autre recherche australienne a établi que 25 % des jeunes de 8 à 13 ans utilisent un cellulaire dans ce pays.*

*Au Canada, 5 % des enfants de 8 à 12 ans et 30 % des enfants de 13 à 15 ans ont accès à un cellulaire dont ils sont le principal utilisateur, selon l'Association canadienne de la téléphonie sans fil.*

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<sup>224</sup> Légitimes dépenses program, Consommation jeunesse, Mon premier cellulaire, Télé-Québec, Montreal, Canada, 2011. [Online] <http://legitimedepense.telequebec.tv/sujets.aspx?id=8> (consulted on June 14, 2011).

*Selon une étude suisse, ceux qui s'habituent à utiliser le téléphone cellulaire durant leur jeune âge l'utilisent davantage que les autres à l'âge adulte<sup>225</sup>.*

#### **a) In Quebec**

Journal de Montréal journalist Mathieu Turbide reports that:

*Les jeunes s'endettent avec leur cellulaire*

*Les jeunes qui signent des contrats pour obtenir un téléphone cellulaire ne savent pas dans quoi ils s'embarquent et se retrouvent souvent incapables de payer leur compte, révèle une étude réalisée récemment par Option consommateurs.*

*L'organisme a suivi et interrogé une soixantaine de jeunes de 15 à 25 ans pour découvrir que la plupart d'entre eux ont sous-estimé le coût de leurs téléphones cellulaires.*

*Les jeunes sont attirés par les forfaits à long terme, parce que cela leur permet d'avoir un téléphone gratuit.*

*“Conséquence : ils se retrouvent avec des forfaits qui ne conviennent pas à leurs besoins. [...] Autre constatation : lorsqu'ils reçoivent leur facture, les jeunes sont souvent surpris de la somme à payer, qui est plus élevée que prévu,” peut-on lire dans le document de 210 pages qui a été remis récemment à Industry Canada, qui a financé la recherche.*

*L'équipe de chercheurs, dirigée par Maryse Guénette, a aussi fait le constat que beaucoup de jeunes ignorent l'existence même des frais de résiliation de contrat.*

*[...]*

*Selon les auteurs de l'étude, les entreprises étudiées, Bell, Rogers (incluant Fido) et Telus (incluant Koodo), informent mal leurs clients au moment de faire signer les contrats.*

*“Nous av*

*ons découvert que, la plupart du temps, bien que ces modalités soient faciles à trouver, elles sont difficiles à comprendre, que les frais demandés y sont rarement précisés et que l'intérêt sur les paiements en retard ainsi que les frais de résiliation sont très élevés.”<sup>226</sup>*

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<sup>225</sup> TURBIDE, Mathieu, Les jeunes s'endettent avec leur cellulaire, Canoe, Montreal, January 26, 2010. [Online] <http://fr.canoe.ca/techno/nouvelles/archives/2010/01/20100126-115523.html> (consulted on June 14, 2011).

<sup>226</sup> *Op. Cit.*, Note 225.

La Presse journalist Marc Tison writes the following:

*Les ados et le cellulaire : des clients mal renseignés*

*Publié le 16 novembre 2007 à 0 h | Mis à jour le 16 novembre 2007 à 6 h 41*

*Les trois jeunes rigolos bigarrés qui utilisent leurs cellulaires à toutes les sauces dans une série de pubs télé ont eu de la chance s'ils ont pu obtenir l'information appropriée au moment de leur achat.*

*La publicité attire les jeunes -et les très jeunes- dans les magasins de téléphones cellulaires, mais une fois sur place, ils sont souvent mal accueillis, mal renseignés, mal conseillés.*

*Bref, l'information manque à l'appel.*

*C'est ce que révèle une enquête réalisée par Option consommateurs en octobre, novembre et décembre 2006.*

*C'est lors du trimestre qui précède les Fêtes que les compagnies de téléphonie cellulaire enregistrent le plus grand nombre de ventes 607 000 nouveaux abonnés au Canada durant les trois derniers mois de 2006, davantage que dans les six premiers mois.*

*Pour vérifier quel accueil on leur réservait, six jeunes de 12 à 17 ans ont chacun visité six magasins des bannières Bell, Fido, Rogers, Telus, Virgin et La cabine téléphonique, en annonçant d'entrée qu'ils n'y connaissaient rien.*

*Deux enquêteurs adultes se tenaient discrètement à proximité pour prendre note des échanges.*

*“La première chose que nous avons notée, c'est le peu d'intérêt que les vendeurs ont montré pour nos enquêteurs adolescents, indique Maryse Guénette, coauteure de l'enquête. Très peu les ont bien renseignés, plusieurs ont semblé peu intéressés à les servir, certains les ont même ignorés complètement.”*

*Sur les 36 vendeurs rencontrés, seulement trois ont demandé sur quel territoire le jeune client comptait utiliser son cellulaire.*

*À peine sept se sont enquis de la fréquence de l'usage, pour orienter le jeune vers le forfait ou le paiement à la carte. Moins de la moitié des vendeurs ont demandé quand le téléphone serait utilisé -une donnée essentielle pour le choix d'un forfait approprié.*

*L'information fournie n'était pas plus généreuse. Ainsi, seulement six vendeurs ont expliqué la différence entre un forfait et un service à la carte.*

