

# **Regulating Distance Contracts: Time to Take Stock**

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



June 2014

Report published by:



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ISBN: 978-2-923405-57-5



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.*

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

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## **Union des consommateurs: *Strength through networking***

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

UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its activities are based on values cherished by its members: solidarity, equity and social justice, and improving consumers' economic, social, political and environmental living conditions.

UC's structure enables it to maintain a broad vision of consumer issues while developing 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.

UC 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: household finances and money management, energy, issues related to 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.

Lastly, in the context of market globalization, UC works in cooperation with several consumer groups in English Canada and abroad. It is a member of *Consumers International* (CI), an organization recognized by the United Nations.

## 1. Introduction

*THE GLOBAL NATURE OF THE INTERNET and the growth of electronic commerce (e-commerce) raise a plethora of legal issues. While, on the one hand, both consumers and businesses can benefit from the novel opportunities of the electronic marketplace, on the other, they are also faced with the unique impediments that the internet presents. The change of the face of the marketplace through the advent and rise of electronic commerce raises the question whether existing legislation is adequate to meet the basic needs of today's online consumers without preventing particularly small and mid-sized businesses from exploring new business prospects.*

Carina Neumueller<sup>1</sup>

During the 2000s, most Canadian provinces adopted legislation to better protect consumers in relation to distance contracts, with some provinces choosing, among the various types of distance contracts, to only specifically regulate online purchases, using as a basis the *Internet Sales Contract Harmonization Template* (the “Harmonization Template”) ratified by federal, provincial and territorial ministers in 2001<sup>2</sup>. Others adopted separate provisions respectively applicable to the various modes of communication used for distance contracts, while still others, invoking the principle of technological neutrality, chose to regulate all distance contracts with rules that basically apply to any type of medium.

The European Union, which examined the issue in 1997<sup>3</sup>, 1999<sup>4</sup> and 2000<sup>5</sup>, adopted a new directive on October 25, 2011 (“Directive 2011/83/EU” or “new directive”) in view of updating regulations pertaining to distance contracts, eliminating inconsistencies and addressing certain shortcomings in existing regulations<sup>6</sup>.

<sup>1</sup> NEUMUELLER, C., *Are We “There” Yet? An Analysis of Canadian and European Adjudicatory Jurisdiction* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997L0007:en:HTML> *Principles in the Context of Electronic Commerce Consumer Protection and Policy Issues*, University of Ottawa Law and Technology Journal, Vol. 3, No. 2, Ottawa, Canada, 2006, 36 pages, p. 421. Available online at the University of Ottawa website. [Online] <http://www.uoltj.ca/articles/vol3.2/2006.3.2.uoltj.Neumueller.421-456.pdf> (document viewed on February 17, 2014).

<sup>2</sup> CONSUMER MEASURES COMMITTEE, *Internet Sales Contract Harmonization Template*, 2001. Available online at the CMC website. [Online] [http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/Sales\\_Template.pdf/\\$file/Sales\\_Template.pdf](http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/Sales_Template.pdf/$file/Sales_Template.pdf) (document viewed on February 26, 2014).

<sup>3</sup> Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts – Statement by the Council and the Parliament re Article 6 (1) – Statement by the Commission re Article 3 (1), first indent. [Online] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997L0007:en:HTML> (page viewed on April 11, 2014).

<sup>4</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees. [Online] <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31999L0044> (page viewed on April 11, 2014).

<sup>5</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). [Online] <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0031> (page viewed on April 11, 2014).

<sup>6</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance. Available online at the European Union website. [Online] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF> (document viewed on March 3, 2014).

The new measures or enhancements of existing measures covered by the new directive include greater obligations regarding information disclosure; rules regarding payment; prohibiting merchants from automatically checking boxes to accept additional goods or services; and longer withdrawal time limits. The new directive also stipulates that Member States can opt to not apply it to “small” contracts, namely, those valued at less than 50 Euros.

What is the position adopted by Canadian legislation in relation to these new standards?

In light of the experience acquired over the last 13 years, certain gaps are observed in the applicable regulations in Canadian provinces as well as a definite lack of knowledge on the part of consumers regarding several of their rights. Are Canadian consumers adequately protected with respect to distance contracts? Are legislative provisions regarding distance commerce observed by merchants? Are Canadian standards currently out of date? Do we need to change or enhance Canadian provincial legislation to better protect consumers?

Close to one decade after work began aimed at introducing harmonized provisions in Canada regarding certain distance contracts, the time has come to take stock of the situation. This review will deal with the relevance of Canadian legislation with respect to changes in the market, the new European directive, and knowledge that Canadian consumers have of their rights and recourses.

The first part of this report will consist of a literature review in order to present the current regulatory framework for distance contracts. We will then review Canadian legislation specifically pertaining to distance contracts (e.g. protection measures, shortcomings, application problems), after which we will do a comparative study of Canadian legislation versus Directive 2011/83/EU to assess whether the protection Canadian consumers have is adequate.

To assess the effectiveness of existing laws and the level of conformance of the market, we conducted a three-part field survey. In the last part of our study, we will be presenting our conclusions based on the responses obtained to a questionnaire we submitted to government agencies in charge of applying regulations on distance contracts, along with the results of the survey conducted among 1,000 Canadians to determine their level of knowledge of the legislative framework on distance contracts, their perception of these measures, and whether they use them. This part will be supplemented with the results of our review of the websites of merchants aimed at assessing the conformity of the latter’s online practices.

First, it should be noted that only eight Canadian provinces have adopted specific provisions on distance contracts in their consumer protection legislation, with three provinces doing so only for Internet sales contracts. This led us to specifically focus on the legislative framework of Internet sales contracts when we did a comparison of the Canadian legislation, and exclusively when we conducted our survey among merchants, while only considering their transactional websites.

Second, note that the aim of our study was not to examine all issues potentially related to distance contracts. Thus, the scope of our study excluded, for instance, issues related to the protection of privacy, payment security, and the efficiency of return policies. The study also does not deal with specific rules applicable to certain distance contracts such as contracts for remote services and travel-related purchases, nor on legislative issues raised by transborder purchases.

## 2. Distance Contracts: Background and Overview

### 2.1 Background

As some authors mention, “distance selling is not a recent occurrence. Who has not flipped through the pages of thick catalogues that used to be delivered to most homes and ordered, either by phone or by mail, a much desired product?”<sup>7</sup> [translation]

Although distance selling has been around for some time, the advent of the personal computer and Internet access in consumers’ homes have made it much easier:

*In the 1980s, the Internet, which until then had been almost exclusively American, opened up to the rest of the world. In the 1990s, it extended beyond academia to reach the general public. The Internet broke down barriers, undercut prices and has the music industry shaking in its boots.*<sup>8</sup> [translation]

In addition to the new research and communication opportunities made possible by the advent of the Internet and the World Wide Web, online transactions now became possible. In 1979, with the advent of the first wave of personal computers, English inventor and entrepreneur Michael Aldrich invented the process of online shopping and made Internet transactions possible.<sup>9</sup> The first B2B (business to business) transaction was done shortly afterwards, in 1981<sup>10</sup>: “B2B was commercially viable from the beginning. Business to Consumer (B2C) online shopping did not become commercially viable until the 1990s.<sup>11</sup> Also in 1981, Citibank launched its first online banking services.<sup>12</sup>

In the late 1990s, online transactions had become sufficiently widespread for OECD member states, including Canada, to consider it important to take measures to regulate them. The new electronic environment brought up not only new legal issues but also economic ones: in fact, it was believed that legislative measures aimed at providing better consumer protection for online purchases was likely to build consumer trust, which in turn would have the effect of bolstering the growth of the new market.

<sup>7</sup> BOUCHARD, C. and M. LACOURSIÈRE, “Les enjeux du contrat de consommation,” in *Hein Online*, 33 Rev. Gen. 373 2003, 65 pages.

<sup>8</sup> COLOMBAIN, Jérôme. *Internet, l'invention qui nous a fait changer de civilisation*, France Info, Paris, France, July 23, 2012. [Online] <http://www.franceinfo.fr/high-tech/nouveau-monde-ces-inventions-qui-ont-change-nos-vies/internet-l-invention-qui-nous-a-fait-changer-de-civilisat> (page viewed on September 5, 2013).

<sup>9</sup> THE MICHAEL ALDRICH ARCHIVE. Author’s website, Londong, UK, no date. [Online] <http://www.aldricharchive.com/index.html> (page viewed on September 5, 2013).

<sup>10</sup> FUXA, M., *L'Histoire du e-commerce en une infographie*, E-Commerce mag.fr, Paris, France, November 23, 2011. [Online] <http://www.ecommercemag.fr/Thematique/marche-prospective-1010/indicateurs-marche-10043/Breves/L-histoire-du-e-commerce-en-une-infographie-42670.htm> (page viewed on February 17, 2014).

<sup>11</sup> THE MICHAEL ALDRICH ARCHIVE, *Op. cit.*, note 9. See *Pioneers of Online Shopping - History of Online Shopping*. [Online] <http://www.aldricharchive.com/index.html> (page viewed on February 17, 2014).

<sup>12</sup> FUXA, M., *Op. cit.*, note 10.

In 1999, Canada undertook steps to adopt a harmonized framework for e-commerce by taking part in establishing the *Internet Sales Contract Harmonization Template* that would encourage the provinces and territories to adopt compatible provisions, which would help deal with the legislative issues that would potentially be raised by this type of distance selling that to some extent disregarded borders.<sup>13</sup>

Canada set up the The Electronic Commerce Branch (now called Digital Policy Branch) under Industry Canada, the primary mission of which was not of course to protect consumers, but to build trust in the digital economy and eliminate obstacles to the use of e-commerce, in conjunction with the private sector.

*We support a safe and strong online marketplace that promotes business innovation, competition, and growth through the development of policies, legislation, and regulations. We also promote the adoption and use of digital technologies in Canadian business to support and facilitate the growth of the Canadian economy.*<sup>14</sup>

In 2004, the federal government stated that the goal it had set for Canada six years earlier – to become a world leader in e-commerce – had been largely reached and that it was ready for a new challenge: “to be the first country to build an e-economy for the 21st century.”<sup>15</sup> One of the main new strategies was to:

*Create a climate of trust among consumers and businesses that fosters the growth of the e-economy in Canada and internationally and creates global markets for electronic goods and services;*<sup>16</sup>

## 2.2 Definitions and concepts

For the purposes of our study, a few key terms related to distance contracts need to be defined.

### a) Electronic transactions

In this report, we use the term “electronic transaction” to mean a “secure transaction that is performed during a purchase or online payment made via the Internet” (as per the definition provided by the Office québécois de la langue française). In context, the term “transaction” could refer to commercial, banking or other types of operations.

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<sup>13</sup> CONSUMER MEASURES COMMITTEE, *Op. cit.*, Note 2. This topic will be covered in greater detail in the following chapters.

<sup>14</sup> INDUSTRY CANADA. *Website home page*, Digital Policy Branch, Government of Canada, Ottawa, Canada, July 17, 2013. [Online] <http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/home> (page viewed on September 5, 2013).

<sup>15</sup> INDUSTRY CANADA. *The Challenge of Change: Building the Century Economy*, Conference Background Paper, “e-Commerce to e-Economy Strategies for the 21st Century” 27–28 September, 2004, Ottawa, Canada, page i. Available on Industry Canada’s website. [Online] [https://www.ic.gc.ca/eic/site/ecic-ceac.nsf/vwapi/the\\_challenge\\_of\\_change.pdf/\\$file/the\\_challenge\\_of\\_change.pdf](https://www.ic.gc.ca/eic/site/ecic-ceac.nsf/vwapi/the_challenge_of_change.pdf/$file/the_challenge_of_change.pdf) (document viewed on September 5, 2013).

<sup>16</sup> *Ibid.*

## b) E-commerce

E-commerce refers to all the commercial transactions carried out via the Internet.

The OECD defines e-commerce as:

*The sale or purchase of goods or services by a business, individual, organization or any other public or private body, performed over an electronic network. The following distinctions are made:*

- *Electronic transaction between businesses, known as **B2B** (Business to Business);*
- *E-commerce for individuals, or **B2C** (Business to Consumer). These consist of teleshopping-type of merchant websites;*
- *E-commerce among individuals, or **C2C** (Consumer to Consumer). These are websites that enable sales transactions between individuals (e.g. real estate, stock exchange, ads, bartering);*
- *Electronic transactions between private businesses and the government, often called **B2G** (Business to Government) or **B2A** (Business to Administration).<sup>17</sup>*

Our study only deals with electronic transactions between businesses and consumers (B2C).

## c) Distance contracts

Directive 2011/83/EU defines distance contracts as follows:

*Article 2 7): “distance contract” means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication.<sup>18</sup>*

In Quebec, the Consumer Protection Act has adopted a similar approach:

*54.1. A distance contract is a contract entered into without the merchant and the consumer being in one another's presence and preceded by an offer by the merchant to enter into such a contract.<sup>19</sup>*

The concept of distance contract thus includes any transactions made *without the simultaneous physical presence* of the merchant and consumer such as transactions by mail, fax, phone, Internet, mobile phone, etc.

In Canada, as the *Internet Sales Contract Harmonization Template*<sup>20</sup> – ratified in 2001 by the federal and provincial governments – is not intended to cover all contracts likely to be concluded remotely, provincial legislators have each chosen to regulate all or some distance contracts in

<sup>17</sup> **DIRECTION DE L'INFORMATION LÉGALE ET ADMINISTRATIVE**, *Le commerce électronique, La documentation française*, Paris, France, November 3, 2011. [Online] <http://www.ladocumentationfrancaise.fr/dossiers/internet-monde/commerce-electronique.shtml> (page viewed on February 17, 2014).

<sup>18</sup> *Op. cit.*, Note 6, par. 4.

<sup>19</sup> **QC: Consumer Protection Act**, RLRQ c P-40.1, sect. 54.4 h). [Online] <http://canlii.ca/t/68w8g>.

<sup>20</sup> **CONSUMER MEASURES COMMITTEE**, *Op. cit.*, note 2.

their own way. Some provinces, following in this regard the restricted framework of the Harmonization Template, have decided to only regulate Internet sales contracts. Others adopted separate provisions depending on the mode of communication used for the distance contract, while still others have chosen to regulate all distance contracts with rules that ideally would be applicable regardless of the mode of communication, in keeping with the principle of technological neutrality.

These regulatory frameworks that have not been harmonized nationwide have presented us with a sizeable challenge with respect to our study: in fact, our comparisons could only be done if the legislation pertained to the same subjects. However, only Internet sales contracts are covered by the provincial regulatory frameworks that were adopted. Hence, although distance contracts, under their general meaning, will be covered in passing and that comparisons can be done, when relevant, between the regulatory frameworks pertaining to various types of distance contracts, we have chosen to mainly focus on Internet distance contracts.

#### d) Technological neutrality

Three Canadian provinces have chosen to apply only one set of rules (except as provided by regulations) to all types of distance contracts, regardless of the mode of communication used. The provinces in question are British Columbia, Newfoundland and Labrador, and Quebec, with the first two adopting a less neutral approach than the last, although the idea of adopting a general regulatory framework for distance contracts based on the principle of technological neutrality was heavily criticized in Quebec.

Under the principle of technological neutrality, the law should, save any provisions to the contrary, handle all modes of communication in the same way and, by extension, be interpreted and applied without favouring one mode of communication over another. This approach, which can serve both as drafting principle and interpretation principle,<sup>21</sup> was set out in a Quebec statute, *An Act to Establish a Legal Framework for Information Technology*, CQLR, c. C-1.1., which stipulates that a document has the same legal value, whether it is on paper or a technological medium, as well as in the Civil Code of Québec, in the chapter on proof (*Media for Writings and Technological Neutrality*, articles 2837 and following).

Given the increasing role played by information technology over time, this concept was incorporated into several laws, both in Canada and abroad, in various ways, according to the aims and objectives of the legislation involved.<sup>22</sup> Professor Vincent Gautrais is highly critical of legislative attempts to regulate distance contracts using this vague principle, which he qualifies as “dogma”<sup>23</sup>:

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<sup>21</sup> GAUTRAIS, V., *Neutralité technologique (définition)*, plateforme Loi concernant le cadre juridique des technologies de l'information, Université de Montréal, Faculty of Law, Montreal, Canada, January 25, 2013. [Online] <http://lccjti.ca/definition/neutralite-technologique/> (page viewed on April 11, 2014). See also: GAUTRAIS, V., *Neutralité technologique – Rédaction et interprétation des lois face aux changements technologiques*, Les Éditions Thémis, Montreal, Canada, 2012, 305 pages. Available online at [droitdu.net](http://droitdu.net). [Online] [http://droitdu.net/fichiers/gautrais\\_neutralite\\_technologique.pdf](http://droitdu.net/fichiers/gautrais_neutralite_technologique.pdf) (document viewed on February 20, 2014).

<sup>22</sup> GAUTRAIS, V., *Fictions et présomptions: outils juridiques d'intégration des technologies*. Transcription of a conference held on September 30, 2002 at the Université de Montréal Faculty of Law, Montreal, Quebec, Canada, 11 pages. Available online on the Lex Electronica website. [Online] [http://www.lex-electronica.org/docs/articles\\_105.pdf](http://www.lex-electronica.org/docs/articles_105.pdf) (document viewed on February 20, 2014).

<sup>23</sup> *Ibid.*

*Consequently, we are at the very least critical of a concept that would likely be applied from the telephone to the Internet, including papal signs consisting of “smoke signals.” Technology is not neutral, despite the notion of technological neutrality that seems to prevail in Quebec law, with a considerable lack of precision.<sup>24</sup> [translation]*

Professor Gautrais adds:

*From a highly circumscribed original concept aimed at ensuring that laws do not in some instances favour any specific technology, the principle of technological neutrality shifted to a concept based on which technologies can and must be regulated in the same way; suggesting that information technologies are regulated in the same way. From a very specific and functional legislative objective whereby legislation would not become obsolete as technology evolves, inevitably more rapidly than the law, technological neutrality required that laws be created that can be applied to all types of communication simultaneously. However, this has not proven to be the case, and the example of the merchants’ informational obligations in section 54.4 of the Consumer Protection Act is telling in this respect: for the purposes of consumer protection, legislation provides detailed stipulations on merchants’ information disclosure obligations by listing measures specifically applied to the Internet. However, do these measures also apply to cell phones, landline phones, catalogues, and naturally other forms of communication that are constantly evolving? Will other exceptions have to be stipulated via the implementing regulation? If so, why continue to use the term “distance contract”?<sup>25</sup> [translation]*

## 2.3 Communicational characteristics of e-commerce

The rapid development of new technologies and their increasing availability to an ever-growing segment of the population have created an urgent and real need for regulations as of the late 1990s (see *OECD Guidelines*<sup>26</sup> and the *Harmonization Template* in Canada), given the characteristics of electronic transactions and the risk that regulatory frameworks for e-commerce do not adequately cover this new type of transaction.

In 2007, Professor Gautrais listed five (5) communicational characteristics of e-commerce:<sup>27</sup>

- Reading information on a screen is more difficult than on paper, which affects understanding and retention;
- As an electronic environment has virtually no physical limitations, the quantity of information that is available can be staggering, and Web pages can sometimes appear endless and websites unending;

<sup>24</sup> GAUTRAIS, V. and A. PORCIN, *Les 7 péchés de la L.p.c.: actions et omissions applicables au commerce électronique*, Revue juridique Thémis, 43 R.J.T, Montreal, Canada, 2009, 45 pages, pp. 563-603. [Online] [http://www.editionsthemis.com/uploaded/revue/article/18343\\_gautrais.pdf](http://www.editionsthemis.com/uploaded/revue/article/18343_gautrais.pdf) (document viewed on April 11, 2014).

<sup>25</sup> *Ibid.*, p. 570.

<sup>26</sup> OECD. *Guidelines for Consumer Protection in the Context of Electronic Commerce*, 2000. Available online at the OECD website. [Online] <http://www.oecd.org/sti/consumer/34023811.pdf> (document viewed on February 18, 2014).

<sup>27</sup> GAUTRAIS, V., “Le nouveau contrat à distance et la Loi sur la protection du consommateur,” in Pierre-Claude Lafond (dir.), *Droit de la consommation sous influences*, Cowansville, Éditions Yvon Blais, 2007, 26 pages. Available online on Professor V. Gautrais’s website. [Online] <http://ancien.gautrais.com/IMG/pdf/econsommation15062007.pdf> (page viewed on February 17, 2014).

- Hyperlinks make it impossible to read through a text in a linear fashion as can be done on paper, and still require a certain level of technological knowledge, as hyperlinks constitute distractions to customary linear reading;
- An electronic document can be easily be modified at will by the “writer-merchant” on his website, even after the contract is concluded. The process is not as easy and more evident with paper documents, which require that the modified document be resent;
- The contract terms can be hard to locate on the Internet as the legal documents are split up and spread throughout the website under titles that are often not very clear.

Given these major differences, it would therefore seem logical that specific rules for e-commerce be adopted that take into account these differences that may increase the vulnerability of consumers, who are further attracted by the apparent benefits of e-commerce.

We will occasionally return to these various issues in the chapters that follow, when relevant, when doing an in-depth examination of Canadian legislation.

## 2.4 E-commerce in Canada

Statistics on distance contracts in general appear to be non-existent. However, there is an abundance of data on e-commerce.

In 2012, 83% of Canadian households had home Internet access, a 4% increase compared to 2010. Of this number, 97% stated having high-speed Internet access. Among those without any home Internet access, 61% stated that it was due to a lack of interest or need, while 20% stated that it was due to cost.<sup>28</sup>

With respect to Canadian businesses, studies revealed that in 2012, 45% of them had a website, with those most likely to have one selling products to consumers.<sup>29</sup> However, only 11% of Canadian businesses sold goods and services online during the same year, for an approximate value of \$122 billion, an increase of slightly over 50% compared to 2007.<sup>30</sup>

This increase in Internet use, for both Canadian consumers and businesses, obviously resulted in a significant increase in online purchases.

In 2012, over half of Internet users (56%) purchased goods or services online for their household or personal use (whereas 77% searched for goods or services or did online window shopping). In all, Canadians made close to 165 million purchases valued at about \$18.9 billion. Canadians shopping online made an average of about 13 separate purchases and spent an average of about \$1,450 each. Most online consumers (82%) purchased goods or services from Canadian businesses, 63% from U.S. businesses, and 21% from businesses abroad. 58% of

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<sup>28</sup> **STATISTICS CANADA.** *Canadian Internet Use Survey, 2012*, (ECUI), Government of Canada, Ottawa, Canada, October 28, 2013. [Online] <http://www.statcan.gc.ca/daily-quotidien/131126/dq131126d-eng.htm> (page viewed on February 17, 2014).

<sup>29</sup> **STATISTICS CANADA.** *Digital Technology and Internet Use, 2012*. In *The Daily*, Government of Canada, Ottawa, Canada, October 28, 2013. [Online] <http://www.statcan.gc.ca/daily-quotidien/130612/dq130612a-eng.htm> (page viewed on February 17, 2014). This study involved all types of Canadian businesses and the data that are presented do not deal solely with B2C sales.

<sup>30</sup> *Ibid.*

those who made online purchases did so as part of travel arrangements (e.g. hotel reservations, public transit passes and car leasing) and 52% for show tickets.<sup>31</sup>

Regarding methods of payment, 90.4% of transactions were paid by credit card and 33.8% via an online payment service.<sup>32</sup>

Studies show that “Canadians make the fewest online purchases and are also the least likely to use their portable device for shopping”<sup>33</sup> [translation]. However, as the number of Canadians who use the Internet for online purchases is growing each year, the importance of having legislation in place that adequately protects consumers in this area is all the more greater.

## a) Incentives for legislative intervention

### *Why shop online?*

Online shopping provides undeniable benefits for consumers, such as the possibility of shopping from the comfort of their own home; direct access to merchants from another city or country; incomparable ease in checking and comparing products, prices and the availability of products and services from a wide range of sources;<sup>34</sup> etc. In a survey conducted in 2008,<sup>35</sup> consumers mentioned the advantages of online shopping:

- Fewer trips and the resulting savings in transportation costs;
- Access to discounts only offered online;
- Access to products that are impossible or difficult to find in stores.

In addition to shopping and making purchases, the Internet also enables consumers to read reviews from consumers on the goods or services they purchased and on the merchants with whom they dealt regarding quality, durability, customer service, delivery, policies (on returning items), etc.<sup>36</sup> In theory, this consumer practice of pooling their reviews, both favourable and unfavourable, should incite merchants to provide quality products and services, as studies have determined the influence that such consumer reviews can have on purchasing decisions:

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<sup>31</sup> **STATISTICS CANADA.** *Individual Internet use and e-commerce, 2012*, Government of Canada, Ottawa, Canada, 2012, October 28, 2013. [Online] <http://www.statcan.gc.ca/daily-quotidien/131028/dq131028a-eng.htm> (page viewed on February 17, 2014).

<sup>32</sup> **STATISTICS CANADA.** Table 358-0158 – *Canadian Internet use survey, electronic commerce, electronic orders by type of payment, for Canada and regions* (percent), CANSIM (database), Government of Canada, Ottawa, Canada, October 28, 2013. [Online] <http://www5.statcan.gc.ca/cansim/a26?id=3580158&pattern=358-0152..358-0158&p2=-1&tabMode=dataTable&p1=-1&retrLang=eng&srchLan=-1&lang=eng> (page viewed on February 17, 2014).

<sup>33</sup> **ARGENT.** *Achats En ligne, les Canadiens trainent de la patte*, Groupe TVA, Montreal, Canada, August 22, 2013. [Online] <http://argent.canoe.ca/techno/achats-en-ligne-les-canadiens-trainent-de-la-patte-22082013>, (page viewed on February 17, 2014).

<sup>34</sup> Websites have been set up on the search for goods or services found in a bank of merchants (physical or online) and on price comparison. See <http://meilleursprix.ca/>, <http://quebec.shopbot.ca/>, <http://www.infoprix.ca/>, etc.

<sup>35</sup> **PERRON, F.**, “Faire des achats sur Internet” in *Protégez-vous*, Éditions Protégez-vous, Montreal, Canada, December 2008. [Online] <http://www.protegez-vous.ca/technologie/acheter-sur-internet.html>, (page viewed on March 5, 2014).

<sup>36</sup> **OECD.** *Op. cit.*, Note 26, p. 11.

*Research has found that reading three negative reviews is enough to change the mind of 63% of consumers about making a purchase.*<sup>37</sup>

Moreover, according to a study conducted in 2013 in 58 countries, a very large proportion (68%) of online consumers rely on online reviews posted by other consumers.<sup>38</sup>

*After recommendations by family and friends, online reviews are considered the most reliable source of information. No fewer than 70% of consumers rely on reviews, an increase of 15% in four years. As comparison, TV ads have a confidence level of 47%, newspapers, 46%, and social media, 36%.*<sup>39</sup> [translation]

However, recent studies have shown that merchants also use forums or other websites that feature consumer reviews<sup>40</sup> to post reviews or have reviews posted. According to certain reports, about 30% of consumer reviews on various goods or services, from hotels to games and books, are fake.<sup>41</sup> In the State of New York, this practice, known as “astroturfing” and considered a form of false advertising, led to fines ranging from \$2,500 to \$100,000 for 19 companies in 2013.<sup>42</sup> Action on the part of authorities could in fact help ensure that consumer trust is created and help establish such trust in those without any.

*Gartner believes that although consumer trust in social media is currently low, consumer perception of tightened government regulation and increased media exposure of fake social media ratings and reviews will ultimately increase consumer trust in new and existing social media ratings and reviews.*<sup>43</sup>

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<sup>37</sup> **SMITH, M.D.**, “Fake reviews plague consumer websites” in *The Guardian*, London, UK, January 26, 2013. [Online] <http://www.theguardian.com/money/2013/jan/26/fake-reviews-plague-consumer-websites>, (page viewed on March 5, 2014).

<sup>38</sup> **NIELSEN**. *Just Do It? Consumer Trust in Advertising and Willingness to Take Action*, Nielsen Global Survey of Trust in Advertising, New York, USA, September 2013. [Online] <http://www.nielsen.com/us/en/newswire/2013/just-do-it-consumer-trust-in-advertising-and-willingness-to-ta.html> (page viewed on March 31, 2014).

<sup>39</sup> **FOURNIER, M-È.**, “Vos avis défavorables sont les bienvenus,” in *La Presse*, Montreal, Canada, May 7, 2014. [Online] <http://affaires.lapresse.ca/finances-personnelles/consommation/201405/06/01-4764112-vos-avis-defavorables-sont-les-bienvenus.php> (page viewed on May 7, 2014).

<sup>40</sup> **STAMFORD, C.**, *Gartner Says By 2014, 10-15 Percent of Social Media Reviews to Be Fake, Paid for By Companies*, Gartner inc., Stamford, Connecticut, USA, September 7, 2012. [Online] <http://www.gartner.com/newsroom/id/2161315> (page viewed on March 5, 2014).

<sup>41</sup> **VEGA, C.**, “Yelp Outs Companies That Pay for Positive Reviews,” ABC News, New York, USA, November 19, 2012. [Online] <http://abcnews.go.com/blogs/business/2012/11/yelp-outs-companies-that-pay-for-positive-reviews/> (page viewed on March 5, 2014).

<sup>42</sup> **QUIRK, M.B.**, “New York A.G. Investigation Uncovers 19 Companies That Faked Positive Yelp Reviews,” in *Consumerist*, Yonkers, USA, September 24, 2013. [Online] <http://consumerist.com/2013/09/24/new-york-a-g-investigation-uncovers-19-companies-that-faked-positive-yelp-reviews/> (page viewed on March 5, 2014). See also **SCHNEIDERMAN, ERIC T.** Attorney General, New York, “A.G. Schneiderman Announces Agreement With 19 Companies To Stop Writing Fake Online Reviews And Pay More Than \$350,000 In Fines,” September 23, 2013. [Online] <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-agreement-19-companies-stop-writing-fake-online-reviews-and> (page viewed on March 5, 2014).

<sup>43</sup> **GARTNER, INC.**, *Op. cit.*, Note 40.

## **E-commerce and jurisdictional issues**

Making online purchases does not necessarily mean purchasing items from abroad. However, CEFRIO reported in 2013 that only 28% of Quebecers' total online purchases were made from Quebec businesses.<sup>44</sup>

Some authors have justly pointed out that given that it is not subject to geographic boundaries, e-commerce presents particular problems given the difficulty of forcing merchants when based elsewhere to conform to the consumer protection policies adopted in the jurisdiction where the consumer resides, and given the jurisdictional framework issues applicable in the event of a dispute.<sup>45</sup> If these products or services are available everywhere, how should merchants observe the laws in all the jurisdictions where their potential customers reside?

*Due to the inherently international nature of online communications, online sellers face the unhappy prospect that a multiplicity of jurisdictions will take more than a passing interest in their activities. Other communications technologies make it relatively simple to target commercial solicitations to a particular geographic area. When sellers make use of the various modes of online communication, such targeting ranges from the difficult to the impossible. This geographic indeterminacy raises severe and intractable issues of jurisdiction and choice of law, interfering with the ability of online sellers to structure their operations on grounds of legal predictability. Online sellers must also endure commercial uncertainty in the form of regulatory opacity. It is in many cases unclear how existing regulatory regimes governing trade practices apply to online commerce. The growth in online commerce will inevitably be accompanied by a rise in deceptive marketing practices directed at consumers. As much as ten percent of online commerce may involve consumer fraud.<sup>46</sup> (citations omitted)*

Consumer protection laws generally stipulate that the law applicable to the consumer's place of residence shall apply to distance contracts. However, compliance is still an issue. To rule out the issue of jurisdictional disputes to some extent and give merchants a modicum of predictability, harmonization efforts are currently under way, in particular among the Canadian provinces and between the member states and the European Union. Nonetheless, the situation is far from clear regarding purchases that Canadian consumers may make outside of Canada.<sup>47</sup> However, this report will not be dealing with this issue since it is outside the scope of our study.

## **Other incentives for legislative measures**

Besides the foreseeable increase in deceptive business practices, there are other problems that are intrinsically associated with e-commerce: identity theft, fraud, privacy, etc., that are not specifically covered, at least not in Canada, by consumer protection laws and e-commerce

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<sup>44</sup> CEFRIO. *Résultats d'une enquête exclusive sur les habitudes d'achat en ligne des adultes québécois*, Ministère de l'éducation supérieur, de la Recherche, de la Science et de la Technologie, Quebec, Canada, 2012-2013, 4 pages. Available online on the CEFRIO website. [Online] <http://www.cefrio.qc.ca/media/uploader/synthse.pdf> (document viewed on March 5, 2014).

<sup>45</sup> ROTHCHILD, J., "Protecting the Digital Consumer: The Limits of Cyberspace Utopianism," in *Indiana Law Journal*, Maurer School of Law: Indiana University, Vol. 74, No. 3, Article 5, p. 895-989, July 1, 1999. [Online] <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2248&context=ilj> (page viewed on February 17, 2014).

<sup>46</sup> *Ibid.*, p. 897.

<sup>47</sup> NEUMUELLER, C., *Op. cit.*, Note 1, pp. 421-456.

legislation. However, these important issues, which should also require a specific regulatory framework or incite the existing framework to adapt to the e-commerce environment, exceed the scope of our study and therefore are not covered here.

## b) International response/measures

Starting in the late 1990s, several measures were implemented internationally, as several countries agreed that this new type of purchasing/selling, i.e. e-commerce, which would likely grow exponentially in very little time, would quickly become a problem if not properly regulated.

As previously stated, both businesses and countries benefit from regulating practices, in particular due to the fact that regulations would build trust in consumers for this type of method of purchasing and that such consumer trust would be a critical factor for e-commerce to reach its full potential. Therefore, the aim was to attempt to eliminate uncertainty for both consumers and merchants, at both the national and international level.

### *United Nations*

In 1996, the United Nations Commission on International Trade Law (“UNCITRAL”) adopted the *UNCITRAL Model Law on Electronic Commerce*.

*UNCITRAL’s decision to formulate model legislation on electronic commerce was also a response to the fact that much of the existing legislation governing the communication and storage of information did not contemplate the use of electronic commerce. In a number of cases, the legislation in place imposed or implied restrictions on the use of modern means of communication, for example, by prescribing the use of “written,” “signed” or “original” documents.*

*The Model Law on Electronic Commerce aims to provide national legislatures with a set of internationally recognized rules to remove legal obstacles and create a more certain legal environment for electronic commerce. It seeks to provide equivalent treatment for users of paper-based documentation and for users of computer-based information. As a “framework” law, however, it does not set out all the rules or cover every aspect of the use of electronic commerce.<sup>48</sup> (citation omitted)*

This legislative text was the first to advance, in the context of e-commerce, the principle of technological neutrality covered in section 2.2 of this report.<sup>49</sup>

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<sup>48</sup> DAVIES, A., *The Development of Laws on Electronic Documents and E-Commerce Transactions*, Library of Parliament, PRB 00-12-E, Ottawa, Canada, December 20, 2008, 35 pages, page 2. Available online at the Parliament of Canada website. [Online] <http://www.parl.gc.ca/content/lop/researchpublications/prb0012-e.pdf> (document viewed on March 5, 2014).

<sup>49</sup> UNCITRAL. *UNCITRAL Model Law on Electronic Commerce* (1996) with additional article 5 bis as adopted in 1998. [Online] [http://www.uncitral.org/uncitral/en/uncitral\\_texts/electronic\\_commerce/1996Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html) (page viewed on March 19, 2014).

## OECD Guidelines – 1999

In 1999, after a year and a half of discussions among business, consumer and government representatives from OECD member countries, the OECD Council approved the *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce* (the “OECD Guidelines”), the primary aim of which was to attempt to ensure, through “technology-neutral” rules, that online consumers are given protection similar to what consumers making in-store purchases have.

*The Guidelines reflect existing legal protections available to consumers in more traditional forms of commerce. Their aim is to encourage: fair business, advertising and marketing practices; clear information about an online business’s identity, the goods or services it offers and the terms and conditions of any transaction; a transparent process for the confirmation of transactions; secure payment mechanisms; fair, timely and affordable dispute resolution and redress; privacy protection; and consumer and business education. They are technology-neutral, encourage private sector initiatives that include participation by consumer representatives, and emphasise the need for co-operation among governments, businesses and consumers.*<sup>50</sup>

These guidelines emphasize in the form of principles the key points that must be considered in legislation, in particular, in order to dispel the uncertainty found in the e-commerce industry, for both consumers and businesses:

- *Effective and transparent protection;*
- *Fair business practices by businesses (no false advertising, clear and available information, while taking the nature of e-commerce into account, etc.);*
- *Disclosure of information:*
  - *On the business (e.g. name, address, e-mail/telephone no.);*
  - *On the goods and services offered (enough information for making a decision communicated so that the information can be kept);*
  - *On the transaction (information on conditions, presented in a clearly and easily available manner and in a way that it can be kept by the consumer, and that contains: the total price as well as the other applicable costs, if any, information on the delivery, payment terms and conditions, restrictions related to the purchase, instructions on use, exchange, cancellation and return policies, warranties, and the applicable currency);*
- *Possibility of reviewing the order, correcting any errors, making changes and cancelling the order or providing clear consent to the transaction, as well as the possibility of keeping a statement of the transaction;*
- *Payment (methods that are secure and easy to use; consumers should also be informed of the transaction’s level of security);*
- *Dispute settlement (governments should review existing laws and, if applicable, amend them so that consumers can benefit from protection equivalent to what they have with other forms of trade, ensure access to alternate fair forms of dispute settlement, and develop joint self-regulation programs); a more in-depth review is required for international dispute settlements;*
- *Protection of privacy;*

<sup>50</sup> OECD. *Op. cit.*, Note 26, p. 4. Note: These guidelines are currently being revised by the OECD.

- *Education and awareness (of both consumers and businesses).*<sup>51</sup>

OECD member countries thus came to an understanding: in order to successfully handle the issues and new challenges arising from e-commerce, measures need to be taken at an international level, and harmonious development will require a contribution from civil society and a cooperative global effort that includes not only governments but also consumers, businesses and their representatives.<sup>52</sup>

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<sup>51</sup> *Ibid.*, pp. 29-36.

<sup>52</sup> *Ibid.*, p. 9.

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## 3. Canadian Legislation: Protection and Harmonization

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### 3.1 Guidelines

Canada is made up of provinces and territories, each with its own jurisdiction with respect to contracts and consumer protection. With respect to private international law, the Canadian provinces and territories are different “countries,” and the question of jurisdiction is just as important for remote purchases between provinces as when the purchase is made between Quebec and the U.S., for instance. Commercial transactions between provinces, even within Canada, thus consist of transborder transactions.

This is why it is important and even necessary, between Canadian “countries,” to have regulations that are harmonized, if not identical, in order to facilitate e-commerce across Canada and give merchants as much predictability as possible, while assuring that consumers benefit to a certain extent from greater compliance on the merchants’ part to consumer protection regulations for the consumer’s province: if they are similar, observance of the regulations in a given province will generally result in observance of the rules of the province with which the rules have been harmonized.

It is to limit the effect of these borders that the Canadian First Ministers signed the Agreement on Internal Trade, which came into force in 1995 and aimed at establishing an open domestic market in Canada.<sup>53</sup> This agreement led to the creation of the Consumer Measures Committee, which oversees the sought-after harmonization.

#### a) Principles of Consumer Protection for Electronic Commerce

In 1999, the *Working Group on Electronic Commerce and Consumers*, made up of representatives from consumer groups, Canadian industry associations, and the federal and provincial governments, adopted the *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework* (the “PCPEC Principles”<sup>54</sup>) aimed at better guiding consumers and businesses as well as Canadian provincial governments in adopting consumer protection frameworks for online purchases,<sup>55</sup> which should, under these principles, “be consistent with directions in consumer protection established by international bodies such as the Organisation for Economic Co-operation and Development.”<sup>56</sup>

The PCPEC Principles provide, for instance, for better disclosure of certain information to anyone accessing the merchant’s website. Disclosure must be made in an evident and clear manner, and should include the merchant’s contact information, the exact and precise

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<sup>53</sup> *Agreement on Internal Trade*. [Online] [http://www.ait-aci.ca/index\\_en/intro.htm](http://www.ait-aci.ca/index_en/intro.htm) (page viewed on April 11, 2014).

<sup>54</sup> **WORKING GROUP ON ELECTRONIC COMMERCE AND CONSUMERS**, *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework*, 1999. Available online at the Canadian Bankers Association website. [Online] [http://www.cba.ca/contents/files/misc/vol\\_20090000\\_consumerprotectionelectroniccommerce\\_en.pdf](http://www.cba.ca/contents/files/misc/vol_20090000_consumerprotectionelectroniccommerce_en.pdf) (document viewed on August 3, 2013).

