

FROM THE WAREHOUSE TO THE LIVING ROOM: THE EVOLUTION OF E-COMMERCE

FINAL REPORT OF THE RESEARCH PROJECT PRESENTED
BY UNION DES CONSOMMATEURS TO

**THE OFFICE OF CONSUMER AFFAIRS OF INNOVATION,
SCIENCE AND ECONOMIC DEVELOPMENT CANADA**

November 2023



Photo : CaraMapr.nl on the Unsplash platform

From the Warehouse to the Living Room: The Evolution of E-Commerce

THE TEAM

REPORT PRODUCED BY

Union des consommateurs

RESEARCH AND WRITING

Julia Atack

EDITORIAL DIRECTOR

Marcel Boucher

TRANSLATION

Moderna Reg'd – Mark Manning

COLLABORATION

Many thanks to Marc Lacoursière, Pierre Descarie,
Chrystel Maurice, Carolina Muñoz Jasa



7000 avenue du Parc, Suite 201
Montreal, Quebec H3N 1X1
Telephone : 514 521-6820
Fax : 514 521-0736

info@uniondesconsommateurs.ca
www.uniondesconsommateurs.ca

MEMBER ORGANIZATIONS OF UNION DES CONSOMMATEURS :

ACEF Appalaches Beauce Etchemins
ACEF de Laval
ACEF du Nord de Montréal
ACEF Estrie
ACEF Montérégie-Est
ACQC
ACEF de l'Est de Montréal
ACEF du Grand-Portage
ACEF du Sud-Ouest de Montréal
ACEF Lanaudière
ACEF Rive-Sud de Québec
Centre d'éducation financière EBO
CIBES de la Mauricie
SAC de la Mauricie

THE REPORT

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

© Union des consommateurs — 2023

Reproduction of the report is authorized provided the source is acknowledged. Any reproduction or use for commercial purposes is strictly prohibited.

UNION DES CONSOMMATEURS



Union des consommateurs (UC) is a non-profit organization comprised of 14 consumer rights groups.

UC's mission is to represent and defend the rights of consumers, with particular 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 sectors, particularly via its research 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 their communities.

UC acts mainly at the national level by representing the interests of consumers before political or regulatory authorities, in public forums, or through class actions. Its priority issues, in terms of research, action and advocacy, include the following: household finances and debt, energy, issues related to telecommunications, broadcasting and the Internet, health, financial products and services, as well as social and fiscal policies.

Table of Contents

0. Introduction	7
1. Overview of E-Commerce	9
Definitions	9
Electronic commerce (e-commerce).....	9
Electronic transaction (e-transaction)	9
Parties to the electronic transaction: overview, roles and responsibilities	10
Suppliers.....	10
Sellers.....	11
Third-party sellers	11
Dropshippers	12
Online marketplace operators	12
Delivery service providers	14
Payment service providers.....	15
Social network operators.....	16
History of E-Commerce	16
The evolution of e-commerce.....	16
Impact of the COVID-19 pandemic.....	17
Business entry in the e-commerce market during the pandemic	19
Growing importance of platforms during the pandemic.....	20
Findings.....	23
2. Overview of the Legal Framework	24
Canadian Legislative Framework: Guidelines	24
Internet Sales Contract Harmonization Template	24
Canadian Code of Practice for Consumer Protection in Electronic Commerce.....	26
Canadian Legislative Framework: Provincial	28
E-commerce laws	28
Application of private international law	31
Overview of Relevant Canadian Case Law.....	33
Directive 2019/2161 of the European Parliament and of the Council	34
Findings.....	38
3. Survey: Consumer Experiences, Knowledge and Perceptions	39
Introduction and Methodology	39
E-commerce Usage.....	39
E-commerce-Specific Problems Reported by Consumers	39