*Aucun n'a précisé qu'une rupture de contrat entraînait des frais. À peine six conseillers ont indiqué à leur jeune client combien lui coûterait chaque mois l'usage de son cellulaire.*

*“Dans ce contexte, on peut se demander comment il se fait que 26 vendeurs se soient sentis suffisamment à l'aise pour faire une suggestion à nos jeunes enquêteurs,” relèvent les auteurs de l'enquête.*

*De son côté, Bell Mobilité indique qu'elle va étudier les résultats de l'enquête avant d'apporter, s'il y a lieu, les correctifs nécessaires.*

*"Il faut une interaction entre le vendeur, le mineur et ses parents, qui doivent travailler ensemble," soutient le porte-parole, Jacques Bouchard<sup>227</sup>.*

## **b) In Canada**

The website of the Montreal Children's Hospital of the McGill University Health Centre reports that an online survey conducted on the About.com website asked parents at what age children should have their first cell phone. Over 57% of the 3,700 answers received were in favour of children between 10 and 13 years of age having a first cell phone.<sup>228</sup>

The cell phone used to be a simple telephone, but this is less and less the case. Journal de Québec columnist Renée Laurin revealed the following:

*Facturation mobile*

*Le cellulaire, ami ou ennemi des ados?*

*Mademoiselle Rêve veut un cellulaire. À 15 ans, on ne peut plus s'en passer, me dit-elle. Après tout, TOUS ses amis en ont un...*

*Et bien Mademoiselle Rêve peut toujours rêver. Elle n'aura pas de cellulaire.*

*Je me fiche de savoir que ses amis en ont un. Quand bien même toute la population de la planète se promènerait avec un cellulaire en poche, je resterais inébranlable. Je suis résolument contre.*

*Elle pourra toujours prendre le mien en cas de nécessité, mais tant qu'elle ne sera pas en mesure d'assumer elle-même les coûts d'un besoin imaginaire créé de toutes pièces par une industrie en quête de profits démesurés, je ne marcherai pas.*

*Non, mais c'est quoi cette maladie de vouloir être joignable, 24 h sur 24.*

*Je me fâche rarement, je déteste remettre en question les choix que font les autres parents, mais lorsqu'il est question de cellulaire, de BlackBerry et autre portable, je perds toute objectivité.*

*Je n'arrive tout simplement pas à trouver une raison valable pour justifier l'achat d'un cellulaire à un adolescent.*

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<sup>227</sup> TISON, Marc, Les ados et le cellulaire: des clients mal renseignés, La Presse, Business section, Montreal, November 16, 2007. [Online] <http://lapresseaffaires.cyberpresse.ca/economie/200901/06/01-681843-les-ados-et-le-cellulaire-des-clients-mal-renseignes.php> (consulted on June 21, 2011).

<sup>228</sup> Montreal Children's Hospital of the McGill University Health Centre, How Old for a Cell Phone? You Decide. Montreal, April 12, 2011. [Online] <http://www.hopitalpourenfants.com/en/health/conditions.aspx?sLg=1&iID=506> (consulted on June 15, 2011).

### À L'OCCASION

*À la limite, je peux comprendre qu'on lui en fournisse un à l'occasion pour être en mesure de le retracer facilement lorsqu'il sort tard le soir, lorsqu'il doit voyager seul sur de grandes distances en empruntant les transports publics, etc. Savoir qu'on peut communiquer avec notre enfant en tout temps et qu'il peut faire de même, en cas de besoin, nous rassure.*

*Sauf que dans les faits, les jeunes possèdent pour la plupart leur propre téléphone et s'en servent généralement pour bien d'autres raisons que pour nous rassurer.*

*En 2005, 46 % des jeunes Canadiens de cinquième secondaire possédaient leur propre cellulaire, selon un sondage réalisé par le Bureau de la consommation du Canada. D'autres sources sur le Web parlent maintenant de deux ados sur trois.*

*Selon le même sondage, les jeunes s'en servent d'abord pour téléphoner, puis pour écrire ou recevoir des messages textes, prendre des photos et télécharger de la musique.*

*On mentionne aussi que les options les plus demandées au moment d'acheter un cellulaire ou de s'abonner à un forfait sont la prise de photo, le lecteur MP3 intégré et surtout les textos. Ça en dit long sur l'usage qu'ils comptent en faire et sur le montant de la facture que les parents risquent d'avoir à payer au bout du mois s'ils sont responsables du compte d'un jeune qui dépasse, souvent sans s'en rendre compte, les limites permises par le forfait.*

*Carole Grenier, coach budgétaire pour particuliers, me confiait récemment qu'un de ses clients, qui venait d'acheter un téléphone cellulaire à son ado, s'est retrouvé avec une facture de 200 \$ à payer.*

*Dans le cadre d'une étude toute fraîche d'Option consommateur sur les cellulaires et l'endettement des jeunes, "plusieurs jeunes ont affirmé payer chaque mois une somme plus élevée que prévu. Cette différence était de 10 \$ à... 60 \$ par mois".*