<sup>55</sup> **ALLARD, A.**, *Les contrats à distance et la protection du consommateur – Les nouvelles dispositions de la loi sur la protection du consommateur du Québec*, Office de la protection du consommateur, Montreal, Canada, April 21, 2008, 37 pages, p. 7. Available online on the Legal IT conference website. [Online] [http://legalit.ca/wp-content/uploads/presentations/2008\\_Allard\\_Contrats\\_a\\_distance.pdf](http://legalit.ca/wp-content/uploads/presentations/2008_Allard_Contrats_a_distance.pdf) (document viewed on August 3, 2013).

<sup>56</sup> **WORKING GROUP ON ELECTRONIC COMMERCE AND CONSUMERS**, *Op. cit.*, note 54, p. 2.

description of the products, and information on complaint procedures, prices and other charges, geographical restrictions, etc. Cancellation, exchange and refund policies, total price, shipping and handling charges, taxes, delivery-related information, among other information, should be disclosed before the contract is concluded and the transaction confirmed as soon as possible.

With respect to recourses, the working group is recommending that governments cooperate in order to establish clear regulations that are applicable at the time of transborder disputes.<sup>57</sup> The PCPEC Principles also deal with payment security (“Consumers should be protected against unreasonable liability for payments in transactions”<sup>58</sup>), and recommend that credit card companies make reasonable efforts to help consumers for such transactions, when sellers do not deliver the merchandise, or for unauthorized transactions.<sup>59</sup>

However, note that this is only a voluntary code of conduct that does not have the force of law.

## b) Canadian harmonization template

The Consumer Measures Committee (CMC) was set up under chapter eight of the Agreement on Internal Trade (AIT).<sup>60</sup> The CMC is made up of a federal administration representative along with a representative from each province and territory, and aims at improving the market for the benefit of Canadian consumers and improving efficiency in consumer-related matters through the harmonization of laws nation-wide.<sup>61</sup>

The CMC studied electronic commerce and drew up the *Internet Sales Contract Harmonization Template*,<sup>62</sup> which was ratified in 2001 by the federal and provincial governments. In fact, the Harmonization Template was in large part used by the provinces to subsequently set up a regulatory framework for online contracts.

### *Disclosure of information*

The Harmonization Template, aimed at conciliating the measures that will be taken by Canadian lawmakers with expertise in e-commerce, details in section 3 the rules about the disclosure of information (“clear and comprehensible,” prominently displayed) established in the PCPEC Principles and, in section 4, the merchant’s obligation to send the consumer a written copy or an electronic version of the contract within fifteen (15) days following the transaction. Under Section 3(1)a), the merchant must in particular disclose the following information to the consumer: (i) information on the merchant, (ii) on the goods and services (exact description, technical specifications), (iii) on the transaction (price, shipping charges, taxes, customs duties), currency, conditions, method of payment, (iv) on the delivery, (v) on policies regarding

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<sup>57</sup> *Ibid.*, Principle 5.4, p. 8.

<sup>58</sup> *Ibid.*, Principle 6, p. 9.

<sup>59</sup> *Ibid.*, Principle 6.2, p. 9.

<sup>60</sup> *Agreement on Internal Trade, Op. cit.*, Note 53, sect. 809. The Agreement on Internal Trade (AIT) is an intergovernmental trade agreement signed by Canadian First Ministers that came into force in 1995. Its purpose is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investment within Canada and to establish an open, efficient, and stable domestic market. □

<sup>61</sup> **CONSUMER MEASURES COMMITTEE**. Website home page, Consumer Measures Committee, Government of Canada, Ottawa, Canada, April 19, 2011. [Online] <http://www.ic.gc.ca/eic/site/cmc-cmc.nsf/eng/home> (page viewed on April 11, 2014).

<sup>62</sup> **CONSUMER MEASURES COMMITTEE**. *Op. cit.*, note 2, sect. 3.

cancellation, return, exchange or refund, if applicable, and (vi) on any other restrictions, limitations or conditions likely to apply to the purchases.

## **Cancellation rights**

Section 5 of the Harmonization Template stipulates certain consumer contract cancellation rights if the merchant does not observe the disclosure rules:

### **5(1) A consumer may cancel an internet sales contract [...]**

*a) at any time from the date the contract is entered into until 7 days after the consumer receives a copy of the contract if*

*(i) the supplier does not disclose to the consumer the information described in section 3(1)(a), or*

*(ii) the supplier does not provide to the consumer an express opportunity to accept or decline the contract or to correct errors immediately before entering into it.*

*b) within 30 days from the date the contract is entered into if the supplier does not provide the consumer with a copy of the contract pursuant to section 4.*

### **5(2) In addition to the cancellation rights under subsection (1), a consumer may cancel an internet sales contract at any time before delivery of the goods or the commencement of the services under the contract if**

*a) in the case of goods, the supplier does not deliver the goods within 30 days from the delivery date specified in the contract or an amended delivery date agreed on by the consumer and the supplier, either in writing or in electronic form, or*

*b) in the case of services, the supplier does not begin the services within 30 days from the commencement date specified in the contract or an amended commencement date agreed on by the consumer and the supplier, either in writing or in electronic form.*

### **5(3) If the delivery date or commencement date is not specified in the internet sales contract, a consumer may cancel the contract at any time before the delivery of the goods or the commencement of the services under the contract if the supplier does not deliver the goods or begin the services within 30 days from the date the contract is entered into.**

Contract cancellation by the consumer involves the following obligations, pursuant to section 9:

- The supplier has fifteen (15) days following the cancellation of the contract to reimburse the consumer for any amounts paid under the terms of the contract and any related transaction;
- The consumer has fifteen (15) days following the date of cancellation or delivery (whichever is later) to return the goods to the supplier, by any means, provided there is proof of delivery. The goods must not have been used and must be returned in the same condition as when they were delivered;
- The supplier must accept the returned goods and pay the reasonable charges incurred for the return;

The same section states that:

- Any consumer who does not receive a reimbursement within said period of fifteen (15) days can sue the supplier to recover the amounts.

### **Chargeback**

When the merchant fails to reimburse the consumer, the latter may, as long as the payment has been made with a credit card, have the transaction cancelled by the credit card issuer. Section 11 of the Harmonization Template in fact states that credit card issuers are obligated to reimburse a consumer who requests it by indicating the reason for the cancellation of the contract, which must be one of the reasons listed in section 5 of the Harmonization Template. This reimbursement procedure is known as a “chargeback.”

### **Penal offences**

Section 12 states that a breach of section 9 (obligations when contract is cancelled by the consumer) and section 11 (chargeback) constitutes a penal offence.

## **c) Canadian Code of Practice for Consumer Protection in Electronic Commerce**

In 1999, the federal government set up the *Working Group on Electronic Commerce and Consumers*, composed of representatives of different sectors of the economy, to develop a Code of Practice, based on the PCPEC Principles and the OECD Code. In 2003, the *Canadian Code of Practice for Consumer Protection in Electronic Commerce* (the “Code”) was approved in principle by the Working Group as a “model for effective consumer protection in electronic commerce”<sup>63</sup> and was endorsed in 2004 by the federal, provincial and territorial ministers in charge of consumer-related matters.<sup>64</sup> This “model for effective consumer protection” was intended to provide merchants with an easy procedure to help them adopt harmonized practices that conform to the principles, which at the time were designed to guide provincial legislators.

The Code, in article 1, in turn covered the disclosure of certain information. Furthermore, like the PCPEC Principles, the Code covered questions regarding the protection of online personal information, payment security, handling of complaints, unsolicited e-mails, etc.

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<sup>63</sup> CONSUMER MEASURES COMMITTEE. [Online] <http://cmcweb.ca/eic/site/cmc-cmc.nsf/eng/fe00064.html> (page viewed on April 11, 2014).

<sup>64</sup> *Ibid.* The CMC archived page mentions that the Code “is now open to endorsement by private sector organizations and consumer organizations as representing good practice benchmarks for merchants engaging in consumer e-commerce” and that attestations that “any particular vendor or group of vendors meets the terms of the Code” may take place. The page has not been updated since 2004 and Government of Canada Publications indicates that the document is no longer published (see [Online] <http://www.publications.gc.ca/site/eng/269762/publication.html> (page viewed on April 11, 2014)).

### 3.2 Overview of provincial consumer protection laws

Internet sales contracts constitute what is defined as distance contracts, namely contracts entered into when the parties are not dealing face to face. However, this does not mean, as previously seen, that the rules must be the same for all distance contracts. The Canadian lawmakers who legislated to provide a regulatory framework for e-commerce in fact adopted different approaches: those who passed laws in this regard (only 8 out of 13 provinces and territories, despite the Harmonization Template) chose to only regulate electronic contracts (3/8), merge e-commerce rules with the rules applicable to all distance contracts (3/8), or separately regulate these two types of distance contracts (2/8).

**Table 1**  
**Types of regulatory frameworks in Canadian provinces or territories**  
**and date of coming into force**

PROVINCE/TERRITORY	Internet sales	Distance sales other than via the Internet	Both together (same provisions)	Both (separate sections)	None
British Columbia (BC) <sup>65</sup>			√ (2004)		
Alberta (AB) <sup>*66</sup>	√ (2001)				
Saskatchewan (SK) <sup>*67</sup>	=>	=>		√ (Internet: 2002; other: 2006)	
Manitoba (MB) <sup>68</sup>	√ (2001)				
Ontario (ON) <sup>*69</sup>	=>	=>		√ (2005)	
Quebec (QC) <sup>70</sup>			√ (2006)		
New Brunswick (NB)					√
Newfoundland and Labrador (NL) <sup>71</sup>			√ (2009)		
Prince Edward Island (PEI)					√
Nova Scotia (NS) <sup>*72</sup>	√ (2003)				
Northwest Territories (NT)					√
Yukon (YK)					√
Nunavut					√

<sup>65</sup> **BC**: *Business Practices and Consumer Protection Act*, SBC 2004, c. 2, Part 4. [Online] [http://www.bclaws.ca/Recon/document/ID/freeside/04002\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/04002_00).

<sup>66</sup> **AB**: *Internet Sales Contract Regulation*, Alta Reg 81/2001. [Online] <http://canlii.ca/t/kxk8>.

<sup>67</sup> **SK**: *The Consumer Protection Act*, SS 1996, c C-30.1, Part IV.1 and Part IV.5. [Online] <http://canlii.ca/t/hxnd>.

<sup>68</sup> **MB**: *Consumer Protection Act*, CCSM, c. C200, Part XVI. [Online] <http://www.canlii.org/en/mb/laws/stat/ccsm-c-c200/110256/ccsm-c-c200.html>.

<sup>69</sup> **ON**: *Consumer Protection Act, 2002*, SO 2002, c. 30, Parts IV and V. [Online] <http://www.canlii.org/en/on/laws/stat/so-2002-c-30-sch-a/108405/so-2002-c-30-sch-a.html>.

<sup>70</sup> **QC**: *Consumer Protection Act*, CQLR c. P-40.1, Ch. III, Section I.1. [Online] <http://canlii.ca/t/68w8g>.

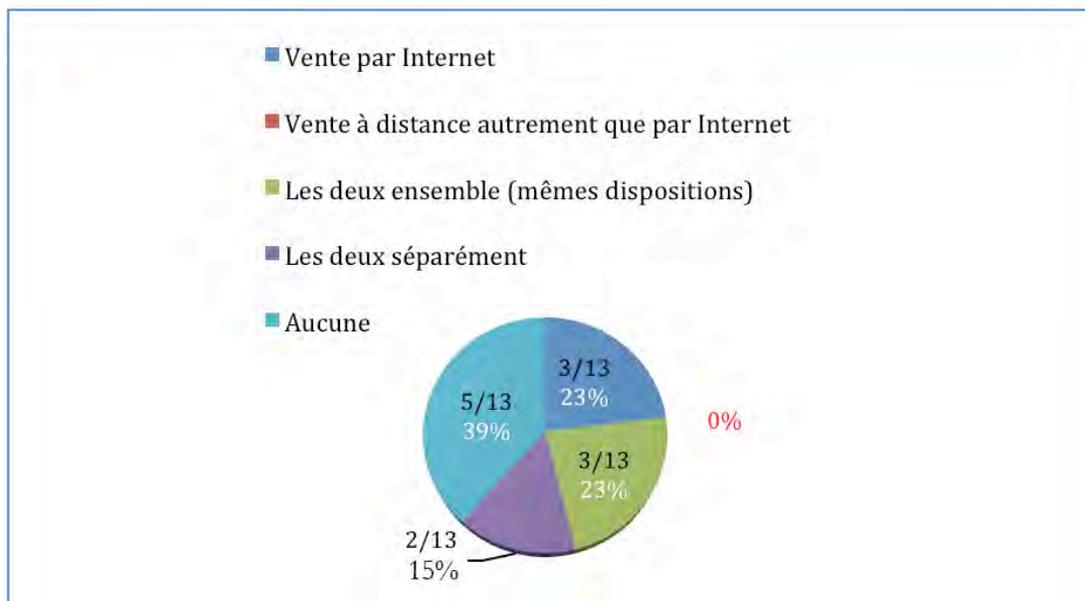
<sup>71</sup> **NL**: *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, Part V, Division 2. [Online] <http://canlii.ca/t/51wmx>.

<sup>72</sup> **NS**: *Internet Sales Contract Regulations*, NS Reg 91/2002. [Online] <http://canlii.ca/t/jmpc>.

\* The provisions only apply to distance contracts valued at \$50 or more.

\*\* The arrows (=>) indicate that regulations exist for these sectors, but that the provisions are included in the same act, although in separate chapters.

**Table 2**  
**Types of contracts for which Canadian provincial laws provide protection to consumers with regard to distance selling**



The Canadian provinces that reviewed their consumer protection laws since the OECD Guidelines and the Harmonization Template were adopted in large part reiterated the principles that were proposed in these documents. We will therefore begin our review of the legislation based on the principles relevant to our study, by emphasizing the characteristics that emerged during the study of the respective provincial legislation.

Whereas the Harmonization Model only dealt with Internet sales and three provinces (AB, MB and NS) adopted legislation only for this type of distance selling, our comparisons will in the majority of cases only cover legislation on Internet distance contracts.

For ease of reading, in the section that follows, unless otherwise indicated, the term “provinces” will refer to the provinces that adopted provisions on Internet sales contracts.

## a) Application

The Harmonization Model covered Internet sales contracts with a consumer, with each jurisdiction being free to determine 1) the scope of the template, 2) whether certain classes of businesses or certain types of goods and services should be excluded, and 3) the application of some or all of the provisions.

The provinces regulating Internet sales all chose to apply their regulatory framework to both goods and services, although limiting the application in ON, AB, SK and NS to contracts of \$50 and more, and/or reserving the right to restrict the application by regulation.

Provisions on e-commerce are found, with some exceptions,<sup>73</sup> in consumer protection legislation or in regulations adopted under such legislation, and therefore naturally apply to consumer contracts, i.e. those entered into by a consumer and a merchant, generally for personal reasons.

## b) Principle 1: Disclosure of information

As previously seen, the guidelines, principles and other agreements on the desired regulatory framework for online distance contracts all stress the merchant's obligation to provide consumers with certain information that will enable them to make an informed choice and to make up for the fact that they are not able to directly see the product, and that merchants are not in front of them and therefore are unable to obtain additional information as easily. One of the challenges presented to legislators consists in finding a certain balance: although consumers should be provided with essential information, they should not be overwhelmed by a mass of peripheral information, and merchants should not be given a task that is impossible to carry out.

The elements we identified as being common to all provincial laws and that require disclosure of information on the merchant's part consist of the following:

- (E1) The supplier's name and, if different, the name under which the supplier carries on business;
- (E2) The supplier's business address and, if different, the supplier's mailing address;<sup>74</sup>
- (E3) The supplier's telephone number and, if available, the supplier's e-mail address and fax number;
- (E4) Description of the goods and services being sold to the consumer, including any relevant technical or system specifications;
- (E5) Itemized list of the prices, including any associated costs (shipping charges and taxes);
- (E6) Any additional charges that may apply to the price of the product, or a description of these charges if they cannot be determined by the supplier;
- (E7) Total amount of the contract or amount of the periodic payments;
- (E8) The currency;<sup>75</sup>

<sup>73</sup> AB adopted the relevant regulation – involving Internet sales contracts – under the *Fair Trading Act*, with the regulation also including exceptions (cut flowers, perishable goods and businesses covered by specific legislation).

<sup>74</sup> This wording is found in the Harmonization Template. BC, AB and NS use the same wording. However, SK instead uses the “address of the premises from which the supplier conducts business with the consumer” (sect. 7 of *The Consumer Protection Regulations*, 2007, RRS c C-30.1 Reg 2, [Online] <http://canlii.ca/t/hxnq>), ON uses the “address of the premises” (sect. 32(2) of the *Ontario Regulation 17/05, General*, [Online] <http://www.canlii.org/en/on/laws/regu/o-reg-17-05/latest/o-reg-17-05.html>); QC “the merchant's address” (sect. 54.4 b) of the *Consumer Protection Act*, RLRQ c P-40.1 [Online] <http://canlii.ca/t/68w8g>) and NL uses “business address” (sect. 24(1)b) of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 [Online] <http://canlii.ca/t/51wmx>).

<sup>75</sup> In QC, SK and ON, the law requires merchants to indicate the currency only if the amount is not in Canadian dollars: **QC**: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.4 h); **SK**: *The Consumer Protection Regulations*,

- (E9) The terms, conditions, and method of payment;
- (E10) Delivery arrangements (date, identity of the shipper,<sup>76</sup> mode of transportation and place of delivery);
- (E11) Cancellation, return, exchange and refund policies, if any;
- (E12) Any other restrictions/conditions/limitations that may apply to the purchase.

These elements are all found in one form or another in the Harmonization Template; the regulatory frameworks established by the various provinces are, if not identical, at least substantially similar. Some provincial legislators have added certain elements to the mandatory information disclosure list: for example, BC<sup>77</sup>, MB<sup>78</sup> and NL<sup>79</sup> now specifically require the disclosure of the cost of credit, if applicable; MB<sup>80</sup> also requires the disclosure of the policies associated with the protection of the consumer's financial and personal information; etc.

The most marked difference is possibly found in the description requirement for the good or service (E4). Whereas the Harmonization Template mentions a "fair and accurate description" of the goods or services,<sup>81</sup> most provinces require that a "fair and accurate (or exact)" description be provided (AB<sup>82</sup>, SK<sup>83</sup>, MB<sup>84</sup>, ON<sup>85</sup> and NS<sup>86</sup>), while BC<sup>87</sup>, QC<sup>88</sup> and NL<sup>89</sup> require a detailed description. The choice of the term "detailed" in a world where a staggering amount of information and details can be provided may seem unfortunate. When is the description detailed enough to meet the legal requirement?<sup>90</sup>

*An "overly informed" consumer is also an ill-informed consumer. Electronic forms can contain dozens of pages, be peppered with hyperlinks, and include a set of terms and conditions and exemption clauses which a reasonable person can become lost in.<sup>91</sup>*

Although these new provisions have been long-awaited and welcome in the consumer protection sector, they have also been criticized. Comparing the requirements of a fair and accurate description or the itemized description with the requirement of disclosure of the basic

2007, RRS c C-30.1 Reg. 2, sect. 7(h). [Online] <http://canlii.ca/t/hxnq>; **ON**: *Ontario Regulation 17/05, General*, sect. 32(13). [Online] <http://canlii.ca/t/p2b8>.

<sup>76</sup> With the exception of MB, which does not go so far as asking for the disclosure of information on the shipper's identity but only "the seller's delivery arrangements, including the method of delivery" (sect. 3(1)l of the *Internet Agreements Regulation*).

<sup>77</sup> **BC**: *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 47(1)a) and 19(j).

<sup>78</sup> **MB**: *Internet Agreements Regulation*, Man Reg 176/2000, sect. 3(1)(j). [Online] <http://canlii.ca/t/k8w0>.

<sup>79</sup> **NL**: *Consumer Protection and Business Practices Act*, *Op. cit.*, note 71, sect. 29(1)a) and 24(ii).

<sup>80</sup> **MB**: *Internet Agreements Regulation*, *Op. cit.*, note 78, sect. 3(1)(m), (o).

<sup>81</sup> **CONSUMER MEASURES COMMITTEE**. *Op. cit.*, note 2, sect. 3(1)a)iv).

<sup>82</sup> **AB**: *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 4(1)(a)iv).

<sup>83</sup> **SK**: *Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.52(1) a) and *Consumer Protection Regulations*, 2007, *Op. cit.*, note 75, sect. 7(d) and 36(d).

<sup>84</sup> **MB**: *Internet Agreements Regulation*, *Op. cit.*, note 78, sect. 3(1)(d).

<sup>85</sup> **ON**: *Consumer Protection Act*, 2002, *Op. cit.*, note 69, sect. 38(1) and 45 and *Ontario Regulation 17/05, General*, *Op. cit.*, note 75, sect. 32(3) and 37(1)3).

<sup>86</sup> **NS**: *Internet Sales Contract Regulations*, *Op. cit.*, note 72, sect. 3(d).

<sup>87</sup> **BC**: *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 46(1)c).

<sup>88</sup> **QC**: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.4 par. 1(d).

<sup>89</sup> **NL**: *Consumer Protection and Business Practices Act*, *Op. cit.*, note 71, sect. 29(1)c).

<sup>90</sup> This choice is all the more curious as it was made by the provinces where the requirements regarding distance contracts are the same regardless of the method of communication; is it advisable to require the same detailed description for a telephone transaction as for an online one? Would the difference between the proper degree of detail be allowed based on the mode of communication, despite the preference for technological neutrality? See: **GAUTRAIS, V.**, *Op. cit.*, note 27, p.10.

<sup>91</sup> **BOUCHARD C.** and **M. LACOURSIERE**, *Op. cit.*, note 7, p. 395.

characteristics found in the *Code de la consommation français* (French consumer code), Serge Kablan and Oulaï Arthur, noting that the purpose of information disclosure is to allow the consumer to make an informed decision, state:

*However, the distinctive wording by Quebec legislators allows the same ambiguity and lack of precision to hang over the scope of the target prescription. Perhaps this lack of precision stems from the variety of goods and services available in cyberspace, and incidentally, in the illusion associated with a possible standardization of their description. How, then, can we ensure that online merchants have fulfilled their obligation of information disclosure, all the more so as the only indications suggested by the legislation leads one to believe that “itemized description” or even a “fair and accurate description” of a good or service includes, without being limited to, the disclosure of its characteristics and technical specifications? Is an “itemized description” of accurate but non-essential characteristics of a good valid? Does the “itemized description” necessarily include the disclosure of the essential characteristics of the good or service?*

[...]

*This wording of the disclosure of information regarding the purpose of the contract is more indicative that the immaterial context of the contractual interaction requires protection against any lack of information that can affect consent. A basic rule in relation to contracts is that the parties are acting in full knowledge of the facts. Emphasis on the knowledge of the basic characteristics of the good or service part of the contract rather than on its “detailed description” or its “fair and accurate description” is a beneficial application of this rule. The average consumer to whom the basic features of the desired good or service are disclosed appears in fact to be better informed (he almost instantly knows if the good or service will meet his needs) than a consumer who is given a description where the validity criteria remain diffuse, or worse, a “detailed description” which in fact, because of all the details, may cause the basic features of the good to be buried by an extraordinary amalgamation of information that could change his mind about making the purchase. Does the average consumer need to know the weight or depth of a CPU case to determine whether he wishes to purchase it? It is actually such information, in addition to a multitude of other details, that is found on some websites and that supposedly describes in detail the goods or services available for purchase.<sup>92</sup>*  
[translation]

With respect to the obligation to disclose the “other restrictions/conditions/limitations that may apply to the purchase” (E12), its vagueness must be pointed out. Its ambiguity may prove to be highly problematic in practice because, on the one hand, the merchant will not necessarily know which additional information must be provided to the consumer before the contract is made, and, on the other, because the consumer may have to deal with a mountain of information, which would discourage him from reading the contract. What could these *other restrictions and conditions* in fact consist of?

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<sup>92</sup> **KABLAN S.** and **A. OULAÏ**, La formalisation du devoir d’information dans les contrats de cyberconsommation: analyse de la solution québécoise, 54 R.D. McGill 627, Montreal, Canada, 2009, 42 pages. Available online at the McGill Law Journal website. [Online] <http://lawjournal.mcgill.ca/userfiles/other/1574695-kablan.pdf> (document viewed on February 20, 2014).

*In light of the current practice of e-commerce, the ambiguity of the obligation to disclose the 'other restrictions and conditions applicable to the contract,' in addition to the indications previously mentioned, can result, for the same contract, in a heterogeneous combination of clauses, or even of contract documents, the relevance of which has not been established: guaranteed lowest prices; policy on typographical errors; advertising rebate policy; policy on contests; intellectual property management; shopping guarantee; agreement related to the website; replacement program, etc. In addition to these clauses, there are those often qualified as completely useless, but which online merchants, when they 'choose' to disclose information, do not necessarily do without.<sup>93</sup> (citation omitted)*

Provincial legislation has also established a more or less specific way of disclosing the information, still in keeping with the Harmonization Template (see Table 3 below).

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<sup>93</sup> *Ibid.*, p. 645.

**Table 3**  
**Presentation of information**

		Prominently displayed	Clear and comprehensible	Access/ Keep/ Print	Accept/ Decline/ Correct
CMC <sup>94</sup>	<i>Internet</i>	√ 3(2)a)	√ 3(2)a)	√ 3(2)b)	√ 3(1)
BC <sup>95</sup>	<i>All media</i>		√ 46(b)	√* 47(2) a)	√* 47(2) b)
AB <sup>96</sup>	<i>Internet</i>	√ 4(2)a)	√ 4(2)a)	√ 4(2)b)	√ 4(1)b)
SK <sup>97</sup>	<i>Internet</i>	√ 75.52(2)a)	√ 75.52(2)a)	√ 75.52(2)b)	√ 75.52(1)b)
	<i>Other media</i>				√ <sup>98</sup>
MB <sup>99</sup>	<i>Internet</i>			√ 129(2)b)	
ON <sup>100</sup>	<i>Internet</i>	√ 5	√ 5	√ 38 (3)	√ 38 (2)
	<i>Other media</i>	√ 5	√ 5		√ <sup>101</sup>
QC <sup>102</sup>	<i>All media</i>	√ 54.4 par.2	√ 54.4 par.2	√ 54.4 par.2 (if there is a written offer)	√ 54.5
NL <sup>103</sup>	<i>All media</i>		√ 29(2)	√* 30(2)a)	√* 30(2)b)
NS <sup>104</sup>	<i>Internet</i>	√ 4(a)	√ 4(a)	√ 4(b)	√ <sup>105</sup>

**Legend:**

- Grey: Applicable to Internet sales only.  
 Blue: Applicable to all types of distance contracts.  
 √\*: Applicable to electronic contracts only.

<sup>94</sup> **CONSUMER MEASURES COMMITTEE**. *Op. cit.*, note 2.

<sup>95</sup> **BC**: *Business Practices and Consumer Protection Act, Op. cit.*, note 65.

<sup>96</sup> **AB**: *Internet Sales Contract Regulation, Op. cit.*, note 66.

<sup>97</sup> **SK**: *The Consumer Protection Act, SS 1996, Op. cit.*, note 67.

<sup>98</sup> **SK**: *The Consumer Protection Regulations, 2007, Op. cit.*, note 75, sect. 37.

<sup>99</sup> **MB**: *Consumer Protection Act, Op. cit.*, note 68.

<sup>100</sup> **ON**: *Consumer Protection Act, 2002, Op. cit.*, note 69.

<sup>101</sup> **ON**: *Ontario Regulation 17/05, General, Op. cit.*, note 75, sect. 38.

<sup>102</sup> **QC**: *Consumer Protection Act, Op. cit.*, note 70, sect. 54.4 par. 2.

<sup>103</sup> **NL**: *Consumer Protection and Business Practices Act, Op. cit.*, note 71, sect. 29(2).

<sup>104</sup> **NS**: *Internet Sales Contract Regulations, Op. cit.*, note 72.

<sup>105</sup> **NS**: *Consumer Protection Act, Op. cit.*, note 72, sect. 21Y.

## Prominently displayed

The Harmonization Template states that, for sales of goods or services to consumers online, merchants must **prominently display** the mandatory information. When adopting specific provisions in this regard, only four of the provinces that followed the Harmonization Template also adopted a similar specific provision: AB, SK and NS, which adopted the wording “prominently displayed,” and QC, which went even further: it required that the information be brought expressly to the consumer’s attention. In ON, legislators have included this requirement in the general part of the Consumer Protection Act, 2002, Part I, *Interpretation and Application*.

## Access

Among the provinces that have a requirement for the information to be prominently displayed, AB, SK and ON went even further, still in keeping with the Harmonization Template, when their legislators have chosen to make it mandatory for the consumer to be given this information, requiring merchants to ensure that the consumer **has accessed** the information prior to the purchase:

- AB<sup>106</sup> and SK<sup>107</sup>: “in a manner that ensures that (i) the consumer has accessed the information”
- ON: “in a manner that ensures that: (a) the consumer has accessed the information.”<sup>108</sup>

Moreover, despite the fact that the other provinces did not follow the Harmonization Model with respect to the *displayed prominently* requirement, legislators also in this instance chose to emphasize the access to information:

- BC: “in a manner that requires the consumer to access the information”<sup>109</sup>
- MB: “the information is made accessible to the buyer on the Internet in a manner that ensures that: (i) the buyer has accessed the information before entering into the agreement”<sup>110</sup>
- NL: “available in a manner that (i) requires the consumer to access the information.”<sup>111</sup>

The only provinces that do not subject merchants to such an *access requirement* are QC and NS, although Quebec stresses the fact that the information must be brought *expressly* to the consumer’s attention.<sup>112</sup>

<sup>106</sup> **AB**: *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 4(2)b).

<sup>107</sup> **SK**: *The Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.52(2)b).

<sup>108</sup> **ON**: *Consumer Protection Act, 2002*, *Op. cit.*, note 69, sect. 38(3)a).

<sup>109</sup> **BC**: *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 47(2)a).

<sup>110</sup> **MB**: *Consumer Protection Act*, *Op. cit.*, note 68, sect. 129(2)b).

<sup>111</sup> **NL**: *Consumer Protection and Business Practices Act*, *Op. cit.*, note 71, sect. 30(2)a).

<sup>112</sup> **QC**: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.4 par. 2.

## Retain/Print

In keeping with the Harmonization Template, all the provinces have also stipulated in their legislation on Internet sales contracts a requirement for merchants to make the information available to the consumer so that the latter can retain and print it. Note that the five provinces that adopted provisions covering distance contracts as a whole have rejected the principle of technological neutrality on this issue: legislators in fact specified that this requirement only applies to electronic contracts (BC and NL); in QC, the requirement only applies to contracts preceded by a written offer. The provinces that adopted separate distance selling provisions for the Internet and for other types of distance selling (SK and ON) followed suite and adopted this requirement with regard to retaining and printing the contract information only for online transactions. This comment also applies with respect to the previous requirement (“access”).

Note that QC is the only province that does not in this case create a distinction between the use of an electronic medium and other media.

## Clarity

As can be seen in Table 3, only one province did not include the requirement of clarity proposed by the Harmonization Template (MB). QC once again adopted wording that is slightly different from that of the other provinces (“prominently and in a comprehensible manner”).

## c) Principle 2: Opportunity to Accept, Decline and Correct

Seven provinces that adopted new consumer protection provisions with respect to Internet sales contracts included a requirement for merchants to provide the consumer, before finalizing the contract, with the opportunity to accept or decline the contract or to correct any errors that may have been made during the process leading to the purchase. Only MB did not specifically include this requirement in the new provisions on Internet sales contracts.

## d) Principle 3: Copy of the contract

The new provisions adopted by the provinces to protect consumers when entering into Internet contracts for the most part (with the exception of MB) stipulate a requirement for the merchant to send, once the contract has been finalized, a copy of the contract that must reproduce the information to be disclosed by law. This written copy of the contract must generally be in electronic form, sent by e-mail or by a means that allows the merchant to prove that the consumer has received it.<sup>113</sup> As for AB, SK, ON and NS, legislation also specifically stipulates the opportunity to do so by fax or by mail.

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<sup>113</sup> **BC:** *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 48 (3); **AB:** *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 5(1) and (3); **SK:** *The Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.6 and 76.73 and *The Consumer Protection Regulations*, 2007, *Op. cit.*, note 75, sect. 8 (2); **ON:** *Consumer Protection Act*, 2002, *Op. cit.*, note 69, sect. 39 and 46 and *Ontario Regulation 17/05, General*, *Op. cit.*, note 75, sect. 33(3) and 39(3); **NL:** *Consumer Protection and Business Practices Act*, *Op. cit.*, note 71, c C-31.1, sect. 31(3); **NS:** *Internet Sales Contract Regulations*, *Op. cit.*, note 72, sect. 5(2).

QC is an exception to this rule since the *Consumer Protection Act* only indicates that the copy must be in writing.<sup>114</sup>

The copy of the contract, if applicable, must be sent within fifteen (15) days of the date the contract has been entered into.<sup>115</sup>

## e) Principle 4: Right of cancellation

Provincial consumer protection laws that regulate Internet sales contracts give the consumer the right to cancel the contract if the merchant does not meet some of his obligations, namely: the disclosure of information, giving the consumer the opportunity to accept or decline the contract or to correct any errors in it, and the obligation to send the consumer a copy of the contract that includes the mandatory information.

The right of cancellation is exercised simply by sending a cancellation notice to the merchant: some provinces (BC<sup>116</sup>, AB<sup>117</sup>, SK<sup>118</sup>, ON<sup>119</sup> and NS<sup>120</sup>) stipulate that the notice can be given in any manner – which conforms to what was proposed in the Harmonization Template – while other provinces mention a notice to the merchant, without further clarifications (QC: “sending a notice”<sup>121</sup> and NL: “giving notice”<sup>122</sup>). MB, for its part, requires that consumers give notice using a method that would enable them to obtain confirmation of the delivery of such notice to the merchant,<sup>123</sup> which is more advisable, but which adds a burden for the consumer that is difficult to justify:

*132(2) A buyer may provide a notice of cancellation to the seller by personal delivery or by registered mail, fax, e-mail or any other method by which the buyer can obtain confirmation of delivery of the notice.*

This measure was established to protect consumers and probably to enable them to provide confirmation of the transmission, when necessary, but the provision can still be harmful to the consumer, as not many will go read the legislation when finding themselves in such a situation. And when they do not comply with the provisions, will they not be penalized by a provision that first and foremost should be providing them with protection or giving them a right?<sup>124</sup>

<sup>114</sup> **QC:** *Consumer Protection Act, Op. cit.*, note 70, sect. 54.6.

<sup>115</sup> **BC:** *Business Practices and Consumer Protection Act, Op. cit.*, note 65, sect. 48; **AB:** *Internet Sales Contract Regulation, Op. cit.*, note 66, sect. 5(1); **SK:** *The Consumer Protection Act, Op. cit.*, note 67, sect. 75.6 and 76.73 and *The Consumer Protection Regulations, 2007, Op. cit.*, note 75, sect. 8 and 37; **ON:** *Consumer Protection Act, 2002, Op. cit.*, note 69, sect. 39 and *Ontario Regulation 17/05, General, Op. cit.*, note 75, sect. 33. For distance contracts made other than via the Internet, the copy can be sent on the earliest of the following two dates: within thirty (30) days of billing or within sixty (60) days of the contract being concluded (sect. 39(1) of the same regulation); **QC:** *Consumer Protection Act, Op. cit.*, note 70, sect. 54.7; **NL:** *Consumer Protection and Business Practices Act, Op. cit.*, note 71, sect. 31; **NS:** *Internet Sales Contract Regulations, Op. cit.*, note 72, sect. 5.

<sup>116</sup> **BC:** *Business Practices and Consumer Protection Act, Op. cit.*, note 65, sect. 49.

<sup>117</sup> **AB:** *Internet Sales Contract Regulation, Op. cit.*, note 66, sect. 8.

<sup>118</sup> **SK:** *The Consumer Protection Act, Op. cit.*, note 67, sect. 75.7.

<sup>119</sup> **ON:** *Consumer Protection Act, 2002, Op. cit.*, note 69, sect. 94 and 92.

<sup>120</sup> **NS:** *Internet Sales Contract Regulations, Op. cit.*, note 72, sect. 7.

<sup>121</sup> **QC:** *Consumer Protection Act, Op. cit.*, note 70, sect. 54.11.

<sup>122</sup> **NL:** *Consumer Protection and Business Practices Act, Op. cit.*, note 71, sect. 32.

<sup>123</sup> **MB:** *Consumer Protection Act, Op. cit.*, note 68, sect. 132(2).

<sup>124</sup> Note, moreover, that the manner in which notices are given under the law includes hand delivery, a method that does not allow for “confirmation of delivery.” □

In section 5 of the Harmonization Template, three types of reasons are stated for cancellation: breach of the precontractual obligations (failure to disclosure information or not providing the opportunity to revise or correct), not providing a valid contract, and delivery problems.<sup>125</sup>

The following table summarizes for the various provinces, as the case may be, the time periods applicable to such cancellation rights.

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<sup>125</sup> CONSUMER MEASURES COMMITTEE, *Op. cit.*, note 2, sect. 5.

**Table 4**  
**Reasons for cancelling an Internet sales contract**

	Up to 7 or 10 days following receipt of the copy of the contract	Up to 30 days after the date the contract has been entered into	Up to 7 days from when the merchant begins to fulfill his obligation
1. The merchant does not disclose the contract information to the consumer <u>or</u> does not provide the consumer with the opportunity to accept or decline the contract or to correct any errors	BC ( <i>Internet</i> ) <sup>126</sup> AB ( <i>Internet</i> ) <sup>127</sup> SK ( <i>Internet</i> ) <sup>128</sup> ON <sup>129</sup> QC <sup>130</sup> NL ( <i>Internet</i> ) <sup>131</sup> NS ( <i>Internet</i> ) <sup>132</sup>		QC <sup>133</sup>
2. The merchant does not <b>provide a copy</b> of the contract to the consumer, including the mandatory disclosure of the contract information <sup>134</sup>		BC <sup>135</sup> AB ( <i>Internet</i> ) <sup>136</sup> SK ( <i>Internet</i> ) <sup>137</sup> ON ( <i>Internet</i> ) <sup>138</sup> QC <sup>139</sup> NS ( <i>Internet</i> ) <sup>140</sup> NL <sup>141</sup>	
2.1 The <b>copy</b> of the contract is <b>non-conforming</b> (e.g. does not include the mandatory information)	BC <sup>142</sup> NL <sup>143</sup> QC <sup>144</sup>		QC <sup>145</sup>

\* (*Internet*): This cancellation reason applies only to Internet sales contracts, regardless of whether the province regulates these contracts or all distance contracts.

<sup>126</sup> **CB** : *Business Practices and Consumer Protection Act, Op. cit.*, note 65, sect. 49(1)a)ii).

<sup>127</sup> **AB**: *Internet Sales Contract Regulation, Op. cit.*, note 66, sect. 6(1)a).

<sup>128</sup> **SK**: *The Consumer Protection Act, Op. cit.*, note 67, sect. 75.61(1)a).

<sup>129</sup> **ON**: *Consumer Protection Act, 2002, Op. cit.*, note 69, sect. 40(1) and 47 and *Ontario Regulation 17/05, General, Op. cit.*, note 75, sect. 38.

<sup>130</sup> **QC**: *Consumer Protection Act, Op. cit.*, note 70, sect. 54.8 par. 1.

<sup>131</sup> **NL**: *Consumer Protection and Business Practices Act, Op. cit.*, note 71, sect. 32(1)a)i).

<sup>132</sup> **NS**: *Consumer Protection Act, Op. cit.*, note 105, sect. 21AA and *Internet Sales Contract Regulations, Op. cit.*, note 72, sect. 6(1)a).

<sup>133</sup> **QC**: *Consumer Protection Act, Op. cit.*, note 70, sect. 54.8 par. 2.

<sup>134</sup> The provinces highlighted in blue have a different timeframe for cases of non-compliance on the merchant's part related to the content of the copy (2.1).

<sup>135</sup> **BC**: *Business Practices and Consumer Protection Act, Op. cit.*, note 65, sect. 49(1)b).

<sup>136</sup> **AB**: *Internet Sales Contract Regulation, Op. cit.*, note 66, sect. 6(1)b).