Lack of information.....	40
Late delivery	42
Product never delivered or received.....	42
Product does not match the description	43
Problems related to the COVID-19 pandemic	45
Recourse.....	46
Consumer Knowledge	47
Identification, roles and responsibilities of parties.....	47
Chargebacks.....	49
Law enforcement	49
Consumer Perceptions and Concerns	49
Findings.....	52
4. Field Survey	54
Introduction	54
Objectives.....	54
Selection of sellers.....	54
Degree of Compliance by Type of Seller	55
Results: compliance by type of seller (in number and percentage).....	62
Review of Third Parties: Roles, Responsibilities and Information.....	63
Marketplace operators	63
Delivery services.....	81
Payment services.....	81
Findings.....	84
5. Analysis: Adequacy of Canadian Legislative Frameworks.....	87
Application and Suitability of the Legal Frameworks.....	87
Pre-contractual disclosure.....	87
Delivery.....	90
Chargebacks.....	90
Deadlines and procedure	94
Gaps in the Existing Legal Framework	94
Application of the law to third parties.....	94
User comments.....	100
Application of private international law	101
Findings.....	103
6. Expert Interviews	105

The State of E-Commerce in Canada and Problems Encountered by Consumers	106
Canadian E-Commerce Laws	107
Chargebacks	110
European Union Directive 2019/2161	110
Responsibilities of Marketplace and Platform Operators.....	112
Findings.....	115
7. Conclusion	117
8. Recommendations.....	119

0. Introduction

E-commerce has come a long way since consumers first began conducting transactions online in the 1990s. Over the past few decades, e-commerce has become an increasingly important part of Canadians' shopping habits. Moreover, many new players have emerged in the course of this evolution: third-party sellers, marketplace operators, payment service providers, social network operators and more. In 2020, these trends became more visible than ever, as consumers and merchants turned intensively to e-commerce, due to the closures caused by the Covid-19 pandemic.

In this report, we seek to understand the impact of this evolution on consumers. To that end, we examine the entire online transaction from the consumer's point of view. From the moment the consumer visits a company's transactional website to the moment the goods are delivered to his home, we look at how the transaction unfolds, the actors with whom the consumer deals, the problems he encounters and the remedies available to him. We look at the consumer's relationship with non-traditional actors and third-parties in online transactions, as well as the e-commerce framework applicable to these various players. In so doing, we attempt to paint a picture of e-commerce in Canada from a consumer protection perspective, examining the evolution of e-commerce to ascertain whether it has accentuated the difficulties encountered by consumers, whether new problems have arisen over time, and whether the existing legal framework remains adequate.

The task is immense, as there are many different types of online transaction. We have therefore limited the scope of our research to the online purchase of physical goods. We do not examine the sale of digital goods, such as files, subscriptions to online services and so on. Nor do we examine the purchase of services, such as flights, travel, accommodation, etc. This is not because these areas are without interest; indeed, we found a great deal of research on the problems that consumers encounter when purchasing digital goods or services online. But these types of transactions pose their own problems, which are sometimes very different from those that consumers encounter when ordering a physical good online. That said, we think some of our conclusions are applicable to e-commerce transactions generally, and that they can be extended to areas other than those specifically covered by our report.

We have also chosen not to address certain e-commerce issues which are of vital importance but which exceed the scope of this report. In particular, we do not address issues relating to privacy and the use of personal data in e-commerce, nor do we examine the notion of clicking to consent (or "clickwrap" agreements) in online transactions. Although these issues have serious implications for consumer rights, they are far too vast to be examined in detail here, and are already the subject of other reports.

The first part of our report presents an overview of e-commerce. We provide a summary of the identity, roles and responsibilities of the various parties involved in e-commerce transactions, including sellers and third parties. In examining third parties, we focus on those who act as intermediaries (middlemen) between sellers and consumers. We then examine the evolution of e-commerce, taking into account the impact of the COVID-19 pandemic.

In the second part of the report, we examine the legislative framework for e-commerce in Canada, particularly the provincial laws adopted in the 2000s to regulate online purchasing. We also look at a recent European Union directive that regulates many important aspects of e-commerce.