*Souvent, ils se laissent convaincre par des publicités trompeuses qui leur promettent par exemple l'utilisation illimitée des textos. Or cette clause s'applique souvent pendant une période limitée. Le délai de gratuité passé, la facture mensuelle se met soudain à grimper et les jeunes qui s'étaient engagés au départ à tout payer, ne sont plus en mesure de le faire.*

*Si les parents refusent de payer la note, ils se retrouvent avec des dettes et un dossier de crédit avant même de pouvoir voler de leurs propres ailes.*

### DES RAISONS POUR NE PAS ACHETER DE CELLULAIRE À VOTRE ADO

*Les risques pour la santé ne sont pas encore clairement établis. L'OMS passe en revue une quantité importante de recherches scientifiques sur le sujet, mais le rapport ne sera pas publié avant 2010.*

*"Les jeunes utilisent souvent leur téléphone cellulaire plus que ne le font les autres consommateurs, soit durant, en moyenne, 84 (plutôt que 71) minutes chaque semaine. Et ils l'utilisent davantage pour leurs besoins personnels." (Option consommateurs, étude 2007)*

*Les jeunes sont des proies faciles pour les vendeurs. «Ils (les vendeurs) sont souvent avares d'information, ce qui peut être préjudiciable pour les jeunes consommateurs. Seulement six vendeurs sur 36 (16,5 %) ont dit à nos jeunes enquêteurs combien leur coûterait chaque mois leur téléphone cellulaire» . (Option consommateurs, étude 2007) Le cellulaire, comme le iPod, mine la concentration des élèves. Ceux qui en font un usage intensif réussiraient moins bien à l'école, selon une étude de la Kaiser Family Foundation.*

*Les ados risquent de s'endetter et d'avoir un mauvais dossier de crédit.*

*Un adolescent qui utilise son cellulaire pour flirter en exposant des photos ou vidéos pornographiques peut faire face à des accusations de pornographie juvénile, même s'il s'agit d'autoportraits.*

*Certains adolescents font un usage abusif de leur cellulaire. Ils s'en servent pour tricher aux examens ou encore pour filmer et prendre des photos des gens à leur insu.*

*Il se pourrait que les cellulaires soient responsables du caractère parfois grincheux des adolescents. On a trouvé que l'usage excessif du cellulaire par les adolescents avait tendance à favoriser l'agitation et la perturbation du sommeil.<sup>229</sup>*

## **Text messages<sup>230</sup>**

Text messages, those mini textual messages sent by cell phones or computers to cell phones, are a windfall for all kinds of merchants. Indeed, depending on the policy of the company selling the cell phone service, those messages may be free, partly free or chargeable.

### **a) In Quebec**

In 2006, La Presse business journalist Marc Tison alerted the public to the various forms that text messages could already adopt:

*Pièges à ados sur cellulaire*

*Son cellulaire l'a bien fait rire. Jusqu'à ce que sa mère reçoive le compte. Elle l'a trouvée moins drôle.*

*Son fils, raconte Denise Chicoine, avait acquiescé à l'offre de téléchargement d'une blague quotidienne sur son cellulaire, en messagerie texte. Tout cela gratuitement, il va sans dire. En fait, il était le dindon de la farce.*

*Une somme de 25 \$ s'est éventuellement ajoutée à la facture mensuelle de sa mère. "Ils lui facturaient environ un dollar par jour pour la blague, explique-t-elle. Comique, non?"*

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<sup>229</sup> LAURIN, Renée, Le cellulaire, ami ou ennemi des ados?, Journal de Québec, March 8, 2011. [Online] <http://lejournaldemontreal.canoe.ca/journaldemontreal/votrevie/famille/archives/2011/03/20110308-094340.html> (consulted on June 19, 2011).

<sup>230</sup> Texto: text (or SMS) messages, short textual messages, Wikipedia. [Online] <http://en.wikipedia.org/wiki/Texto> and [http://en.wikipedia.org/wiki/Short\\_Message\\_Service](http://en.wikipedia.org/wiki/Short_Message_Service) (consulted on June 15, 2011).

*Le farceur facturait ses services par l'intermédiaire du fournisseur de téléphonie sans fil. Au terme de longues et complexes démarches maternelles, le joyeux service a finalement été interrompu.*

*“Ce téléphone cellulaire que j'ai donné à mon enfant servait à le trouver en tout temps, s'indigne Mme Chicoine. Mais les jeunes peuvent s'abonner à des services qui coûtent une fortune sans l'autorisation de leurs parents, alors qu'ils sont mineurs.”*

*Les jeunes utilisateurs de cellulaires sont en effet soumis à d'alléchantes tentations-sonneries et tonalités d'attente personnalisées, blagues, chansons, capsules mode à 25 cents la pièce... Ces produits peuvent être sélectionnés à partir du téléphone, du portail Internet du fournisseur de services sans fil ou d'un autre site Web.*

*“Les ados constituent le marché émergent du cellulaire et représentent un potentiel énorme de revenu,” soutient André H. Caron, directeur du Centre interdisciplinaire de recherche sur les technologies émergentes de l'UdM. Il est l'auteur, avec Letizia Caronia, de l'ouvrage Culture mobile, sur la relation entre cellulaires et jeunes.*

*Les mineurs ne devraient pas pouvoir s'engager sans l'accord des parents, mais “c'est l'omniprésence des technologies qui fait qu'on ne peut plus contrôler toutes les offres et les messages qui circulent,” constate-t-il.*