<sup>137</sup> **SK**: *The Consumer Protection Act, Op. cit.*, note 67, sect. 75.61(1)b).

<sup>138</sup> **ON**: *Consumer Protection Act, 2002, Op. cit.*, note 69, sect. 40(2).

<sup>139</sup> **QC**: *Consumer Protection Act, Op. cit.*, note 70, sect. 54.8 al.3.

<sup>140</sup> **NS**: *Consumer Protection Act, Op. cit.*, note 105, sect. 21AA and *Internet Sales Contract Regulations, Op. cit.*, note 72, sect. 6(1)b).

<sup>141</sup> **NL**: *Consumer Protection and Business Practices Act, Op. cit.*, note 71, sect. 32(1)b).

<sup>142</sup> **BC**: *Business Practices and Consumer Protection Act, Op. cit.*, note 65, sect. 49(1)a)ii).

<sup>143</sup> **NL**: *Consumer Protection and Business Practices Act, Op. cit.*, note 71, sect. 32(1)a)ii).

<sup>144</sup> **QC**: *Consumer Protection Act, Op. cit.*, note 70, sect. 54.8 par. 2.

<sup>145</sup> *Ibid.*, sect. 54.8, par. 2.

## ***Reasons related to information disclosure and not providing a copy of the contract***

In 2001, the Harmonization Template proposed that when the online merchant did not fulfill his obligations of information disclosure or did not provide the opportunity to the consumer to accept or decline the contract or correct any errors in it, the consumer should be entitled to cancel the contract at any time between the date when the contract was entered into and five (5) days following the receipt of the copy of the contract. However, if the consumer does not receive said copy within thirty (30) days from the date the contract is entered into, or if the contract is non-conforming, such as for failure to reproduce the mandatory contract information, the consumer should also be entitled to cancel the contract.

All of the provinces that chose to regulate Internet sales contracts adopted this type of provision, except for Manitoba.

When the merchant has not fulfilled the information disclosure requirement or given the consumer the opportunity to accept/decline the contract or correct errors in it before it is entered into, the consumer was given up to seven days by provincial legislators to send a notice of cancellation following the receipt of the copy of the contract. NL extended this time to ten days.

However, when the online merchant fails to send the consumer a valid copy of the contract (i.e. that contains all the prescribed contract information, including the consumer's name and the date of the contract), the Harmonization Template proposes that the consumer should have thirty (30) days after the date the contract is entered into to request the cancellation of the contract.<sup>146</sup> Most provinces have adopted a measure similar to this one.

In addition to this cancellation right within thirty (30) days of entering into the contract in the event a copy of the contract is not received, three provinces added a different calculation method in cases where the contract that is received does not comply with legal provisions: BC and NL gave the consumer seven (7) days starting from the time the contract is received to cancel it if the contract does not include the prescribed information. This additional protection is very pertinent: if the consumer receives the copy of the contract late, the time limits for checking whether the contents of the contract conform to the law and, if necessary, informing the merchant of his intention to cancel the contract could be severely curtailed if they are considered from the date the contract is entered into. These two provinces have therefore corrected this flaw in the Harmonization Template by ensuring that consumers have a certain period of time to review the copy of the contract.

QC legislation went much further: considering the fact that, for instance, consumers can only determine whether the description of the good or service is valid when the merchant has delivered (or started to deliver) said good or service, the legislation stipulates that the "cancellation period begins as of the merchant's performance of the principal obligation if the consumer, at that time, observes that the merchant has not disclosed all the information described in section 54.4."<sup>147</sup>

*Thus, consumers receiving a good that does not correspond to what they had purchased online could be in the ludicrous position of not having any recourses should the delivery take more than seven days, which is not infrequent. The provision in the Canadian Harmonization Template could thus be seen as potentially completely useless, and the*

<sup>146</sup> CONSUMER MEASURES COMMITTEE, *Op. cit.*, note 2, sect. 4 and 5(1)b).

<sup>147</sup> QC: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.8 par. 2.

correction requested in the *Union des consommateurs* report and made by the legal experts from the *Office de la protection du consommateur* is particularly beneficial.<sup>148</sup> (citation omitted) [translation]

MB has not conferred the cancellation rights stipulated in the Harmonization Template: the legislation states a right of cancellation only when the merchant does not provide the prescribed information in writing. Consumers can exercise this right of cancellation at any time, before the merchant has delivered or begins delivery of the good or service: “If a seller fails to provide prescribed information to a buyer in writing before entering into a retail sale or retail hire-purchase agreement with the buyer, the buyer may cancel the agreement before accepting delivery of the goods or services under the agreement.”<sup>149</sup>

### **Reasons related to delivery problems**

The Harmonization Template states that consumers should also have the right to cancel an Internet sales contract if the good or service was not delivered within thirty (30) days from the date the contract is entered into or, if applicable, the date of delivery indicated in the contract, at any time before delivery is made by the merchant.<sup>150</sup>

Seven of the eight Canadian provinces that regulate distance contracts (ON being the exception<sup>151</sup>) adopted a specific measure in this respect, with each province also providing exceptions (e.g. for contracts involving transportation, food and travel services<sup>152</sup>).

One could question the approach chosen by legislators, which consists in conferring by law a “grace period” to the merchant who has agreed on a delivery date with the consumer.<sup>153</sup> It is nonetheless odd that the law requires that the merchant indicate the delivery date on the contract and that the consumer be allowed to cancel the contract if the merchant does not conform to this requirement, but that the same legislation further allows that the agreement regarding the delivery date not be observed, prohibiting the consumer from cancelling the contract until the merchant has been in default for one month.

<sup>148</sup> GAUTRAIS, V., *Op. cit.*, note 27, p. 22.

<sup>149</sup> MB: *Consumer Protection Act*, *Op. cit.*, note 68, 129(1); see also the *Internet Agreements Regulation*, *Op. cit.*, note 78.

<sup>150</sup> CONSUMER MEASURES COMMITTEE, *Op. cit.*, note 2, sect. 5(2).

<sup>151</sup> In ON, there was no need to adopt a specific provision in this respect as there already was a general provision in place; see sect. 26 of the *Consumer Protection Act, 2002*, *Op. cit.*, note 69, sect. 96.

<sup>152</sup> BC: *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 49 (1)(b),c,d); AB: *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 6(2),(3); SK: *The Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.61(2),(3) and 76.74(2); MB: *Consumer Protection Act*, *Op. cit.*, note 68, sect. 130; QC: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.9; NL: *Consumer Protection and Business Practices Act*, *Op. cit.*, note 71, sect. 32(1)(b),c,d); NS: *Consumer Protection Act*, *Op. cit.*, note 105, sect. 21AA and *Internet Sales Contract Regulations*, *Op. cit.*, note 72, sect. 6(1)(c),d).

<sup>153</sup> Certain goods and services are fortunately exempt by law from this “generosity” to merchants.

## f) Principle 5: Effect of cancellation

The provinces have naturally stipulated the effects of cancelling the Internet sales contract by a consumer invoking the legislative provisions in this regard. In most cases, it would be as if the contract had never existed<sup>154</sup> and the parties will have to be returned to the state in which they were before the contract was entered into. Using the Harmonization Template as a basis,<sup>155</sup> the rights and obligations in provincial legislation, except for a few items, have the same effect in all jurisdictions.

If delivery was made, the consumer must return the good to the merchant (the legislation generally states that the good must be in the same condition as when it was delivered, and not be used), within fifteen (15) days of the cancellation or of delivery, depending on the later of the two, through any means that allows the consumer to obtain confirmation of delivery (QC legislation does not stipulate that consumers must use a method that allows them to confirm delivery). The merchant also has fifteen (15) days starting from the cancellation of the contract to reimburse the consumer for all amounts that have been paid under the contract and related transactions. He is also required to pay reasonable return shipping charges, as well as accept the good that has been returned.<sup>156</sup>

MB legislation stipulates that cancellation of the contract has the effect of extinguishing the consumer's obligations and requiring the merchant to refund to the consumer "all consideration paid by the buyer under the agreement, whether paid to the seller or any other person."<sup>157</sup> However, the consumer may rescind the notice of cancellation by accepting the services. In MB, the return and reimbursement time limits are thirty days rather than fifteen. However, the cost of returning the goods is still borne by the merchant.

MB also adopted a provision that states the choices consumers have when the goods are delivered to them despite their having sent a notice of cancellation:

*133(3) If goods are delivered to a buyer under an agreement after the buyer has cancelled the agreement under section 129 or 130, the buyer may:*

- a) rescind the notice of cancellation by accepting the goods; or*
- b) refuse to accept delivery of the goods or, having accepted delivery, return the goods, within 30 days after accepting delivery, to the seller unopened and in the same condition in which they were delivered, by any method that provides the buyer with confirmation of delivery to the seller.*<sup>158</sup>

<sup>154</sup> Only NL did not specify it.

<sup>155</sup> **CONSUMER MEASURES COMMITTEE**, *Op. cit.*, note 2, sect. 8 and 9.

<sup>156</sup> **BC**: *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 50 and 51; **AB**: *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 10; **SK**: *The Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.72 and 76.78; **ON**: see *Consumer Protection Act, 2002*, *Op. cit.*, note 69, sect. 96 and *Ontario Regulation 17/05, General*, *Op. cit.*, note 75, sect. 79 and 81(1)1),2); **QC**: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.13. However, the act does not specify how the good is to be restituted, nor the merchant's obligation to accept the returned good; **NL**: *Consumer Protection and Business Practices Act*, *Op. cit.*, note 71, sect. 34; **NS**: *Consumer Protection Act*, *Op. cit.*, note 105, sect. 21AC.

<sup>157</sup> **MB**: *Consumer Protection Act*, *Op. cit.*, note 68, sect. 133.

<sup>158</sup> *Ibid.*, sect. 133(3).

## g) Principle 6: Recovery of refund

If the merchant, following a notice of cancellation by the consumer, refuses or omits to refund the consumer within the prescribed time limits, provincial legislation requires, in such a case, that a chargeback be made to the credit card that was used to pay for the obligation. The intermediary shall, if the conditions are met, credit the consumer's account for the amount that was charged and cancel the purchase-related charges applied to the account.

This procedure was proposed in 1999 by the OECD, which encouraged its development and use for electronic transactions since it constituted a powerful tool for increasing consumer trust.<sup>159</sup> The procedure was in fact incorporated into the Harmonization Template, which included detailed provisions on the conditions to be met and the procedure to be followed by consumers wishing to make use of the chargeback process.<sup>160</sup>

The eight Canadian provinces that adopted specific measures with respect to distance selling all included legislative provisions that enabled consumers to ask the credit card issuer for a chargeback should the merchant not meet its refund obligation following a cancellation of the contract paid by credit card.<sup>161</sup>

Only two of the eight provinces, Ontario and Quebec, opened the door, in their respective legislation, to the use of chargebacks when methods of payment other than credit cards were used<sup>162</sup>, by stating that it would be possible to add by regulation a new method of payment to which the relevant provisions would apply. AB did not include this type of provision, but its regulation has a specific feature, namely an expiration date, September 30, 2016, which requires that a review be done to ensure that it remains up-to-date.<sup>163</sup>

With the exception of NS, provincial legislation also stipulates that the credit card issuer must acknowledge receipt of the consumer's request within thirty (30) days, as well as refund the consumer for all amounts related to the purchase that were charged to the account, at the earliest of the two following dates: within ninety (90) days of the receipt of the consumer's request, or within two billing cycles.<sup>164</sup> MB, for its part, stipulates that the refund must be made immediately, as soon as the consumer's request has been received, provided, of course, that it meets the prescribed conditions.<sup>165</sup> Moreover, MB appears to have wanted to ensure that this provision would not be excluded in any Internet sales contract, and thus clearly prohibits any attempts at exclusion.<sup>166</sup>

<sup>159</sup> OECD. *Op. cit.*, note 26, p.17.

<sup>160</sup> CONSUMER MEASURES COMMITTEE, *Op. cit.*, note 2, sect. 11.

<sup>161</sup> BC: *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 52; AB: *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 12; SK: *The Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.81 and 76.80; MB: *Consumer Protection Act*, *Op. cit.*, note 68, sect. 134; ON: *Ontario Regulation 17/05, General*, *Op. cit.*, note 69, sect. 99 and *Ontario Regulation 17/05, General*, *Op. cit.*, note 75, sect. 85; QC: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.14; NL: *Consumer Protection and Business Practices Act*, *Op. cit.*, note 71, sect. 35; NS: *Consumer Protection Act*, *Op. cit.*, note 105, sect. 21AF and *Internet Sales Contract Regulations*, *Op. cit.*, note 72, sect. 8.

<sup>162</sup> ON: *Consumer Protection Act*, 2002, *Op. cit.*, note 69, sect. 99(7); QC: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 350(z).

<sup>163</sup> AB: *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 14.

<sup>164</sup> BC: *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 52(4); AB: *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 12(3),(4); SK: *The Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.81(4) and 76.80(4); ON: *Ontario Regulation 17/05, General*, *Op. cit.*, note 75, sect. 85(3), (4); QC: *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.16; NL: *Consumer Protection and Business Practices Act*, *Op. cit.*, note 71, sect. 35(3);

<sup>165</sup> MB: *Consumer Protection Act*, *Op. cit.*, note 68, sect. 134 (2).

<sup>166</sup> MB: *Consumer Protection Act*, *Op. cit.*, note 68, sect. 134 (3).

What is the time limit for requesting a chargeback? Only QC and ON appear to stipulate a time limit, i.e. sixty (60) days after the expiration of the period during which the refund is to be made by the merchant.<sup>167</sup>

## h) Principle 7: Remedy and recourse

Two provinces, AB and SK,<sup>168</sup> following the provisions of the Harmonization Template,<sup>169</sup> opted to grant recourse to the merchant if the latter considers to have been adversely affected by the consumer's cancellation: their legislation grants the courts specific power to intervene and render an order they deem appropriate if the courts consider the cancellation requested by the consumer to be an unfair remedy.

With respect to the legal recourse granted to consumers, the provinces in most cases did not impose specific penalties in the event the merchant or credit card issuer does not refund or reverse the charge, despite the recommendations in the Harmonization Template.<sup>170</sup> Therefore, the general legal recourses of the relevant legislation are the ones that apply.

Only ON expressly provides for the consumer's right to directly sue the credit card issuer in the event the latter does not fulfill its obligations.<sup>171</sup>

Note that the Harmonization Template does not mention the need to create offences or specific recourses for the other breaches to the new provisions on Internet sales contracts, such as those that stipulate mandatory disclosure of information, sending a copy of the contract to the consumer, etc. The legislation obviously confers to the consumer, in the event of a breach by the merchant of certain obligations, a right of cancellation and refund, which still constitutes a beneficial recourse, though limited only to the breach of certain provisions.

However, specific penal remedies are more frequent.

AB was one of the provinces that followed the Harmonization Template and that made the breach of the refund and chargeback obligations an offence under the *Fair Trading Act*,<sup>172</sup> with the offender (the merchant or credit card issuer) risking a fine of up to \$300,000 or three times the amount obtained as a result of the offence (the highest of the two amounts) and/or a maximum jail term of two years.<sup>173</sup>

SK goes even further, given that the breach of any of the obligations imposed by the part of the act dealing with Internet sales contracts<sup>174</sup> is an offence resulting in a specific penalty.<sup>175</sup> This obviously includes the merchant's obligation to refund the consumer, as well as the obligations

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<sup>167</sup> **QC:** *Consumer Protection Act*, *Op. cit.*, note 70, sect. 54.14; **ON:** *Ontario Regulation 17/05, General*, *Op. cit.*, note 75, sect. 85(1).

<sup>168</sup> **AB:** *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 7; **SK:** *The Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.62 and 76.75.

<sup>169</sup> **CONSUMER MEASURES COMMITTEE**, *Op. cit.*, note 2, sect. 6.

<sup>170</sup> *Ibid.*, sect. 12.

<sup>171</sup> **ON:** *Consumer Protection Act, 2002*, *Op. cit.*, note 69, sect. 99(6).

<sup>172</sup> **AB:** *Internet Sales Contract Regulation*, *Op. cit.*, note 66, sect. 13.

<sup>173</sup> **AB:** *Fair Trading Act*, RSA 2000, c. F-2, sect. 164. [Online] <http://canlii.ca/t/522q8>.

<sup>174</sup> The same applies to the part that deals with the other types of distance contracts.

<sup>175</sup> **SK:** *The Consumer Protection Act*, *Op. cit.*, note 67, sect. 75.82 and 76.81.

of the credit card issuer. Fines can be as high as \$5,000 and/or up to one year in prison for an individual and up to \$100,000 for a company for a first offence.

BC legislators, for their part, decided to only consider as an offence a breach by merchants of their information disclosure obligation, which could result in a fine of up to \$10,000 for individuals (and/or a jail term of up to 12 months), or up to \$100,000 in the case of a company. The courts also have the power to order the defendant to pay up to \$1,000 to the Consumer Advancement Fund, as well as provide as compensation to the consumer for his pecuniary loss an amount not greater than the monetary jurisdiction specified in the Small Claims Act.<sup>176</sup>

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<sup>176</sup> **BC:** *Business Practices and Consumer Protection Act*, *Op. cit.*, note 65, sect. 189 to 192.

## 4. Application of Legislation on Distance Contracts by the Courts

As previously mentioned, starting in 2001, Canadian provinces specified the regulatory framework for Internet distance contracts in provincial legislation. To date, the jurisprudence dealing with this regulatory framework is minimal.<sup>177</sup> Given that there has been a greater number of decisions in Quebec, this is the province we will be focusing on in our overview.

How have Quebec courts been applying the new legislation on distance contracts? Upon reviewing the jurisprudence, it can be noted that the new regulatory framework is not being easily applied by the courts; decision-makers are hesitating between using general principles of civil law and half-baked comparisons, which is not ideal for clarifying the legal grey areas that are still found in this area, or distinctions that are difficult to justify that are based on a rough understanding of the new technologies and their use (or the users).

When is a contract a distance contract? Quebec legislation defines a distance contract as:<sup>178</sup>

*A distance contract is a contract entered into without the merchant and the consumer being in one another's presence and preceded by an offer by the merchant to enter into such a contract.*

*A merchant is deemed to have made an offer to enter into a distance contract if the merchant's proposal comprises all the essential elements of the intended contract, regardless of whether there is an indication of the merchant's willingness to be bound in the event the proposal is accepted and even if there is an indication to the contrary.*<sup>179</sup>

The fact that the actual definition of a distance contract requires that it be preceded by an offer from the merchant before it is entered into seems to present a problem when having to decide whether the regulations specific to this type of contract can be enforced. For instance, in 2013, a Court of Quebec judge stated in his decision:

*[11] During the trial, Tessier stated that he was the one who contacted Beal, based on a friend's referral. It is therefore Tessier who initiated the process and obtained the information from Beal: this is not a 'distance contract' under section 54.1 of the Consumer Protection Act. The contract was not necessarily to be made in writing and Beal was not required to comply with sections 54.1 to 54.7 of the Consumer Protection Act.*<sup>180</sup> [translation]

This conclusion may be surprising. Is the offer associated only with the initiative of the first contact? According to the Civil Code of Québec, "An offer to contract derives from the person who initiates the contract or the person who determines its content or even, in certain cases, the person who presents the last essential element of the proposed contract."<sup>181</sup>

<sup>177</sup> Note that we will not be focusing on jurisprudence dealing with jurisdictional issues related to distance contracts, which is outside the scope of this study.

<sup>178</sup> As previously mentioned, Quebec legislators have chosen to apply the same provisions to all types of distance contracts, with a few exemptions being mentioned in the regulations.

<sup>179</sup> *Consumer Protection Act*, c. P-40.1, section 54.1.

<sup>180</sup> *Beal c. Tessier*, 2013 QCCQ 5114 (CanLII). [Online] <http://canlii.ca/t/foxr64> (page viewed on April 9, 2014).

<sup>181</sup> *Civil Code of Québec*, article 1389.

Although the Civil Code mentions the initiative of the *contract*, and not that of the *contact*, such an initiative can, in relation to distance contracts, be more difficult to determine. However, the rest of the Civil Code definition should indicate what the offer mentioned in the Consumer Protection Act consists of: in fact, regardless of who initiates contact, the one who determines the content of the contract or its last essential element will be presumed to have made the offer. It would in fact be strange that two identical contracts, entered into by phone, be qualified or not as distance contracts depending on whether the merchant has called the consumer or vice versa. This line of reasoning is found to the most absurd degree on the Internet: the consumer is in fact in almost all cases the one who chooses to “contact” an Internet sales site. The doctrine presented in 2001 an extremely limited view of what constituted an offer as part of online selling:

*After several years of doctrinal equivocation, most authors agree in saying that the merchant is proposing that the consumer enter into an Internet sales contract when the merchant targets the consumer through personalized advertising, whether through an e-mail or, which is more difficult to decide legally, a website that only targets a specific geographic segment.*<sup>182</sup> (citation omitted) [translation]

This search for distinctions in the definition of an offer may appear surprising; would the change in method of transaction be sufficient on its own to force certain general application concepts to be redefined? However, no one would try to claim that the offer originates from the consumer solely based on the fact that the consumer is the one who chose to enter of his own volition into a store, speak to the merchant, and conclude a sale.

In another decision by the Court of Québec in 2013, the judge once again used a definition of an offer that is based on initial contact, going as far as to specify that the contact was initiated to obtain information:

*[17] During the trial, Apollinaire Ndayizeye stated that he was the one who contacted the defendant. He was therefore the one who initiated the process and who obtained the necessary information. Chauffage Climatisation Lalonde was not the initiator; as a result, it did not need to send a contract to Apollinaire Ndayizeye. Chauffage Climatisation Lalonde was not required to comply with sections 54.1 to 54.7 of the Consumer Protection Act.*<sup>183</sup> [translation]

This decision is all the more surprising when it states the plaintiff had contacted the Office de la protection du consommateur, which confirmed that the contract was in fact a distance contract under the Consumer Protection Act.

Although these decisions were rendered by the Small Claims Division of the Court of Quebec, and therefore are not subject to an appeal which could allow some of the interpretations to be corrected, the difficulty faced by courts which most likely will be hearing a large number of the disputes associated with Internet sales contracts in addressing distance contracts clearly shows the problem in applying a fairly vague principle of technological neutrality. Based on the rulings, non-existent differences (the difference in how the offer is qualified depending on whether the consumer used the phone, is browsing the Internet, or walks into a store) will be considered

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<sup>182</sup> L'HEUREUX, N. and M. LACOURSIÈRE, *Droit de la consommation*, 6th Edition, Éd. Yvon Blais, Cowansville, Quebec, Canada, 2001, 911 pages.

<sup>183</sup> *Ndayizeye c. 4253159 Canada inc. (Chauffage climatisation Lalonde)*, 2013 QCCQ 10442 (CanLII). [Online] <http://canlii.ca/t/g0mmd> (page viewed on April 7, 2014).

and, conversely, the refusal to take into account certain fundamental differences (an Internet contract is NOT a paper contract and hyperlinks are not the equivalent of the reverse side of a paper contract – see our comments below on the Dell ruling).

The particular challenge associated with defining the offer, as illustrated by the two aforementioned rulings, is not likely to occur in the other provinces, which do not have such a provision. These rulings nonetheless show how many issues that appear simple are likely to raise, in the mind of certain adjudicators where distance contracts are involved, unsuspected problems.

Note that Directive 2011/83/EU seems to avoid this type of pitfall through a much broader definition of distance contracts in Article 2(7): “A ‘distance contract’ means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.”<sup>184</sup>

Although section 54.4 of the Consumer Protection Act requires the merchant to disclose the information “before a distance contract is entered into,” the exact time when the merchant must fulfill this obligation appears to be open to discussion. In 2011, the matter was brought before the Court of Quebec, which ruled that it was “at the time the distance contract is entered into” [translation] that the information must be disclosed:

*[19] In fact, it is when the distance contract is entered into, namely during the telephone conversation of June 25, 2011, that this information must be disclosed to the consumer and not when the consumer fills out an entry form for a promotional contest.*<sup>185</sup>  
[translation]

It was also stressed in case law that the description that must be disclosed to the consumer before the distance contract is entered into must be detailed, under the law (sect. 54.4 d)), failing which the contract can be cancelled by the consumer (sect. 54.8). A 2011 decision by the Court of Quebec concluded that information that is confusing (in this instance, regarding the features of the good that was purchased) does not meet the legal requirements.<sup>186</sup>

With respect to the specific requirement that the Consumer Protection Act created in Quebec under section 54.6, namely that the contract be evidenced in writing, the courts once again seem to have trouble applying it. In the previously mentioned decision *Rioux c. Centre récréatif Bigfoot Inc.*, the judge, who had in fact agreed that a distance contract was involved, i.e. entered into while the parties were not in each other’s presence, affirmed that the merchant’s “proposal” was not followed by a contract that would bind the parties, and the “contract form” was not signed.<sup>187</sup>

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<sup>184</sup> *Op. cit.*, note 6, par. 4.

<sup>185</sup> *Aubry c. Bigfoot Paintball*, 2011 QCCQ 16047 (CanLII). [Online] <http://canlii.ca/t/fprgs> (page viewed on April 7, 2014).

<sup>186</sup> *Mailhot c. BuroPLUS division commerciale*, 2011 QCCQ 9285 (CanLII). [Online] <http://canlii.ca/t/fmxnd> (page viewed on April 7, 2014).

<sup>187</sup> *Rioux c. Centre récréatif Bigfoot inc.*, 2013 QCCQ 11206 (CanLII). [Online] <http://canlii.ca/t/g0rt5> (page viewed on April 9, 2014). The judge also seems to take issue with the merchant collecting part of the payment before the obligation is fulfilled, which is prohibited under section 54.3, whereas this same section expressly provides for an exception with respect to payments made by credit card.

One of the most important rulings on distance contracts was made in 2007 by the Supreme Court of Canada in *Dell Computer Corp. v. Union des consommateurs*<sup>188</sup> (the “Dell Ruling”). While the case before the Supreme Court mainly involved a business’s right to oppose the arbitration clause for its consumer contracts in relation to a class action application, Canada’s highest court focused on some of the characteristics of Internet sales contracts, as the contract at the root of the dispute was entered into via the Internet. The Supreme Court had to determine whether the arbitration clause constituted an external clause to which the contract was referring, since, under article 1435 of the Civil Code of Québec, such a clause is null if, at the time of formation of the contract, it was not expressly brought to the attention of the consumer.

*94. The case at bar is the first in which the Quebec Court of Appeal has had to consider whether a contract clause that can be accessed by means of a hyperlink in a contract entered into via the Internet can be considered to be an external clause. Previous disputes concerning the external nature of contractual stipulations have concerned paper documents.*<sup>189</sup>

Solely on the basis of ease of access, the Court, in searching for extreme *functional equivalence* despite its caveats as to the necessary qualifications *when having to transpose “the traditional test of physical separation” to the context of e-commerce*, ruled that the case at bar was not an external clause since there was a hyperlink in the Internet contract leading to the page where it was found:

*96 Despite the efforts to harmonize the rules via legislation, there are legal rules that are not always easy to apply in the context of the Internet. This is true, for example, in the case of external clauses, since the traditional test of physical separation cannot be transposed without qualification to the context of electronic commerce.*

*97 (...) Analogously to paper documents, some Web documents contain several pages that can be accessed only by means of hyperlinks, whereas others can be viewed by scrolling down them on the computer’s screen. There is no reason to favour one configuration over the other. To determine whether clauses on the Internet are external clauses, therefore, it is necessary to consider another rule that, although not expressly mentioned in art. 1435 C.C.Q., is implied by it.*

*99 The implied precondition of accessibility is a useful tool for the analysis of an electronic document. Thus, a clause that requires operations of such complexity that its text is not reasonably accessible cannot be regarded as an integral part of the contract. Likewise, a clause contained in a document on the Internet to which a contract on the Internet refers, but for which no hyperlink is provided, will be an external clause. Access to the clause in electronic format should be no more difficult than access to its equivalent on paper. This proposition flows both from the interpretation of art. 1435 C.C.Q. and from the principle of functional equivalence that underlies the Act to establish a legal framework for information technology.*

*100 The evidence in the record shows that the consumer could access the page of Dell’s Web site containing the arbitration clause directly by clicking on the highlighted hyperlink entitled “Terms and Conditions of Sale.” This link reappeared on every page the*

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<sup>188</sup> *Dell computer v. Union des consommateurs*, 2007 SCC 34, [2007] 2 SCR 801 (CanLII). [Online] <http://www.canlii.org/en/ca/scc/doc/2007/2007scc34/2007scc34.html> (page viewed on April 14, 2014).

<sup>189</sup> *Ibid.*

consumer accessed. When the consumer clicked on the link, a page containing the terms and conditions of sale, including the arbitration clause, appeared on the screen. From this point of view, the clause was no more difficult for the consumer to access than would have been the case had he or she been given a paper copy of the entire contract on which the terms and conditions of sale appeared on the back of the first page.

101 In my view, the consumer's access to the arbitration clause was not impeded by the configuration of the clause; to read it, he or she needed only to click once on the hyperlink to the terms and conditions of sale. The clause is therefore not an external one within the meaning of the Civil Code of Québec.<sup>190</sup>

Thus, despite the Court recognizing that "A Web page may contain many links, each of which leads in turn to a new Web page that may itself contain many more links, and so on. Obviously, it cannot be argued that all these different but interlinked pages constitute a single document, or that the entire Web, as it scrolls down a user's screen, is just one document," the Court's effort at applying the fundamental principle of *functional equivalence* has led it to say that "Analogously to paper documents, some Web documents contain several pages that can be accessed only by means of hyperlinks, whereas others can be viewed by scrolling down them on the computer's screen. There is no reason to favour one configuration over the other."<sup>191</sup>

Having been rendered by the highest court in the land, this decision and the approach that was used could obviously also have repercussions in the country's other provinces and territories, with their magnitude varying based on the specific provisions related to distance contracts. The fact remains that the requirements of "evidence" and access imposed by the regulatory frameworks of distance contracts appear to be considerably less restrictive when the Supreme Court tells us that mere hyperlinks could have the effect of including in an Internet sales contract or in the mandatory information disclosure all the web pages to which the hyperlinks posted by the merchant on a main page refer.

This ruling still shows a worrisome lack of understanding on the part of the courts with respect to electronic distance selling; the doctrine in fact severely criticized it<sup>192</sup>, denouncing the blind transposition of the contractual principles applicable to paper contracts to contracts entered into by electronic means, which are quite different. The authors conclude that the complex nature of Internet sales contracts would require a more in-depth analysis as well as, ideally, a formal structure suited to its unique and new characteristics, where the use of hyperlinks is only one example: "The Dell ruling shows, in our opinion, the idea based on which, when faced with a new field, it is important to draw a comparison with the old, in this case, paper. However, we believe that technology is not neutral either and has specific features that makes attempts at drawing analogies difficult in many cases."<sup>193</sup>

This seems all the more evident when one realizes that the Court in the Dell Ruling used the "principle of functional equivalence that underlies the *Act to establish a legal framework for information technology*"<sup>194</sup> to justify its comparison between the hyperlinks used by an electronic

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*, par. 97.

<sup>192</sup> L'HEUREUX, N. and M. LACOURSIÈRE, *Op. cit.*, note 182, p. 84; GAUTRAIS, V., *Le vouloir électronique selon l'affaire Dell Computer: dommage!*, Revue générale de droit, University of Ottawa, Vol. 37, No. 2, Ottawa, Canada, 2007, 54 pages. Available online on Prof. V. Gautrais' website. [online]

<http://ancien.gautrais.com/IMG/pdf/200702GautraisEpreuve1.pdf> (page viewed on April 14, 2014).

<sup>193</sup> GAUTRAIS, V. *Op. cit.*, note 192, p. 14.

<sup>194</sup> *Dell computer v. Union des consommateurs*, *Op. cit.*, note 188, par. 97.

contract and what would be written on the back of a paper contract. The Court in fact paraphrases section 5 of this act, which, in its opinion, “provides that documents have the same legal value whether they are paper or technology-based documents.”<sup>195</sup>

Professor Gautrais is in fact directly criticizing the Supreme Court’s view:

*Although it is true that the expression ‘legal value’ is both unattractive, meaningless, no longer used in law, especially when associated with the legal qualifier, it is mainly interpreted here in a manner beyond the understanding that must be given to it. Thus, in addition to an expression considered awkward there is also the incorrect and overly broad scope, as the principle in question does not work in favour of an assimilation of media.*

*The expression ‘legal value’ that is used in the Dell ruling appears to be the outcome of the principle of technological neutrality, and its lack of a definition, even if this is not what was precisely said in section 5 [...], where the intention was only to talk about evidence and not of contractual aspects; which is in fact very clear in Article 2838 of the C.C.Q., the equivalent of section 5 of the Act to establish a legal framework for information technology. Furthermore, this assimilation as a matter of evidence is related to the need to observe integrity. Moreover, probationary assimilation does not mean assimilation with regard to communication. [...]*<sup>196</sup> [translation]

Because of a lack of specific regulations in the matter, the Court ended up giving an overly permissive interpretation in this matter to the use of hyperlinks in Internet sales contracts. Conversely, in a case before the Superior Court of Québec, the Court found that Internet transactions should be treated differently from other types of transactions<sup>197</sup> and refused to consider that a price advertised on a website did not have to comply with the law (unlikely, for instance, a price posted in the storefront of a “bricks-and-mortar” retail establishment) if the page on which it appeared was not transactional.

Our review of case law reveals that the courts are having some trouble grasping the new issues arising in the field of e-commerce. The use of the Internet for contracts entered into between a merchant and a consumer therefore seems to present a problem, whether the judges draw overly approximate parallels with traditional commerce or, on the contrary, consider it to be a world with its own rules. In the Dell Ruling, the Honourable Judges Bastarache and Lebel, cited, to justify the approach they adopted, a ruling made in 2002 by the Ontario Superior Court of Justice (the “Kanitz Ruling”), which considered that it was reasonable to require consumers who choose to make online purchases to adapt to merchants’ practices rather than to determine whether these practices grant all the protections to consumers, in letter and in spirit, provided under laws designed to establish a balance between consumers and merchants:

*[32] (...) we are dealing in this case with a different mode of doing business than has heretofore been generally considered by the courts. We are here dealing with people who wish to avail themselves of an electronic environment and the electronic services that are available through it. It does not seem unreasonable for persons who are seeking electronic access to all manner of goods, services and products, along with information,*

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<sup>195</sup> *Ibid.*, par. 95.

<sup>196</sup> GAUTRAIS, V., *Op. cit.*, note 192, p. 24.

<sup>197</sup> *Union des consommateurs c. Air Canada* 2014 QCCA 523. [Online] <http://canlii.ca/t/g66tg> (page viewed on April 11, 2014).

*communication, entertainment and other resources, to have the legal attributes of their relationship with the very entity that is providing such electronic access, defined and communicated to them through that electronic format.*<sup>198</sup>

Should consumers, merely by choosing this medium to make their purchases, be imposed a considerably heavier burden than if they were to choose to make their purchases otherwise and expect that their rights be conditioned by the specific nature of the medium? And yet, the aim of this new regulatory framework is to offer the same protections, without discrimination, based on the medium being used.

If the courts are having so much trouble comprehending the basic characteristics that distinguish traditional transactions from virtual ones, it is not surprising to see that regulations on online contracts seem to present the courts with a few interpretation and application problems. As suggested by some authors, a stricter, more explicit and more customized formal structure is perhaps required, which would allow the concept of technological neutrality to be put into perspective and provide the consumer with the necessary and equivalent protections in this context, as the new regulatory framework sought to do.

*Ultimately, legislative wisdom requires that laws be in keeping with “living reality,” for which it should provide a regulatory framework; it must fully examine the differences found in each technology and counter the tendency to level them out. Legislation is therefore not necessarily ‘future proof’ and must make sure to be in line with new developments. This is all the more true when legislators ‘overlegislate’ and adopt an overly “verbose” approach by conditioning and limiting the interpretative position of judges. Judges who in fact have always had to interpret the law when new developments occur and who are all the more obligated to do so when prevented by the law as a result of too much precision. Judges who often did so by showing an openness, which one needs to have toward technology.*<sup>199</sup> (citations omitted)

The approach currently adopted by Canadian lawmakers with respect to consumer protection matters appears too often based on neo-liberal thinking, which consists in making sure that consumers have a significant amount of information, would constitute in the eyes of many the best means of ensuring their protection. However, given the relative failure of this approach, in this area as well as elsewhere, perhaps more government intervention is required.

To conclude, courts are clearly having to deal with new technologies – the Internet, as any new purchasing medium made available to consumers, and soon purchases by mobile phone – and, as a result, with the new emerging areas of law. Currently, the very basis of this entire process raises questions before the courts, which are of the type to influence the world of e-commerce and have a significant impact on consumers. Lawmakers must take the time to more specifically examine all the facets of this new type of commerce in order to provide greater certainty to both consumers and merchants not only from a functional standpoint but also in terms of contractual content.

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<sup>198</sup> *Kanitz v. Rogers Cable Inc.*, 2002 CanLII 49415 (ON SC). [Online] <http://canlii.ca/t/1w1c2> (page viewed on April 11, 2014)

<sup>199</sup> GAUTRAIS, V. and A. PORCIN, *Op. cit.*, note 24, p. 572.

## 5. Canada in Relation to the European Union: Directive 2011/83/EU – Recent Developments Regarding the Regulation of Distance Contracts

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As reiterated by the European Parliament and the Council of the European Union (the Council) in the whereas clauses of the directive:

*The internal market is to comprise an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer distance and off-premises contracts is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.<sup>200</sup>*

It is fairly easy to draw a parallel between this willingness to achieve the “harmonization of certain aspects of consumer contracts for the promotion of a real consumer internal market” and what is found in Canada under the *Agreement on Internal Trade* (ATI):

*The Agreement on Internal Trade (AIT) is an intergovernmental trade agreement signed by Canadian First Ministers that came into force in 1995. Its purpose is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investment within Canada and to establish an open, efficient, and stable domestic market.<sup>201</sup>*

Whereas the search for a high level of consumer protection, in such a context, must also be part of the concerns of Canadian legislators, in this section we will be examining the protections provided by the new directive in order to determine whether any improvements need to be made to our legislation.

### 5.1 Aim and scope of Directive 2011/83/EU

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights was adopted for the purpose of establishing a unique regulatory framework within the member states of the European Union (the “EU”) and of harmonizing as much as possible the rules related to distance and off-premises contracts, while seeking to provide better protection to consumers and encourage the transborder sale of goods and services.<sup>202</sup>

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<sup>200</sup> *Op. cit.*, note 6, par. 4 of the whereas clauses.

<sup>201</sup> *Agreement on Internal Trade*, *Op. cit.*, note 53.

<sup>202</sup> *Op. cit.*, note 6, par. 4 to 8 of the whereas clauses.

This new directive amends *Council Directive 93/13/EEC on unfair terms in consumer contracts*<sup>203</sup> and *Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees*<sup>204</sup> and repeals *Council Directive 85/577/EC on off-premises contracts*<sup>205</sup> and *Directive 97/7/EC of the European Parliament and of the Council on distance contracts*.<sup>206</sup>

However, for the purposes of this study, we will be only looking at the rules pertaining to distance contracts, which are defined in article 2(7) of Directive 2011/83/EU:

*Any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.*

The rules stipulated in Directive 2011/83/EU must be transposed into the national laws of the member states (art. 28(2)). The member states “shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection” (art. 4), unless otherwise provided for in this Directive. Pre-contractual information is in fact an exception to this maximum harmonization rule: under article 6(8), the member states are free to impose additional information requirements provided that directives 2006/123/EC and 2000/31/EC are also observed.

The new directive stipulates that consumers may not waive the rights conferred on them by the national measures transposing the Directive (art. 25). This principle is also applicable in Canada where, as a general rule, consumer protection laws are of public order. In Quebec, for instance, the Consumer Protection Act stipulates that no one may derogate from it by private agreement and consumers may not waive the rights granted to them by the Act.<sup>207</sup>

## 5.2 Principles of Directive 2011/83/EU

What principles are being set forth in the new directive on consumer protection and distance contracts? Are there any similarities with the Canadian regulatory framework? What are the differences?

### a) Principle 1: Pre-contractual disclosure

One of the aims of Directive 2011/83/EU is to harmonize the requirements for merchant transparency and ensure that consumers are accurately informed before entering into a distance contract. Thus, article 6 of the new directive establishes very precise rules regarding

<sup>203</sup> *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts*. [Online] [http://ec.europa.eu/consumers/policy/developments/unfa\\_cont\\_term/uct01\\_fr.pdf](http://ec.europa.eu/consumers/policy/developments/unfa_cont_term/uct01_fr.pdf) (document viewed on May 7, 2014).