In the third part, we present consumers' experiences, knowledge and perceptions of e-commerce, mainly by examining the results of a survey of over 1,000 Canadian consumers, and incorporating findings from other sources.

The fourth part of our report focuses on the results of our field survey, which analyzed the compliance of online merchants, both on their own websites and on marketplaces, with existing e-commerce laws. In this section, we also examine the third parties who were involved in the online transactions we studied, looking at their roles and the presence of information on their responsibilities and policies.

In the fifth part, we bring together the results of this research and verify the adequacy of the existing legal framework to protect consumers.

Finally, in section six, we present the views of three experts we consulted on our results.

1. Overview of E-Commerce

Definitions

Electronic commerce (e-commerce)

In this report, we use the term “electronic commerce” (e-commerce) as defined by the Office québécois de la langue française: e-commerce is **“all commercial activities carried out via computer networks, particularly the Internet, including the online promotion and sale of products and services, the sale of information and the exchange of electronic correspondence¹.”**

There are several types of e-commerce, including business to business (B2B), business to consumer (B2C), consumer to consumer (C2C), and even between business and government².

Electronic transaction (e-transaction)

We use the term “electronic transaction” (e-transaction) as defined by the Office québécois de la langue française, i.e. a **“secure transaction that is carried out, during an online purchase or payment, via the Internet network³.”**

Although there are many types of online transactions, including banking transactions, when we refer to an e-transaction in this report we are generally referring to **a contract concluded over the Internet between a consumer and a supplier for the purchase of goods or services.**

¹ Office québécois de la langue française (OQLF), *Grand dictionnaire terminologique*, article taken from the Canadian Institute of Chartered Accountants, *Dictionnaire de la comptabilité et de la gestion financière*, 2006, “commerce électronique,” online: https://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?Id_Fiche=506566m. Our translation.

² Organisation for Economic Co-operation and Development (OECD), *OECD Economic Outlook*, 67, Vol. 1, 2000, p. 195, online: https://www.oecd-ilibrary.org/economics/oecd-economic-outlook-volume-2000-issue-1_eco_outlook-v2000-1-en.

³ OQLF, *Vocabulaire de la prestation de services*, 2010, “transaction électronique,” online: https://www.oqlf.gouv.qc.ca/ressources/bibliotheque/dictionnaires/terminologie_pds/fiches/transaction_electronique.html. Our translation.

Parties to the electronic transaction: overview, roles and responsibilities

In theory, a purchase is made between two parties: a seller and a buyer. However, several parties are involved in every e-transaction, and their roles are not always clearly defined or understood. Most online transactions involve several third parties. Some act as intermediaries, enabling the interaction between seller and consumer or the fulfillment of their respective obligations. Examples include delivery companies and payment service providers. These types of third parties are generally known to the consumer; the consumer may even have a contract with them. Certain third parties also play a role in e-transactions but interact only with the seller, often without the consumer's knowledge, for example, delivery insurers, third-party logistics companies and so on. In this report, we examine only those third parties who act as intermediaries between sellers and consumers in e-transactions.

In this section, we will identify the parties to an e-transaction and examine their roles and responsibilities.

Suppliers

In this report, we will use the term “supplier” to refer to a specific legal concept. “Supplier” is generally only vaguely defined in Canadian consumer protection legislation, and indeed, the term varies from one province to another⁴. In general, the term is used to determine to whom consumer protection legislation applies, and is in contrast with the notion of a private individual (contracts between individuals are generally excluded from these laws). In 2001, the *Internet Sales Contract Harmonization Template* (see section 2) proposed the following definition of a supplier:

“[...] a person who in the course of the person's business provides goods or services to consumers⁵.”

Although this definition is broad, it does contain some ideas that are largely considered essential for determining the scope of application of consumer protection laws:

- The supplier is a person (natural or legal);
- The supplier provides a good or service to a consumer (and not to another supplier, company, craftsman, etc.);
- The supplier provides the good or service in the course of the supplier's business, i.e., as part of the supplier's professional activity⁶.