*Dans le cas de notre lectrice, la tarification des blagues gratuites était-elle mentionnée quelque part? Sans doute, en petits caractères relayés par un discret astérisque.*

*Patricia Lefebvre, responsable de la section Jeunesse chez Option consommateurs, a trouvé d'autres explications dans les séances d'information sur l'utilisation des cellulaires qu'elle donne dans les écoles.*

*“Les jeunes me disent que les premiers mois d'un service sont gratuits et que, lorsqu'il ne l'est plus, ils sont déjà habitués à télécharger et oublient d'annuler ce service, expose-t-elle. Ou encore, on leur a dit qu'il y avait un certain nombre de minutes de téléchargement gratuit, mais ils se rendent compte que le téléchargement de la chanson prend davantage de temps et ils ne s'arrêtent pas en cours.”*

*Dans un cas comme dans l'autre, le parent entendra bientôt sonner la caisse enregistreuse.*

*[...]*

*Jean-Jacques Préaux, de l'Office de la protection du consommateur, recommande aux jeunes de toujours prendre le temps de lire les conditions de toute offre de services connexes. “C'est lorsqu'on appuie sur le bouton 'J'accepte' après un long texte que surviennent des surprises qu'on n'attendait pas,” souligne-t-il<sup>231</sup>.*

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<sup>231</sup> TISON, Marc, Pièges à ados sur cellulaire, La Presse, Technaute section, Montreal, April 3, 2006. [Online] <http://technaute.cyberpresse.ca/nouvelles/mobilite/200604/03/01-15404-pieges-a-ados-sur-cellulaire.php> (consulted on June 14, 2011).



In 2008, Union des consommateurs warned consumers about poisoned text messages and offered resources for preventing their receipt:

***Méfiez-vous des textos empoisonnés***

*Les messages textes non désirés*

*Sonneries gratuites, concours pour gagner un baladeur, horoscope, blagues, tests “d’intelligence,” jeux... Autant d’appâts qui sont annoncés sur des sites web, des publicités à la télévision, des textos ou des courriels... Autant de raisons d’être sur vos gardes.*

*Si l’on vous demande d’inscrire votre numéro de cellulaire sur une page web ou d’envoyer, à partir de votre cellulaire, un message texte à un numéro abrégé (généralement à cinq (5) ou six (6) chiffres), méfiez-vous!*

*Plusieurs de ces services constituent une forme d’abonnement et dès que vous vous abonnez, vous recevez un message texte, puis un autre, puis un autre... Le manège peut coûter cher. Des abonnés de téléphone cellulaire ont rapporté à l’Union des consommateurs avoir reçu plusieurs messages textes par semaine, coûtant autour de deux dollars chacun, en plus, le cas échéant, des frais réguliers de textos entrants facturés par la compagnie de cellulaire.*

*En principe, chaque consommateur qui s’abonne est avisé des frais rattachés à ce service et doit y consentir de façon explicite. Dans la réalité, le consommateur ne donne pas toujours un consentement éclairé. Le “contrat,” quand il existe, est souvent écrit avec des caractères illisibles ou de façon incompréhensible. Certains consommateurs prétendent de façon catégorique n’avoir donné aucun consentement.*

*Souvent, les consommateurs ne se rendent compte du piège qu’en recevant leur facture, à la fin du mois, et en y découvrant une “surprise,” des frais inscrits sous une rubrique nommée “services supérieurs” ou “messages de qualité” ou encore, “services premiums” qui peuvent atteindre quelques centaines de dollars.*

In 2011, the problem, far from solved, seems to be growing. In May 2011, Stéphane Dussault, a journalist for the consumer magazine Protégez-vous, wrote, in an article about poisoned text messages addressed to children:

*Cas vécu : comment arnaquer une enfant en sept étapes faciles*

*Un concours “gratuit” offert sur le Web, mais facturé sur le cellulaire... Les textos empoisonnés contaminent même les sites pour enfants. Résultat : une facture de téléphone salée. Le cas vécu de Simone, 12 ans, et de ses parents.*

*En consultant le relevé de compte du téléphone portable de Simone, notre fille de 12 ans, nous remarquons un supplément de 40 \$ par rapport aux factures habituelles. Nous contactons le fournisseur de téléphonie, qui nous souligne qu'elle a participé à un concours et qu'il faut appeler les responsables pour obtenir les détails. “Mais le concours était gratuit!” se défend Simone. Refaisons le parcours de notre enfant pour nous y retrouver.*

*Les sept étapes de l'arnaque*

*Étape 1 : choisir un site Web pour enfants*

*Les problèmes commencent sur le site Web Cromimi, où les enfants peuvent élever des rongeurs virtuels. Pour trouver une solution à un problème technique, Simone va dans son navigateur de recherche et tape “Astuce Cromimi”. Bravo pour l'initiative, mais bonjour les problèmes!*

*Étape 2 : attirer l'œil de la victime avec un concours*

*Elle atterrit sur le site Top-Astuce, qui donne un coup de pouce aux enfants dans plusieurs jeux, dont Cromimi. Malheureusement, l'œil de Simone est attiré par un bandeau publicitaire qui lui annonce qu'elle a été choisie comme candidate pour un prix. “Cliquez ici pour gagner,” lui suggère-t-on. Ce qu'elle fait avec bonheur. Qui refuserait un gain qui ne nécessite qu'un clic?*