<sup>204</sup> *Op. cit.*, note 4.

<sup>205</sup> *Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises*. [Online] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0577:fr:HTML> (page viewed on May 7, 2014).

<sup>206</sup> *Op. cit.*, note 3.

<sup>207</sup> *Consumer Protection Act*, *Op. cit.*, note 70, sect. 261 and 262.

information disclosure. In the long list of information that the merchant must provide (e.g. merchant identification and contact information, prices, charges, payment methods), some obligations stand out that are not usually part of disclosure requirements in Canadian provincial legislation but where the disclosure would likely better protect consumers as well as increase their level of trust in the current transaction, and subsequently, in e-commerce.

First, it can be noted that Directive 2011/83/EU adopts the French approach by requiring that the *main characteristics* of the good or service be disclosed (art. 6(1)a)). As mentioned above, this approach should be used for a “detailed” or “fair and accurate” description requirement. The Directive, apparently disregarding the principle of technological neutrality, adds that the information must be disclosed “to the extent appropriate to the medium and to the goods or services” (art. 5(1)a)<sup>208</sup>).

Among the formal obligations regarding distance contracts, article 8(4) provides a few clarifications on this broadened scope, while at the same time indicating the information that cannot be ignored:

*If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in points (a), (b), (e), (h) and (o) of Article 6(1). The other information referred to in Article 6(1) shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.*

The new directive once again stands out from the Canadian regulatory framework when it requires, again prior to the contract being entered into, that the merchant inform the consumer whether there is a right of withdrawal, and if so, equally clearly set out the conditions, time limit and procedures and provide a model withdrawal form (art. 6(1)h)). The merchant must furthermore indicate who will bear the costs if a good is to be returned (art. 6(1)i)). The directive goes even further: where a right of withdrawal is not provided for, the merchant must inform the consumer of this situation (art.6(1)k)). The merchant must also indicate the circumstances under which the consumer could lose such a right of withdrawal.

The merchant is also required to remind the consumer of the existence of a legal guarantee of conformity of goods provided for under national legislation (art. 6(1)l)).

Among the restrictions the merchant is required to disclose, the new directive specifically stipulates that where applicable, the functionality, including applicable technical protection measures, of digital content, as well as any relevant interoperability of digital content with hardware and software must be disclosed (art. 6(1)r) and s)).

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<sup>208</sup> In paragraph 36 of the whereas clauses, the directive clearly states that “In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions on the number of characters on certain mobile telephone screens or the time constraint on television sales spots. □ See also articles 8(1) and (4) of the Directive.

Article 6(1)t) stipulates another disclosure obligation not found in Canadian legislation: the merchant must inform the consumer of any out-of-court complaint and redress mechanism available in the event of a dispute and the methods for having access to it.

This concern for out-of-court complaint and redress mechanisms is likely due to the fact that the Directive deals with trade between the Member States, and that this type of dispute settlement is increasingly recommended for problems that arise when the consumer and merchant are not from the same country. Note that Member States are required to include the provisions of the Directive in their national laws, which is not the case with the Canadian Harmonization Model, although the latter also concerns itself with interprovincial trade.

## b) Principle 2: Accept – Decline – Correct

When the distance contract must be entered into electronically and requires the consumer to make a payment, the merchant must ensure that the consumer explicitly recognizes that the order involves an obligation to pay. Further, the Directive requires that this be done clearly (art. 8(2)):

*If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.*

## c) Principle 3: Copy of the contract

Directive 2011/83/EU stipulates in article 8(7) that the professional must provide **confirmation of the contract on a durable medium**<sup>209</sup> within a reasonable period of time, but at the latest at the time of delivery, with said confirmation including all the information that must be disclosed before the contract is entered into, except if such information was already provided to the consumer on a durable medium before the contract is entered into.

Regarding the Canadian legislation that was reviewed here, legislators generally specify that the merchant must send a written or electronic copy to the consumer, which also allows for the use of any type of medium, possibly based on the medium used for entering into the contract. However, the fact of including the electronic copy precludes the obligation to send said copy via some type of “durable medium.”

<sup>209</sup> The Directive stipulates, in paragraph 23 of the whereas clauses: “Such media should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as e-mails.” Admittedly, it is a little surprising to see this last item, which is a means of communication, among the examples of “durable media.” This is all the more curious as this requirement to provide a copy on a durable medium may have in fact been a way to ensure that confirmation would be provided only by e-mail.

## d) Principle 4: Right of cancellation and withdrawal

Furthermore, when the merchant does not comply with his disclosure obligations regarding the charges or costs associated with the price of the good/service or, when applicable, with returning the good, the consumer shall not bear those charges or costs (art. 6(6)).

The directive puts significant emphasis on the consumer's right to withdrawal, as well as the terms and effects of such a right (art. 9 to 16). The consumer can, in fact, unless otherwise provided, **withdraw without reason** and without incurring any additional charges, from a distance contract, within fourteen (14) days starting from:

- The day of the conclusion of the service contract;
- The day on which the consumer acquires physical possession of the good, for sales contracts (or the day on which the consumer acquires physical possession of the first good for contracts involving a regular delivery<sup>210</sup>) (art. 9).

Canadian consumer law already includes some business sectors where consumers have the right of withdrawal, such as with respect to door-to-door sales, where the legislation considers that the consumer is in a particularly vulnerable situation. However, this right is not conferred for distance contracts. How did the EU justify its decision to grant such a right of withdrawal with respect to distance contracts?

*Since in the case of distance sales, the consumer is not able to see the goods before concluding the contract, he should have a right of withdrawal. For the same reason, the consumer should be allowed to test and inspect the goods he has bought to the extent necessary to establish the nature, characteristics and the functioning of the goods. Concerning off-premises contracts, the consumer should have the right of withdrawal because of the potential surprise element and/or psychological pressure. Withdrawal from the contract should terminate the obligation of the contracting parties to perform the contract.*<sup>211</sup>

Exceptions from the right of withdrawal include goods liable to deteriorate or expire rapidly, clearly personalized goods, goods that are inseparably mixed with other items, alcoholic beverages, newspapers, periodicals and magazines (with the exception of subscription contracts), etc. (art. 16).

The exercise of the right of withdrawal has the effect of terminating the obligation of the parties to perform the distance contract, or to conclude the contract in cases where an offer was made by the consumer, and also terminates any related contract (art. 12).

In cases where the merchant does not inform the consumer of his right of withdrawal, the withdrawal period shall extend to twelve (12) months from the end of the initial withdrawal period. However, if, during said 12-month period, the merchant has provided the consumer with the information on his right of withdrawal, the consumer shall have fourteen (14) days from the day of such a notice to exercise his right of withdrawal, if he so wishes (art. 10).

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<sup>210</sup> The Directive provides for the determination of special time periods for contracts "for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium." (art. 9(2)c)).

<sup>211</sup> *Op. cit.*, note 6, par. 37 of the whereas clauses.

The consumer who wishes to withdraw from the contract must, before the prescribed time has elapsed, inform the merchant of his decision by using the prescribed form (a copy of which the merchant must provide with the contract) or through any other similar statement (art. 11(1)).

When the consumer communicates his decision online on the merchant's website, the latter must send an acknowledgment of receipt on a durable medium without delay (art. 11(3)).

The burden of proof with respect to withdrawal requests rests on the consumer.

These provisions clearly show that the new 2011 Directive confers a right of withdrawal that is considerably broader than what is found in Canadian legislation. Earlier we noted the right of retraction that provincial legislation grants, for instance, for door-to-door selling; provincial legislators regrettably have not gone as far with regard to distance contracts. The fact that the EU explicitly assures this right may possibly lead Canadian legislators to do the same.

The new Directive does not explicitly stipulate – contrary to Canadian provincial legislation, which also includes a right of cancellation as a result of such breaches – the effects of merchants' non-compliance with the mandatory information disclosure prior to entering into a distance contract or the obligation to send a copy to the consumer. Instead, the Directive leaves this up to the Member States.

## **e) Principle 5: Effects of cancellation and withdrawal**

The new Directive, contrary to most Canadian provincial laws, stipulates neither the mechanisms or the effects of the cancellation of the contract by the consumer as a result of failure on the merchant's part to fulfill his obligations. The rules provided by the Member States shall apply. However, the Directive provides for the mechanisms and effects of the right of withdrawal that it confers to the consumer, which are very similar to those arising from the cancellation of a contract in Canada.

In the event of a withdrawal on the consumer's part, the merchant shall reimburse all payments received from the consumer in relation to the distance contract, including delivery costs, within fourteen (14) days after being informed of the withdrawal decision. The merchant must then use the same means of payment as initially used by the consumer, or another payment method provided the consumer agrees to it (art.13).

However, when the consumer has initially chosen a delivery method other than the one proposed by the merchant, which resulted in the merchant incurring additional costs, the merchant is not required to reimburse these supplementary costs to the consumer (art. 13(2)).

Following the withdrawal, the consumer shall send back the goods without delay, within fourteen (14) days from so advising the merchant, and shall only assume the direct costs of sending the goods. In addition, the consumer shall only be liable for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the functioning of the goods, unless the merchant has failed to provide notice of the right of withdrawal (art.14(2)).

## f) Principle 6: Remedy and recourse

The Directive does not provide for any specific **right to take action**; it is up to the Member States to define such rights in their own legal systems (article 23). However, the Directive requires the Member States to ensure that certain organizations, including “consumer organisations having a legitimate interest protecting consumers,” are given the right to take action before the courts to ensure compliance with the provisions adopted under the Directive:

**23 (1). Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.**

**23 (2). The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions transposing this Directive are applied:**

- a) *Public bodies or their representatives;*
- b) *Consumer organisations having a legitimate interest in protecting consumers;*
- c) *Professional organisations having a legitimate interest in acting.*

It is also up to the Member States to determine the penalties applicable to an infringement of the provisions adopted under the new Directive. Such measures must be effective, proportionate and dissuasive (art. 24 and 28).

This would be a good example for Canada to follow, both with respect to making room for consumer associations to ensure that consumer protection laws are observed, as well as with respect to the effectiveness of the dissuasive measures that this type of legislation must include.

## 5.3 Other consumer protection measures

Article 8(3) of Directive 2011/83/EU states that the websites of online businesses must clearly and legibly indicate, no later than at the start of the ordering process, the methods of payment that are accepted, along with any applicable delivery restrictions. This obligation does not substantially differ from what is seen in Canada, where this type of information is generally part of the information disclosure obligations.

Once again running counter to the principle of *technological neutrality*, the Directive has adopted certain specific provisions that expressly target distance transactions by telephone.

### a) Conclusion

The current Canadian regulatory framework for Internet sales contracts has several similarities with Directive 2011/83/EU: the rules regarding information disclosure on the merchant’s part, the obligation to give the consumer the opportunity to accept or decline the contract based on an explicit presentation of the main elements of the contract to be entered into, along with that of correcting any errors that have occurred in the process leading to the transaction, the

mandatory transmission of a copy of the contract (except when otherwise stipulated), the chargeback obligation on the part of payment intermediaries, etc.

However, major differences were noted between the two regulatory frameworks: the Directive's more exhaustive list of information disclosure elements, the decision to instead emphasize the obligation to communicate "the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services" (art. 5(1)a), compared to the "detailed" or "fair and accurate" description of the goods/services in the Canadian regulatory framework.

Directive 2011/83/EU also goes further than Canadian legislation in terms of distance B2C contracts when it provides for a right of withdrawal without reason within fourteen (14) days, and the obligation for the merchant to provide a model withdrawal form to consumers, as well as that of informing them whether this right, which is generally provided for, exists or not (meaning whether it is part of the exceptions in the Directive), just like cases where the consumer can lose such a right, as non-compliance with these information disclosure obligations could result in the contract being cancelled.

## **6. The Stakeholders: Consumers, Consumer Protection Agencies, and Merchants**

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To assess the effectiveness of existing legislation and the industry's level of compliance, we conducted a three-part field survey. This part presents our observations based on the responses obtained to a questionnaire submitted to government agencies in charge of applying the provisions on distance contracts, as well as the results of the survey we conducted among 1,020 Canadians to determine their degree of knowledge of the regulatory framework for distance contracts, their perception of these measures, and their use of them. This will be supplemented with our review of merchants' websites, in which we attempted to determine the level of compliance of merchants' online practices.

### **6.1 Perception of Canadian consumers**

Given that the effectiveness of a given law is dependent on the knowledge of the measures it contains by those it is intended to protect and of the capacity of these measures to implement the protection being provided, we conducted a survey among 1,020 Canadians to determine their perception of the relevance of these laws. Our aim was to determine whether the respondents made distance purchases, the frequency of such purchases, and the means of communication and types of transactions used, along with their level of knowledge of the regulatory framework for distance contracts and the extent to which they use them.

Based on this information, we hope to identify any elements of the legislation that are problematic to consumers.

#### **a) Methodology**

An online survey consisting of 30 main questions<sup>212</sup> was conducted by Passages Marketing from September 27 to October 5, 2013 among 1,020 Canadians with the following proportional distribution: 32% from ON, 25% from QC, 13.2% from BC, 12.6% from AB, 6.1% from NS, 4% from MB, 3.3% from NL, 1.9% from NB, and 1.7% from SK. Note that the legislators from the respondents' provinces of origin, with the exception of NB, specifically regulate distance contracts.

Note that none of the respondents was from the Canadian territories; however, this does not affect the survey results given that no measure has yet been adopted in the Territories regarding distance contracts.

The respondents were male and female in equal proportions (50%). All age groups were represented, although the age group of 35-54 years accounted for 41% of the total. Education levels were almost equally represented: 25% of respondents had a high school education, 37% a Cegep education, and 37% a university education. Close to 70% of respondents worked either full or part time.

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<sup>212</sup> Therefore excluding the sub-sections.

## b) Highlights<sup>213</sup>

### Spending habits

The respondents to our survey made more online purchases than the average Canadian, which could possibly be due to the fact that our survey was conducted online. While Statistics Canada reports that “More than half of Internet users (56%) ordered goods or services online in 2012, up from 51% in 2010,”<sup>214</sup> 89% of the respondents to our survey had made at least one purchase online over the 12 months preceding the survey. Among those aged 18-34, this proportion is 98%. Close to half of respondents (48%) made online purchases at least once a month. On average, respondents purchased three to four different types of goods during the course of their purchases. Close to 40% only purchased goods (no services).

**Table 5**  
**Online spending habits of Canadians**

Les contrats à distance • Habitudes d'achat – Achat sur Internet			
Type d'achat (sur Internet)			
Livres	41%	Télécommunications	24%
Vêtements	40%	Abonnements	19%
Billets d'avion	39%	Location automobile	17%
Produits électroniques	33%	Cours	16%
Musique	25%	Entretien	7%
Produits pour la maison	20%	Services esthétiques	5%
Films	19%	Autres	6%
Forfaits vacances	18%	Aucun achat de services	39%
Jeux	15%		
Produits de beauté	14%		
Autres	57%		
Aucun achat de biens	1%		

As shown in Table 5, the items most frequently purchased online by our respondents are books (41%), clothing (40%) and airline tickets (39%), followed by electronic products (33%).

A comparison of the number of online purchases with more traditional forms of distance selling reveals the recent increasing impact of the Internet on spending habits: less than one-third of the Canadians surveyed made a transaction by phone, fax or mail. Although these purchasing channels have not become completely marginal, it can be assumed that they are on the decline and that the Internet could end up making them obsolete.<sup>215</sup>

<sup>213</sup> The survey report is found in Appendix 1.

<sup>214</sup> **CANADIAN PRESS**. “Statistics Canada – Hausse de 24% des achats en ligne en 2013,” in *Le Devoir*, Montreal, Canada, October 29, 2013. [Online] <http://www.ledevoir.com/economie/actualites-economiques/391177/hausse-de-24-des-achats-en-ligne-en-2013> (page viewed on April 11, 2014).

<sup>215</sup> However, we need to treat these results cautiously as they may not be very representative of all Canadians, given the exceptionally high proportion of respondents that make online purchases.

### **Knowledge of regulatory framework: Application**

We asked our respondents two questions : with the first one, we wanted to verify if they knew a specific legislation protects consumers when a distance contract is concluded with a merchant. With the second one, we wanted to verify respondents' knowledge of the general content of consumer protection laws, which include the specific protection regarding distance contracts.

The responses obtained to the simple question on the existence of legislation applicable to distance contracts is astonishing, all the more so when one considers the huge proportion of respondents that enter into Internet contracts (89%) and the frequency of these transactions. In fact, out of all the respondents from provinces that actually have such protections regarding distance contracts (i.e. excluding PEI and NB), 65% are unaware whether such protections exist, and 21% are certain that they do not. Only 14% of the respondents from those provinces answered in the affirmative. The proportion is much higher in Quebec: 35% of Quebec respondents (slightly more the one-third) are aware that such protections exist.<sup>216</sup> The survey did not reveal any link between spending frequency and the respondents' level of knowledge of the existence of such protections.

Although these results bring up the issue of the enormous communicational challenge faced by the various consumer protection organizations, they also somewhat put into question the presumed link between more stringent legislation and the increase in the level of trust that such a tightening should entail, which would likely help the growth of e-commerce.

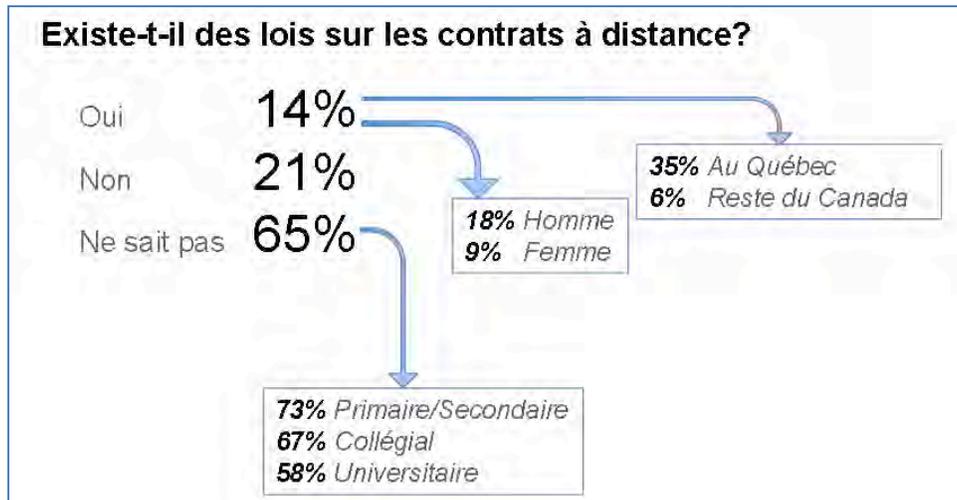
Such results are nonetheless disappointing: as online purchases are becoming more mainstream and frequent, the likelihood that a consumer will require such protection increases each year. However, the chances that consumers make use of it seem fairly low, given the high proportion of consumers who are aware that they are protected by the law.

We surveyed the general level of knowledge of consumer protection regulatory framework among respondents who admitted being aware of the existence of specific protections with respect to distance contracts. Close to half of respondents believed having average knowledge of such laws. Once again Quebec stands out, with Quebec respondents claiming to have better general knowledge of consumer protection regulations (89% of Quebec respondents who are aware that such regulations exist claimed to know more than simply being aware of their existence versus 58% of other Canadians). Note that this 31% of respondents claiming to have good knowledge of the consumer protection framework represents only a mere 5% if we look at all the respondents as a whole.

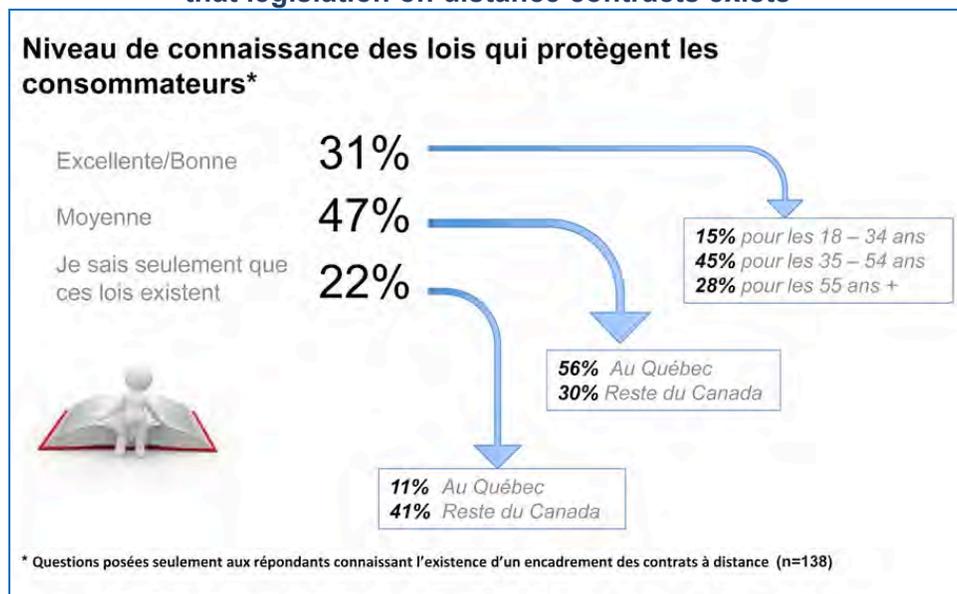
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<sup>216</sup> The percentage varies by province, but the higher level of knowledge in QC (35%) increases the average. In fact, aside from BC, where 12% of respondents are aware of the existence of specific protections regarding distance contracts, the other provinces all had a response rate under 10%.

**Table 6**  
**Knowledge of legislation on distance contracts**



**Table 6.1**  
**Level of knowledge of those claiming to know that legislation on distance contracts exists**



It seems clear for most (69%) of the respondents who are aware that regulations exist that laws on distance contracts apply to both products and services. However, this majority is skewed by the results in Quebec, where 83% of Quebec respondents rightly believe that the protection applies to both goods and services, versus only 42% in the rest of Canada, while only 11% of Quebecers are unaware of the scope of application, compared to 34% in the rest of Canada.

As for the responses on the types of distance contracts covered by provincial laws, tables 7 and 8 below show a breakdown by province by indicating the “correct response.” These tables only show the responses from the 137 respondents who stated being aware that such legislation

exists (from this point, we excluded from the 138 positive responses one that came from a NB respondent who claimed he knew of the existence of a distance contract framework that doesn't actually exist in that province). In the tables, we separated the responses from provinces with legislation only pertaining to Internet sales contracts (AB, MB and NS) from the other responses in order to determine whether this exclusive approach was reflected on consumers' knowledge.

Table 7

**Application of regulatory framework – Internet sales contracts**

*Q: In your province, are the following contracts between a consumer and merchant regulated in any particular way by law? Internet sales contracts.*

(Question asked only to respondents who are aware that legislation on distance contracts exists (n=137))

PROVINCES	RESPONSES				
AB, MB, NS	<b>Correct response</b>		<b>YES</b>		
	<b>Survey responses</b>		<b>Yes</b>	<b>No</b>	<b>Does not know</b>
			57%	8.6%	34%
BC, SK, ON, QC, NL	<b>Correct response</b>		<b>YES</b>		
	<b>Survey responses</b>		<b>Yes</b>	<b>No</b>	<b>Does not know</b>
			67%	6.7%	26%

Note that the percentage of respondents who believe and know that the existing laws on distance contracts are applicable to Internet sales contracts is much too low, given that all of these eight provinces legislate this type of contract first. It is surprising to see that one-third of respondents claiming to be aware of the content of consumer protection laws stated that the legislation does not apply to Internet sales contracts or that they ignored it if it did.

Table 8

**Application of regulatory framework – Contracts entered into other than by Internet**

*Q: In your province, are the following contracts between a consumer and merchant regulated in any particular way by law?*

*Contracts entered into by phone, mail or fax.*

(Question asked only to respondents who are aware that a legislation on distance contracts exists (n=137))

PROVINCES	RESPONSES				
AB, MB, NS	<b>Correct response</b>		<b>NO</b>		
	<b>Survey responses</b>	By phone	<b>Yes</b>	<b>No</b>	<b>Does not know</b>
			62.7%	8.6%	28.6%
		By mail	<b>Yes</b>	<b>No</b>	<b>Does not know</b>
			76.7%	5.3%	18%
	By fax	<b>Yes</b>	<b>No</b>	<b>Does not know</b>	
		40%	14%	46%	
BC, SK, ON, QC, NL	<b>Correct response</b>		<b>YES</b>		
	<b>Survey responses</b>	By phone	<b>Yes</b>	<b>No</b>	<b>Does not know</b>
			67.7%	6.5%	25.8%
		By mail	<b>Yes</b>	<b>No</b>	<b>Does not know</b>
			64%	5.7%	30.3%
	By fax	<b>Yes</b>	<b>No</b>	<b>Does not know</b>	
		44.7%	5.5%	49.7%	

Although the above data are worrisome, they are especially so for the respondents from the three provinces that only regulate Internet sales contracts (AB, MB and NS). The survey reveals that close to two-thirds of these respondents wrongly believe that consumers are specifically protected when they enter into a distance contract by phone, and more than three-fourths when a distance contract is entered into by mail. Furthermore, the percentage of respondents who are unaware of the contracts for which consumers are provided protection under their province's legislation, regardless of the province, is no less negligible.

These data thus once again reveal considerable confusion in the mind of Canadian consumers.

We also attempted to determine among respondents whether, based on their perception of the legislation on distance contracts, the location of the merchant's place of business could have an impact on its application. Although the respondents are about even with respect to interprovincial trade, around one-third believe that the legislation on distance contracts does not apply if the merchant's place of business is outside Canada.

**Table 9**  
**Geographic application**

<b>Knowledge of legislation:</b> Does the legislation apply when the merchant's place of business is...*	<b>Yes</b>	<b>No</b>	<b>Does not know</b>
<b>In your province</b>	84% (QC: 86%; ROC: 78%)	2%	14%
<b>In another province/territory</b>	62% (QC: 66%; ROC: 49%)	19%	20%
<b>In the U.S.</b>	41% (QC: 44%; ROC: 32%)	29%	30%
<b>Elsewhere in the world</b>	38% (QC: 41%; ROC: 28%)	29%	33%

\* Answers of the respondents who are aware that a legislation on distance contracts exists and who are aware of the content of consumer laws (n= 107/137)

### **Knowledge of the legislation: Content**

Among the respondents claiming to know that distance contracts were regulated, some (22%) admitted being unaware of any of the contents of consumer protection laws (see Table 6.1). We generally only retained the responses to the questions on the content of the distance contracts legislation from respondents who admitted having some knowledge of the content of consumer protection laws, whether significant, good or average.

The following data only consider the responses from respondents from provinces with consumer protection legislation on distance contracts. The respondents who are aware of the content of consumer protection legislation have good knowledge of the information that the merchant must provide before and after the distance transaction<sup>217</sup> (see Table 10 below). Quebecers, who

<sup>217</sup> The only items found in the list submitted to respondents for this question are part of the list of items which must be disclosed under legislation on distance contracts. Note, however, that with respect to the description of the good, we chose to make a compromise, given that the various provincial laws sometimes state "fair and accurate description," at other times "detailed," etc. (see section 3.2, Principle 1). We chose to indicate "accurate description

claimed greater knowledge of the content of consumer protection legislation, also show greater knowledge compared to other Canadians.

**Table 10**  
**Mandatory disclosure of information**

<b>Knowledge of legislation:</b> Merchant's obligation to provide the following information BEFORE the distance contract is entered into*	<b>Yes</b>	<b>No</b>	<b>Does not know</b>
<b>Contact information</b>	77% (QC: 74%; ROC: 84%)	21%	2%
<b>Date and method of delivery</b>	83% (QC: 87%; ROC: 73%)	12%	5%
<b>Name of carrier</b>	59% (QC : 58%; ROC: 60%)	24%	17%
<b>Cancellation policies</b>	91% (QC: 96%; ROC: 75%)	5%	4%
<b>Detailed price breakdown</b>	97% (QC: 99%; ROC: 94%)	2%	1%
<b>Accurate description of the good</b>	92% (QC: 92%; ROC: 93%)	3%	5%
<b>Technical specifications</b>	68% (QC: 72%; ROC: 56%)	18%	14%

\* Answers of the respondents who are aware that a legislation on distance contracts exists and who are aware of the content of consumer laws (n= 107/137)

**Table 10.1**  
**Mandatory disclosure of information**

<b>Knowledge of legislation:</b> Merchant's obligation to provide the following information BEFORE the distance contract is entered into*	<b>Yes</b>
<b>Contact information</b>	50% (QC: 86%; ROC: 31%)
<b>Date and method of delivery</b>	39% (QC: 70%; ROC: 23%)
<b>Name of carrier</b>	29% (QC: 41%; ROC: 23%)
<b>Cancellation policies</b>	47% (QC: 70%; ROC: 35%)
<b>Detailed price breakdown</b>	57% (QC: 93%; ROC: 38%)
<b>Accurate description of the good</b>	59% (QC: 93%; ROC: 42%)
<b>Technical specifications</b>	20% (QC: 25%; ROC: 18%)

\* Answers of the respondents who are aware that a legislation on distance contracts exists and who are unaware of the content of consumer laws (n= 30/137)

For this question, we were interested in comparing the responses from those claiming to know, if only summarily, the contents of consumer protection legislation (Table 10) with those from respondents who, while knowing that distance contracts are regulated, said they were unaware of the content of consumer protection laws (Table 10.1), and who presumably attempted to guess the content of the distance contract legislation (unless they knew more than they were admitting). The overall rate of response exceeded 50% for only two of the items: the detailed description and the accurate description of the good (57% and 59%, respectively). However, the

of the good. □ The same goes for the term "technical specifications, □ where legislation, depending on the province, also uses "technical characteristics and specifications, □ "descriptive and informative specifications, □ etc.

rate of positive responses by Quebec is what significantly increased the average. In fact, 93% of Quebecers who claimed to be unaware of the content of consumer protection legislation seemed ready to believe that the disclosure of these elements is mandatory (namely, for the accurate description of the good, a rate of correct responses higher than among Quebecers claiming to be aware of the consumer protection legislation's content, which was also observed for the disclosure of merchant information). It was quickly determined that the Quebec respondents' rate of response to each of these proposals, and therefore presumably the level of trust in the legislation, since they guessed that it would require the disclosure of information on important elements of the contract, is by far greater than that of respondents from the rest of Canada.

When asked about whether they thought merchants had to provide a summary of the terms and conditions of the contract being entered into and to subsequently send the consumer a copy of the contract after it was finalized, about 80% of respondents who are aware that a legislation on distance contracts exists and aware of the content of consumer protection legislation believed that these two obligations are found in the legislation.

As for the respondents who were only aware that such laws exist, without being aware of their content, 54% believed that the merchant must send a copy of the contract to the consumer after the contract is finalized (the percentage is even higher in QC: 77%, compared to 42% for the rest of Canada) and 44% believed that the merchant must provide a summary of the terms and conditions before the contract is finalized (71% in QC and 31% in the rest of Canada).

### **Knowledge of the legislation: Cancellation right**

Provincial regulations all stipulate that certain situations or a merchant's breach of his obligations entitle the consumer to cancel the distance contract. We presented a list of circumstances to respondents who declared they were aware of the content of consumer protection legislation by asking them if they believed these circumstances entitled the consumer to cancel a distance contract.

**Table 11**  
**Cancellation right**

<b>Knowledge of the legislation:</b>	<b>Yes</b>	<b>No</b>	<b>Does not know</b>
Consumer allowed to cancel the contract			
Prior to delivery <sup>218</sup>	76% (QC: 76%; ROC: 74%)	9%	15%
Within a specific time, regardless of reason	74% (QC: 80%; ROC: 59%)	14%	12%
Delivery delayed	36% (QC: 31%; ROC: 49%)	36%	28%
Good/service not delivered	83% (QC: 88%; ROC: 71%)	6%	11%
Description does not match	83% (QC: 86%; ROC: 75%)	6%	11%
Technical information not provided	47% (QC: 47%; ROC: 48%)	29%	24%
Adequate summary not provided	70% (QC: 73%; ROC: 60%)	11%	19%
No opportunity to correct any errors	63% (QC: 63%; ROC: 61%)	13%	24%

<sup>218</sup> With respect to cancellation "before delivery," we asked respondents the following question: "In your opinion, when making a distance purchase, is the merchant required to allow the consumer to cancel the sale... before delivery": we were thinking here (as for the previous question) about the right of withdrawal, but respondents may have confused this with the right of cancellation following a delay in the delivery stipulated in the contract.

No copy sent	65% (QC: 63%; ROC: 72%)	10%	25%
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\* Answers of the respondents who are aware that a legislation on distance contracts exists and who are aware of the content of consumer laws (n= 107/137)

The correct responses appear in red.<sup>219</sup> As the “correct response” to the question of a late delivery was uncertain (“Yes, but...”), we did not include this “correct response” indication.

Contrary to what we did for the previous lists, in this list we included elements not part of the rights that provincial legislation provides to consumers, i.e. right of retraction without reason (in grey in Table 11). A large percentage of respondents believes that regulations regarding distance contracts allow consumers to cancel such a contract without reason, either before delivery, or within a time period set under the law (76% and 74%). Besides the reason of non-delivery and that of delivery of a product that does not fit the description, which 83% of respondents rightly believe to be included in the legislation, the right of cancellation without reason, not stipulated in provincial legislation, is the one that unfortunately wrongly yielded the highest rate of affirmative responses.

Although the reasons related to pre-contractual and contractual formalities (in green in Table 11) led to mitigated responses, as was expected, consumers are, surprisingly, not unanimous in believing that the merchant not delivering the good or service in itself constitutes a reason for cancelling the contract.<sup>220</sup>

Cancelling the contract because of late delivery, although stipulated in legislation on distance contracts, was the reason that received the smallest number of responses (36%, both in Quebec and elsewhere). However, the provisions related to this specific right of withdrawal are admittedly so convoluted that consumers are partly excused from not being aware of them.

What are the parties’ respective obligations when the consumer exercises his right of cancellation? Close to half of respondents (42%) claimed being unaware that a notice must be sent to the merchant. Only 66% of respondents stated they knew that the good had to be returned to the merchant, and 68% that the merchant had to reimburse them within a specific time period. 5% of respondents stated that none of these obligations between a consumer and merchant was stipulated in legislation on distance contracts.

When the consumer cancels a distance contract and the merchant does not refund him, he can, if the transaction was paid by credit card, require the credit card issuer to apply a chargeback. The survey revealed that 54% of respondents who were aware of the existence of legislation on distance contracts are aware of this obligation on the part of credit card issuers (strangely, this percentage is only 34% among female respondents and 63% among male respondents).

No province has to date extended this refund obligation to other intermediaries, credit card issuers or e-wallets, although around 27% of the respondents believe this to be the case.

<sup>219</sup> For the choice “unable to correct errors,” the rate of correct responses is rather 62%; MB did not impose this requirement to merchants which consists in allowing the consumer to correct errors before finalizing the transaction, Manitoba respondents who said “Yes” therefore gave an incorrect response here.

<sup>220</sup> Note that this reason, the merchant failing to carry out his primary obligation, is estimated as being provided by the law less often than the right to cancel the contract without a reason, which the law does not stipulate, by respondents outside of Quebec. Ironically, they believe that the legislation is more likely to stipulate that the contract can be cancelled if the good or service, as delivered, does not match its description than if the merchant outright refuses to deliver the goods.

However, it should be noted that over one-third of these respondents (36%) who claim to be aware of the content of consumer protection legislation claimed that the chargeback requirement is not stipulated in the distance contract legislation.

### ***Knowledge of the legislation: Consumers' experience***

We asked respondents who claimed to be aware that distance contract legislation existed whether they had experienced, during their distance transactions, any of the problems for which there are specific legal provisions, and whether they had invoked the law on these occasions.

One-third of respondents who are aware that legislation exists had experienced a problem in relation to a distance transaction (44 respondents<sup>221</sup>): late delivery (52%) and the good/service not matching the description (35%) are, not surprisingly, the two types of problems most frequently encountered, followed by missing information (33%) and problems being reimbursed by the merchant (30%). A smaller percentage of respondents mentioned problems related to prices or non-conforming charges (25%) or the refund made by the credit card issuer (7 respondents). A very large proportion of these respondents, i.e. 89% of those who stated having had problems, eventually resolved them, with the average satisfaction rating being 7.7/10.

The survey also revealed that most of those who invoked existing legislation to settle a dispute with a merchant subsequent to entering into a distance contract ended up settling the dispute.

29% of Canadians who stated being aware that specific legislation exists in relation to distance contracts had previously asked a payment intermediary (e.g. bank, credit card company), when after they cancelled the contract, to reimburse them for the amounts paid to the merchant.

### ***Knowledge of the legislation: Consumers' perception***

Assuming that the respondents as a whole did not have an adequate level of knowledge of consumer protection provisions related to distance contracts, we submitted a short list of the main protections to them tailored according to each respondent's province of origin to check whether they believed that the protection was adequate.

Overall, 66% of respondents believed that the provisions, as presented by us, provided them with adequate protection. 5% of respondents considered that the provisions do not provide any protection. Even more surprisingly, with respect to respondents who had already stated being aware that legislation existed, 64% of them thought the protection to be adequate, and in this group, twice as many respondents (11%) believed that no protection was provided by the provisions.

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<sup>221</sup> Given that the respondent percentages are sometimes much too low, we chose to indicate them in numbers, when applicable.

## **c) Conclusion**

There is thus widespread lack of knowledge on legislation on distance contracts. The awareness rate in fact appears to be close to nil. It could therefore be said with some degree of certainty that many consumers may have been harmed because they were not aware of the existence of legal provisions and that this proportion could increase as a result of the proliferation of online purchases.

The Internet has in fact become an undeniable selling channel. Ironically, there is a plethora of online forums and websites that help consumers make more informed choices, just as consumers may be tempted to deal with merchants they are not very familiar with.

This increasing importance of the Internet thus justifies examining the issue of Internet sales contracts. However, the regulatory framework will continue to have little effect if consumers are unaware of it or do not invoke it, and if authorities in charge of applying the legislation do not intervene to inform consumers and merchants and if they do not take action in the event of breaches.

Specifically, what type of action is taken by these agencies?

## **6.2 Survey among provincial agencies in charge of consumer protection**

For this study, we drew up a questionnaire that was sent to all provincial agencies in charge of applying consumer protection laws in the thirteen (13) Canadian provinces and territories. One of the aims of the questionnaire was to determine how the agencies enforce and monitor the laws or specific provisions related to distance contracts, the number and type of complaints received by consumers in this regard, the methods used to inform consumers and merchants of the rights and obligations under said legislation, etc.

What are the benefits and drawbacks of these provisions, as designed and applied? Could legislation on distance contracts be improved? If so, how? These are the questions that were asked.

## **a) Methodology**

The questionnaire was sent to all provincial and territorial governments in charge of consumer protection, regardless of the fact that only eight provinces had adopted specific consumer protection provisions on distance contracts.

The agencies were approached through letters mailed out in June 2013 that explained the aim of our project and asked them to confirm their participation and, where applicable, the contact information of the liaison person. English and French versions of the questionnaire were sent out in late September 2013 to the organizations that had confirmed their participation. We made follow-up reminders by phone and e-mail in September and October 2013, and in a few cases in November 2013. Almost all the organizations we contacted filled out the questionnaire (92%), whether or not specific provisions had been adopted in their province or territory.

The respondents consisted of:

<b>Alberta</b>	Service Alberta
<b>British Columbia</b>	Consumer Protection BC
<b>Prince Edward Island*</b>	Consumer Services Section, Department of Justice and Public Safety
<b>Manitoba</b>	Manitoba Consumer Protection Office
<b>New Brunswick*</b>	Financial and Consumer Services Commission
<b>Nova Scotia</b>	Consumer and Business Policy, Service Nova Scotia and Municipal Relations
<b>Nunavut*</b>	Government of Nunavut
<b>Ontario</b>	Ministry of Consumer Services, Consumer Protection Branch
<b>Quebec</b>	Office de la protection du consommateur
<b>Saskatchewan</b>	Consumer Protection Division, Financial and Consumer Affairs Authority of Saskatchewan
<b>Newfoundland and Labrador</b>	Government of Newfoundland Labrador, Service NL, Consumer Affairs Division
<b>Northwest Territories*</b>	Consumer Services, Public Safety Branch, MACA, Govt. Of the NWT
<b>Yukon*</b>	Government of Yukon

\* Indicates the provinces and territories that did not adopt any specific legislation.