⁴ Some provinces have adopted definitions, others have not. See, for example, the definition of “supplier” in the *Business Practices and Consumer Protection Authority Act*, SBC. 2004, c. 2, s. 1. Ontario also adopts the concept of “supplier,” which is defined, and “consumer agreement” is between a supplier and a consumer: *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Schedule A, s. 1. In Quebec, the term “merchant” (*commerçant*) is defined in the English version of the *Consumer Protection Act*, CQLR. c. P-40.1. s. 1, but not in the French version. However, section 2 of this Act states that it “applies to every contract for goods or services entered into between a consumer and a merchant in the course of his business.” The Consumer Measures Committee (see note 5) uses the term “vendor”.

⁵ Consumer Measures Committee, *Internet Sales Contract Harmonization Template*, 2001, sec. 1(g), online: <https://ised-isde.canada.ca/site/consumer-measures-committee/en/formal-agreements/internet-sales-contract-harmonization-template>. The *Canadian Code of Practice for Consumer Protection in Electronic Commerce* defines “vendor” as: “an organization, whether a for profit business or a non-profit entity, conducting electronic commerce directly with consumers”: Consumer Measures Committee, *Canadian Code of Practice for Consumer Protection in Electronic Commerce*, 2004, p.5, online: <https://publications.gc.ca/collections/Collection/lu23-1-2004E.pdf>.

⁶ This last idea has been developed in Quebec case law and doctrine: “the status of supplier [*commerçant*] therefore requires the presence of 3 cumulative elements: a commercial act, an activity with a profit-making or speculative

All those **who carry out a commercial act or enter into a consumer contract in the course of their business** are therefore considered to be suppliers, and are covered by the law.

This definition can be applied to many different types of actor. Not only can professional sellers be considered suppliers, but also financial institutions, platform operators, etc., if they provide a service as part of their professional activity. It's important to note that this designation (and the obligations that flow from it) determines a legal status that applies to anyone who meets the definition, regardless of how they present themselves.

In e-transactions, suppliers are responsible for fulfilling the obligations set out in their contracts with consumers (for example, in a sale, transferring ownership of a good and delivering it, or providing a service...). The supplier is also generally subject by law to numerous other responsibilities, depending on the jurisdiction. For example, Canadian provincial laws may establish that it is the supplier's responsibility to offer certain warranties, and to respect the specific rules governing e-transaction contracts, as will be discussed in greater detail in Section 2 of this report.

Sellers

One of the key players in any e-transaction is the seller. Online sellers can be suppliers or private individuals. Some e-commerce sellers operate both an online and an in-person store, while others transact exclusively online. Two new types of seller have emerged over the years in the development of e-commerce: third-party sellers and dropshippers.

Third-party sellers

Third-party sellers are vendors who sell on a marketplace rather than on their own website⁷. Third-party sellers are new players in e-transactions, emerging with the creation of online marketplaces. The number of third-party sellers on online marketplaces is on the rise⁸.

Third-party sellers can be suppliers or individuals. Some marketplaces allow only suppliers (businesses) to sell to consumers (B2C); others allow both individuals and suppliers to sell (C2C and B2C). On the latter types of marketplace, the status of the third-party seller is not always clear. When a third-party seller is a supplier, it is bound by all the obligations that the law imposes on suppliers; its third-party status does not, a priori, entail any different application of the law. That said, the extent of its responsibilities is not always clear, particularly when the marketplace operator takes control of important elements of the transaction or of the obligations that the law normally imposes on sellers (disclosure of information, guarantees, etc.).

purpose (e.g.: retail sales, money lending); the permanence of the activity, a continuity over time; the commercial activities must be exercised habitually and not occasionally." Pierre-Claude Lafond, *Droit de la protection du consommateur*, Cowansville, Éditions Yvon Blais, 2015, electronic version (without pagination). Our translation.

