

## Ending abusive clauses in consumer contracts

*Executive summary*  
September 2011

Consumer contracts often abound with clauses highlighting the imbalance between merchants and consumers. Under statutory provisions, the applicability of many contract clauses may be questioned – some may be deemed abusive while others are the focus of specific regulations. However, provisions concerning abusive clauses can be difficult for the courts to interpret and apply; this is probably one of the reasons why the problem persists and consumer contracts still contain many clauses that may appear abusive.

Consumer and research associations have conducted many studies focusing on abusive clauses. Moreover, the vast majority of consumer problems reported by the media stem from contract clauses of an abusive nature, such as amending a contract unilaterally. Most jurisdictions acknowledge the scope of the problem. In Quebec, the Government has given the Consumer Protection Act regulatory authority to identify prohibited clauses in consumer contracts. Foreign jurisdictions (such as the European Union, Great Britain, France, Germany and Australia) have adopted various approaches to dealing with abusive clauses. These approaches include developing lists of clauses deemed to be abusive, or establishing specific procedures for timely handling of complaints.

How can Canada manage the problem of abusive clauses, so that consumers are properly protected and the market is regulated?

Given that foreign jurisdictions have adopted various measures to limit or prohibit the use of abusive clauses in consumer contracts, those approaches could likely serve as models for an appropriate regulatory framework. What methods are used to prohibit clauses? What types of tests are advocated to determine whether a clause is abusive? What types of tests are advocated to determine whether a clause is abusive? What measures are implemented to ensure compliance with the prohibition of a clause? What are the advantages and disadvantages of the various regulatory procedures?

In Canada as well, governments are attempting to restore a certain balance in consumer contracts by regulating abusive clauses. Is the problem being handled in a complete and effective manner across Canada? Is the approach uniform?

In this study, we have compared Quebec regulations with those of other Canadian provinces, but also with what is found in foreign jurisdictions, whether in common law or civil law countries: Great Britain, the United States, Australia, France, the Netherlands, Germany and Brazil. Since some of the countries studied are members of the European Union, we have also examined the latter's directives and their effects on national laws.

### *La force d'un réseau*

#### Nos membres réguliers

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  
union@consommateur.qc.ca | [www.consommateur.qc.ca/union](http://www.consommateur.qc.ca/union)

Of course, the goal of this research was to determine if there are weaknesses in our consumer legislation with regard to abusive clauses, and to identify – through our comparative study, among other means – possible solutions or improvements that could be applied in Quebec and Canadian consumer law.

After outlining the history of abusive clause regulations, we studied Canadian and foreign legislation by examining and comparing various means of regulation, protection and redress.

Through a summary and analysis of the measures adopted on the American continent and in Europe against abusive or unfair clauses, we have identified the best practices observed in the course of our research.

We recommend notably that provincial governments include, in their consumer protection legislation, explicit measures to control abusive clauses in consumer contracts, and that eventual legislation be harmonized among provincial jurisdictions.

---

French version available on our website.

The present document summarizes a research report published by Union des consommateurs in September 2011 as part of a research project funded by Industry Canada's Office of Consumer Affairs. Union des consommateurs has received funding from Industry Canada's Contributions Program for Non-profit Consumer and Voluntary Organizations. The views expressed in this document are not necessarily those of Industry Canada or of the Government of Canada.