During the course of our analysis, we noted that some responses from agencies in charge of enforcing consumer protection legislation appeared to indicate that contracts involving services provided remotely (such as telecommunications) were considered by respondents in the same way as actual distance contracts, which is likely to have skewed some of the data. Given the relatively summary nature of the responses and that a contract involving a service provided remotely may have been entered into remotely, we were unable to separate the responses.

## b) Survey analysis

### ***Number and type of complaints and information requests received by the agencies***

The first questions dealt with the number and type of complaints and requests for information which the agencies in charge of enforcing consumer protection legislation received over the last five years in relation to distance contracts. We asked respondents to provide examples of any such requests or complaints.

To obtain an accurate profile of the responses that were received in relation to the three questions, we will first present the number of complaints received by agencies in the provinces that had adopted specific legislative provisions, then the number received by agencies from provinces and territories that had not adopted such legislation. Lastly, we will list the questions most frequently asked by consumers to the agencies, regardless of the location.

### **Provinces that adopted provisions regarding distance contracts**

We quickly realized that the fact that the various agencies had no complaint filing system or standardized database made it difficult to perform either a comparative or cumulative analysis.

In Quebec, for instance, the Office de la protection du consommateur informed us that it was difficult to precisely determine the number of consumers whose inquiries specifically pertained to distance contracts; because of the juxtaposition of protections under the *Consumer Protection Act*, the figures that were provided “may not be very representative of conditions in terms of quantity,” as they were specific to consumer inquiries or complaints directly pertaining to specific provisions on distance contracts and not on other issues that may come up when a distance contract is entered into.

Out of the total information requests reported by the Office de la protection du consommateur for the last five years, 6,367 directly involved specific provisions on distance contracts, less than 1% of the total requests received. 528 complaints were handled, amounting to about 100 a year.

The NS Consumer and Business Policy was unable to provide us with the requested data since complaints are grouped based on the company that is the subject of the complaint rather than the issue involved in the complaint.

Consumer Protection BC said it received a total of 149 requests dealing with distance contracts over the last five years. Service Alberta opened 103 files on this matter, and Manitoba Consumer Protection Office reports 27 complaints.

The Consumer Affairs Division of NL, where provisions aimed at protecting consumers in relation to distance contracts only came into force in December 2009, reports having filed a total of 65 complaints and receiving 139 calls and requests between 2011 and 2013.

In SK, the Consumer Protection Division reported eight inquiries regarding distance contracts over the last five years:

1. *Complaint that supplier continued to make withdrawals from his account when his initial subscription period ended.*
2. *Ordered a product from television infomercial, once received consumer wanted to return, company did not want the product returned to them, but refunded the price of the product however would not refund any of the additional charges.*
3. *Consumer registered for a seminar which was cancelled at the last minute. Media reports respecting the seminar suggested the seminar would be rescheduled or a refund provided. The consumer expected the refund from the providers of the seminar and not her credit card company.*
4. *Consumer purchased tickets for a seminar which was cancelled and not re-scheduled. The vendor provided the Consumer Protection Division with cancellation instructions which provided the consumer with a full refund from the credit card company.*
5. *Consumer entered into a remote contract with a Financial Group on the promise the company would lower the interest rate on her credit cards. Upon cancellation only a partial refund was provided.*
6. *Complainant placed a written order to supplier early in July, mid-August order had not been received. Investigator contacted supplier and confirmed order had been sent out.*
7. *Office contacted to look into a promotion by a satellite tv supplier. Complainant believed she would receive a \$1000 gift card if she signed up.*
8. *Complainant ordered herbal supplements and charged to her credit card. The investigation revealed she has not received the goods within 30 days of the date on which the contract was entered into. She is entitled to have her credit card provider reverse the charges pursuant to the Sask. Consumer Protection Act.*

The Ontario Ministry of Consumer Services, Consumer Protection Branch reported one of the highest numbers of complaints and requests in this matter, i.e. 7,520 complaints and information requests, 1,115 of which were made verbally. The organization also provided us with examples of questions it received from consumers:

- *How do I cancel my contract?*
- *Do I have to pay? If so, how much?*
- *Am I bound by the contract?*
- *Can I get compensation for damages or losses suffered?*
- *Is the supplier obligated to give me a refund?*
- *Is there a 10 day cooling off period for my purchase?*
- *Can I get my money back?*
- *What do I do if I didn't (sic) get a copy of the contract in writing?*

### **Provinces that did not adopt any provisions regarding distance contracts**

The Government of Yukon said it received two complaints in relation to distance contracts, citing “telephone billing contracts” as an example. The Government of Nunavut reported six complaints, with three of the examples provided relating to mobile phone contracts and the billing of high charges, another to the high landing fees for a snowmobile delivered by plane, another to the replacement guarantee for an ATV, and the last to inability to have delivered a truck ordered from another jurisdiction. As for examples of questions asked by consumers, Nunavut mentioned the following: “How can I get the supplier to respond?,” “Who can help me?,” “What do I do?,” “Will this cost me any money?,” “Do I have to contact the RCMP?” and “How can we resolve this issue?”

The New Brunswick Financial and Consumer Services Commission told us that it did not have enough information to answer our questions. However, it did state that it periodically received complaints related to telecommunications, and it would then refer consumers to the Canadian Radio-television and Telecommunications Commission (CRTC).

The PEI Consumer Services Section and the NWT Consumer Services indicated that they had received no complaints regarding distance contracts.

### **Questions often asked by consumers**

This section deals with the responses from all the responding agencies, whether or not they adopted legislation on distance contracts.

Table 12 was drawn up based on the responses obtained from the agencies in charge of enforcing consumer protection legislation that received complaints or requests for information in relation to the matter and who also kept records of them (nine in all). The question most frequently asked by consumers in relation to distance contracts deals with the right to cancel a contract; eight of the nine provinces and territories in fact mentioned that they were asked this type of question. The second most common question pertains to the merchant’s obligation to refund the consumer. Next came questions on the application or scope of the legislation and on chargebacks. Other frequent questions involved mandatory disclosure of information and the merchant’s other obligations.

**Table 12**  
**Questions frequently asked by consumers**  
**to provincial agencies in charge of enforcing the legislation**

Province/territory	BC	SK	MB	ON	QC	NL	NS	YUKON	NUNAVUT
<b>Application/scope of legislation</b>			X	X		X			X
<b>Protection</b>				X					X
<b>Disclosure obligations</b>								X	X
<b>Merchant’s other obligations</b>								X	X
<b>Right of cancellation</b>	X		X	X	X	X	X	X	X
<b>Obligation to provide a refund</b>		X		X	X			X	X
<b>Chargeback</b>					X			X	X
<b>Recourse</b>					X				

Surprisingly, the greatest variety of questions on distance contracts came from the two territories, which have no specific provisions in this regard.

Consumers, with the exception of Quebecers, do not generally seem to ask any questions on the legal recourses available to them. Is this because the problems that occur when making distance purchases are resolved well before the consumer is ready to take legal action?<sup>222</sup> Such as when coming to an agreement with the merchant, or by generally resorting to chargebacks, which allows the amounts paid to an uncooperative merchant to be collected without having to take legal action? The data gathered here do not provide an answer to these questions.

What information do these agencies provide to consumers who contact them?

### c) Advice given to consumers

The question on how government agencies responded to consumer inquiries regarding a breach on the merchant's part was worded as follows:

*What type of advice would you give consumers reporting an infringement of their rights as part of the conclusion of a distance contract or requesting information on the application of the law (e.g. possible measures, applicable laws, recourses)?*

The BC respondent tells consumers that he must, when noting that a merchant is in breach of the law, send a complaint form and that an investigation will be started. In AB, Service Alberta informs consumers of their legal recourses along with the possibility of contacting the credit card issuer to have the charges reversed. He also tells them about the possibility of filing a complaint with the Better Business Bureau or the Canadian Anti-Fraud Centre, depending on the situation.

In SK, the Consumer Protection Division informs consumers on existing legislation, possible remedies, and on how to resolve problems. In addition, it explains how to file a complaint and submit the matter to the small claims division.

The Manitoba Consumer Protection Office referred us to Part XVI of the *Consumer Protection Act* (copied in its entirety), which deals with Internet sales contracts.

The Ontario agency provided us with the information given to consumers in relation to distance contracts which states the key concepts of the legislation and the consumer's rights when a merchant has breached his obligations:

#### **General protection**

- Protection against false representation and unfair practices and right of withdrawal;
- Disclosure of information associated with each type of contract and non-enforceability of the contract in case of non-compliance;

#### **Distance contracts**

- Right of cancellation when disclosure obligations or certain formal requirements are not met;

<sup>222</sup> In response to our survey, only 6% of respondents from the reduced sample stated having to take the matter to court.

**Internet sales contracts**

- Merchant's obligation to give the consumer the opportunity to accept or decline the contract and correct any errors in it;
- Merchant's obligation to provide the information so that it can be printed out;
- Merchant's obligation to send a copy of the contract within fifteen (15) days;
- Right of cancellation in the event of a breach on the merchant's part.

Regarding the exercise of recourses, the Ontario agency adds the following:

*Consumers who did not receive contracted services or goods are typically advised to write to the company asking for a resolution within a reasonable period of time. Should a business fail to remedy the situation to the satisfaction of the consumer and if there has been a contravention of our consumer protection statute, consumers may be encouraged to file a written complaint with the Ministry of Consumer Services. The Ministry may then attempt to mediate a resolution with the supplier. If mediation is not successful, progressive compliance action may be undertaken as appropriate to the circumstance. Depending on the issue, consumers may also be advised to seek remedy through the court system.*

Agents from the *Office de la protection du consommateur* in QC inform consumers who call them regarding distance contracts on their rights and recourses; according to the agency's current system, a personalized letter can also be sent to consumers who contact the agency; over the last five (5) years, 1,118 documents specifically dealing with distance contracts were sent to consumers following a call or as part of the filing of a complaint.

The NL Consumer Affairs Division simply referred us to the Canadian Consumer Handbook website<sup>223</sup>.

The NS agency stated that it informs consumers on the protection provided to them under the *Consumer Protection Act* or the *Internet Contract Regulations*, depending on the nature of their complaint.

The territories that responded to our questionnaire, Yukon and Nunavut – which have yet to adopt any specific provisions regarding distance contracts – recommend that consumers contact the merchants when they experience a problem with distance contracts and attempt to resolve the issue. If the problem cannot be resolved in this way, the Government of Nunavut suggests that consumers file a formal complaint, copies of which are provided at the Consumer Protection Office in the respective jurisdictions, where the issue is usually resolved. However, if this course of action also proves to be fruitless, they suggest that consumers take legal action against the merchant.

NWT Consumer Services direct consumers to the applicable legislation, consider the various approaches when legal action is possible, or direct them to existing legal remedies.

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<sup>223</sup> **INDUSTRY CANADA**, Canadian Consumer Handbook, Government of Canada, Ottawa, Canada, December 5, 2011. [Online] <http://www.consumerhandbook.ca/en/>.

## d) Raising awareness

We asked the agencies in charge of enforcing consumer protection legislation whether they engaged in any awareness-raising activities for consumers and merchants regarding distance contracts to increase their awareness of their respective rights and obligations.

All the agencies that filled out our form responded to this question, including those from the provinces where no specific legislative provisions had been adopted regarding distance contracts. The awareness-raising measures by the latter agencies will naturally therefore pertain to the more general consumer protection measures.

As shown in Table 13, most of the agencies first and even exclusively use their own websites as a means of raising consumer awareness (in BC, AB, SK and MB<sup>224</sup>). The agencies in ON, QC and NL add participation in events and information sessions with the public, organizations and students; they also produce and distribute flyers and booklets on distance contracts. In QC, the *Office de la protection du consommateur* seems to be more active with respect to the release of information: it has also taken part in radio and TV shows, published articles on the topic, produced videos and downloaded them on YouTube, and used Facebook and Twitter to reach consumers.

NS informed us that it is not specifically studying the issue of distance contracts.

With respect to raising the awareness of merchants on the provisions in provincial consumer protection legislation on distance contracts, government agencies in BC and AB admitted to only informing them of their obligations when complaints were filed against them.<sup>225</sup> SK and NL limited their information dissemination efforts to their website. ON uses the same approach for merchants as it does for consumers. Once again QC sets an example here: a specific business letter was drawn up by the agency's legal department and mailed to merchants to inform them of their obligations and the rights of consumers with respect to distance contracts.

Agencies in MB and NS admitted to not taking any initiative to inform merchants of their obligations with respect to distance contracts.

**Table 13**  
**Measures aimed at increasing the awareness of consumers and merchants**

Prov.	Consumers	Merchants
<b>Yukon</b>	<i>Information links on government website under Consumer Services</i>	<i>No.</i>
<b>Nunavut</b>	<i>Consumer awareness material translated into Official languages of Nunavut; Inuktitut, Inuinnaqtun and French (from English)</i> <ul style="list-style-type: none"> <li>– <i>Distribution of consumer awareness material to the Hamlets/Municipalities of Nunavut, City of Iqaluit.</i></li> <li>– <i>Post Consumer Awareness material on GN website</i></li> <li>– <i>Presentations to communities, Hamlets/Municipal staff, organizations when we travel to the (23)</i></li> </ul>	<i>No, respective jurisdictions' (outside of Nunavut consumer protection regulations in place must be effective for suppliers' awareness as we do not receive many "remote contracts" complaints from Nunavummiut. Many Nunavummiut purchase items/goods online as it is considerably less than purchasing from "local stores," i.e. Arctic Co-operatives, Northwest Company.</i>

<sup>224</sup> However, note that AB and MB only adopted provisions on Internet sales contracts.

<sup>225</sup> With respect to BC, however, we were told that they are in the process of assessing ways of educating merchants in a more proactive way.

	<p>communities</p> <ul style="list-style-type: none"> <li>- "Word of mouth"</li> </ul>	
<b>BC</b>	Website	[...] this work typically occurs once a contract has been found to be in non-compliance with the law. It would be preferable to educate businesses on a more proactive basis re the requirements of BC's contract law. We are assessing options re this approach currently.
<b>AB</b>	We have a consumer tipsheet on the subject <sup>226</sup> .	No, unless there is a complaint and the supplier is then informed of his obligations under the law.
<b>SK</b>	Web page information only	Web page material only
<b>MB</b>	Website	No
<b>ON</b>	<ul style="list-style-type: none"> <li>- Attendance at various public education events across the province to raise awareness of the consumer protection program. Discussions focused on contract types, including the disclosure requirements for remote and internet agreements, cancellation rights and other protections offered under the CPA.</li> <li>- As part of the complaint handling protocol, education is provided during the mediation process to both consumers and businesses.</li> <li>- Website, pamphlets focused on the cancellation of contracts, etc.</li> </ul>	Same as for consumers.
<b>QC</b>	<p>Content on the Office's website. [...] accessible on the mobile version.</p> <p>Other action:</p> <ul style="list-style-type: none"> <li>- Mention of rules regarding the conclusion of distance contracts at information sessions with organizations or students led by consumer protection officers;</li> <li>- Production and distribution (among consumers wishing to communicate with the Office, at regional offices, during trade fairs) of an information pamphlet related to distance contracts;</li> <li>- Radio spots by our public relations officer, with the most recent one dating back to July 2013;</li> <li>- Specific answers to journalists' questions on the topic;</li> <li>- Publication of articles in the "Partenaires" section of the Protégez-Vous website.</li> <li>- Production and release on our website and on YouTube of the video "L'achat par Internet";</li> <li>- Mailing of a printed information document on distance contracts to consumers who contact the Office about an issue or problem in relation to distance contracts;</li> <li>- Publication of an information sheet in the Government of Quebec's directory of government programs and services;</li> <li>- Periodic release of information on distance selling on the Office's Facebook page and Twitter account.</li> </ul>	<p>1) Information to merchants: Transmission to merchants of a business letter prepared by the legal department.</p> <p>Under preparation:</p> <ul style="list-style-type: none"> <li>- Updating and popularization of the contents of the section on the website;</li> <li>- Section added on group buying.</li> </ul> <p>These sections will inform merchants of their obligations with respect to distance contracts.</p> <p>2) Direct action taken with merchants: When a complaint case is prioritized and that no infringement of a criminal nature is determined, the Office intervenes in one way or another with the merchant in breach. This intervention can take various forms (e.g. regional notices, formal notice, penal notice) and can involve more than one unit within the agency. Although the choice of action is subject to an integrated validation process, a unit can choose to intervene more directly with a merchant and attempt mediation.</p>

<sup>226</sup> The Alberta agency has provided us with a link to this document: [http://www.servicealberta.ca/pdf/tipsheets/Internet\\_shopping.pdf](http://www.servicealberta.ca/pdf/tipsheets/Internet_shopping.pdf), and NL a link to its website: [http://www.servicenl.gov.nl.ca/consumer/consumer\\_affairs/distance\\_service\\_contracts.html](http://www.servicenl.gov.nl.ca/consumer/consumer_affairs/distance_service_contracts.html)

<b>NL</b>	Consumer Affairs maintains an active website, involves itself in public educational initiatives, like Law Day, and we prepare press releases [...]	We maintain a website, offer press releases, operate a province-wide toll free telephone service and every single time there is a registered complaint we share all of the consumer's written complaint and documents with the communication company concerned.
<b>NS</b>	Generally, we have not focused on remote contracts.	No general education about remote contracts has been undertaken.
<b>NWT</b>	While not specifically envisioned, the Department is beginning an awareness program into place in an attempt to increase consumer awareness around rights and responsibilities. This activity is expected to increase the "visibility" of the office and will likely generate additional consumer inquiries for a wide range of activities.	No.

What then, according to the agencies that were questioned, is the level of knowledge of consumers and merchants regarding the regulatory framework for distance contracts?

### e) Level of knowledge of legislation by consumers and merchants, according to the agencies that were questioned

This section only analyzes the responses received by the organizations in charge of enforcing the consumer protection legislation of the eight Canadian provinces that adopted provisions on distance contracts.

As shown in Table 14, six of these respondents consider the level of knowledge of these regulations by consumers to be *inadequate*.<sup>227</sup> The other respondents consider it to be *fair*.

The survey results appear to favour the first group: of the 14% of Canadian consumers who are aware that specific provisions exist, which is already very little, 22% stated that they have no knowledge of the content of consumer protection provisions (which include distance contract protections). Two provinces consider that the awareness level concerning distance contracts regulations is *fair*; some of the respondents to our survey from these provinces were unaware of the existence of such protections – 68% in Manitoba and 77% in Newfoundland (while about 20% assure that such legislation does not exist – 23,5% in Manitoba and 1% in Newfoundland).

According to the agencies in charge of enforcing consumer protection legislation, the level of awareness of the legislation on distance contracts is much more adequate among merchants (Table 15), with five of the respondents considering it to be "*Fair*" and the other three "*Inadequate*." ON has tempered its negative assessment somewhat due to the fact that the level of knowledge of the legislation in this matter varies depending on the size of the business.

<sup>227</sup> The *Office de la protection du consommateur* (from QC) noted, however, that the responses concerning the levels of knowledge by consumers and by merchants are solely based on the general subjective impression of the person who responded to the questionnaire on behalf of the agency, made based on the requests the agency received.

**Table 14**  
Level of knowledge of consumers, according to the agencies

PROVINCE	BC	AB	SK	MB	ON	QC	NL	NS
Excellent								
Good								
Fair				x			x	
Inadequate	x	x	x		x	x		x

**Table 15**  
Level of knowledge of merchants, according to the agencies

PROVINCE	BC	AB	SK	MB	ON	QC	NL	NS
Excellent								
Good								
Fair	x		x	x		x	x	
Inadequate		x			x			x

Note that the level of “Fair” is still far behind “Excellent” and that no agency has rated the level of knowledge as “Good,” either for consumers or merchants, even in provinces where specific efforts, which seem fairly significant, were deployed to increase the awareness of both consumers and merchants.

**Table 16**  
Consumers’ knowledge of the existence of distance contract legislation, based on our survey (%)

PROVINCE	CAD	BC	AB	SK	MB	ON	QC	NL	NS
Aware that legislation exists	14	12	8	5	9	4	35	5	0
Believes that no such legislation exists	21	21	20	38	23	30	9	18	22
Unaware if such legislation exists	65	67	72	57	68	66	56	77	77

**Table 17**  
Consumers’ level of knowledge of consumer protection legislation, based on our survey among consumers who know that distance contract legislation exists (n=137) (%)<sup>228</sup>

PROVINCE	CAD	BC	AB	MB	ON	QC	NL	NS
Excellent	4	0	10	33	8	2	0	0
Fair	27	21	20	0	21	31	53	0
Average	47	18	26	20	45	56	47	0
Only aware that such legislation exists	22	61	44	47	25	44	0	0

Although the awareness measures in themselves do not seem, according to the agencies, to result in an adequate level of knowledge by consumers of their rights with respect to distance contracts, Table 18 appears to indicate that a larger number of and more varied awareness

<sup>228</sup> For some provinces, percentages are not significant, since there was only one respondent in SK and two for NFL.

measures will at the very least make consumers more curious, and perhaps more likely to exercise their rights; the number of information requests and complaints filed by consumers with the responding organizations is in fact much higher in provinces that emphasize consumer information and awareness measures. However, our survey does not seem to indicate, except for Quebec, any link between awareness of legislation on distance contracts (just the knowledge of its existence) and the number of complaints filed or the awareness efforts deployed.

**Table 18**  
**Data on information requests/complaints from consumers**  
**and awareness of the legislation by province**

Province	Adoption of provisions	Means of consumer information and awareness measures	Awareness of the law (our survey)	Requests and complaints (last five years)
BC	2004	Website only	12%	149
AB	2001	Website only	8%	103
SK	2002 <i>Internet</i>	Website only	5%	8
	2006 <i>Other</i>			
MB	2001	Website only	9%	27
ON	2005 <i>Internet</i>	Website; information sessions with the public, students and organizations; pamphlets and/or brochures	4%	7520
	2005 <i>Other</i>			
QC	2006	Website; information sessions with the public, students and organizations; pamphlets/brochures + radio and TV shows, publication of articles, use of Facebook, Twitter and Youtube	35%	6367
NL	2009	Website; information sessions with the public, students and organizations; pamphlets/brochures	5%	139
NS	2003	None	0%	? <sup>229</sup>

<sup>229</sup> As mentioned earlier, the number of complaints associated with distance contracts is difficult to estimate, as the complaints that were received were filed by business name and not by subject.

## f) Measures taken by the agencies to facilitate the implementation of the legislation on distance contracts

The following question was asked to the agencies in charge of enforcing consumer protection laws in Canada:

*What action and measures were taken by your agency to facilitate the implementation of the legislation on distance contracts (e.g. arbitration, mediation)?*

In response to this question, the provinces that adopted consumer protection measures in relation to distance contracts mostly said that no specific measures were taken in this regard (BC,<sup>230</sup> AB, SK and NS)<sup>231</sup>.

ON explained that, to facilitate the implementation of the regulatory framework adopted in 2005, the Ontario Ministry of Consumer Services used webcasts to inform the industry of the new rules and also provided them with tools that explained the requirements. The agency reiterated the consumer awareness measures outlined above, adding that a helpline was set up to respond to consumers' questions and complaints.

In QC, the *Office de la protection du consommateur* responded by saying that mediation is part of the tools that can be used by the *Direction des services au consommateur (DCS)* to increase the awareness of merchants.

The Canadian territories obviously do not have such measures as they do not have any consumer protection legislation on distance contracts. However, despite this fact, the Yukon respondent indicated having had two complaints in this respect and of having to use arbitration to settle them.

## g) Remedies, measures taken and compliance investigations

We also asked the consumer protection agencies the following questions:

*Over the last five years, has your agency undertaken any action toward merchants who did not comply with legislation on distance contracts? If so, could you specify the type and number of measures along with the outcome of the action taken (e.g. rate of success, greater compliance)?*

*Over the last five years, has your agency implemented any other types of measures (e.g. administrative measures and sanctions, permit suspensions, formal notices, injunctions) toward merchants who did not follow the law on distance contracts? If so, what was the outcome of these measures (e.g. rate of success, etc.)?*

<sup>230</sup> The respondent from BC, a non-profit organization and not a government agency, told us the following: "The legislation predates our organization and would have been done by Government. □"

<sup>231</sup> NL responded to this question by referring us to the responses provided to the previous questions. MB referred us to Part XVI of the Act which, does not seem to include any specific measures aimed at facilitating the implementation.

For the analysis of the responses to the above questions, we only retained the responses received from agencies from the eight provinces that had consumer protection legislation on distance contracts.

Four of the respondents informed us that no action was taken toward merchants who did not follow the law on distance contracts and no coercive or punitive measures were implemented (SK, MB, NL and NS<sup>232</sup>).

Service Alberta took legal action against a merchant who entered into distance contracts with consumers and who was subsequently fined; Director's orders were given to two merchants to force them to comply with the provisions related to the refund stipulated in the *Internet Sales Contract Regulation*. Notices and information were also sent to certain merchants.

In ON, the Ministry of Consumer Services, Consumer Protection Branch took legal action against four merchants since the provisions on distance contracts came into force (2005):

*The Ministry has prosecuted 4 such companies since the inception of the CPA, 2002 in July 2005:*

- 1. In November 2012 a vehicle moving company and its director were charged with:*
  - engaging in unfair practices*
  - failing to deliver a valid internet agreement*
  - failing to refund after contracts were cancelled.*

*Three consumers complained that the company failed to transport any of the vehicles, despite being wire-transferred the funds.*

*In October 2013 the director pleaded guilty to 3 counts of "fail to provide agreement" and 1 count of "fail to refund."*

*Received suspended sentence after making full restitution.*

- 2. In December 2012 an Ontario corporation that sells and installs boat lifts, and its director were charged with:*
  - engaging in unfair practices*
  - failing to deliver a valid remote agreement*
  - ailing to refund after contracts were cancelled.*

*Seven consumers from several provinces, and the US, entered into remote contracts with the corporation and remitted funds totalling over \$33,000 for the delivery and installation of boatlifts. No products were delivered and no refunds provided. All charges remain before the court.*

- 3. In December 2010 an Ontario corporation and its director were charged with:*
  - engaging in unfair practices*
  - failing to deliver a valid remote agreement*
  - failing to make necessary disclosures*
  - failing to refund after contracts were cancelled.*

<sup>232</sup> However, NS provided the following response to another question: "Providers may be notified of their responsibilities under the law by formal letter. In some cases, this results in the supplier correcting their behaviour. □"

*Five consumers from Ontario, BC, Manitoba and the US entered into remote or internet agreements for the purchase of hardwood flooring. The consumers paid in full in advance; however, no materials were delivered. The consumers cancelled the agreements and requested refunds totalling \$17,000 CDN and \$6442.27 USD. No refunds were provided.*

*In May 2012 - Corporation pleaded guilty to 5 counts of “engage in unfair practice” and was sentenced to a fine of \$3,000 on each count, for a total of \$15,000. All remaining charges were withdrawn in consideration of full restitution of \$23,447.*

*4. In May 2011 an individual was charged with engaging in an unfair practice.*

*A consumer in New Brunswick entered into an internet agreement with a sole proprietor in Ontario for the purchase of hockey goaltending equipment at a cost of nearly \$1500. The product was never shipped and no refund received.*

*In January 2012 the Crown withdrew all charges citing no prospect of a conviction.*

At first glance, ON does not seem to take any measures other than penal ones toward merchants that do not comply with legislation on distance contracts.

QC also undertook criminal proceedings against merchants in accordance with legislation on distance contracts. We were informed that four of these proceedings had been filed as of January 2008, but as of November 1, 2013, no decision has yet been rendered in these cases:

*Legal proceedings were undertaken for infringements of the prohibition to require payment before the main obligation is performed, the obligation to send a copy of the contract within 15 days, the obligation to disclose, before entering into the contract, all the amounts that the consumer is required to pay, and the obligation to give the consumer the opportunity to accept the agreement.*

The *Office de la protection du consommateur* in QC also told us that its *Direction des services aux consommateurs* sent out 25 regional notices and 27 formal notices in the last five years. The five most common areas were:

- 1. Telecommunications sector (mobile phone services, Internet, television, remote surveillance and other services regulated under the section on contracts involving sequential performance for a service provided at a distance)*
- 2. Home services (lawn maintenance, moving companies)*
- 3. Various promotions offered on TV or the Internet (involving products claimed to have some kind of special properties (weight loss products, cosmetics) or household (e.g. kitchen gadgets, decorations) or personal-use products (e.g. lingerie, wallets, binoculars))*
- 4. Tourism and leisure services (e.g. travel reservations)*
- 5. And, recently, prepaid cards that give access to a wide range of goods and services offered by an intermediary exclusively on websites (e.g. Groupon, Tuango)*

As for BC, the agency told us that its system did not allow it to locate the information that would enable it to respond to these questions.

We also asked the agencies whether compliance assessment measures had been taken:

*Over the last five years, has your agency conducted any compliance investigations among merchants to assess the level of compliance with legislation on distance contracts? If so, could you tell us the outcome of the investigations?*

Three respondents told us that no compliance investigations in relation to distance contracts had been conducted on merchants in their province (MB, NL and NS). ON mentioned that some investigations were conducted, but they did not all deal with the specific provisions on distance contracts.<sup>233</sup>

Wide-scale investigations do not appear to be the course chosen by the provinces: authorities only investigate compliance on a case-by-case basis, such as when breaches are reported. Three provinces stated this clearly (AB<sup>234</sup>, SK and QC).

Over the last five years, 16 cases were investigated in QC by the *Office de la protection du consommateur* regarding non-compliance by certain businesses of the provisions on distance contracts in the Consumer Protection Act: eight involved recommendations for criminal prosecution and two others for a penal notice. Three cases were closed without resolution and three others transferred to the legal department for appropriate action.

Service Alberta mentioned being in the process conducting compliance investigations on certain merchants; if the latter are also involved in distance selling, this aspect will also be investigated.

As Consumer Protection BC has no investigative powers, it indicated that the question was not applicable.

## **h) Advantages, drawbacks and possible improvements to the legislation**

Given that distance selling is becoming increasingly widespread, Service Alberta considers that the legislation could be modernized to make the regulatory framework more efficient. The agency believes that the resources required to monitor such purchases within the existing framework far exceed what is currently available for ongoing monitoring. The agency investigates complaints, but the investigations are rarely proactive.

The Ontario Ministry of Consumer Services listed the pros and cons of the existing regulatory framework in Ontario:

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<sup>233</sup> ON: "With regard to the payday loan industry, inspections are conducted on licensees including those that offer remote agreements. Inspections generally result in resolving non-compliance. Instances of continued non-compliance could in some cases result in administrative monetary penalties (AMPS) (depending on whether the provision is *ampable*) or other actions. □

<sup>234</sup> AB: "There are compliance inspections on licensed business that we already inspect. If these businesses are also doing remote contracts, this is reviewed and any deficiencies in this regard addressed."

**Pros:**

- *Better disclosure, so consumers know what they are buying.*
- *Clear cancellation rights.*
- *Improved marketplace compliance with regard to contract disclosure requirements.*
- *Internet contracts provide consumers with the express opportunity to accept or decline the agreement and to correct errors before entering into the contract.*
- *Consumers also must be given the option to retain and print the agreement online.*
- *Penalties for individuals convicted of an offence under the CPA include fines of up to \$50,000 and/or imprisonment of two years less a day. A corporation convicted of an offence under the CPA is liable to a fine of not more than \$250,000.*

**Cons:**

- *In remote and Internet purchases, items cannot be viewed in person and often there are misrepresentations of the quality/attributes of the product/service.*
- *Verbal disclosures over the phone may be onerous and time consuming.*
- *Businesses may not provide all the required disclosure information over the phone.*
- *There may be language barriers for consumers for whom English is a second language.*
- *Business may reside outside of Ontario (straddling of legislative jurisdictions).*

As for the improvements that could be made to the Ontario regulatory framework, the agency indicated, for instance, that more precise rules may be required to regulate certain specific contracts that can now be entered into online: it mentions contracts entered into remotely with moving companies, specifying that specific obligations should be stipulated in the legislation, such as when estimating the number/weight/dimensions of items being moved.

In QC, the *Office de la protection du consommateur* also drew up a list of the pros and cons of the regulatory framework for its province in relation to distance contracts:

**Pros**

- *Provides for a presumption based on which the merchant is deemed to have made an offer to enter into a distance contract if the merchant's proposal comprises all the essential elements of the intended contract, regardless of whether there is an indication of the merchant's willingness to be bound in the event the proposal is accepted and even if there is an indication to the contrary (54.1, par. 2);*
- *Provides for a presumption based on which the contract is deemed to be entered into at the consumer's address (54.2);*
- *Covers the various stages of a distance transaction (before (54.4), during (54.5) and after (54.6, 54.7, 54.9 and 54.10);*
- *Includes protections that take into account the problems and risks specific to distance contracts (no physical contact with the product / obligation to disclose detailed information on the good (54.4); information accessible through hyperlinks / obligation to bring certain information to the consumer's attention (54.4 par. 2); information not transmitted on paper / obligation to set up the presentation of the information so that it is easy to keep (54.2 par. 2) and providing a contract (54.7), with a mandatory content (54.6), that the consumer must also be able to easily keep (54.7); delivery of the good after the contract is entered into / prohibition from requiring that the consumer pay for the good prior to delivery, unless payment was made by credit card (54.3), in which case the consumer may subsequently, if the*

good is not delivered, have the charges reversed (54.9 and 54.14); little inclination on the consumer's part to take legal action against a merchant located abroad / when certain conditions are met, obligation for the credit card issuer used by the consumer to charge back the amounts paid to the merchant (which allows the consumer to ask a third party that is easy accessible and known to him – his credit card company – to reverse the charges for all the amounts paid under the contract and any related contract (54.14) without having to go to court);

- Favours the consumer since should the merchant oppose a chargeback by the credit card issuer, the merchant is the one who has to take the consumer to court;
- If the merchant fails to meet his obligations, allows the contract to be cancelled by the consumer by sending a verbal or written notice to the merchant (54.11 and 54.12);
- Provides that the cancellation of the main contract results in the cancellation of any related contract and, under certain conditions, of the credit agreement made with respect to the distance contract (54.12 par. 3).

### Cons

- The time limits and situations that allow the consumer to exercise his right of withdrawal are varied, which does not make it easy for consumers to understand and retain the applicable rules;
- Some time limits, within which the consumer must exercise his right of withdrawal, are short;
- The provisions do not include an obligation for the merchant to keep a copy of the contract;
- Section 26 of the Consumer Protection Act, which requires that some contracts be drafted in French, does not apply to distance contracts;
- The obligation to charge back the amounts paid by the consumer only applies when a credit card was used for the payment. Such an obligation does not exist if another method of payment was used. However, in the latter case, the payment can only be received once the good has been delivered;
- In some cases, the consumer may be unable to determine that the merchant has not complied with certain obligations (e.g. non-disclosure, before the contract is entered into, of the total amount that will be charged), until the credit card statement is received, when the time limits for exercising the right of cancellation have expired.

The agency also believes that changes could be made to improve the regulatory framework:

- The possibility of subjecting other payment intermediaries to such obligations [such as chargebacks] could be considered [...];
- The possibility that certain rules under sections 23 and following of the Consumer Protection Act<sup>235</sup> apply, even for distance contracts, could be reviewed [...];
- The Consumer Protection Act could stipulate that the consumer must cancel the contract within seven days after receiving the statement of account when the consumer notices at that time that the merchant has not disclosed all the information required before the contract is entered into or has not disclosed it as prescribed by law. [...]

<sup>235</sup> These sections basically represent the rules for drafting certain contracts, which the legislation requires be made in writing.

In stating a drawback, Nova Scotia agencies said “Our regulatory framework is not structured to support the investigation of distance contract issues. These issues provide a significant challenge.” In their opinion, “A national framework, clearer roles and responsibilities, and common expectations would be valuable. For instance, a common Canadian timeframe on time limits to distance service contracts would be a significant improvement.” The agency added: “Development of authority to operate or reciprocate in other jurisdictions is key to implementing distance contract requirements. In many cases, the supplier will be located or headquartered outside of the legislating province.”

The NL agency also noted the advantages of its regulatory framework regarding distance contracts:

*One advantage of our recent changes – Bill 6 – is consumers get a written contract they can easily review. Another plus is consumers in this province are saving money with a set and established formula for cancelation fees when before this time the companies changed (sic) various amounts.*

However, the NL agency did not mention any other drawbacks or how the regulatory framework could be improved.

The Consumer Protection Division in SK also had no suggestions regarding improvements that could be made to the regulatory framework in force in the province.

The Manitoba Consumer Protection Office stated the following: “Enforcing legislation when it applies to remote contracts is a challenge relating to the distance involved when investigating non-compliant businesses in other jurisdictions, often in Europe.”

Consumer Protection BC considers, strangely, that these questions do not apply in its case.<sup>236</sup>

## 6.2 Investigation among merchant associations

In March 2014, we sent an e-mail to two Canadian merchant associations, the Canadian Federation of Independent Business (CFIB) and the Retail Council of Canada (RCC), to see whether they had any advice, models or guidelines of good practice for their members in relation to e-commerce that would explain the applicable rules to them, in particular with regard to information disclosure, reasons for cancellation, chargebacks, etc. If so, we asked them who was responsible for drawing up and communicating the advice to members and how.

The CFIB furthermore informed us that it did not provide, at least for the time being, any documentation in this respect to its members. However, they said that they would be interested in doing so in the future

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<sup>236</sup> The agency responded: “N/A.”

The RCC, for its part, stated the following:

*(...) despite the fact that we have produced a variety of guides for our members, there does not seem to be any that exactly correspond to what you are looking for. Specifically, for e-commerce, the guides that the RCC has produced deal more with the strategies for a better conversion of the rate of visits into purchases and the development of online exposure for our members.*

*We also keep our members informed through our quarterly magazine, Canadian Retailer. Our members also have access to the Shopify service.*

Note that *Shopify.com* is a website that allows merchants to create their own transactional website and sell their goods/services online directly to consumers. However, *Shopify* is not responsible for whether merchants' practices comply with consumer protection laws.<sup>237</sup>

### 6.3 E-commerce: Investigation

Given that distance selling is becoming increasingly more popular and now occurs mainly on the Internet, and given that our study of the existing legislation applicable to distance contracts has focused on Internet sales contracts, we decided to check how merchants involved in online selling apply this specific legislation on distance contracts.

During our investigation of the provincial agencies responsible for enforcing these laws, we noted that they do not systematically inform merchants of their obligations in this respect.

We conducted a field investigation by studying 30 transactional websites, both in Canada and abroad (13 websites in the latter case), which included the websites of major retailers such as BestBuy, Dell, Future Shop, Amazon, Sears, and Ikea, websites that sell gym memberships (Centre du Plateau and Centre Père Sablon), and websites that sell telecommunication products and services (e.g. Bell, Telus and Teksavvy Solutions)<sup>238</sup>. We looked at merchants involved in selling both goods and services.<sup>239</sup>

Note that our investigation only pertained to compliance with pre-contractual obligations. Since we did not purchase any good or services from the websites, we did not study the later parts of the process (e.g. transmission of a copy of the contract to the consumer within 15 days of purchase, cancellation and refund).

What was the outcome of our investigation? Do merchants comply with their legal obligations with regard to Internet sales contracts? Do they disclose, before the contract is entered into, the mandatory information to the extent and in the manner provided for by law?

<sup>237</sup> STOKES J., *Make Sure Your eCommerce Site Complies with the Law*, ShopIFYBuilder, blog, Birmingham, U.K., November 10, 2013. [Online] <http://shopifybuilder.com/make-sure-your-ecommerce-site-complies-with-the-law> (page viewed on April 11, 2014).

<sup>238</sup> See the complete list in Appendix 2.

<sup>239</sup> Despite the fact that this type of purchase is one of the most common types of online purchases, we did not examine any website that sells airline tickets or travel packages; this industry is highly complex, it is regulated both at the federal and provincial levels, and has specific legislation, despite the concurrent application of the rules on distance contracts. This type of offer alone could be the subject of a research project; we therefore did not consider this type of business in order to not cloud the issue.

Based on our prior survey of the pre-contractual disclosure of information,<sup>240</sup> we visited the chosen websites to determine whether the information was provided and in what manner.

## a) Merchant name

We noted that all the websites we examined indicated the *full names* of the merchants operating them on the first page and/or at the bottom of the pages.

## b) Merchant contact information

Only one of the websites we examined did not provide the merchant's address (Netflix), while six other sites instead only provided the address of the branches/stores<sup>241</sup>. Three other websites that we visited provided names and addresses but without any information, during the process, related to the phone and fax numbers and e-mail address, neither at the top or bottom of the pages or elsewhere.