*Étape 3 : faire miroiter un prix alléchant*

*Bonheur! Le prix est un iPad, justement la bécote que nous refusons de lui acheter pour son anniversaire, jugeant que sa Nintendo DS et son téléphone portable, la télé et l'ordinateur de la famille, la Wii de sa sœur et le iPod Touch de sa mère suffisent comme attirail techno...*

*Étape 4 : poser une question facile*

*Ayant été élevée dans un environnement Macintosh, notre préado n'a aucune difficulté à trouver la bonne réponse.*

*Étape 5 : demander un numéro de cellulaire, l'air de rien*

*Pourquoi demander un numéro de téléphone portable pour décerner un prix? De toute évidence, c'est la dernière des questions que se pose Simone, obnubilée par l'iPad.*

*Étape 6 : envoyer un code PIN “sans frais” sur le cellulaire*

*C'est gratuit, donc ça va bien. Simone lâche l'ordinateur et passe à son téléphone pour récupérer son code PIN sans frais.*

*Étape 7 : envoyer un texto par jour et facturer chaque utilisation du code*

*Le peu de méfiance qui lui restait et la difficulté de compréhension du message texto ont eu raison de notre jeune fille. Elle apprendra un mois plus tard qu'obtenir le code PIN était gratuit, mais que l'utiliser coûtait quelque chose. Un détail de 40 \$, puisqu'on lui envoyait un texto par jour pour lui suggérer d'ajouter un autre cybercoupon de participation. Simone ne se doutait pas qu'on lui facturait 2 \$ pour chacune de ces inscriptions. Ce n'est qu'après la réception de la facture mensuelle que notre ingénue a cessé de participer.*

*L'entreprise refuse de rembourser*

*Isabelle, la mère de Simone, envoie aussitôt un courriel au responsable du concours, une entreprise nommée R&D Media : "Je suis stupéfaite de constater que l'on peut solliciter des enfants mineurs avec des concours où on doit payer pour participer. Je croyais que c'était illégal et que les concours étaient réservés aux 18 ans et plus," écrit-elle avant de demander un remboursement.*

*Elle se fait répondre que le texto était limpide. "Nous ne voyons malheureusement aucune raison de vous rembourser. Sur nos règlements, on signale que c'est interdit à des mineurs et que s'ils ont bien envie de s'inscrire il faut demander l'autorisation aux parents. Selon la loi canadienne, vous êtes entièrement responsable des actes de votre fille."*

*Isabelle réplique en écrivant notamment : "Avec des messages aussi peu lisibles que «(Joue! (2 \$/msg,1msg/jour) > ENTRER CODE : 7513 < (info : zemgo.com, frais données possibles, question, Envoie STOP pour arrêter, 18+)», comment voulez-vous que l'on comprenne tout ce que vous prenez la peine de m'expliquer sur une page entière dans votre courriel d'explications! Je vous rappelle que vous appâtez vos proies sur un site de jeux pour jeunes enfants."*

*L'entreprise lui répond essentiellement qu'elle reste sur ses positions<sup>232</sup>. [...]*

Internet users commented:

*Par Marjolaine Lalonde*

*Je suis désolée pour cette famille, mais ma première réaction est que fait une jeune fille de 11 ans avec un cellulaire. Est-ce vraiment essentiel? Il est évident qu'elle n'a pas la maturité pour comprendre tout ce qu'elle peut faire avec ce genre d'appareil. Si les jeunes doivent absolument avoir un cellulaire, alors, les compagnies (Telus, fido, Rodgers et autres) devraient avoir des forfaits moins de 18 ans pour lesquels ce genre de facturation est interdit. Un peu comme un compte jeunesse à la banque qui limite le genre de transaction que le détenteur du compte peut faire. Mais néanmoins lorsqu'un parent est d'accord pour mettre entre les mains de son jeune un cellulaire et bien il doit assumer sa décision et payer pour les gaffes de son jeune. J'ai eu des enfants qui sont maintenant de jeunes adultes et ils n'ont pas eu de cellulaire avant l'âge de 16-17 ans. Ils étaient alors responsables du paiement de leur compte.*

*26 mai 2011 Par Cécile Savoie*

<sup>232</sup> DUSSAULT, Stéphane, Cas vécu: comment arnaquer une enfant en sept étapes faciles, Protégez-vous, Montreal, May 2011. [Online] <http://www.protegez-vous.ca/affaires-et-societe/cas-vecu-arnaquer-enfant.html> (consulted on June 14, 2011).