For 13 of the other websites examined, the business address is found at the top or bottom of the pages, most often in the menu on each page, in a section that contains a specific heading ("contact" etc.). However, in about half of these same cases, the business address is not accessible at first glance; the consumer must obtain it from a section often referred to as "Terms and Conditions," "Terms of Agreement," etc. (hereafter "TA").

In about half the cases examined, the telephone number was also found in one of the sections appearing at the top or bottom of the website pages, in the menu that appears throughout the purchasing process. Most of the time, consumers will also find the information by accessing the "Customer Service" or "Contact" sections.<sup>242</sup>

However, in about slightly more than one-quarter of the cases examined, the address is still difficult to find, since it only appears, in some cases, under the "Privacy Policy" (Ikea) or "Help and Policies" sections (Swim2000.com), which requires a more thorough search, because it is less intuitive, to find this information that the merchant must clearly disclose by law to the consumer before the Internet sales contract is entered into.

Of all the websites that were examined, 12 provided the merchant's telephone number (along with a fax number and e-mail address, where applicable) during or at the end of the purchasing

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<sup>240</sup> See Chapter 3, more specifically section 3.2, which describes the mandatory information that merchants must disclose before the contract is entered into.

<sup>241</sup> This practice does not fully comply with the provisions adopted by half the provinces with regulations in this respect (BC, AB, MB and NS), which require (as seen in section 3.2 of this report) that the merchant provide the address of the business and, if different, his mailing address. However, it seems to comply with the provisions of the other provinces (SK, ON, QC and NL), which have not gone as far as what the Harmonization Template proposes and that only stipulated in their legislation that it is enough for the merchant to provide the address of his business or, in QC, merely "his address."

<sup>242</sup> In one case, the number is found in a section at the bottom of the page known as "Terms," which makes systematic access by the consumer fairly doubtful. Three of the websites that were examined, two of which sell gym memberships, are not considered transactional websites as such: when ready to make the transaction, the consumer is redirected to an external (secure) payment platform. These third-party pages do not contain the merchant's contact information and going back to the merchant's page to make possible corrections is more complicated. This practice could present particular problems when applying provisions involving distance selling. We did not delve further into the issue, as it exceeded the scope of our study.

process, often in the “Terms and Conditions” section which the consumer must accept before proceeding with the purchase. Two websites provided a summary of the “contract” at the end of the purchasing process, in which they clearly indicated all the merchant’s contact information (Best Buy and Future Shop).

In eight of the 30 cases examined, no e-mail address was provided, even when the merchant was inviting the consumer to send an e-mail from the website through a process whereby the recipient’s address is not disclosed.<sup>243</sup> This process further has the disadvantage for the consumer of not being able to keep proof of the transmission.

If the aim of the legislative framework for B2C Internet sales contracts was to ensure that at some time or other prior to the purchase the consumer would be able to view (or “easily” find) the merchant’s address, virtually all the websites that were examined appear to comply with the spirit of the law. The manner obviously differs from one website to another.

However, as seen in section 3.2 of this report, provincial laws also provide, to a certain extent and in a non-harmonized fashion, for the manner. According to the provinces, each element subject to mandatory information disclosure must be provided to the consumer, depending on the province, *prominently*, or even be *brought expressly to the consumer’s attention*. Merchants must generally *guarantee access* to this information when they do not essentially ensure that the transaction cannot take place without the merchant assuring that the consumer has had access to it, an obligation arising from the Harmonization Template. We were able to determine that this is not the case for most of the websites examined during our investigation.

Only one-third of the 30 websites that we investigated and where information on the merchant’s contact information was found (in whole or in part) in the Terms of Agreement require the consumer, before the purchase is finalized, to indicate that he has read and accepts the terms and conditions. Only two of these websites seemed to make the consumer’s task easier by providing a summary of the terms and conditions of the sale before the end of the purchasing process.

It should be pointed out that when the contact information (or any other information that must be disclosed) is found in whole or in part only in the Terms of Agreement, it must still be *prominently displayed* in these sometimes long and complex and often very tedious documents.

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<sup>243</sup> Since provisions on distance contracts have been adopted by the provinces, other means of communication have seen rapid development: about 17% of websites offer Internet users the possibility of chatting with a sales representative, or to contact the merchant via Twitter and Facebook, for instance. These methods also do not always allow the consumer to keep proof of transmission. These new means of communication and the associated practices once again show the difficulty of applying the principle of technological neutrality.

### c) Description of goods/services sold (including technical specifications)

We noted during the review of the different provisions that the requirement for the description of the product varies from one province to another, and the interpretation of the scope of the requirements could also vary.

When examining our chosen websites, we therefore tried to determine whether the descriptions of the goods and services provided by the merchants could possibly be qualified as “detailed” or “fair and accurate” descriptions. In addition, given that we had not made a purchase, we knew that we would not be able to assess the *accuracy* or *fairness* of the description by comparing it with the actual product.<sup>244</sup> We therefore limited ourselves to determining, by examining a range of products on the selected websites, whether, based on the description provided for the product, we had the impression of having full knowledge of what was being offered. Wherever possible, we also attempted to determine whether any essential product features had been omitted from the description.

To do so, we randomly chose two products for sale at each website that was being reviewed and examined the description related to the product.<sup>245</sup>

Our first determination was that merchants take advantage of the leeway provided by the law: product descriptions ranged from a summary to a mountain of information (with respect to telecommunications, for instance) in which it was extremely difficult to distinguish the main features from the secondary features or minor details, and in which a large proportion of consumers may find themselves in a position of having to determine what is essential in information that is sometimes difficult to understand by the uninitiated, naturally with respect to the technical specifications.

In all the cases that we examined, what was supposed to be a “detailed” description was found at the start of the process, before the actual purchasing process had been initiated, meaning the stage at which the consumer decides which good/service he wishes to purchase and chooses from among the various products, where applicable, proposed by the merchant, and therefore before adding the item to the basket. The consumer will then follow the steps of the purchasing process before finally, after having entered his personal and credit card information, is asked to confirm the purchase and payment. The product that is the subject of the transaction is at this point only referred to by its name, and sometimes includes a picture, but very rarely a “detailed” description of the item. However, at times only the item number is provided. Does this sole disclosure of the detailed description at the start of the process meet legal requirements?

With respect to the actual description, we found for only less than one-quarter of the products that were examined (11/48) a description that included all the elements that we would have considered essential to allow the consumer to know exactly what he is purchasing. In each case, some knowledge would be required to choose from among the products being offered

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<sup>244</sup> An approach that in any case may have provided little information: as the fairness or accuracy of the description may, depending on the products, be extremely variable on the same merchant’s website, the results would have been linked to random choices based on which it would have likely been very difficult to draw any valid general conclusions.

<sup>245</sup> We only examined the description of one product at the websites of merchants selling only one type of product. A total of 48 descriptions were reviewed for the following: cell phones, laptops, cameras, tablets, microwaves, books, clothing, footwear and accessories, Internet packages, toys, food, coupons, subscriptions and perfumes.

(laptop computer, Internet package, tablets, microwaves); the descriptions, although appearing fairly complete, did not necessarily meet the criteria for clarity. The description of the goods and services, although not necessarily very detailed or complete, seemed, however, to be adequate in 23 of the other cases.

In more than one-third of the cases (14/48), the description therefore did not seem to include all the elements that would enable the consumer to know exactly what he was purchasing or make an informed decision. For instance, in the case of clothing, the merchants did not always disclose laundering information, despite the fact that they always included fabric composition. With respect to books, the number of pages is almost always missing, just like the dimensions of the book, its weight, and sometimes even the ISBN number or the table of contents. Regarding food, we found a picture of what the consumer was buying, along with the brand and weight, but not the exact contents (e.g. list of ingredients or nutritional value).

With respect to Internet sales contracts, the Canadian regulatory framework also stipulates that the merchant is obliged to provide this information to the consumer so that the latter can retain and print it. However, our investigation shows that merchant websites do not have save and print buttons, marked as such, which the consumer can simply click to “easily” print or save the information. Do merchants rely on the fact that these two actions can be performed on just about any web page, provided a person knows how? If so, then we doubt that this approach complies with the requirements stipulated in provincial regulatory provisions, unless we assume that the lawmakers’ work is pointless. The fact that the lawmakers stipulated that the consumer must be able to perform these actions “easily” indicates that they were not making any assumptions about consumers’ technical knowledge and that they fully had the intention of requiring merchants to take specific measures to make the task easier for the consumer.

#### **d) Detailed list of prices related to the contract, description of additional charges and total amount of the contract/instalments**

In most of the cases, the websites that were investigated clearly indicated a detailed list of the prices for the products likely to be purchased as part of an Internet sales contract.<sup>246</sup> However, there were a few exceptions: Dell, for instance, does not systematically and clearly indicate delivery charges on its website, despite the fact that all delivery charges must be indicated as part of information disclosure requirements.<sup>247</sup> Banana Republic mentions that the taxes indicated during the purchasing process will be calculated when the order is processed and that the amount could vary slightly compared to the amount indicated. The same goes for One Stop Plus, which indicates that delivery charges and taxes will be recalculated and that the exact information will be e-mailed to the consumer after the purchase is made.

Moreover, certain charges, although indicated, correspond to extremely vague “services,” with the consumer not knowing exactly why he is being charged for them or what they cover (such as Bell’s “one-time fees”). As previously seen, the pre-contractual information must be clear and understandable, and this type of information does not appear to meet these criteria.

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<sup>246</sup> Once again, as we did not make a purchase, we are unable to say whether the prices displayed are those that would have actually been charged.

<sup>247</sup> One would think that if there are no delivery charges, the merchant would indicate it.

## e) Currency

As previously seen, the law requires merchants to disclose to consumers the currency in which payment is to be made, although this obligation only applies, under legislation in QC, SK and ON, if the price is indicated other than in Canadian dollars.

Of all the websites we investigated, 17 are Canadian and 13 foreign. In 11 websites (four of which are Canadian), merchants disclose to consumers, prior to the purchase, the currency of the price (with the dollar sign (\$) along with “C,” “CAD,” or “CDN,” or via an indication that simply states that prices are expressed in Canadian dollars). At the 19 other websites, only the dollar sign (\$) is displayed to indicate the price of the goods or services<sup>248</sup>.

Six of these last websites that only display the price with a dollar sign (\$) are foreign. Note that the legislation in QC, ON and SK only requires merchants to specify the currency when it is other than Canadian; we should therefore conclude that this requirement to indicate the currency is thus only enforced, despite the extraterritorial problems mentioned above, to foreign merchants.

Note that six of the Canadian sites that were examined, which only mention the dollar sign, ask the consumer from the outset (or the process likely to lead to a purchase) for his country of origin. It is easier for the consumer to then assume that the currency, unless otherwise stipulated, will correspond to his country's currency. However, such a practice, although it complies with the legislation in QC, ON and SK (provided that Canadian currency is involved), does not comply with the legislation in the five other provinces, which require merchants to indicate the currency (and not let consumers assume or guess what it is).

## f) Clauses, terms and conditions, and methods of payment

Having looked at transactional websites, we did not see any problems or any unusual aspects in the disclosure of the payment terms, which is always done with this type of transaction, as one can expect, before the contract is entered into. Some sites also stipulate the payment terms in their “Conditions of Use.”

## g) Delivery information: date, carrier name, method and location

At all the websites we visited, the delivery location is chosen by the consumer during the purchasing process: it can be an address of his choice or, in some cases, the address of one of the merchant's branches where the consumer can pick up the item.

Of the 20 websites we examined, the merchant provides the consumer with an estimated delivery date by indicating the number of days that delivery will take from the date of the order, or by giving the consumer an indication of the estimated date. In two other cases, we only found

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<sup>248</sup> If merchants fail to clearly indicate the currency, as required by law, a clear and prominent indication of the merchant's address would at least allow the consumer to deduce whether the currency is in Canadian or US dollars. Note that about 30 countries use this symbol for their currency. See **STATISTIQUES MONDIALES**, *Monnaies par ordre alphabétique des pays*, Statistiques mondiales, Écubiens, Switzerland, no date. [Online] <http://www.statistiques-mondiales.com/monnaies.htm> (page viewed on April 11, 2014).

this indication related to the delivery time by reading through the Terms of Agreement, while in two other cases, we found absolutely no information on the delivery date, either during the purchasing process or in the Terms of Agreement.

Only five of the investigated sites clearly indicated the delivery date or the start of the service.<sup>249</sup>

With respect to the name of the carrier, the information was clearly provided during the purchasing process one time out of four (six sites out of 24<sup>250</sup>). In three cases, the information was found in the Terms of Agreement, while for 13 sites, the merchants did not provide any information anywhere on the site regarding the carrier's name, although about half the sites did indicate the delivery method:<sup>251</sup> "Standard," "Regular," "Priority," "Express," "Expedited," or "ground shipping." Obviously, revealing the carrier after the purchase, which seems to be a common practice, does not comply with the information disclosure requirement.

The new EU Directive has established rules in this respect that are different from those found in Canadian legislation: although it stipulates that the merchant must disclose to the consumer, before the contract is entered into, the delivery date or the start of the services (art. 6(1)g), it does not delve further or provide more details on this issue.

## **h) Cancellation/return/exchange/refund policy, if applicable**

The laws we reviewed in relation to our study indicates that the merchant must, if he has a cancellation/return/refund policy, disclose it to the consumer before the distance contract is entered into. An obvious problem was brought up during a field investigation of this obligation: has the merchant who provided no information chosen not to adopt such policies – which he is free to do – or instead has not disclosed them, which is a breach of his legal obligation?

We found indications, in 16 of the cases that were reviewed, that such policies existed *during the online purchasing process*. Note, however, that these indications are not always easy to find; only two of the sites presented them during a summary of the terms of agreement prior to the purchase, before the consumer pays for the order. Six of the sites provide (still during the purchasing process) a direct link to these policies, while seven others included a link to the Terms of Agreement, where the information was found. Another site provided the information by asking the consumer to click on seemingly endless hyperlinks before being able to locate the policies.<sup>252</sup> The latter case clearly does not consist of information that is *prominently displayed* or *brought expressly to the consumer's attention*, as required by provincial legislation.

In nine of the remaining cases, a link at the bottom of the page provides access to the policies identified as such; for one of the sites, consumers will find the indication by searching through the Terms of Agreement, which the merchant makes available to the consumer through a hyperlink.

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<sup>249</sup> We excluded Groupon from our review in this instance since consumers only obtain a coupon that allows them to obtain a product or service from a merchant. However, this website indicates the expiration date for the discount provided by the coupon, as well as the times when it can be used.

<sup>250</sup> Out of a total of 24 websites, since this obligation does not seem to apply to the six other sites, which only provide services (e.g. gym memberships) for which the consumer must leave his home and which are not delivered to him.

<sup>251</sup> This requirement is in fact the only one included in Manitoba regulations, under which the merchant must indicate not the name of the carrier but only "the seller's delivery arrangements, including the method of delivery" (sect. 3(1) of the *Internet Agreements Regulation*, Man Reg 176/2000 [Online] <http://canlii.ca/t/k8w0>).

<sup>252</sup> This is also the case for one of the sites, which provides the information to consumers in the Terms of Agreement.

If we were to assume that websites that do not indicate that such policies exist simply do not have any, such an assumption could be undermined by the fact that we were able to locate the merchant's policies through a Google search, while we were unable to do so on the merchant's transactional website.

In short, in six of all the cases that were identified, the policies, even though they exist, are very difficult to find.

It is difficult to comment on the clarity of these policies; suffice to say, at least in one case, the policies were dozens of pages long, with the reader having to plough through a multitude of clauses which at times are fairly difficult to understand.

## **i) All restrictions likely to apply**

Legislation on distance contracts requires merchants to disclose any restrictions likely to apply to the contract. However, this can mean many things. We tried to determine whether, during the course of the process leading to an online purchase, some of these restrictions were in fact made known to the consumer. We attempted to see whether these indications could cause confusion or even be contrary to the law, or at least the Quebec *Consumer Protection Act*.<sup>253</sup> We paid special attention to the Terms of Agreement, which often contain a lot of the information that must be disclosed by law.

Here is a summary of the types of clauses we found in several Terms of Agreement on the transactional websites we investigated.

### ***Clauses on unilateral changes***

As Quebec has adopted provisions regarding unilateral changes to a contract, these will therefore apply from the outset to Internet sales contracts, notwithstanding what may be stipulated in the contract, as the *Consumer Protection Act* is a public policy statute.

### ***Clauses referring to other documents***

In Quebec, in principle, the merchant must, for it to be binding on the consumer, expressly bring an external clause to his attention (C.C.Q. 1435), although the Supreme Court Dell ruling, which we discussed earlier, casts some doubt on the application of this provision in relation to Internet sales contracts.

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<sup>253</sup> As this exceeds the scope of our study, we limited this review to Quebec legislation, which is more familiar to us, as a previous study is also more likely to provide us with reference points for our review. See: **DUCHESNE, G.** *Les obstacles à la prise de connaissance et à la compréhension par le consommateur du contrat de consommation*, Union des consommateurs, Montreal, Canada, June 2008, 360 pages. Available online at the Union des consommateurs website. [Online] [http://uniondesconsommateurs.ca/docu/protec\\_conso/contrats\\_consommation.pdf](http://uniondesconsommateurs.ca/docu/protec_conso/contrats_consommation.pdf) (document viewed on April 11, 2014).

### **Clauses related to legal recourse**

In their Terms of Agreement, merchants often indicate the legal recourse available to consumers and often attempt to impose arbitration. Certain Terms of Agreement impose the jurisdiction where the disputes will be heard:

*TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, YOU HEREBY AGREE AND CONSENT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS SITUATED IN THE STATE OF NEW YORK IN ANY ACTION, CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THESE CONDITIONS OF USE, AND YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION OF SUCH COURTS.*

*– Bloomingdale’s, January 31, 2014, no. 17*

Quebec law prohibits the merchant from using clauses that restrict the consumer’s legal recourse or impose arbitration (11.1 CPA). Under the Civil Code of Québec, consumer protection laws continue to apply even if the parties agree to submit the contract to other legislation (C.C.Q. 3117) and stipulate that Quebec authorities have jurisdiction to hear an action involving a consumer contract and that the waiver of such jurisdiction by the consumer may not be set up against him (C.C.Q. 3149).

### **Clauses related to merchant indemnification and the exclusion of merchant liability**

In some of the cases we looked at during our investigation, the Terms of Agreement contain clauses similar to the following:

*You agree to defend, indemnify and hold Forever 21 harmless from and against any and all claims, damages, costs and expenses, including attorneys’ fees, arising from or related to your use of the Site.*

*– Forever 21, February 3, 2014*

*IN NO EVENT IS GROUPON LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT.*

*– Groupon, February 7, 2014*

Quebec law prohibits the disclaimers that merchants may be tempted to include in their contracts.

### **Restocking fees**

Some Terms of Agreement contain clauses that inform consumers of possible restocking fees if their contract is cancelled: “Some products may also be assessed a 15% restocking fee – please ask if you are unsure.” (Think Geek, February 3, 2014).

Quebec legislation stipulates that the merchant cannot impose charges for which the amounts were not indicated in the contract (12 CPA). Therefore, this clause would be applicable, subject to limitations, to cancellations by the consumer in accordance with the merchant’s cancellation policies, but not to cancellations arising from the application of the rules on distance contracts (e.g. if the merchant fails to meet his obligations regarding the pre-contractual disclosure of information or the transmission of a copy of

the contract). In these instances, the merchant must in fact refund all amounts paid by the consumer and also assume the costs of restitution (54.13 CPA).

### **Other conditions**

Some Canadian sites state in their TA that the advertisements on their websites do not constitute offers but rather invitations for consumers to make a purchase offer.

*Advertisements on our Web Site are invitations to you to make offers to purchase products and services on the Web Site and are not offers to sell. (...) Your order will be deemed to be accepted only if and when we send a shipping notice email to your email address. That shipping notice email constitutes our acceptance of your order and forms a legally binding contract with Future Shop Canada Ltd., which operates Future Shop and FutureShop.ca.*

*– Future Shop and Best Buy, January 31, 2014, in the final summary*

These clauses are ineffective in Quebec as the *Consumer Protection Act* clearly stipulates, through an irrefutable presumption, that: “A merchant is deemed to have made an offer to enter into a distance contract if the merchant’s proposal comprises all the essential elements of the intended contract, regardless of whether there is an indication of the merchant’s willingness to be bound in the event the proposal is accepted and even if there is an indication to the contrary.” (54.1 CPA)

Other clauses mention that the merchant is not bound by an order as long as the product has not been shipped by him or he has not accepted the order (e.g. Dell).

## **j) Validity of the clauses**

Clauses of the type mentioned are for the most part prohibited in Quebec. They therefore have no effect. This means without any *legal* effect, since they can still have an effect on the consumer, who is aware that the contract is binding upon the parties, and to which the merchant will refer, reminding him that he has “agreed” to these conditions when he entered into the contract.

The *Consumer Protection Act*, which, as we mentioned when applicable, prohibits certain contractual clauses, still allows merchants to include clauses of this type in contracts, provided the merchant mentions they are not applicable<sup>254</sup>. This requirement has the advantage of creating a standardized way of informing the consumer. However, some websites continue to indicate as in the past that some provisions of the contract or the Terms of Agreement “may not be applicable” or state that the rights granted the consumer by the jurisdiction where he lives will apply. Unfortunately, this practice may create a lot of confusion in consumers.

*Clauses of this type are therefore highly problematic since they are likely to mislead the consumer by allowing him to think that he has fewer rights than he actually does. Unless the consumer is fully aware of the legal provisions that may prevail over the contractual*

<sup>254</sup> Under the *Consumer Protection Act*, a stipulation that is prohibited by law, if still included in the contract or the Terms of Agreement, “must be immediately preceded by an explicit and prominently presented statement to that effect” (19.1 CPA).

*provisions, the mere fact of adding “to the extent permitted by law” after the problematic clauses in the contract will obviously not be enough to dispel the effect of such a clause on the consumer.*<sup>255</sup>

### **Accepting/declining the contract, or correcting errors in it**

Canadian laws require the merchant to give the consumer, before the contract is entered into, the opportunity to accept, decline or correct any errors in the contract. In 11 of the 30 websites that were investigated, the merchant makes available to the consumer special buttons marked “Modify” or “Edit/Change” during the process that precedes the purchase. Three other sites make only one button available to consumers (“Back”). None of the 16 other sites contains a correction process. The consumer, should he wish to correct any errors, has no other choice than to abandon the purchase and start the process from the beginning.

## **k) Conclusion**

As we were able to determine, it is difficult to find transactional websites that comply with Canadian legal provisions that attempt to regulate Internet sales contracts. During our investigation, we noted that most of the information that the merchant is required to disclose to the consumer before entering into the contract is found on the websites we examined.

However, provincial laws not only require disclosure; they also stipulate to some extent the nature and manner of the disclosure. For instance, the information must be prominently displayed and disclosed in a manner that is clear and comprehensible to the consumer. Some information is subjected to stricter requirements: the description of goods, for instance, must be complete, or detailed, accurate, etc. During our investigation, we instead found, one time out of three, partial descriptions of goods and services, along with missing or unclear information, etc.

As mentioned, several clauses that include information that must be disclosed before the contract is entered into are found in the documents that cover conditions of use, the Terms of Agreement, mixed in with or even buried among many other clauses to which the consumer is agreeing to as a whole when making the purchase.

*(...) some documents contain clauses that are important enough to be expressly brought to the consumer’s attention. However, we noted that the location of some of these documents does not favour the consumer becoming aware of them. In fact, several companies set up their websites so that some terms and conditions can only be accessed through a hyperlink found at the bottom of the website pages. The consumer, with generally little inclination to browse through the entire website (because the links directing him to what he is looking for, and which he is asked to click on, are generally found at the top or in the middle of the page, in keeping with standard web page layouts), will therefore be required to first notice that there is a hyperlink at the bottom of the page, guess its importance, and then take a roundabout means to get to the page it leads to, otherwise he will be unable to complete the purchasing process without having viewed some important terms.*<sup>256</sup> [translation]

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<sup>255</sup> UNION DES CONSOMMATEURS, *Op. cit.*, note 254., p. 27.

<sup>256</sup> *Ibid.*, p. 56.

Surprisingly, this observation, made in 2008 by Union des consommateurs, still applies today, despite the fact that the law requires the information to be *prominently displayed*.

Given that the legislation we studied is far from being clear and specific with respect to the elements that must be included in a mandatory disclosure of information (e.g. *detailed description* rather than *main characteristics* (E1), *Any other restrictions/conditions/limitations that may apply* (E12), etc.) and that legislators have not specifically included any clear obligation for the merchant to present, before the consumer has entered into the contract, a *summary* with all the important information (e.g. name, address, description of the item), this information, when found on the merchants' websites, is scattered and locating it is often a time-consuming task.

This obligation to gather the information should, however, to some extent be inferred from the merchant's obligation to give the consumer the opportunity to accept, decline or correct any errors in the contract before it is entered into, but especially in the obligations that require the merchant to present the information prominently and to allow the consumer to retain and print the information. We even believe that such a summary would most likely be the only way for the merchant to fully comply with all the provisions stipulating how the mandatory information is to be displayed. How, otherwise, can these different obligations to prominently display the information be reconciled (as stated, it would be difficult to claim that the content of a clause buried in a long document is "prominently displayed"), ensure that the consumer was able to access it (and not only that he was given the opportunity to do so), enable the consumer to retain and print the information (which clearly implies that the information must be found at the same location), and to also allow the consumer, before he accepts the contract, to revise the content of the contract proposed by the merchant?

However, it would seem that if obligations have to be inferred based on certain aspects of a given provision, this is enough to result in general non-compliance. If the legislator's intent, as we understand it, was to require merchants to gather the mandatory information in a single location (so that it can be prominently displayed, ensure that the consumer has seen it and can retain and print it – all ideally at the end of the purchasing process so that the consumer is able to adequately revise and, if necessary, make any corrections), it seems that the sole fact of providing indications in this respect has not proven to be adequate.

Legislation should then expressly include the obligation to gather the information, even provide a *summary* of it to the consumer who is about to purchase a good or service online (the consumer will obviously neither read nor print continuous text that is several pages long).

## **6.4 Investigation among credit card issuers**

To determine the extent to which Canadian consumers make use of chargebacks, which is now covered by consumer protection laws on distance contracts paid by credit card, we approached credit card companies and certain associations to invite them to fill out a short questionnaire on the use of this procedure by consumers, how it worked, and whether it was efficient.

In October 2013, we approached VISA, MasterCard and American Express; only one of these companies, VISA, responded in November to inform us that only banks would be able to respond to the questions that we submitted to the credit card issuers, who do not have the necessary information.

Contacted in December, the Canadian Bankers Association (CBA) said that they were unable to assist us with our study. The Financial Consumer Agency of Canada (FCAC) and the Canadian Federation of Independent Business (CFIB), which were also contacted, told us that they did not have the type of information we were looking for, nor any statistics on the subject.

Starting in January 2014, we tried to contact the six major banks (Royal Bank of Canada, TD Bank, Citigroup, Bank of Montreal, Scotia Bank, National Bank of Canada), along with Fédération des caisses Desjardins du Québec to ask them to fill out our questionnaire. Despite our insistence, two of the banks never responded to our e-mails or returned our telephone calls. In the case of five others, following discussions by phone with the representatives who had contacted us in response to our inquiry, we sent them our questionnaire so they could review it and let us know if they could fill it out. Four of the financial institutions told us that they would not be taking part in our project, either because they did not have the information needed to respond to most of our questions, because of the competitive impact that could arise from sharing the information (despite the fact we ensured them that the results could be presented anonymously), or... due to lack of time.

Only one of the financial institutions we contacted agreed to fill out our questionnaire provided it remained anonymous. The person in charge told us they did not have any statistics on the use of chargebacks by consumers and that each request was treated individually to ensure that the cancellation terms under the consumer protection legislation of the consumer's province of origin were met. We were also told that the chargeback obligation in the specific consumer protection provisions could result in financial loss for the credit card issuer: as the latter is not necessarily legally bound to the merchant, it is not always reimbursed following a chargeback for a cancelled transaction, in particular because of the time limits imposed by payment networks.

This representative also told us that financial institutions use the computer systems set up by the actual credit card issuers (e.g. VISA, MasterCard) to reverse charges. These systems make it easier to share information and documents between the various financial institutions, along with the compensation that chargebacks may result in.

We also tried to find statistics on this subject, but were equally unsuccessful.

To conclude, it would seem that financial institutions are not yet ready to make public their statistics on chargebacks, and that the main reason is the competitive ramifications.

## 7. Conclusion

*We are in bondage to the law in order that we may free.*  
– Cicero

Distance selling has been around for a long time in various forms, but since consumers have been able to make purchases on the Internet, this form of transaction has taken on a new impetus and over the years has reached a scope that is far from negligible. The possibility of making an immediate purchase, at any time of the day or night, from any location, the wide range of products, the ease of comparing prices, by browsing websites, or simply by using price comparison websites, the fact of having quick and easy access to the comments of other web users on the particular product, contribute, among other things, to the popularity of the Internet for distance purchases. In 2012, 83% of Canadian households had home Internet access and 56% of Internet users had ordered goods or services online.

Various authorities quickly realized the potential of e-commerce and began developing basic regulations to try to achieve a certain level of harmonization. On the one hand, this should provide a reasonable level of certainty to businesses which may have been reluctant to do business online for fear of being faced, given the relative effect of borders where the Internet is concerned, with a multitude of rules they had been unaware of and which may be unfair, even contradictory, and, on the other, reassure consumers in order to incite them to shop online.

International organizations such as the OECD and the UN therefore started early on, in 1999, to implement measures to attempt to regulate this type of trade. In Canada, the Consumer Measures Committee (CMC), made up of federal and provincial representatives, was set up to harmonize the laws and thus limit the “border” effect between provinces, in accordance with what is stipulated in the *Agreement on Internal Trade*, which came into force in 1995. In 2001, the CMC finalized the *Internet Sales Contract Harmonization Template* based on the principles that had been established until then internationally.

Eight Canadian provinces have to date adopted measures arising from the Harmonization Template. However, the regulatory framework established by the provinces does not always follow the same model: some provinces (B.C., Quebec and Newfoundland-Labrador) provided a broader scope for the rules on Internet sales contracts that covers all distance contracts, based on the principle of technological neutrality, which gives lop-sided results and which the courts appear to have difficulty interpreting and applying in a consistent manner when trying to provide equivalent guarantees regardless of the medium.

According to doctrine, the legislation cannot neglect considering the importance of the medium used by the consumer if its specific characteristics are likely to cause various problems. This is why some suggest that *“Internet sales contracts must be more formal”* and that, *“[to] make up for the lack of materiality associated with paper, the law must set up a formal structure specific to the electronic medium that will create more predictability in business dealings.”*<sup>257</sup>

As the common point in the legislation from the eight provinces is the regulatory framework for Internet sales contracts, we specifically focused on this shared regulatory framework in our study and compared the rules that each province adopted in view of determining what was the

<sup>257</sup> GAUTRAIS, V., *Op. cit.*, note 192 p. 47.

common core, which we then compared with the rules adopted by the European Union (EU) in 2011 in this regard. As e-commerce has evolved over the years and the existing regulatory framework has been around long enough to reveal its flaws, are Canadian regulations now obsolete?

Our study led us to conclude that the protections granted under provincial legislation, which is based on the information disclosure obligations imposed to merchants and on the cancellation rights associated with non-compliance with said obligations, are quite likely to increase the consumer's level of protection. A review of the new rules set forth by the new EU Directive reveals a few differences that suggest that updating and enhancing the existing rules in Canada would still be welcome. The regulatory framework set forth by the EU proposes, for instance, certain additions or clarifications with respect to the disclosure of information that would likely remedy certain flaws noted in our own regulatory frameworks: the list of elements subject to the mandatory disclosure of information, for instance, is more comprehensive. With respect to the description of goods, the directive, clearly not in favour of technological neutrality, states that the merchant must disclose "the main characteristics of the goods or services, to the extent appropriate to the medium and the goods or services,"<sup>258</sup> an approach which authors favour for Canadian provincial legislation,<sup>259</sup> which instead requires the disclosure of a "detailed" or "fair and accurate" description.

Directive 2011/83/EU confirms a general right of withdrawal and requires online merchants to notify the consumer of this right and to even provide him with a model withdrawal form. This recognition of the specific vulnerabilities of online consumers and the right of withdrawal granted to them should also inspire our legislators.

Do merchants comply with the regulatory framework of Internet sales contracts?

Although certain aspects of the Canadian regulatory framework present enforcement problems as a result of a vague scope (in particular, with respect to the description of products), the major flaw that was revealed by our field investigation – which led us to examine the dissemination of the mandatory information by merchants by initiating transactions on 30 transactional websites – is not found as much in the content of the information proposed by the merchants as in the manner it is provided. Unfortunately, although most of the mandatory elements are found on the websites that were investigated, they are often scattered, difficult to locate, and sometimes buried in a mass of other information in which it is virtually impossible to determine what is essential.

The mandatory disclosure of information prescribed by provincial legislation was, however, supposed to form its basis by prescribing not only the content but also the manner in which the information should be disclosed, information considered crucial for the consumer to be able to provide informed consent. Legislators will likely have to, as recommended by certain authors, increase the formality associated with such disclosure and clearly indicate to merchants what is meant by the *prominent display* of information which the legislation is insisting on and the *obligation of ensuring that the consumer has accessed it* (or the obligation of *bringing it expressly to the consumer's attention*). It is likely time to clarify this obligation: the explicit imposition of a summary of the key elements of the contract would likely be the simplest way to ensure that the mandatory information is prominent, that it has been brought expressly to the consumer's attention, and that the consumer can retain and print it, since it will be found in a

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<sup>258</sup> *Op. cit.*, note 6, art. 6)1)a).

<sup>259</sup> GAUTRAIS, V., *Op. cit.*, note 27, p. 10.

single location rather than scattered throughout the website, or buried in the “conditions of use” which the consumer must agree to in its entirety.

The adoption of regulatory frameworks for Internet sales contracts should reassure consumers in order to incite them to use this method of transaction. E-commerce is in fact growing in popularity but, based on the survey we conducted, consumers’ level of knowledge of the protections granted to them with respect to distance contracts is currently close to nil. The few Canadian consumers who are aware of the existence of specific provisions are in fact at a loss to say what they consist of. When told about the content of the legislation on Internet sales contracts for their province, two-thirds of the respondents to our survey said they believed that the legislation provided consumers with adequate protection. Consumers would still need to be aware of the provisions when problems occur so that they know how to resolve them.

Most of the provincial agencies in charge of monitoring and enforcing these laws told us that they do not actively carry out any information, educational and awareness-raising campaigns among consumers with respect to these new protections, preferring instead to release information on their respective websites. Quebec, however, seems more active with respect to increasing consumers’ awareness, which could account for the province’s considerably higher level of knowledge revealed by our survey.

Thus, although there is a regulatory framework in eight Canadian provinces, we need to question its usefulness: as long as consumers remain unaware of it and that the agencies in charge of its enforcement do not intervene to inform consumers of the protections available to them or to enforce its compliance by merchants, it will continue to be largely ineffective. Although the provisions adopted in Canada are necessary and useful, experience shows that they are now far from being clear and are inadequate. In light of the approach adopted by the courts when Internet sales contracts are involved, it would seem crucial to fix the flaws found in the regulatory framework in order to properly guide adjudicators, and that consumers as well as merchants be precisely aware of the rights and obligations under the law. Only a well-designed framework and more comprehensive information from all the parties involved are likely to allow legislation on Internet sales contracts to attain the various target objectives.

It is from this perspective that we are proposing the following recommendations.

## 8. Recommendations

- Whereas in 2001, the Canadian provinces and territories ratified an *Internet Sales Contract Harmonization Template*;
- Whereas only eight provinces adopted the regulatory frameworks needed for the proposed harmonization;
- Whereas efforts are deployed internationally to modernize and harmonize the regulatory framework for consumer contracts, in particular Internet sales contracts;
- Whereas the results of these efforts would likely beneficially inspire Canadian regulatory frameworks;
- Whereas provincial laws have a few flaws with respect to harmonization, particularly in relation to the consumer's right of cancellation should the merchant fail to comply with his legal or contractual obligations;
- Whereas certain consumer rights, with respect to cancellation in particular, are incomplete and can be difficult to understand or exercise;
- Whereas it is only when the merchant carries out his obligation or the consumer receives a statement of account that the consumer is able to notice any discrepancies between what was advertised by the merchant and what appears in the information that must be disclosed and/or the contract;

1. **Union des consommateurs is recommending** that provincial governments work together to modernize and harmonize consumer protection legislation applicable to Internet sales contracts, in particular with respect to the prominent display of information, the presentation of such information, etc.
2. **Union des consommateurs is recommending** that the legislation provides that the time limits for exercising the rights of cancellation in the event of contract non-conformity shall only start from the time the consumer is able to determine such non-conformity.

- Whereas the various media used by consumers for distance contracts may have fundamentally different characteristics, and the context can have an impact on how information is transmitted and received;
- Whereas the Internet's specific environment allows the information made available to consumers on a website to be multiplied, almost ad infinitum, through hyperlinks, and that reading a web page has characteristics likely to affect the consideration and understanding of a text;
- Whereas the principle of technological neutrality on which law standardization attempts are based results in application problems, is likely to complicate the drafting and understanding of the legislation, owing to the necessary inclusion of exceptions through legislation, and results in interpretation problems by the courts;
- Whereas it is important that legislators provide a clear direction to courts on the scope of the protections they grant to consumers;
- Whereas Directive 2011/83/EU provides a model with respect to the distinctions that can be made between the various media likely to be addressed by legislation on distance contracts;

3. **Union des consommateurs is recommending** that provincial governments draw up specific rules for online distance contracts which take into account the specific features of the medium, in particular with regard to communication and the environment, and which stipulate the approach that should be used to ensure that the protection conferred by legislation is applied in an efficient manner, based on the context.

- Whereas the information disclosure obligation related to distance contracts, of a “detailed” or “fair and accurate” description of the goods/services that are offered, is difficult to interpret and apply, and does not ensure that the description emphasizes the key information and the essential features of the product;
- Whereas the requirement of a detailed or accurate description may result in the consumer being buried in a mass of information that could ultimately prevent him from locating the key information;
- Whereas, for purchases made online, consumers may feel time-constrained during the purchasing process set up by merchants;
- Whereas Directive 2011/83/EU has instead provided for the disclosure of the *main characteristics* of the product being offered at a distance;

**4. Union des consommateurs is recommending** that provincial legislation requires, as part of the information disclosure obligation for Internet sales contracts, that a description of the *main characteristics* of the product and the guarantee that the consumer has accessed it be prominently displayed.

- Whereas the information that must be disclosed is often found, on the merchants’ transactional websites, spread out over several pages accessed by hyperlinks, and is often part of long and complex documents informing the potential buyer of a daunting set of terms and conditions applicable to the contract;
- Whereas the fact of spreading out this information does not meet the requirement of prominent display required by Canadian legislation;
- Whereas the scattered presentation of this information, even if prominently displayed in the pages or documents that contain it, does not meet the requirement that consists in ensuring that the consumer has had access to it or that of bringing it expressly to the consumer’s attention;
- Whereas the merchant’s obligation to enable the consumer to retain and print the mandatory information only makes sense in practice if the information is grouped together, which also makes it easier for the information to be prominently displayed and the opportunity to bring the information expressly to the consumer’s attention;
- Whereas our survey revealed that consumers claiming to be aware of the law on distance contracts believe that the merchant is already legally required to submit to the consumer, before the transaction is finalized, a summary of the proposed transaction that includes the mandatory information;

**5. Union des consommateurs is recommending** that provincial governments adopt legislation that specifically and clearly requires the merchant to provide the consumer, before the contract is entered into, with a *summary* that includes all the information that must be disclosed.

- Whereas there are specific risks involved with Internet purchases and a consumer who enters into an Internet sales contract is particularly vulnerable;
- Whereas Canadian regulations on Internet sales contracts only provide for cancellation rights in the event of the merchant’s failure to meet his obligations, and not a withdrawal right;
- Whereas provincial laws have taken into account, in other purchasing contexts, the consumer’s particular vulnerability, such as with respect to door-to-door sales, and have granted the consumer a right of withdrawal;

- Whereas said right of withdrawal is granted to European consumers who enter into Internet sales contracts, and this measure is harmonized across the European Union;
- Whereas the new European directive also requires merchants to disclose the existence of such a right and to provide a form to consumers allowing them to invoke it;

**6. Union des consommateurs is recommending** that provincial legislators recognize a right of withdrawal applicable during online purchases and define it, and that they require merchants to inform consumers of this right and provide them with the tools needed to exercise such a right.

- Whereas given the immense popularity of the Internet, combined with consumers' general lack of awareness of the laws on distance contracts and, hence, of the protections available to them under the law;
- Whereas most of the government agencies in charge of monitoring and enforcing consumer protection laws only educate and increase the awareness of consumers and merchants through information published on their respective websites;
- Whereas these same agencies tell us that they are aware that consumers' level of knowledge of the protections granted to them under the law in relation to Internet sales contracts and merchants' knowledge of their obligations is inadequate;
- Whereas our survey revealed a higher level of knowledge of the legislation on distance contracts among respondents from a province that made significant efforts to disseminate information on such legislation;
- Whereas merchant associations do not seem to have concerned themselves to date with informing their members of their obligations and the rights of consumers with respect to distance contracts;
- Whereas consumer associations, given their field work and direct contact with consumers, are ideally suited to disseminate information on the rights and obligations conferred by law with respect to distance contracts, but their limited resources do not allow them to fully focus on this work;

**7. Union des consommateurs is recommending** that government agencies in charge of monitoring and enforcing consumer protection laws take the necessary measures to make consumers and merchants more aware of the rights and obligations that the legislation confers with respect to Internet sales contracts.

**8. Union des consommateurs is recommending** that merchant associations inform their members of their obligations and of consumer rights with respect to distance contracts.

**9. Union des consommateurs is recommending** that government agencies look into the possibility and appropriateness of asking consumer associations to assist them in more extensive education and information of consumers on their rights and merchants' obligations with respect to Internet sales contracts.

**10. Union des consommateurs is recommending** that, if applicable, consumer associations be given sufficient resources to properly educate and inform consumers on Internet sales contracts.

- Whereas the provincial legislators that adopted provisions in relation to distance contracts have stipulated a chargeback obligation limited to credit card issuers;
- Whereas chargebacks appear to be a sure way to guarantee that consumers will be refunded if the distance contract is cancelled and if the merchant refuses or has reservations about refunding them;

- Whereas distance purchases can already be made using methods of payment other than credit cards (e.g. e-wallets, debit cards) and the rapid development of new methods of payment indicates that the number of methods will grow;
- Whereas consumers should receive the same level of protection when entering into a distance contract regardless of the method of payment that is used;

**11. Union des consommateurs is recommending** that provincial legislators extend to all methods of payment, insofar as possible, the chargeback procedure or any other equivalent method of refund by the payment intermediary.

- Whereas the new European Union directive is requiring Member States to include in their respective legislation the possibility for consumer associations to take action before the courts or appropriate administrative bodies to enforce compliance of the provisions applicable to distance selling;

**12. Union des consommateurs is recommending** that provincial legislators grant Canadian consumer associations such a power to take action before the courts or the appropriate administrative bodies to enforce compliance with the provisions applicable to distance selling in the collective interest of consumers.

**13. Union des consommateurs is recommending** that governments ensure that funds are available and allocated to enable consumer associations to efficiently exercise such a power.

- Whereas the media used by consumers for distance purchases each has its own specific characteristics and technical features;
- Whereas new methods of distance purchasing are currently being developed (e.g. by mobile phone);
- Whereas our overview of case law in the matter revealed a major lack of understanding, on the part of the courts, of these technical differences, which often leads to shoddy enforcement of the existing regulatory framework, contrary to consumers' interests;

**14. Union des consommateurs is recommending** that provincial lawmakers take action to ensure that consumers are given the same rights and protections regardless of the medium used for distance purchases, by adopting specific provisions as needed;

- Whereas our investigation conducted among 30 merchant websites that sell goods and services online to consumers revealed several breaches of the existing regulatory framework on Internet sales contracts;

**15. Union des consommateurs is recommending** that government agencies in charge of monitoring and enforcing consumer protection laws take note of these breaches and take the necessary measures to enforce compliance with the new provisions adopted by the provinces with respect to Internet sales contracts.

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## **Appendix 1: Survey Report**

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# La réglementation des contrats à distance

Rapport de recherche présenté à Union des consommateurs

Octobre 2013





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- Les Canadiens effectuent de plus en plus de transactions en ligne. Dans le confort de leur foyer, ils multiplient les transactions avec différents commerçants, dispersés partout à travers la planète. 
- Ce changement de paradigme dans la façon de magasiner et de consommer soulève la question de la protection des Canadiens par rapport aux contrats à distance. Dans ce contexte, Union des consommateurs désirait faire le point sur cette question. D'une part, elle désirait mieux connaître la propension des Canadiens à opter pour ce genre de contrat. Ensuite, elle était désireuse de s'enquérir de la connaissance qu'ont les Canadiens des lois les protégeant en cas de différend avec un commerçant ainsi que la profondeur de connaissance de ces lois et protections.
- C'est dans ce contexte que Union des Consommateurs a confié à Passages Marketing la réalisation d'un sondage en ligne auprès d'un échantillon représentatif de 1020 répondants.



Collecte en ligne

Du 27 septembre au 5  
octobre 2013

Questionnaire de 10.4 minutes



Taille de l'échantillon : 1020 répondants

Marge d'erreur  
de +/- 3.1%

19 fois sur 20, si l'échantillon était probabiliste

Pour être représentatif de la population canadienne  
l'échantillon sondé a été pondéré selon l'âge, le sexe  
et le poids de chaque province.

## Analyse

- Internet s'est littéralement installé au rang des plateformes d'achat universelles, si bien que l'achat en ligne semble de plus en plus routinier. 
  - Les nombreux efforts pour rassurer les internautes sur le plan de la sécurité des transactions semblent donc avoir porté fruit. Des sites comme Paypal, propriété d'Ebay, créent également un climat plus rassurant.
- Comme c'est généralement le cas pour l'ensemble des nouvelles tendances à saveur technologique, les jeunes ont plus largement (et fréquemment) emboîté le pas de l'achat en ligne.
- Les biens s'affichent comme un terreau plus fertile pour la toile que les services. On peut croire à cet effet que le service comporte une dimension humaine qui se prête moins facilement à l'achat à distance.
- Fait à noter, les Québécois se montrent un peu moins diversifiés dans leurs achats en ligne comparativement à leurs semblables canadiens (84% vs 91%). Cette plus grande «frilosité» technologique des Québécois en général est constamment décelée dans les études que nous effectuons et ce, peu importe l'âge, la scolarité et même le profil technologique.

## Ont effectué au moins un achat sur Internet au cours des 12 derniers mois?

n=1019



**89%**

### Fréquence d'achat

À chaque semaine	<b>8%</b>
À chaque mois	<b>40%</b>
Moins souvent	<b>52%</b>

*13% pour les 18 – 34 ans  
7% pour les 35 – 54 ans  
4% pour les 55 ans +*

*98% pour les 18 – 34 ans  
90% pour les 35 – 54 ans  
78% pour les 55 ans +*



## Type d'achat (sur Internet)

n=909

Livres	41%	Télécommunications	24%
Vêtements	40%	Abonnements	19%
Billets d'avion	39%	Location automobile	17%
Produits électroniques	33%	Cours	16%
Musique	25%	Entretien	7%
Produits pour la maison	20%	Services esthétiques	5%
Films	19%	Autres	6%
Forfaits vacances	18%	Aucun achat de services	39%
Jeux	15%		
Produits de beauté	14%		
Autres	57%		
Aucun achat de biens	1%		



3.4 types de biens achetés

**3.0** Au Québec  
**3.5** Reste du Canada

1.6 type de services achetés

**1.4** Au Québec  
**1.6** Reste du Canada

## Analyse

- C'est lorsque l'on superpose l'incidence d'achat sur Internet à celle d'autres moyens plus traditionnels que l'on peut apprécier la récente montée en puissance de la toile dans la consommation.
  - Le tiers des Canadiens a procédé à une transaction via téléphone, télécopieur ou par la poste. Bien que ces canaux de magasinage ne soient pas devenus marginaux, on peut néanmoins affirmer qu'ils sont déclinants et qu'Internet viendra un jour les déloger complètement.
- Ce constat nous apparaît important, dans la mesure où il permettra d'orienter les efforts communicationnels qui devraient être déployés. Autrement dit, si on désire mieux concentrer et orienter nos efforts, on pourrait poser le postulat suivant: Parler de contrats d'achats à distance, c'est forcément parler de contrats d'achats en ligne.
- D'ailleurs, le simple fait que les types achats réalisés à distance ailleurs que sur Internet ne diffèrent pas de ceux achetés en ligne vient appuyer l'hypothèse de la migration presque totale des achats à distance vers le numérique d'ici quelques années.



## Ont effectué au moins un achat à distance (excluant Internet) au cours des 12 derniers mois?

n=1019

# 32%

Dont...

Par téléphone: 26%

Par la poste: 13%

Par télécopieur: 4%

**32%** pour les 18 – 34 ans  
**35%** pour les 35 – 54 ans  
**28%** pour les 55 ans +

## Nombre de fois par type (parmi les répondants ayant acheté à distance autrement que sur Internet)

Par téléphone **2.2** (18% jamais)

Par télécopieur **0.2** (87% jamais)

Par la poste **0.9** (61% jamais)



## Type d'achats (Par la poste, par téléphone ou par télécopieur)

n=329

Livres	20%	Télécommunications	27%
Vêtements	18%	Abonnements	20%
Forfaits vacances	15%	Location automobile	15%
Billets d'avions	15%	Entretien	10%
Produits électroniques	15%	Cours	7%
Produits beautéés	12%	Services esthétiques	7%
Produits pour la maison	10%	Autres	5%
Films	8%	Aucun achat de services	34%
Musique	5%		
Jeux	3%		
Autres	50%		
Aucun achat de biens	10%		

2.0 types de biens achetés

1.4 type de services achetés



**1.2** pour les 18 – 34 ans  
**1.7** pour les 35 – 54 ans  
**1.5** pour les 55 ans +

## Analyse

- Le constat ne peut être plus clair et est sans appel: **Il existe une grande méconnaissance à travers l'ensemble du Canada des lois protégeant les Canadiens sur les contrats à distance.**
  - Un peu moins d'un répondant sur sept répond par la positive lorsqu'on leur pose la question. En revanche, un peu plus d'un Canadien sur cinq affirme qu'une telle loi n'existe pas. 
  - Les Québécois semblent plus au parfum de la loi, mais le niveau de notoriété (35%) démontre tout de même l'énorme défi communicationnel auquel les différents organismes voués à la défense des consommateurs feront face.
- On peut se décevoir d'un tel résultat, dans la mesure où les achats sur Internet se démocratisent et se multiplient, si bien que, théoriquement, les probabilités qu'un consommateur ait à se prévaloir de cette loi augmentent d'année en année.
- La grande popularité du web, combinée à la méconnaissance quasi-généralisée de la loi, fait donc en sorte qu'une campagne de communication pancanadienne pourrait se révéler pertinente, voire nécessaire.

### Analyse

- La profondeur de connaissance des lois protégeant les consommateurs par rapport aux contrats à distance se révèle en demi-teinte.
  - Moins du tiers des répondants connaissant la loi (donc environ 5% des Canadiens) estiment que leur connaissance de celle-ci est bonne ou excellente.
    - Il existe une certaine confusion quant aux types de canaux que protège cette loi.
    - Par contre, il semble clair pour une majorité de répondants que la loi s'applique tant aux produits qu'aux services.
- Les Québécois, qui démontraient une connaissance accrue des lois, démontrent également une profondeur de connaissance bonifiée comparativement à leurs voisins canadiens.
- Les répondants connaissant la loi affichent, du moins statistiquement, une bonne connaissance des renseignements que doit fournir le commerçant avant et après la transaction à distance. On doit toutefois apporter deux bémols à ces résultats à priori encourageants:
  - Ces questions n'ont été posées qu'aux répondants qui connaissent la loi, qui ont eux-mêmes avoué mal connaître la loi par la suite.
  - La mécanique du questionnaire et la complexité du sujet ont peut-être fait en sorte que des répondants ont été tenté de répondre par l'affirmative par gêne d'avoir déjà suffisamment démontré leur méconnaissance.



## Analyse

- Les répondants connaissant la loi affichent une bonne connaissance des motifs rendant possible pour un consommateur d'annuler un contrat à distance et à l'obligation du commerçant d'envoyer un résumé des conditions du contrat ainsi qu'une copie du contrat au consommateur après l'achat.
  - Il en va de même pour les obligations des deux parties lorsqu'un contrat à distance est annulé et pour l'application de la loi selon la localisation géographique du commerçant.
- Le tiers des répondants connaissant la loi ont déjà vécu un problème lors d'un achat à distance. 
- Les délais de livraison et la non-conformité du bien/service s'imposent sans surprise comme les deux types de problèmes les plus fréquemment rencontrés.

## Existe-t-il des lois sur les contrats à distance?

n=1019

Oui

14%

Non

21%

Ne sait pas

65%

18% Homme  
9% Femme

35% Au Québec  
6% Reste du Canada

73% Primaire/Secondaire  
67% Collégial  
58% Universitaire



## Niveau de connaissance des lois qui protègent les consommateurs\*

n=138

Excellente/Bonne

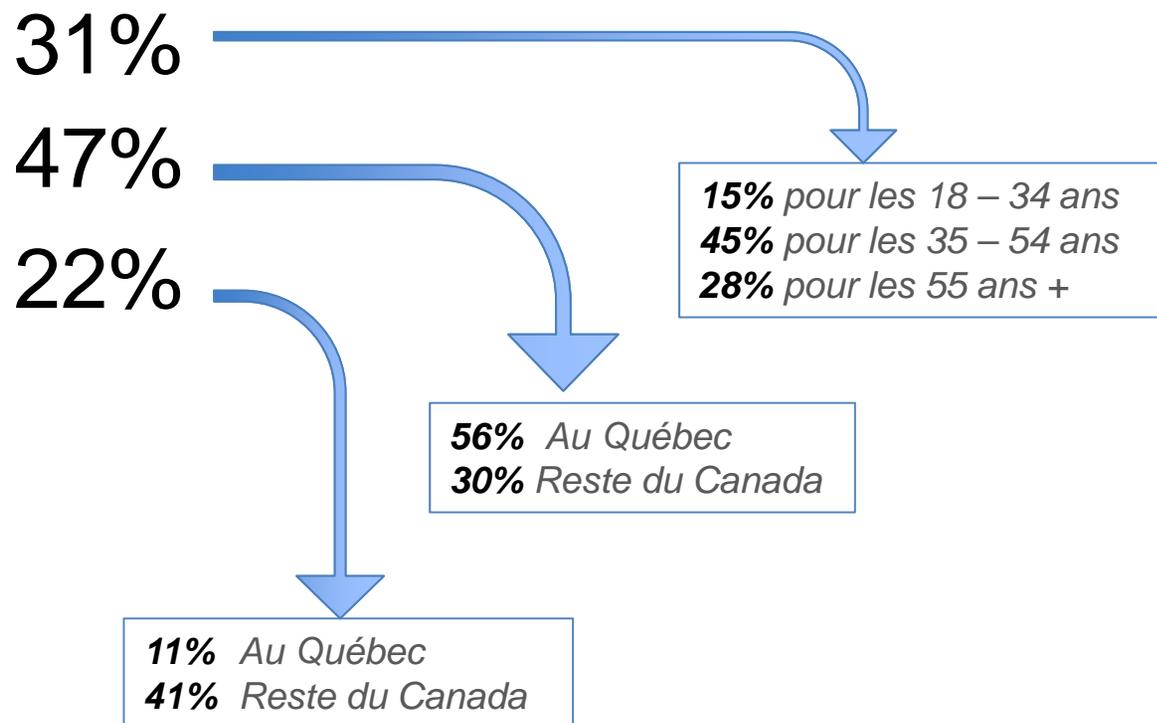
31%

Moyenne

47%

Je sais seulement que ces lois existent

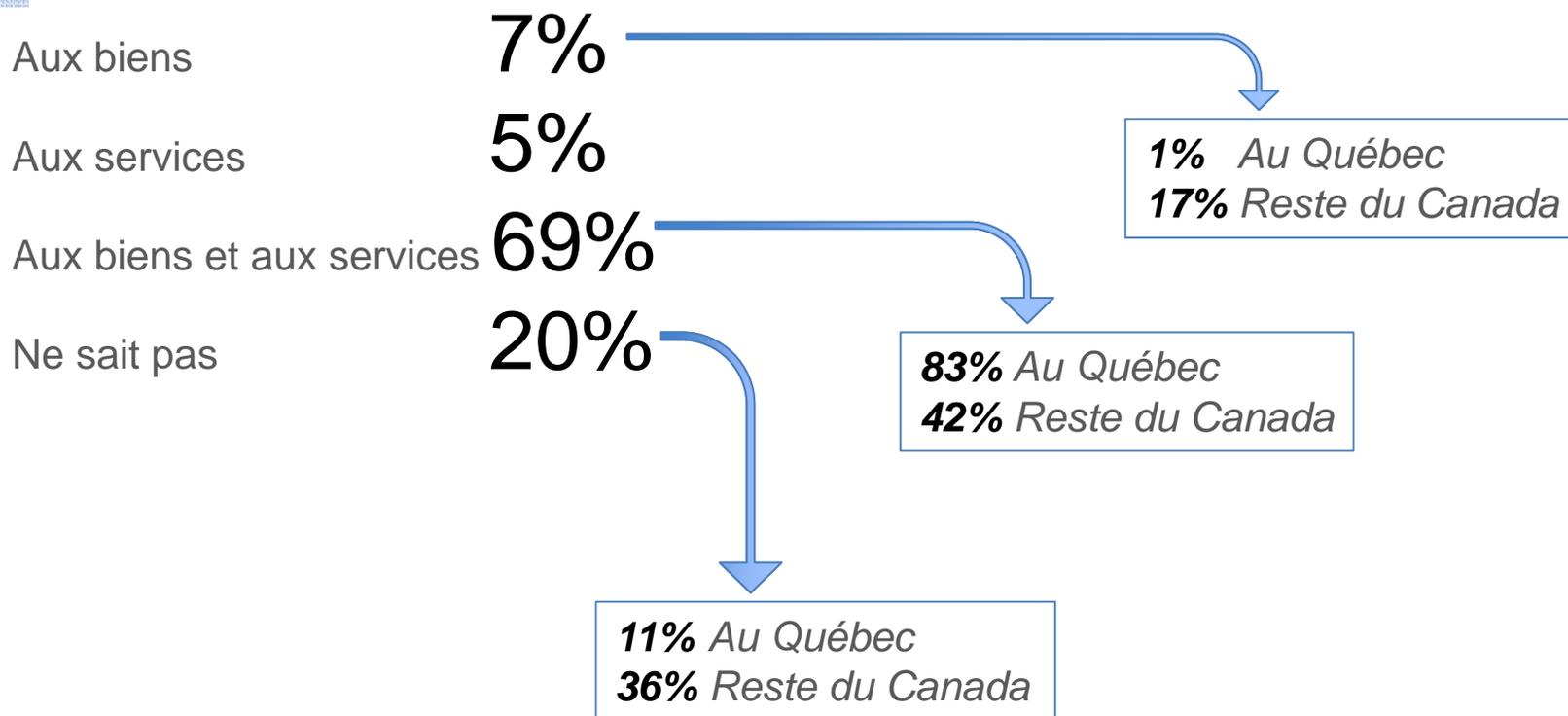
22%



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Les lois de votre province s'appliquent\* ...

n=138



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Types de contrats régis par la loi\*...

n=138

	<i>Oui</i>	<i>Non</i>	<i>Ne sait pas</i>
Contrats conclus par internet	66%	7%	28%
Contrats conclus par téléphone	67%	7%	27%
Contrats conclus par la poste	65%	6%	30%
Contrats conclus par télécopieur (fax)	44%	6%	50%



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Obligation du commerçant de donner les informations suivantes, AVANT la conclusion d'un contrat à distance\*

n=138

	<i>Oui</i>	<i>Non</i>	<i>Ne sait pas</i>
Ses coordonnées	<b>71%</b> (Qc :75%; RDC :63%)	<b>17%</b>	<b>12%</b>
La date et le mode de livraison	<b>74%</b> (Qc :85%; RDC :65%)	<b>11%</b>	<b>15%</b>
Le nom du transporteur	<b>52%</b> (Qc :56%; RDC :44%)	<b>22%</b>	<b>26%</b>
Les politiques d'annulation	<b>82%</b> (Qc :93%; RDC :59%)	<b>5%</b>	<b>14%</b>
Une description détaillée du prix	<b>89%</b> (Qc :98%; RDC :71%)	<b>2%</b>	<b>9%</b>
Une description fidèle du bien	<b>85%</b> (Qc :92%; RDC :72%)	<b>2%</b>	<b>13%</b>
Les exigences techniques	<b>58%</b> (Qc :67%; RDC :42%)	<b>17%</b>	<b>25%</b>



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Obligation du commerçant de donner les informations suivantes, AU MOMENT de la conclusion d'un contrat à distance\*

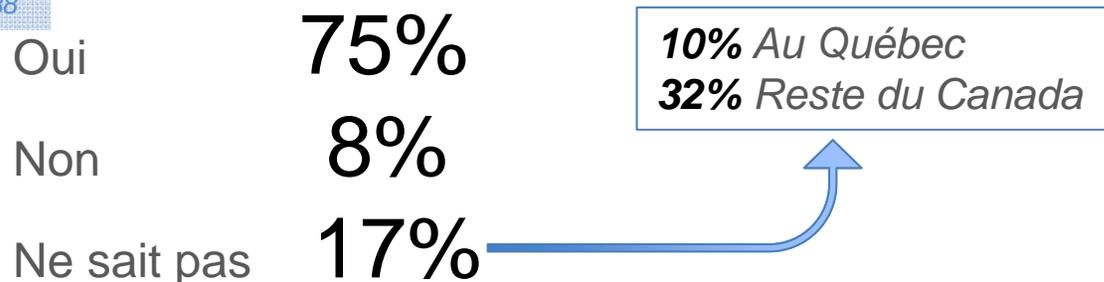
n=138

	Oui	Non	Ne sait pas
Ses coordonnées	69% (Qc :73%; RDC :61%)	15%	16%
La date et le mode de livraison	81% (Qc :88%; RDC :68%)	5%	14%
Les exigences techniques	60% (Qc :69%; RDC :43%)	11%	29%
Le prix détaillé	85% (Qc :96%; RDC :65%)	1%	13%
La description des autres frais applicables	81% (Qc :89%; RDC :64%)	7%	12%
Les modes et modalités de paiement	82% (Qc :92%; RDC :63%)	4%	14%
La date et le mode de transport	70% (Qc :56%; RDC :44%)	11%	19%
Les politiques d'annulation	82% (Qc :93%; RDC :60%)	3%	15%

\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Obligation du commerçant de fournir un résumé des conditions du contrat\*

n=138



## Après l'achat, obligation du commerçant de fournir une copie du contrat\*



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Permettre au consommateur d'annuler la vente \*

n=138

	Oui	Non	Ne sait pas
Avant la livraison	67% (Qc :73%; RDC :57%)	9%	24%
À l'intérieur d'un délai précis	70% (Qc :79%; RDC :52%)	11%	19%
Si la livraison est en retard	33% (Qc :33%; RDC :33%)	30%	38%
Si le bien ou le service ne sont pas livrés	76% (Qc :88%; RDC :53%)	5%	19%
Pas conforme à la description	76% (Qc :87%; RDC :55%)	4%	20%
Informations techniques non fournies	43% (Qc :47%; RDC :34%)	24%	34%
Résumé adéquat manquant	64% (Qc :73%; RDC :47%)	9%	28%
Impossible de corriger les erreurs	56% (Qc :63%; RDC :44%)	11%	33%
Aucune copie écrite envoyée	58% (Qc :63%; RDC :49%)	8%	34%



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## En cas d'annulation du contrat conclu la loi prévoit que\* ...

n=138

Le consommateur doit remettre le bien au commerçant	64%
Obligation de rembourser le consommateur dans un délai précis	63%
Le consommateur doit envoyer un avis au commerçant	54%
Aucun de ces choix n'est prévu par la loi	11%

**5%** Au Québec  
**23%** Reste du Canada

**21%** pour les 18 – 34 ans  
**10%** pour les 35 – 54 ans  
**2%** pour les 55 ans +

**47%** Travailleurs  
**73%** Sans emploi



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Les lois s'appliquent-elles lorsque le commerçant a sa \*...

n=138

	Oui	Non	Ne sait pas
place d'affaires dans votre province	<b>74%</b> (Qc :83%; RDC :58%)	<b>4%</b>	<b>22%</b>
place d'affaires dans une autre province	<b>54%</b> (Qc :60%; RDC :41%)	<b>15%</b>	<b>32%</b>
place d'affaires aux États-Unis	<b>38%</b> (Qc :41%; RDC :32%)	<b>25%</b>	<b>37%</b>
place d'affaires ailleurs dans le Monde	<b>32%</b> (Qc :37%; RDC :20%)	<b>27%</b>	<b>42%</b>



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Pour le commerçant qui refuse de rembourser le consommateur, la loi prévoit que le consommateur doit être remboursé par\* ...

n=138

L'émetteur de la carte de crédit

56%

L'émetteur de la carte de débit

28%

Les portefeuilles électroniques (ex. PayPal, etc.)

28%

Autres

4%

Aucun de ces choix

34%

**23% Homme**  
**53% Femme**

**11%** pour les 18 – 34 ans  
**48%** pour les 35 – 54 ans  
**37%** pour les 55 ans +

**67% Homme**  
**37% Femme**

**12%** Revenu de 55K\$ et moins  
**43%** Revenu de plus de 55K\$



\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

## Ont rencontré un problème lors d'un achat effectué à distance\*

n=44

32%

### Types de problèmes

Délais de livraison

Problèmes de conformité

Informations manquantes

Prix ou frais non conformes

Remboursement par le commerçant

Remboursement par l'émetteur de la carte

Autres

52%

35%

33%

25%

30%

16%

11%

16% Au Québec  
42% Reste du Canada

\* Questions posées seulement aux répondants connaissant l'existence d'un encadrement des contrats à distance (n=138)

### Analyse

- Lorsqu'on les expose aux différentes dispositions de la loi visant à les protéger pour les contrats à distance, une majorité de Canadiens affirment que celle-ci les protège suffisamment.
  - Les deux tiers croient être suffisamment protégés. Seulement 5% croient qu'elle ne les protège pas du tout.
- Seulement 7% des Canadiens ont déjà eu à invoquer les lois qui régissent les contrats à distance lors d'un différend avec un commerçant.
  - Il est difficile d'analyser ce résultat. D'une part, un faible pourcentage peut démontrer que les commerçants sont généralement de bonne foi ou que les consommateurs n'ont pas besoin d'invoquer la loi afin de régler un différend.
  - D'autre part, et de manière beaucoup plus insidieuse, on peut avancer que beaucoup plus de Canadiens se prévaudraient de leurs droits si ces derniers étaient mieux connus. Or, tel que nous l'avons vu précédemment, la loi se révèle vastement méconnue. Rappelons que ce 7% compte pour la moitié du score de notoriété de la loi.
- Le fort taux de règlement positif et la satisfaction en découlant lorsque la loi est évoquée constituent un autre argument militant en faveur d'une communication plus soutenue de son existence.
- Le quart des Canadiens ont déjà demandé à un intermédiaire de paiement (banques, compagnies de crédit, etc.) de rembourser les sommes versées à un commerçant alors qu'ils avaient annulé un contrat à distance.



## Les protections des lois de la province...\*



n=137

Protègent **adéquatement** les consommateurs

64%

Ne protègent pas **suffisamment** les consommateurs

25%

Ne protègent **pas du tout** les consommateurs

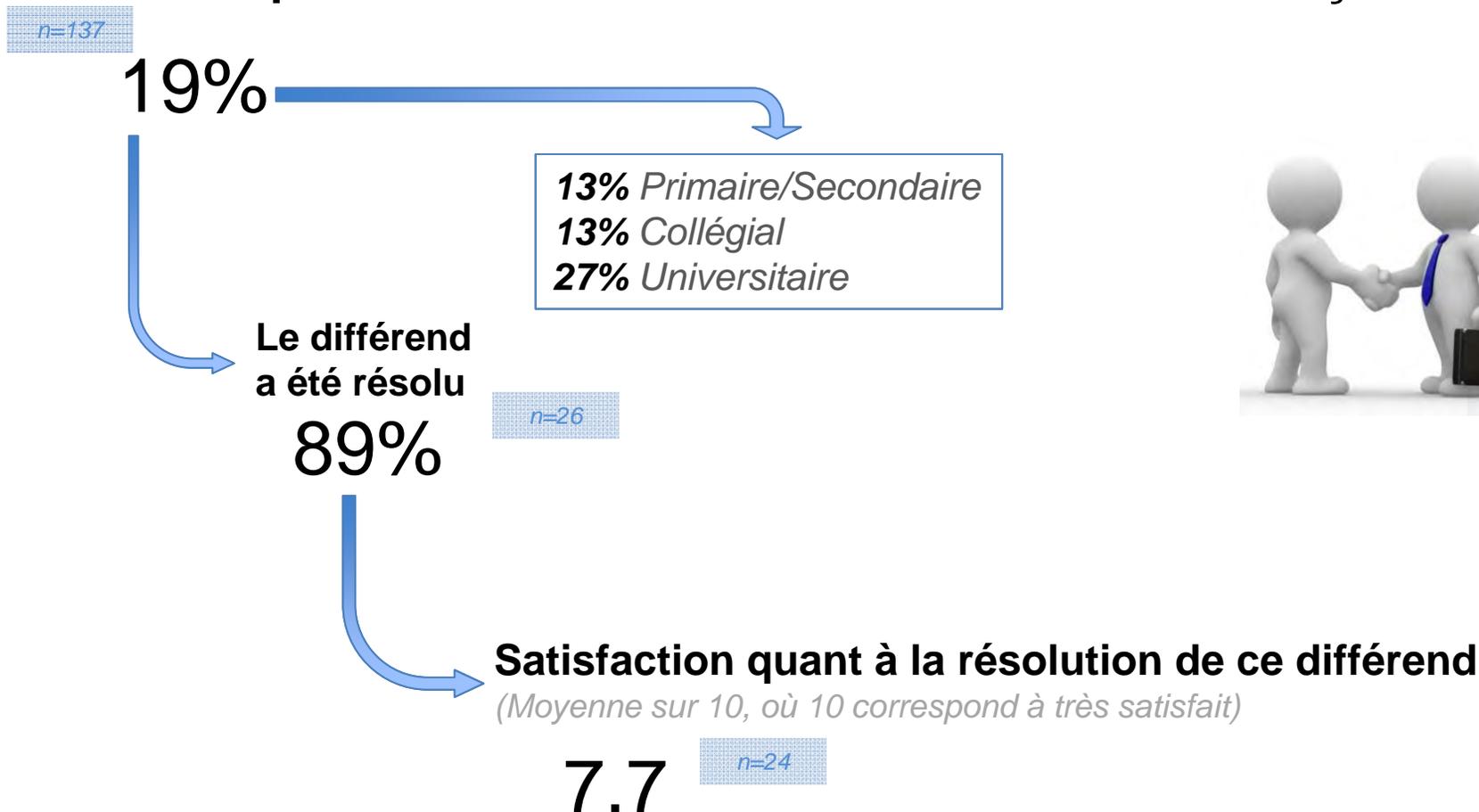
11%

5% *Au Québec*  
21% *Reste du Canada*



\* Réponses des répondants qui ont déclaré connaître l'existence d'un encadrement des contrats à distance (n=138)

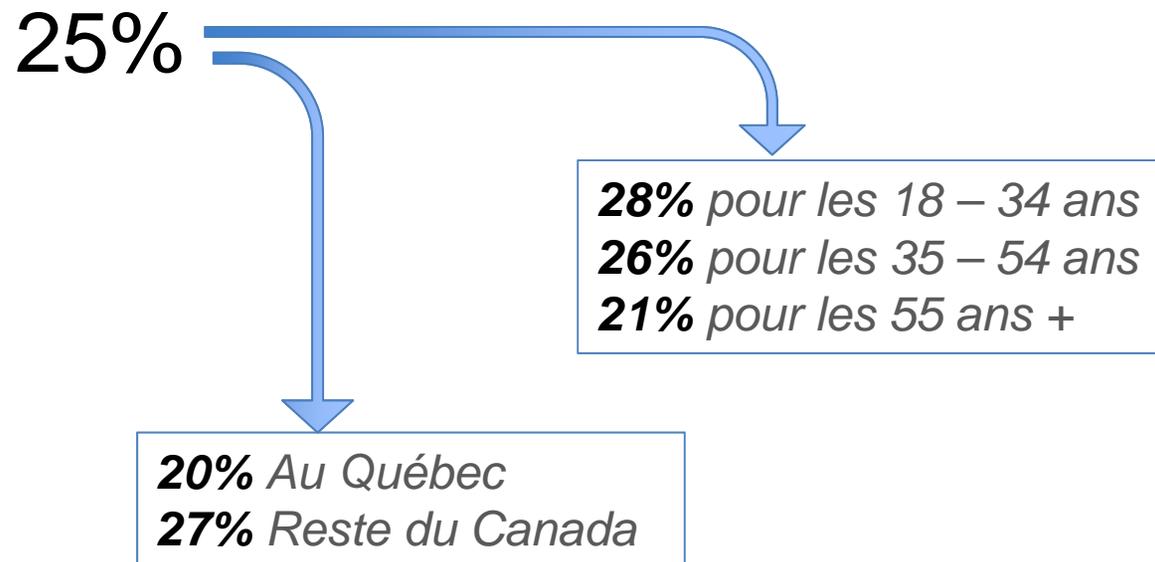
## Ont invoqué les lois lors d'un différend avec un commerçant



\* Réponses des répondants qui ont déclaré connaître l'existence d'un encadrement des contrats à distance (n=138)

## Ont déjà demandé à l'intermédiaire de paiement de faire le remboursement

n=1019



- **Internet:** La toile est devenue un canal de consommation incontournable. Ironiquement, elle regorge de forums et de sites permettant aux consommateurs de faire des choix plus éclairés, mais elle les livre également à des commerçants avec lesquels ils sont souvent peu familiers. Cette montée en puissance rend donc légitime la volonté de Union des Consommateurs de s'intéresser à la question des contrats à distance. 
- **Ciblage:** Afin de ne pas créer de confusion, nous croyons qu'il serait pertinent d'axer les communications et l'éducation sur les achats en ligne et non sur ceux réalisés via le téléphone, le télécopieur et la poste.
- **Méconnaissance:** Il existe une vaste méconnaissance de la loi portant sur les contrats à distance. Le taux de notoriété laisse en effet croire que l'on frôle le «zéro absolu».
- **Opportunités:** 7% de la population canadienne a déjà invoqué les lois qui régissent les contrats à distance lors d'un différend avec un commerçant. Ce résultat peut à priori paraître faible, mais il constitue néanmoins la moitié du score de notoriété de la loi. On peut donc affirmer avec certitude que de nombreux consommateurs ont été lésés parce qu'ils n'en connaissaient pas l'existence et que cette proportion pourrait croître en raison de la prolifération des achats en ligne.

- **Étapes:** La communication concernant la législation en général peut parfois apparaître comme étant aride, voire rébarbative pour certains citoyens/consommateurs. Les organismes responsables devront prendre acte de cette réalité et opter pour la stratégie des petits pas. Autrement dit, elle doit éviter de trop vouloir communiquer d'éléments au sein d'une seule campagne.
- **Notoriété:** Conséquemment au dernier point, les efforts consentis devraient viser à faire connaître la loi. La profondeur de connaissance pourrait faire l'objet de campagnes subséquentes. Une autre option pourrait s'inscrire dans la stratégie d'informer les Canadiens sur l'existence de la loi et de créer un microsite permettant de déployer davantage d'informations.





### Âge du répondant (variable pondérée)

18 – 24 ans	13%
25 – 34 ans	17%
35 – 44 ans	18%
45 – 54 ans	22%
55 – 64 ans	18%
65 ans +	10%

### Sexe (variable pondérée)

Homme	50%
Femme	50%

### Scolarité

Primaire/Sec.	25%
Collégial	37%
Universitaire	37%



### Occupation

Au travail à temps plein (plus de 30 h/semaine)	59%
Au travail à temps partiel (30 h/semaine ou moins)	11%
En chômage ou à la recherche d'emploi	3%
Retraité	19%
À la maison à temps plein	5%
Étudiant	3%



### Revenu

Moins de 15 000\$	3%
15 000\$ à 24 999\$	3%
25 000\$ à 34 999\$	9%
35 000\$ à 44 999\$	9%
45 000\$ à 54 999\$	10%
55 000\$ à 64 999\$	9%
65 000\$ à 84,999\$	14%
85 000\$ à 99 999\$	8%
100 000\$ et plus	20%
Je préfère ne pas répondre	14%





## Province

Terre-Neuve-et-Labrador	3.3%
Île-du-Prince-Édouard	0.3%
Nouvelle-Écosse	6.1%
Nouveau-Brunswick	1.9%
Québec	25.0%
Ontario	32.0%
Manitoba	4.0%
Saskatchewan	1.7%
Alberta	12.6%
Colombie-Britannique	13.2%



***Vers la connaissance***

1911 Des Prunelliers, Longueuil, QC  
[www.passagesmarketing.com](http://www.passagesmarketing.com)



## **Appendix 2: List of Websites Investigated**

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## LISTE DES SITES INTERNET – VENTE EN LIGNE

Liste des 30 sites Internet étudiés lors de notre enquête et noms des entreprises :

- |   |                                  |
|---|----------------------------------|
| 1. <a href="http://www.bell.ca">www.bell.ca</a>   | Bell Canada                      |
| 2. <a href="http://www.amazon.com">www.amazon.com</a>   | Amazon.com Inc.                  |
| 3. <a href="http://www.beyondtherack.com">www.beyondtherack.com</a>   | Beyond the Rack Inc.             |
| 4. <a href="http://www.telus.com">www.telus.com</a>   | Société TELUS Communications     |
| 5. <a href="http://www.teksavvy.com">www.teksavvy.com</a>   | TekSavvy Solutions Inc.          |
| 6. <a href="http://www.renaud-bray.com">www.renaud-bray.com</a>   | Librairie Renaud-Bray Inc.       |
| 7. <a href="http://www.bebe.com">www.bebe.com</a>   | Bebe Studio Inc.                 |
| 8. <a href="http://www.archambault.ca">www.archambault.ca</a>   | Groupe Archambault inc.          |
| 9. <a href="http://www.swim2000.com">www.swim2000.com</a>   | Swim2000 Inc.                    |
| 10. <a href="http://www.sears.ca">www.sears.ca</a>  | Sears Canada Inc.                |
| 11. <a href="http://www.ikea.com">www.ikea.com</a>  | Inter IKEA Systems B.V.          |
| 12. <a href="http://www.thesource.ca">www.thesource.ca</a>  | La Source Bell Électronique inc. |
| 13. <a href="http://www.groupon.ca">www.groupon.ca</a>  | Groupon, Inc.                    |
| 14. <a href="http://www.centreduplateau.qc.ca">www.centreduplateau.qc.ca</a>  | Le Centre du Plateau             |
| 15. <a href="http://www.netflix.com">www.netflix.com</a>  | Netflix Inc.                     |
| 16. <a href="http://www.centresablon.com">www.centresablon.com</a>  | Centre Père Sablon               |
| 17. <a href="http://magasin.iga.net/default.aspx">http://magasin.iga.net/default.aspx</a>                                   | Sobeys inc.                      |
| 18. <a href="http://www.ricardocuisine.com">www.ricardocuisine.com</a>  | Ricardo Media Inc.               |
| 19. <a href="http://www.futureshop.ca/fr-ca/accueil.aspx">http://www.futureshop.ca/fr-ca/accueil.aspx</a>                   | Future Shop                      |
| 20. <a href="http://www.bestbuy.ca">www.bestbuy.ca</a>  | Best Buy Canada Ltée             |
| 21. <a href="http://canada.forever21.com/Product/Main.aspx?BR=F21">http://canada.forever21.com/Product/Main.aspx?BR=F21</a> | Forever 21 inc.                  |
| 22. <a href="http://www.bloomingdales.com">www.bloomingdales.com</a>  | Bloomingdale's Inc.              |
| 23. <a href="http://www.chapters.indigo.ca">www.chapters.indigo.ca</a>  | Indigo Books & Music Inc.        |
| 24. <a href="http://www.onestopplus.com">www.onestopplus.com</a>  | OSP Group                        |
| 25. <a href="http://www.dell.ca">www.dell.ca</a>  | Dell Canada Inc.                 |
| 26. <a href="http://www.thinkgeek.com">www.thinkgeek.com</a>  | ThinkGeek inc.                   |
| 27. <a href="http://bananarepublic.gapcanada.ca/">http://bananarepublic.gapcanada.ca/</a>                                   | Gap Inc.                         |
| 28. <a href="http://www.sephora.ca">www.sephora.ca</a>  | Sephora USA inc.                 |
| 29. <a href="http://www.zara.ca">www.zara.ca</a>  | Zara                             |
| 30. <a href="http://store.thinkempire.com">store.thinkempire.com</a>  | Empire en ligne                  |

## **Appendix 3: Survey on Distance Contracts**

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## SECTION I : GÉNÉRAL

1. Dans quelle province résidez-vous?
  - Colombie-Britannique
  - Alberta
  - Saskatchewan
  - Manitoba
  - Ontario
  - Québec
  - Nouvelle-Écosse
  - Terre-Neuve et Labrador
  - Ile du Prince Edward
  - Nouveau-Brunswick
  - Yukon
  - Nunavut
  - Territoires du Nord-Ouest
  
2. Dans quel groupe d'âge vous situez-vous?
  - 18 à 24 ans
  - 25 à 34 ans
  - 35 à 44 ans
  - 45 à 54 ans
  - 55 à 64 ans
  - 65 à 74 ans
  - 75 ans et plus
  
3. Veuillez indiquer votre sexe
  - Homme
  - Femme

## SECTION II: HABITUDES D'ACHAT (CONTRATS À DISTANCE)

### Sous-section A : Achat sur Internet

4. Avez-vous effectué au moins un achat sur Internet au cours des 12 derniers mois?
  - Oui
  - Non (**prenez en compte la question no. Q8**)

5. À quelle fréquence avez-vous effectué des achats sur Internet au cours des **douze derniers mois**?