*Je comprends votre réaction, mais ici, les parents ne s'opposent pas à assumer la responsabilité des actes de leur enfant (ils paient). Ce qui est en cause ici n'est pas les choix éducatifs, mais bien l'étude d'une tactique commerciale pour déterminer si elle est légalement acceptable (puisqu'on s'entend à peu près pour dire que Moralement, elle ne l'est pas!) Autrement dit, cette entreprise est-elle encore du côté légal de la limite ou l'a-t-elle dépassée? À mon sens, une entreprise éthique et bien intentionnée s'arrange pour éviter de profiter de loopholes et tâche d'avoir une politique commerciale située à une distance évidente de la limite. Une entreprise qui cherche à tromper, au contraire, fait tout pour confondre et rendre la limite imprécise. Dommage que le péché d'intention ne soit pas criminellement recevable<sup>233</sup>.*

Following Mr. Dussault's article, Protégez-vous magazine invited its Internet user subscribers to comment on the following factual case in the Vox Conso section:

*Vox conso*

*Affaires et société*

*Publicité internet pour enfants*

*J'ai un ami qui s'est fait facturer un montant de 922 \$ par Voxtel suite à des appels effectués à un numéro 1-900 par ses enfants âgés entre 8 et 11. Il s'agit à la base du site Blablaland (qui vise directement les enfants en très bas âge) incitant les enfants à appeler à ce numéro pour avoir de la monnaie virtuelle. Les appels coûtent 5 \$ chaque et il est possible d'en placer 2/minute donc imaginez la vitesse à laquelle augmente le compte de téléphone! Et pas trop trop gratuit le site pour enfants. C'est d'abord Allopass (compagnie française) qui offre ce mode de paiement à l'exploitant du site et c'est d'ailleurs sous ce nom qu'apparaissent les frais. Voxtel est la compagnie québécoise qui se charge de facturer la compagnie de téléphone de l'abonné qui elle facture son abonné.*

*Ah oui, j'oubliais! Sur le site de Blablaland, il est aussi possible de participer à des loteries pour gagner de la monnaie virtuelle! Tout un jeu d'enfant!*

*Ça m'a tout l'air d'un contrat de service conclu à distance (art. 54.1 et ss. de la LPC). Est-ce qu'un enfant de 8 ans, par exemple, est apte, en vertu de l'art. 1398 du CcQ à donner son consentement dans un tel cas?*

*Est-ce légal de s'adresser ainsi à de si jeunes enfants pour soutirer autant d'argent des parents?*

*Si non, est-ce qu'on pourrait invoquer la nullité absolue du/des contrat(s) (art.161, 1416, 1417 CcQ)?<sup>234</sup>*

On June 14, 2011, after a month of its publication and although 6 Internet users had found the subject "interesting," this consumer forum established by Protégez-vous magazine had attracted no comment.

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<sup>233</sup> *Op. Cit.*, Note 231.

<sup>234</sup> LYNCH, Cynthia, Publicité internet pour enfants, Protégez-vous, Montreal, May 2011.

[Online] <http://www.voxconso.ca/publicite-internet-pour-enfants.html> (consulted on June 14, 2011).

## iTunes

### a) In Quebec

On April 25, 2009, La Presse journalist Stéphanie Grammond reported the story of a teenager who had made purchases totalling \$2,207 on iTunes.

*Son ado flambe 2207 \$ sur iTunes à son insu*

*Publié le 26 avril 2009 à 11h22 | Mis à jour le 26 avril 2009 à 11h27*

*Les adolescents sont souvent les premiers à se débrouiller avec les gadgets technologiques dernier cri. Leurs réflexes de consommateurs ne sont cependant pas aussi aiguisés, si bien qu'ils commettent des gaffes très coûteuses... pour leurs parents. Sylvain, par exemple, a eu une très mauvaise surprise. Sa fille a l'habitude de télécharger de la musique à partir du site web d'Apple, iTunes. Elle utilise normalement des cartes prépayées. Au début de février, toutefois, elle lui a demandé sa carte de crédit afin d'acheter un jeu pour son iPod Touch (ces logiciels ne peuvent être achetés avec une carte prépayée). Sylvain a accepté. Sur l'ordinateur, il a entré les informations de sa carte de crédit et a réglé l'achat de 9,99 \$.*

*“Au début mars, j'ai presque fait un infarctus en voyant le solde de ma carte,” raconte Sylvain. Sur son relevé de compte figurait une ribambelle d'achats de chansons au magasin iTunes, pour un total de 2207 \$.*

*Sa fille, atterrée, lui a expliqué la méprise : comme elle avait réussi à télécharger de la musique au-delà de la limite de sa carte prépayée, elle a cru qu'elle pouvait l'obtenir gratuitement. Une réaction très naïve, il faut bien le dire. Elle en a donc profité pour télécharger autant de chansons que possible sur son iPod.*

*Sylvain a déduit qu'Apple avait conservé les informations de sa carte de crédit et a continué de débiter son compte... à son insu. Il a appelé immédiatement l'émetteur de sa carte de crédit afin de dénoncer cette pratique. Mais on lui a répondu que pour renverser les transactions, il devait porter plainte pour fraude contre sa propre fille!*

*Il s'est rabattu sur Apple. Un responsable du magasin iTunes lui a expliqué gentiment la politique du magasin : les ventes sont non remboursables. “Mais je peux très bien comprendre à quel point la situation est démoralisante pour vous,” lui a-t-il écrit. Faisant une entorse à la règle, il a accordé à notre correspondant un remboursement partiel de 607 \$, soit plus du quart de la facture.*

*Le responsable a souligné à Sylvain que le processus de paiement est clairement exposé dans les conditions générales d'iTunes, un document d'environ 40 pages que tous les acheteurs acceptent avant d'utiliser les produits.*