- Plusieurs fois par semaine
- Une fois par semaine
- Deux ou trois fois par mois
- Une fois par mois
- Moins qu'une fois par mois
- Une seule fois

6. Excluant les services, quel(s) **bien(s)** avez-vous acheté(s) sur Internet au cours des douze derniers mois?

*(Biens physiques ou non. Ex: Livre en téléchargement ou en papier)*

- Des vêtements
- Des chaussures
- Des livres
- Des produits de beauté et d'hygiène
- Des produits pour la maison (intérieur/extérieur-ex. décoration, électroménagers, etc.)
- Des produits électroniques (Télé, ordinateurs, accessoires, etc.)
- Des logiciels
- Des jeux
- De la musique
- Des films
- De la nourriture (ex. produits congelés, livraison de pizza et autres repas)
- Des magazines
- Des billets d'avion
- Des forfaits de vacances (croisière, et autres)
- Autres (Spécifiez)
- Aucun achat de bien

7. Excluant les biens, quel(s) **service(s)** avez-vous acheté(s) sur internet au cours des douze derniers mois?

- Télécommunications (service Internet, cellulaire, service de téléphonie)
- Services esthétiques
- Cours (langues, cuisine, autre)
- Entretien (ménage, voiture, fenêtres, etc.)
- Location automobile (voiture, camion, etc.)
- Location d'outils
- Abonnements
- Autres (Spécifiez)
- Aucun achat de service

### Sous-section B : autres modes d'achats

Les prochaines questions porteront sur les autres contrats à distance, c'est-à-dire les achats qu'il est possible de faire par téléphone, par la poste ou par télécopieur (fax) (cela exclut les achats faits sur Internet).

- 8a:** Au cours des 12 derniers mois, avez-vous fait des achats à distance, autrement que sur internet
- Oui
  - Non ( **passez à la question no. Q11**)

8. Au cours des 12 derniers mois, combien de fois avez-vous fait des achats à distance, autrement que sur internet :

#### **EN LIGNE**

- Par téléphone
- Par télécopieur (fax)
- Par la poste (envoi de commande par voie postale)

#### **EN LIGNE**

**Boite ouverte (permettre un nombre entre 1 et 100)**

9. Excluant les services, quel(s) **bien(s)** avez-vous acheté(s) à distance autrement que sur internet au cours des douze derniers mois?
- Des vêtements
  - Des chaussures
  - Des livres
  - Des produits de beauté et d'hygiène
  - Des produits pour la maison (intérieur/extérieur-ex. décoration, électroménagers, etc.)
  - Des produits électroniques (Télé, ordinateurs, accessoires, etc.)
  - Des logiciels
  - Des jeux
  - De la musique
  - Des films
  - De la nourriture (ex. produits congelés, livraison de pizza et autres repas)
  - Des magazines
  - Des billets d'avion
  - Des forfaits de vacances (croisière, et autres)
  - Autres (Spécifiez)
  - Aucun achat de bien

10. Excluant les biens, quel(s) **service(s)** avez-vous acheté(s) à distance autrement que sur internet au cours des douze derniers mois?

- Télécommunications (service Internet, cellulaire, service de téléphonie)
- Services esthétiques
- Cours (langues, cuisine, autre)
- Entretien (ménage, voiture, fenêtres, etc.)
- Location automobile (voiture, camion, etc.)
- Location d'outils
- Abonnements
- Autres (Spécifiez)
- Aucun achat de service

### SECTION III : CONNAISSANCE DU CADRE REGLEMENTAIRE PAR LE CONSOMMATEUR

11. -

**11(i)** À votre connaissance, existe-t-il dans votre province des dispositions ou lois particulières qui régissent les **contrats à distance** conclus entre un consommateur et un commerçant ?

- Oui
- Non (passez à la Q.22)
- Je ne sais pas (passez à la Q.22)

**11(ii)** Les lois de votre province qui régissent les **contrats à distance** conclus entre un consommateur et un commerçant s'appliquent-elles ...

**EN COLONNE**

- aux biens
- aux services
- aux biens et aux services
- je ne sais pas

11b. Dans votre province, est-ce que les contrats suivants entre un consommateur et un commerçant sont régis de façon particulière par la loi ?

**EN COLONNE**

- Oui
- Non
- Ne sait pas

**EN LIGNE**

- Contrats conclus par internet
- Contrats conclus par téléphone
- Contrats conclus par la poste
- Contrats conclus par télécopieur (fax)

***Voici quelques questions qui nous permettront d'évaluer votre niveau de connaissance des lois qui protègent les consommateurs dans votre province. Veuillez y répondre au meilleur de votre connaissance.***

12. De façon générale, quel est votre niveau de connaissance des lois qui protègent les consommateurs ?

- Excellente
- Bonne
- Moyenne
- Je sais seulement que ces lois existent

#### **DEMANDER À TOUS**

13. Selon vous, est-ce que le commerçant est tenu par la loi de donner au consommateur **AVANT** la conclusion d'un contrat à distance les renseignements suivants :

##### **EN COLONNE**

- Oui
- Non
- Je ne sais pas

##### **EN LIGNE**

##### **EN ROTATION**

- Ses coordonnées (nom, numéros de téléphone, adresse électronique)
- La date et le mode de livraison
- Le nom du transporteur (compagnie de livraison)
- Les politiques d'annulation / de retour de marchandise / d'échange ou de remboursement
- Une description détaillée du prix, des taxes et autres frais
- Une description fidèle du bien ou service vendu
- Les exigences techniques liées à l'utilisation du bien ou du service vendu

14. Selon vous, le commerçant est-il tenu par la loi de donner les renseignements suivants **AU MOMENT DE** la conclusion du contrat à distance:

##### **EN COLONNE**

- Oui
- Non
- Je ne sais pas

**EN LIGNE****EN ROTATION**

- Ses coordonnées (nom, numéros de téléphone, adresse électronique)
- Une description fidèle du bien ou service acheté
- Les exigences techniques liées à l'utilisation du bien ou du service acheté
- Le prix détaillé, le montant des taxes et les frais d'expédition du bien
- La description des autres frais applicables, s'il y a lieu
- Les modes et modalités de paiement
- La date et le mode de livraison
- Les politiques d'annulation / de retour de marchandise / d'échange ou de remboursement

15. Le commerçant a-t-il l'obligation de fournir expressément un **résumé** clair, qui permette au consommateur de corriger, refuser ou accepter les conditions du contrat?

- Oui
- Non
- Je ne sais pas

16. Selon vous, **après** un achat à distance, le commerçant a-t-il l'**obligation** :

*D'envoyer une copie (électronique ou papier) du contrat d'achat au consommateur?*

- Oui
- Non
- Je ne sais pas

16b. Selon vous, lors d'un achat à distance, le commerçant a-t-il l'**obligation** de permettre au consommateur d'annuler la vente :

- Oui
- Non
- Je ne sais pas

**EN LIGNE  
EN ROTATION**

- Avant la livraison
- À l'intérieur d'un délai précis, peu importe le motif
- Si la livraison est en retard
- Si le bien ou le service ne sont pas livrés
- Si le bien ou le service n'est pas conforme à la description
- Si le commerçant n'a pas fourni au consommateur les caractéristiques et informations techniques du bien
- Si le commerçant n'a pas donné au consommateur un résumé adéquat de la transaction
- Si le consommateur n'a pas eu la possibilité de corriger les erreurs du contrat avant de le conclure
- Si le commerçant n'a pas envoyé au consommateur une copie écrite du contrat (*électronique ou papier*) qu'ils ont conclu à distance

17. En cas d'annulation du contrat conclu avec le commerçant à distance, selon vous, **la loi** prévoit-elle que :

*Sélectionnez tout ce que la loi prévoit.*

Le consommateur doit envoyer un avis au commerçant?

Le consommateur doit remettre le bien au commerçant?

Le commerçant est obligé de rembourser le consommateur dans un délai précis?

Aucun de ces choix n'est prévu par la loi

18. Dans le cas où le commerçant refuse de rembourser le consommateur, **la loi** prévoit-elle que le consommateur doit être remboursé par le tiers qui a transmis le paiement, c'est-à-dire par :

*Sélectionnez tout ce que s'applique.*

L'émetteur de la carte de crédit

L'émetteur de la carte de débit

Portefeuilles électroniques (ex. PayPal, etc.)

Autre (spécifiez)

Aucun de ces choix

19. Selon vous, les lois qui protègent les consommateurs de votre province s'appliquent-elles lorsque

**EN COLONNE**

- Oui
- Non
- Je ne sais pas

**EN LIGNE**

Le commerçant a sa place d'affaires dans votre province de résidence, et ce même s'il s'agit d'une compagnie étrangère?

Le commerçant a sa place d'affaires dans une autre province/territoire au Canada?

Le commerçant a sa place d'affaires aux États-Unis?

Le commerçant a sa place d'affaires ailleurs dans le monde?

20. Avez-vous déjà rencontré des problèmes lors d'un achat effectué à distance (sur internet, par téléphone, par la poste ou par télécopieur (fax)) ?

- Oui
- Non (passez à la question 22)

21. Si vous avez répondu oui à la question 20, indiquez si les problèmes rencontrés lors d'un tel achat ont été reliés à une ou plusieurs des situations suivantes :

Information manquante dans la présentation du bien ou service, avant l'achat

Problème lié au délai de livraison du bien

Problème lors du remboursement par le commerçant

Problème lors du remboursement par l'émetteur de la carte de crédit

Problème de conformité du bien ou du service à la description qui en était faite

Prix ou frais non conformes ou non annoncés

Autre (spécifiez)

**SECTION IV : PERCEPTION DU CONSOMMATEUR DU CADRE RÉGLEMENTAIRE**

22. Si on vous dit que les lois de votre province prévoient ce qui suit en matière de protection des consommateurs lors de la conclusion des **contrats à distance** :

Québec- <i>Loi sur la protection du consommateur</i> Colombie-Britannique- <i>Business Practices and Consumer Protection Act</i> Ontario – <i>Loi de 2002 sur la protection du consommateur</i> Alberta – <i>Internet sales contract regulation</i> Saskatchewan- <i>Consumer Protection Act</i> Manitoba- <i>Loi sur la protection du consommateur</i> Nouveau-Brunswick : Aucune disposition particulière Terre-Neuve et Labrador : <i>Consumer Protection and Business Practices Act</i> Île-du-Prince-Édouard: Aucune disposition particulière Nouvelle-Écosse : <i>Internet Sales Contract Regulations</i> T-N-O : Aucune disposition particulière Yukon : Aucune disposition particulière Nunavut : Aucune disposition particulière
---

Diriez-vous que les lois en vigueur dans votre province...?

protègent **adéquatement** les consommateurs

ne protègent pas **suffisamment** les consommateurs

ne protègent **pas du tout** les consommateurs

**SECTION V : UTILISATION DES MESURES DE PROTECTION**

23. Avez-vous déjà invoqué les lois qui régissent les contrats à distance lors d'un différend avec un commerçant?

- Oui (passez à la question 24)
- Non (passez à la question 25)

24. Est-ce que le différend entre vous et le commerçant a été résolu?

- Oui
- Non (passez à la question 25)

24b. Quel était votre degré de satisfaction quant à la résolution de ce différend :

De 1 à 10

24c. Qu'est-ce qui a joué sur votre degré de satisfaction?

*Sélectionnez tout ce qui s'applique.*

- Je suis arrivé facilement à une entente avec le commerçant
- Je ne suis pas arrivé à une entente avec le commerçant
- Le commerçant a refusé de respecter les dispositions de loi
- J'ai refusé l'offre de règlement qui ne respectait pas la loi
- Le commerçant a spontanément respecté les dispositions de loi
- Il n'y a eu aucune coopération de la part du commerçant et j'ai dû faire une plainte à l'organisme gouvernemental chargé de l'application de la loi dans ma province
- J'ai dû poursuivre le commerçant en cour
- J'ai annulé le contrat mais le commerçant a refusé de procéder au remboursement
- Le dossier a été réglé suite à l'intervention d'un tiers (spécifiez) \_\_\_\_\_
- Les procédures pour régler le différend ont été trop longues
- Les procédures pour régler le différend ont été trop coûteuses
- Autres (spécifiez) \_\_\_\_\_

25. Avez-vous déjà demandé à l'intermédiaire de paiement (banque, émetteur de carte de crédit PayPal, etc.) de vous rembourser les sommes versées à un commerçant alors que vous aviez annulé un contrat à distance?

- Oui
- Non

26. –

***Pour conclure, voici quelques questions qui nous permettront de classer vos réponses avec celles des autres répondants.***

27. Veuillez indiquer votre langue maternelle
- Anglais
  - Français
  - Autre
28. Quel est le niveau de scolarité le plus avancé que vous ayez complété?
- Primaire ou moins
  - Secondaire
  - Collégial/CÉGEP
  - Universitaire
29. Laquelle des situations suivantes décrit **le mieux** votre situation actuelle?
- Au travail à temps plein (plus de 30 heures par semaine)
  - Au travail à temps partiel (30 heures par semaine ou moins)
  - En chômage ou en recherche d'emploi
  - Retraité
  - À la maison à temps plein
  - Étudiant
30. Dans laquelle des catégories suivantes se situe le revenu annuel de **votre ménage** (avant impôts)?
- Moins de 15 000\$
  - 15 000\$ à 24 999\$
  - 25 000\$ à 34 999\$
  - 35 000 à 44 999\$
  - 45 000 à 54 999\$
  - 55 000\$ à 64 999\$
  - 65 000\$ à 84,999\$
  - 85 000\$ à 99 999\$
  - 100 000\$ et plus
  - Je préfère ne pas répondre
31. Veuillez indiquer les trois premiers caractères de votre code postal  
\_\_\_\_\_ (lettre, nombre, lettre)

**SECTION I : GENERAL**

1. In what province do you reside?
  - British Columbia
  - Alberta
  - Saskatchewan
  - Manitoba
  - Ontario
  - Québec
  - Nova Scotia
  - Newfoundland and Labrador
  - Prince Edward Island
  - New Brunswick
  - Yukon
  - Nunavut
  - Northwest Territories
  
2. To which of the following age groups do you belong?
  - 18 to 24 years
  - 25 to 34 years
  - 35 to 44 years
  - 45 to 54 years
  - 55 to 64 years
  - 65 to 74 years
  - 75 years and over
  
3. Please indicate your gender
  - Man
  - Woman

**SECTION II: PURCHASING HABITS (REMOTE CONTRACTS)****Sub-section A : Internet purchases**

4. Did you make at least one purchase over the Internet during the last 12 months?
  - Yes
  - No (**go to Q8**)

5. How often did you purchase over the Internet during the last twelve months?
- Several times a week
  - Once a week
  - Two or three times a month
  - Once a month
  - Less than once a month
  - Only once
6. Excluding services, what are the goods that you bought over the Internet within the previous twelve months?  
(Not limited to physical goods. Ex: downloaded e-books and/or printed books)
- Clothes
  - Shoes
  - Books
  - Hygienic and beauty/care products
  - Household products (indoors/outdoors-ex. decoration, domestic appliances, etc.)
  - Electronic products (TV, computers, various accessories, etc.)
  - Software programs
  - Games
  - Music
  - Movies
  - Food (ex. frozen products, pizza deliveries and other meals)
  - Newspapers, magazines
  - Plane tickets
  - Vacations packages (cruise and others)
  - Other (Specify)
  - None
7. Excluding goods, what are the services that you bought over the Internet within the previous twelve months?
- Telecommunications (Internet service, mobile phone service and other services)
  - Aesthetical services or treatments
  - Lessons (language, cooking, other)
  - Maintenance (house-cleaning, car, window cleaning, etc.)
  - Vehicle rental (car, truck, etc.)
  - Tools rental
  - Subscriptions
  - Other (Specify)
  - None

**Sub-section B : Other purchases of goods and services**

**The next questions refer to other types of remote contracts: purchases made by phone, by mail or by fax (excluding the purchases made over the Internet).**

8a. Did you make distance purchases, other than over the Internet, during the last 12 months?

- Yes
- No (**go to Q11**)

8. Within the previous twelve months, how often did you make distance purchases by any means other than over the Internet :

**EN LIGNE**

- By phone
- By fax
- By mail (sending your order by mail)

**EN LIGNE**

**Boite ouverte (permettre un nombre entre 1 et 100)**

9. Excluding services, what goods did you buy at a distance by any means other than over the Internet, within the previous twelve months?

- Clothes
- Shoes
- Books
- Hygienic and beauty/care products
- Household products (indoors/outdoors-ex. decoration, domestic appliances, etc.)
- Electronic products (TV, computers, various accessories, etc.)
- Software programs
- Games
- Music
- Movies
- Food (ex. frozen products, pizza deliveries and other meals)
- Newspapers, magazines
- Plane tickets
- Vacations packages (cruise and others)
- Other (Specify)
- None

10. Excluding goods, what services did you buy at a distance by any means other than over the Internet, within the previous twelve months?

- Telecommunications (Internet service, mobile phone service and other services)
- Aesthetical services and treatments
- Lessons (language, cooking, other)
- Maintenance (house-cleaning, car, window cleaning, etc.)
- Vehicle rental (car, truck, etc.)
- Tools rental
- Subscriptions
- Other (Specify)
- None

**SECTION III : CONSUMER'S UNDERSTANDING OF THE REGULATORY FRAMEWORK**

11. (i) Do you know if there are particular laws in your province which regulate distance contracts between a consumer and a supplier?

- Yes
- No (Pass to Q22)
- I don't know (pass to Q22)

11(ii) Do laws of your province regulating distance contracts between a consumer and a supplier apply to...

- Contracts concerning goods
- Contracts concerning services

11b. Do you know if the following remote contracts between a consumer and a supplier are governed by law in your province?

**EN COLONNE**

Yes

No

I don't know

**EN LIGNE**

- Contracts concluded via Internet
- Contracts concluded By phone
- Contracts concluded By mail
- Contracts concluded By fax

***Here are some questions regarding remote contracts regulation, which will allow us to estimate your level of knowledge of the laws protecting the consumers in your province. Please answer to the best of your knowledge.***

12. What is your general level of knowledge regarding the laws which protect the consumers?

- Excellent
- Good
- Medium
- I only know that these laws exist

**DEMANDER À TOUS**

13. In your opinion, does law impose on the supplier to provide the consumer with the following information **BEFORE** concluding a remote contract:

**EN COLONNE**

- Yes
- No
- I don't know

**EN LIGNE**

**EN ROTATION**

- His/her contact details (name, telephone numbers, e-mail)
- The delivery date and the mode of transportation
- The identity of the shipper
- The supplier's policies on cancellation, return, exchange and refund
- Detailed price, taxes and other charges
- An accurate description of the goods or services to be sold
- The technical requirements regarding the use of goods or services to be sold

14. In your opinion, does law impose on the supplier to provide the consumer with the following information **AT THE TIME** of the conclusion of a remote contract

**EN COLONNE**

- Yes
- No
- I don't know

**EN LIGNE**

**EN ROTATION**

- His/her contact details (name, telephone numbers, e-mail)
- An accurate description of the goods or services bought
- The technical requirements regarding the use of the goods or services bought
- Detailed price, taxes and shipping charges
- The description of other charges, if any
- The terms and methods of payment
- The delivery date and the mode of transportation
- The supplier's policies on cancellation, return, exchange and refund

15. Does the supplier have the obligation to expressly provide the consumer with a clear **summary**, which allows the consumer to correct, refuse or accept the terms of the distance contract?

- Yes
- No
- I don't know

16. In your opinion, does the supplier have the **obligation** to provide the consumer with a copy of the contract **after** concluding a remote contract?

- Yes
- No
- I don't know

16b. In your opinion, does the supplier have the **obligation** to allow the consumer to cancel the sale **after** concluding a remote contract?

- Yes
- No
- I don't know

#### **EN LIGNE**

#### **EN ROTATION**

- To allow the consumer to cancel the sale:
  - Before the delivery
  - For any reason, within a precise timeframe
  - If the delivery is late
  - If the goods or services bought are not delivered
  - If the goods or services do not conform to the description provided by the supplier
  - If the supplier did not provide the consumer with the technical requirements regarding the use of goods or services bought
  - If the supplier did not provide the consumer with an accurate summary of the transaction
  - If the consumer did not have the opportunity to correct the proposed remote contract's errors before concluding it
  - If the supplier did not provide the consumer with a written copy of the remote contract (electronic or paper copy)
  -

17. In your opinion, in case of cancellation of the remote contract, does the law stipulate that :

*Select all that the law stipulates.*

- The consumer have to send a notice to the supplier?
- The consumer have to return the goods to the supplier?
- The supplier have to reimburse the consumer, within a precise time frame?
- None of the above

18. If the supplier refuses to reimburse the consumer, does **the law** stipulate that the consumer can be reimbursed by the third party which transmitted the payment (intermediary payment service provider), i.e.:

*Select all that applies.*

- The credit card issuer
- The debit card issuer
- Digital wallets (eg. PayPal, etc.)
- Other (specify)
- None of the above

19. In your opinion, the laws protecting the consumer in your province apply if :

**EN COLONNE**

- Yes
- No
- I don't know

**EN LIGNE**

- The supplier has its place of business in your province, even if it's a foreign company?
- The supplier has its place of business in another Canadian province/territory?
- The supplier has its place of business in the United States?
- The supplier has its place of business somewhere else in the world?

20. Have you ever experienced problems during a purchase made at a distance (via Internet, by phone, by mail or by fax)?

- Yes
- No (go to question 22)

21. If you answered **yes** to question 20, indicate if the problems experienced during a remote purchase involved one or several of the following situations :

- Missing information in the presentation of the goods or the services, before its purchase
- Problems related to delivery's deadline of the goods or services
- Problems related to refunding by the supplier
- Problems related to refunding by the credit card issuer
- Problems related to the lack of conformity of the good or service with the initial description
- Price or charges not in compliance with the offer or not announced
- Other (specify)

#### SECTION IV : CONSUMER'S PERCEPTION OF THE REGULATORY FRAMEWORK

22. If we tell you that the law regarding consumer's protection during the conclusion of remote contracts in your province stipulates the following

Québec- *Consumer Protection Act*  
British Columbia- *Business Practices and Consumer Protection Act*  
Ontario – *Consumer Protection Act 2002*  
Alberta – *Internet sales contract regulation*  
Saskatchewan- *Consumer Protection Act*  
Manitoba- *Consumer Protection Act*  
New Brunswick : No specific provision or law  
Newfoundland and Labrador : *Consumer Protection and Business Practices Act*  
Île-du-Prince-Édouard: *Aucune disposition particulière*  
Nova Scotia : *Internet Sales Contract Regulations*  
Northwest Territories : No specific provision or law  
Yukon : No specific provision or law  
Nunavut : No specific provision or law

Would you say that the laws in force in your province ... ?

- Adequately** protect the consumers
- Do not **sufficiently** protect the consumers
- Do not protect the consumers **at all**

#### SECTION V : USE OF PROTECTIVE MEASURES

23. During a dispute with a supplier, have you ever invoked the laws which govern the remote contracts?
- Yes (go to question 24)
  - No (go to question 25)

24. Was the dispute between you and the supplier solved?

##### EN COLONNE

- Yes
- No (go to question 25)

24b. Please rate your level of satisfaction with the dispute resolution:

Scale from 1 to 10.

24c. What influenced your degree of satisfaction?

*Select all that apply.*

**EN LIGNE**

- The supplier and I easily came to an agreement
- The supplier and I did not come to an agreement
- The supplier refused to respect the provisions of the law
- I refused a settlement offer which did not conform with the law
- The supplier spontaneously respected the provisions of the law
- There was no cooperation from the supplier and I had to make a complaint to the governmental body in charge of the law enforcement in my province
- I had to sue the supplier
- I cancelled the contract, but the supplier refused to reimburse me
- The file was settled following the intervention of a third party (specify)\_\_\_\_\_
- Dispute settlement proceedings were too long
- Dispute settlement proceedings were too expensive
- Other (specify)\_\_\_\_\_

25. After cancelling a sale, did you ever ask the intermediary payment service provider (bank, credit card issuer, PayPal, etc.) to reimburse you the amount paid to the supplier for a remote contract?

- Yes
- No

26. -

***In conclusion, here are a few questions that will enable us to classify your answers with those of other respondents.***

27. What is your mother tongue ?

- English
- French
- Other

28. What is the highest level of schooling you have completed?

- Primary
- Secondary
- College
- University

29. Which of the following situations **best** describes your current situation

- Working full-time (over 30 hours per week)
- Working part-time (30 hours per week or less)
- Unemployed or looking for work
- Retired
- At home full-time
- Student

30. In which of the following groups is your annual household income before taxes?

- Less than 15 000\$
- 15 000\$ to 24 999\$
- 25 000\$ to 34 999\$
- 35 000 to 44 999\$
- 45 000 to 54 999\$
- 55 000\$ to 64 999\$
- 65 000\$ to 84,999\$
- 85 000\$ to 99 999\$
- 100 000\$ and more
- I prefer not to answer

31. Please indicate the first three characters of your postal code. \_\_\_\_\_

[LETTER,NUMBER,LETTER]

**Appendix 4: Questionnaire for Consumer Protection Agencies**

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## LA RÉGLEMENTATION DES CONTRATS À DISTANCE: LE TEMPS D'UN BILAN

QUESTIONNAIRE DESTINÉ AUX AGENCES GOUVERNEMENTALES CHARGÉES DE LA PROTECTION DES CONSOMMATEURS

*Projet financé par le Bureau de la consommation (Industrie Canada)*

Septembre 2013

### **Présentation de l'organisme:**

Union des consommateurs est un organisme à but non lucratif du Québec qui regroupe plusieurs Associations coopératives d'économie familiale (ACEF), l'Association des consommateurs pour la qualité dans la construction (ACQC) ainsi que des membres individuels. La mission d'Union des consommateurs est de représenter et défendre les droits des consommateurs, en prenant en compte de façon particulière les intérêts des ménages à revenu modeste.

Union des consommateurs agit principalement sur la scène nationale, auprès de diverses instances politiques, réglementaires ou judiciaires et sur la place publique. Parmi ses dossiers privilégiés de recherche, d'action et de représentation, mentionnons le budget familial et l'endettement, l'énergie, les questions liées à la téléphonie, la radiodiffusion, la télédistribution et l'inforoute, la santé, les produits et services financiers, les pratiques commerciales, ainsi que les politiques sociales et fiscales.

### **Présentation du projet :**

Le projet de recherche intitulé *La réglementation des contrats à distance - Le temps d'un bilan* porte sur une analyse complète du cadre réglementaire canadien des contrats à distance et l'évaluation du degré de connaissance qu'ont les consommateurs canadiens des lois applicables et des protections offertes en matière de contrats à distance. Notre recherche comprend donc une étude du degré de suffisance et d'efficacité des protections offertes aux consommateurs canadiens. Notre objectif est d'identifier, le cas échéant, les failles dans les protections offertes au Canada.

Pour ce faire, nous faisons en premier lieu une étude comparative du cadre réglementaire canadien avec les développements récents en matière de réglementation des contrats à distance en Europe. Afin d'évaluer le degré de connaissance des consommateurs, nous menons un sondage auprès de 1, 000 Canadiens. Dans le cadre

#### *La force d'un réseau*

##### **Nos membres associatifs**

ACEF ABITIBI-TÉMISCAMINGUE  
ACEF AMIANTE – BEAUCE – ETCHEMINS  
ACEF DE L'EST DE MONTRÉAL

ACEF DE L'ÎLE-JÉSUS  
ACEF DE LANAUDIÈRE  
ACEF DU NORD DE MONTRÉAL  
ACEF ESTRIE

ACEF GRAND-PORTAGE  
ACEF MONTRÉGIE-EST  
ACEF RIVE-SUD DE QUÉBEC  
ACQC

6226, rue Saint-Hubert, Montréal (Québec) Canada H2S 2M2

T : 514 521 6820 | Sans frais : 1 888 521 6820 | F : 514 521 0736

info@uniondesconsommateurs.ca | www.uniondesconsommateurs.ca

de notre recherche, nous tenterons également de connaître l'utilisation que font les agences gouvernementales chargées de la protection des consommateurs des lois qu'elles sont chargées d'appliquer afin de mieux protéger les consommateurs parties à un contrat à distance. Pour ce faire, nous sollicitons les organismes gouvernementaux chargés de l'application des lois de protection des consommateurs afin de connaître, entre autres d'autres, les éléments suivants: si des recours liés à des contrats à distance ont été entrepris par les agences gouvernementales, les types de plaintes reçues, le nombre de demandes d'information reçues de la part de consommateurs, l'existence de programmes de sensibilisation, d'éducation ou autre portant sur les contrats à distance, etc.

## **B. Le questionnaire :**

### **(i) Identification de votre organisme:**

Nom :

Adresse :

Personne ressource :

Fonction :

No . de téléphone :

Courriel :

**(ii) Au cours des cinq (5) dernières années avez-vous reçu des plaintes ou des demandes d'information de consommateurs concernant les contrats à distance? Si c'est le cas, veuillez indiquer le nombre de plaintes et/ou de demandes d'information reçues.**

**(iii) Veuillez cocher le type de questions qui portent sur les contrats à distance le plus souvent posées par les consommateurs :**

- Application et/ou portée de la loi**
- Protections offertes**
- Obligations de divulgation qui incombent au commerçant**
- Autres obligations du vendeur/commerçant**
- Droit d'annulation du contrat**
- Obligation de remboursement des montants payés**
- Rétrofacturation**
- Recours**
- Autres**

**(iv) Si vous disposez d'exemples plus précis de demandes d'information ou de plaintes de la part des consommateurs, veuillez les indiquer ici :**

**(v) Quels types de conseils offrez-vous aux consommateurs qui signalent le non-respect de leurs droits dans le cadre de la conclusion d'un contrat à distance ou qui demandent de l'information quant à l'application de la loi (démarches possibles, droit applicable, recours, etc.)?**

**(vi) Quelles sont les démarches et actions entreprises par votre organisme afin de conscientiser les consommateurs quant à leurs droits et recours en lien avec les contrats à distance (ex. campagne publicitaire, brochure, dépliant, site Internet, cahier d'information, etc. ?)**

**(vii) Selon vous, quel est le degré de connaissance des consommateurs du cadre réglementaire des contrats à distance?**

- Excellent**
- Bon**
- Assez bon**
- Insatisfaisant**

**(viii) Avez-vous entrepris des démarches afin de conscientiser les commerçants au sujet des obligations qui leur incombent en vertu des lois sur le contrat à distance et des droits dont bénéficient les consommateurs? Si oui, veuillez indiquer quelques exemples :**

**(ix) Selon vous, quel est le degré de connaissance des commerçants de votre province du cadre réglementaire des contrats à distance?**

- Excellent**
- Bon**
- Assez bon**
- Insatisfaisant**

**(x) Quelles sont les démarches et actions entreprises par votre organisme afin de faciliter la mise en œuvre du cadre réglementaire sur les contrats à distance (ex. : conciliation, médiation, etc.)?**

**(xi) Au cours des cinq dernières années, est-ce que votre organisme a entrepris des recours à l'encontre de commerçants qui ne respectent pas les lois encadrant les contrats à distance? Si oui, pouvez-vous nous indiquer la nature et le nombre de recours, ainsi que le résultat des poursuites (ex. taux de succès, meilleure conformité, etc.)?**

**(xii) Au cours des cinq dernières années, est-ce que votre organisme a mis en œuvre d'autres types de mesures (ex. mesures et sanctions administratives, suspensions de permis, mises en demeure, injonctions, etc.) à l'encontre de commerçants qui ne respectent pas les lois sur les contrats à distance? Si oui, pouvez-vous nous indiquer le résultat de ces mesures (ex. taux de succès, etc.)?**

**(xiii) Au cours des cinq dernières années, est-ce que votre organisme a mené des enquêtes de conformité auprès des commerçants pour évaluer le degré de conformité aux lois sur les contrats à distance? Si oui, pouvez-vous nous indiquer le résultat de ces enquêtes ?**

**(xiv) Quels sont les avantages et inconvénients du cadre réglementaire tel que conçu et appliqué dans votre province?**

**(xv) S'il y a lieu, quelles sont les améliorations qui pourraient être apportées à l'encadrement des contrats à distance?**

**(xvi) Autres commentaires :**

Auriez-vous l'amabilité de nous faire parvenir vos commentaires au plus tard le **vendredi, 1<sup>er</sup> novembre 2013**, par courriel, à l'adresse suivante [idelapeta@uniondesconsommateurs.ca](mailto:idelapeta@uniondesconsommateurs.ca) ?

Pour toute information, n'hésitez pas à nous contacter.

**Merci de votre collaboration!**

UNION DES CONSOMMATEURS

Ioana Delapeta, Analyste en pratiques commerciales et protection du consommateur

Téléphone: (514) 521-6820 poste 240

Télécopieur: (514) 521-0736

Courriel: [idelapeta@uniondesconsommateurs.ca](mailto:idelapeta@uniondesconsommateurs.ca)

## REGULATING DISTANCE CONTRACTS: TIME TO TAKE STOCK

### QUESTIONNAIRE FOR THE GOVERNMENT AGENCIES IN CHARGE OF CONSUMER PROTECTION

*Project funded by Industry Canada's Office of Consumer Affairs*

September 2013

#### ***Presentation of our organization:***

*Union des consommateurs* is a non-for-profit organization in Quebec which regroups several cooperative Associations of family economy (ACEF), the *Association des consommateurs pour la qualité dans la construction* (ACQC), as well as individual members. *Union des consommateurs'* mission is to represent and defend consumer rights, taking into special consideration the interests of low-income households.

*Union des consommateurs* acts mainly on the national stage, with diverse political, statutory or judicial authorities and in the public arena. Among its privileged fields of research, action and representation, we can mention household budget and indebtedness, energy, telecommunications, broadcasting, Info way, health, financial products and services, commercial practices, and social and fiscal policies.

#### ***Union des consommateurs' study:***

Our research project is entitled *Regulating distance contracts: Time to take Stocks*. It covers a complete analysis of the Canadian regulatory framework of distance contracts and the evaluation of the degree of knowledge Canadian consumers might have of the applicable laws and the protection offered with regard to remote contracts. Thus, our research includes a study of the degree of sufficiency and efficiency of the protections given to the Canadian consumers, our goal being to identify, where applicable, the weaknesses in the available protections in Canada.

In order to achieve that, we are first of all conducting a comparative study of the Canadian regulatory framework with the recent developments regarding regulations of remote contracts in Europe. We are also carrying out a survey of 1,000 Canadians in order to assess consumers' knowledge of the legal framework.

Within the framework of our research, we attempt to find out how government agencies responsible for consumer protection apply the laws in order to better protect consumers entering a remote contract. Therefore, we are asking these agencies to participate in our research so we can find out, among other elements, the following: if these organizations

#### *La force d'un réseau*

##### **Nos membres associatifs**

ACEF ABITIBI-TÉMISCAMINGUE  
ACEF AMIANTE – BEAUCE – ETCHÉMIN  
ACEF DE L'EST DE MONTRÉAL

ACEF DE L'ÎLE-JÉSUS  
ACEF DE LANAUDIÈRE  
ACEF DU NORD DE MONTRÉAL  
ACEF ESTRIE

ACEF GRAND-PORTAGE  
ACEF MONTRÉGIE-EST  
ACEF RIVE-SUD DE QUÉBEC  
ACQC

6226, rue Saint-Hubert, Montréal (Québec) Canada H2S 2M2

T : 514 521 6820 | Sans frais : 1 888 521 6820 | F : 514 521 0736

info@uniondesconsommateurs.ca | www.uniondesconsommateurs.ca

have carried out inquiries regarding distance contracts, the type of complaints received from consumers in this particular area, the existence of awareness, education or other programs on the subject, etc.

***B. The questionnaire :***

**(i) Identify your organization:**

Name :

Address :

Contact person :

Fonction :

Telephone number :

E-mail :

**(ii) In the last five (5) years, did you receive complaints or information requests from consumers regarding remote contracts? If so, please indicate the number of complaints and/or information requests received.**

**(iii) Please indicate the type of question most frequently asked by consumers on the subject:**

- Application and/or coverage of the law
- Protections offered
- Supplier's disclosure obligations
- Supplier's other obligations
- Cancellation rights
- Supplier's obligation to refund the consumer
- Retro billing
- Legal remedies
- Other

**(iv) If you have specific examples of information requests and/or complaints from consumers, please indicate them here:**

(v) What kind of advices do you give consumers who report on suppliers' failure to respect their rights within the framework of the conclusion of a remote contract or ask for information regarding the application of the law in force in that specific area (possible approach, applicable law, legal remedies, etc.)?

(vi) What initiatives and actions were undertaken by your organization to raise consumers' awareness with regard to their rights and remedies in the matter of remote contracts (eg. advertising campaign, brochure, unfolding, web site, information documents, etc.?)

(vii) In your opinion, what is the consumers' level of knowledge as to the regulatory framework of remote contracts?

- Excellent
- Good
- Relatively good
- Unsatisfactory

(viii) Did you undertake initiatives to raise suppliers' awareness regarding their obligations under the laws regulating remote contracts, as well as the rights which benefit the consumers? If yes, please indicate some examples:

(ix) In your opinion, what is the suppliers' level of knowledge as to the regulatory framework of remote contracts?

- Excellent
- Good
- Relatively good
- Unsatisfactory

**(x) What initiatives did your organization take to facilitate the implementation of the regulatory framework in connexion with distance contracts (eg. conciliation, mediation, etc.)?**

**(xi) In the last five years, did your organization take any legal recourse against suppliers who failed to respect the laws regarding distance contracts? If so, could you indicate the nature and the number of these recourses, as well as their outcome (eg. rate of success, better compliance, etc.)?**

**(xii) In the last five years, did your organization undertake other type of measures (eg. administrative measures or penalties, licence suspension, formal notices, injunctions, etc.) against the suppliers who did not respect the laws governing distance contracts? If so, could you indicate the result of these measures (eg. rate of success, etc.)?**

**(xiii) In the last five years, did your organization implement compliance investigations in order to verify suppliers' respect of the regulatory framework for remote contracts? If so, could you indicate the result of these investigations?**

**(xiv) What are the advantages and inconveniences of the regulatory framework for remote contracts such as conceived and applied in your province?**

**(xv) What improvements could be brought to the legal framework on remote contracts?**

**(xvi) Other comments :**

Please e-mail us your answers/comments by **Friday, November 1<sup>st</sup>, 2013** at [idelapeta@uniondesconsommateurs.ca](mailto:idelapeta@uniondesconsommateurs.ca).

For further information, do not hesitate to contact us.

**We would like to thank you once again for your participation.**

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