*En effet, ce contrat est bourré de mises en garde. Par exemple, quand vous ouvrez un compte, vous acceptez qu'iTunes conserve les informations sur votre carte de crédit qui peuvent ensuite être utilisées pour votre facturation.*

*Plus loin, le contrat précise que les transactions seront débitées sur votre carte de crédit si la carte prépayée que vous utilisez n'est plus valide. Un genre de facturation en cascade. Et encore plus loin, on explique que lorsque vous accédez à iTunes de votre iPod ou iPhone au moyen du Wi-Fi, la fonctionnalité 1-Click s'active. Dès lors, “le fait de*

*cliquer sur le bouton «Acheter» lancera le téléchargement immédiatement et validera votre transaction sans aucune formalité supplémentaire”.*

*Voilà donc comment la fille de Sylvain a pu si facilement porter toutes les transactions sur la carte de crédit de son père “sans aucune formalité supplémentaire”.*

*Sylvain jure que s’il avait compris la portée des conditions d’achat de iTunes, jamais il n’aurait donné son numéro de carte de crédit.*

*Joint par La Presse, Jason Roth, porte-parole d’Apple pour iTunes, n’a pas voulu commenter le cas précis de Sylvain. Apple considère que les mises en garde sont claires et que l’information n’est pas “enterrée” dans le contrat.*

*Pour obtenir davantage, Sylvain devra tenter sa chance aux petites créances. La cause n’est pas gagnée, “mais c’est jouable,” avance Vincent Gautrais, titulaire de la chaire de l’Université de Montréal en droit de la sécurité et des affaires électroniques. Selon les nouvelles règles sur les contrats à distance de la Consumer Protection Act, le commerçant doit présenter l’information de manière claire et évidente.*

*Mais sur le web, “on se retrouve dans une situation totalement ubuesque où les contrats grossissent de plus en plus. Le contrat de Yahoo gonfle de 10 % par an, dit M. Gautrais.*

*Ça devient humainement impossible à lire<sup>235</sup>”.*

## **b) In Canada**

In an article in the Star, Andrea Gordon reported:

*Meet Danny, a typical teen. Except when he first flashes across the TV screen, he's kneeling in a playpen. A caption introduces him as "Recovering Momma's Boy." Seconds later, Danny is in a highchair, protesting, "I'm not a baby, mom!"*

*Switch to voiceover and Danny sums up his problem: "I really wasn't in control of my life." Enter the MuchMusic Prepaid MasterCard. The baby equipment disappears. Danny, now a big boy, tells us his new card means freedom. Money matters are "as easy as loading it and spending it."*

*MuchMusic, which joined forces with MasterCard this spring to launch the new payment card aimed at teenagers as young as 13, sure knows its target market. The last thing adolescents want is to be treated like children. They are struggling to exert their independence. And they're also bigger spenders than ever before, online and in malls. Both companies are hoping to cash in on that combination.*

*The new MuchMusic card is best described as a payment card that can be loaded and reloaded with funds and then used like a credit card. Kids ages 13 to 15 can get one*

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<sup>235</sup> GRAMMOND, Stéphanie, Son ado flambe 2207 \$ sur iTunes à son insu, La Presse, Montreal, April 26, 2009. [Online] <http://lapresseaffaires.cyberpresse.ca/finances-personnelles/bons-comptes/200904/26/01-850429-son-ado-flambe-2207-sur-itunes-a-son-insu.php> (consulted on June 14, 2011).

*using their parents as account holders. Those 16 and up can apply on their own. It's among the latest products on the market that make it easier than ever for teenagers to spend money*

*It's also one of at least half a dozen arrangements MasterCard has facilitated to offer prepaid cards in Canada. (While Visa Canada doesn't specifically market to teens, it does offer a Visa Gift Card that cannot be reloaded.)*

*Not long ago, financial institutions didn't much care about the under-18 set. But younger teens, now acknowledged as the driving force behind family spending decisions on items ranging from cars to fast food, have become a sought-after group in a card-saturated marketplace<sup>236</sup>.*

## Facebook

### a) In Quebec

Facebook is a networking website on which it is possible to create a personal account, animate a page, establish contacts ("make friends"). One must be at least 13 years of age to register on Facebook. The verification method is simple: just entering one's date and year of birth. A small child could thus change his year of birth open an account with impunity. As Journal de Québec columnist Renée Laurin recently revealed:

*Facebook séduit de plus en plus de jeunes enfants*

*Ma voisine était dans tous ses états la semaine dernière. Sa fille de dix ans lui a annoncé qu'elle venait d'ouvrir son propre compte Facebook... chez son amie.*

*"Qu'est-ce que je suis censée répondre à ça, m'a-t-elle demandé? Je ne suis pas d'accord, mais comment je fais pour l'empêcher de faire ce qu'elle veut ailleurs?" Les règles d'utilisation du réseau social sont pourtant claires : pas avant 13 ans. Mais qui se soucie de respecter cette règle quand il suffit de mentir sur son âge pour y avoir accès? Toutes les amies de sa fille ont déjà leur compte. Le fils d'une de mes amies avait le sien à huit ans et un autre enfant de mon entourage m'a demandé d'être son ami Facebook alors qu'il n'avait que neuf ans.*

*Je trouve ça drôlement jeune pour les exposer à tous les dangers potentiels de cette machine sociale virtuelle, mais les faits sont là : les enfants de moins de 13 ans utilisent de plus en plus Facebook et leurs parents ne semblent pas voir de problèmes à ce qu'ils exposent ainsi leur vie privée à l'ensemble de la planète.*

*On peut nier le phénomène, interdire jusqu'à un certain point en expliquant à notre enfant les raisons de notre refus, mais un jour ou l'autre, s'ils le désirent vraiment, ils finiront, comme la fille de ma voisine, par trouver le moyen d'y adhérer avec ou sans notre permission. Le mieux à faire dans ce cas ne serait-il pas d'adopter une attitude d'ouverture et de les outiller le mieux possible pour qu'ils apprennent tout de suite à utiliser ce réseau en toute sécurité?*

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<sup>236</sup> GORDON, Andrea, Giving teens credit, The Star, Toronto, Canada, August 18, 2007. [Online] <http://www.thestar.com/article/246278> (consulted on June 19, 2011).



*Permettre pour mieux les protéger?*

*“Moi, j'ai un deal avec mes enfants, dit Michel Dumais, observateur en nouvelles technologies. Je suis leur ami Facebook, mais je n'interviens en ligne d'aucune façon. Si je dois leur parler, leur faire des recommandations sur l'usage qu'ils font de Facebook, je le fais face à face.” Ma voisine a finalement opté pour la même solution. En étant amie avec sa fille, elle pourra voir tout ce qui se passe et intervenir en cas de dérapage.*

*“Adopter cette attitude d'ouverture nous permet d'influencer nos enfants pour qu'ils s'approprient cet outil de socialisation de la bonne façon,” croit M. Dumais. Depuis deux ans, il répète inlassablement la même mise en garde à tous ceux qui lui posent la question sur l'attitude à adopter lorsqu'on affiche publiquement un commentaire ou une photo sur Facebook. “Il faut chaque fois s'imaginer que nous sommes au beau milieu du Centre Bell avec un puissant micro et se poser la question suivante : “Est-ce que je souhaite dire et montrer ceci aux 20 000 personnes qui m'entourent?”” Si la réponse est non, on s'abstient. Il rappelle que, même si on a un réseau d'amis fermé, notre commentaire peut être repris par un ami qui peut, de son côté, le rediffuser à plus grande échelle.*

*Même chose pour les photos. Il faut toujours garder en tête qu'il y a des gens mal intentionnés partout. Une photo le moins compromettante de votre enfant (en maillot de bain, par exemple) peut être reprise et utilisée d'une façon que vous n'aimeriez pas nécessairement.*

*Vos enfants doivent aussi savoir que Facebook est un terrain propice à l'intimidation qui donne une tribune sans précédent aux abuseurs. Un ami qu'on connaît moins bien, mais à qui on accepte d'ouvrir la porte de son intimité peut facilement se transformer en ennemi en publiant sur le mur de votre enfant des propos blessants ou encore en affichant des photos compromettantes de celui-ci sans son accord.*

*La tentation d'accepter de nouveaux amis, même de parfaits inconnus, est énorme à un âge où l'on mesure sa popularité au nombre d'amis qui nous entourent. En suivant de près les activités de nos enfants sur Facebook, il est possible de vérifier régulièrement leur liste d'amis et de leur demander des explications lorsqu'on voit apparaître des noms inconnus.*

*Un Facebook pour enfants*

*Pour contourner tous ces dangers et faciliter la vie des parents inquiets, Disney a récemment fait l'acquisition de Togetherville, un réseau social destiné aux enfants de dix ans ou moins. Le réseau imite le modèle de Facebook, mais sans publicité et dans un environnement adapté à l'âge. Les enfants qui y adhèrent interagissent sous la surveillance des parents. Ceux-ci doivent, par exemple, approuver les amis de leurs enfants et peuvent également entrer en contact avec les autres parents. Les enfants ont la possibilité de jouer à des jeux avec leurs amis virtuels ou de regarder des vidéos, mais ils ne peuvent pas avoir accès à ceux, parfois inadaptés à leur âge, qui pourraient se retrouver sur le mur de Facebook.*

*Bonne ou mauvaise idée, ça reste à voir. Personnellement, je préfère retarder le plus longtemps possible l'entrée de mon fils de dix ans dans ce que je considère comme une nouvelle forme de dépendance virtuelle. Notre réseau social et celui de nos enfants doivent d'abord se tisser dans la vraie vie, dans le voisinage immédiat avec des humains*



*en chair et en os. Si nous faisons l'effort de développer ces liens humains en organisant des fêtes de quartier, des parties de hockey sur la patinoire du coin ou toute autre activité rassembleuse, Facebook, j'en suis convaincue, perdra beaucoup d'attraits aux yeux de nos jeunes enfants.*<sup>237</sup>

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<sup>237</sup> LAURIN, Renée, Facebook séduit de plus en plus de jeunes enfants, Journal de Québec, Québec City, March 8, 2011. [Online]  
<http://lejournaldemontreal.canoe.ca/journaldemontreal/votrevie/famille/archives/2011/03/20110308-094340.html> (consulted on June 19, 2011).