⁷ Many sellers sell on marketplaces as well as on their own websites. See, e.g.: Comité Sectoriel de Main-D'œuvre du Commerce de Détail, "Portrait de l'évolution du commerce électronique au Québec," p. 10, online: <https://www.detailquebec.com/wp-content/uploads/2019/09/Revue-de-presse-et-statistiques-Commerce-electronique.pdf>.

⁸ See, e.g.: Amit Mathradas, "The Prevalence Of The Online Marketplace Model and Its Impact On E-Commerce," in *Forbes.com*, February 22, 2021, online: <https://www.forbes.com/sites/forbesbusinesscouncil/2021/02/22/the-prevalence-of-the-online-marketplace-model-and-its-impact-on-e-commerce/?sh=5bdcf18378fa>: "Walmart's marketplace, for example, reported that the number of sellers on its platform more than doubled in July 2020, adding more than 50,000 new sellers since July 2019."

Dropshippers⁹

Dropshipping is a “business model in which the sale is made by an intermediary who never takes physical possession of the product¹⁰.” In other words, the consumer buys a good from a dropshipper who has never seen the good and never handles it; the dropshipper usually buys the good from a retailer who will ship it directly to the consumer.

This practice is not new in itself, but it is particularly common among online sellers¹¹. As the Office québécois de la langue française explains:

Since it requires no inventory management, warehousing or delivery, dropshipping is a low-cost-of-entry e-commerce model, making it popular with new or part-time suppliers¹².

This practice became more popular in e-commerce after the 2010s. It can be found both on marketplaces such as eBay or Amazon and on independent websites hosted on platforms such as Shopify's¹³. When a seller does dropshipping on a marketplace, he is both a third-party seller and a dropshipper.

Like third-party sellers, dropshippers can in some cases be suppliers, if the criteria laid down in the law apply to them. It is often difficult for the consumer to know, on the one hand, whether a seller is a dropshipper and, on the other, whether a seller is a supplier or a private individual¹⁴. Dropshippers that are suppliers are bound by all the legal obligations imposed on online suppliers.

Online marketplace operators

As the Office québécois de la langue française explains, an online marketplace is a:

*Web platform¹⁵ designed to bring together **buyers** and **sellers**, and to facilitate exchanges between them, by providing an environment in which they can collaborate, negotiate and conclude transactions relating to goods and services.*

⁹ In the French version of this report, we have chosen to use the terms *parachutage* and *parachuteurs*, proposed by the OQLF in August 2021. Prior to this date, the locution *livraison directe* (direct delivery), borrowed from France, was generally used.

¹⁰ OQLF, *Grand dictionnaire terminologique*, 2021, “Parachutage,” online: https://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?ld_Fiche=26559328. Our translation.

¹¹ Centre francophone d'informatisation des organisations (CEFRIO), *Portrait de la logistique en commerce électronique au Québec*, 2018, p. 25.

¹² OQLF, *supra*, note 10. Our translation.

¹³ On the importance of Shopify for dropshipping, see Statista, “Market size of selected dropshipping platforms 2021, by region,” online: <https://www.statista.com/statistics/1255179/dropshipping-services-market-size-region/>: “Data from 2021 showed that Shopify was the leading e-commerce service for businesses. In terms of number of dropshipped products, Shopify outdid Spocket and Oberlo. Only in the Americas, Shopify dropshipped almost 1.9 million products, followed by Oberlo with less than 33 thousand products.” See also Terry Nguyen, “Drop shipping, explained” in *Vox.com*, November 8, 2021, online: <https://www.vox.com/the-goods/22763901/drop-shipping-explained>.

¹⁴ Nguyen, *supra*, note 13.

¹⁵ Our translation. Broadly speaking, a platform is an intermediary that enables online communication or interactions between parties. This broad definition includes a variety of services, such as payment platforms, online marketplaces, social networks and Web hosting platforms. Although the European Union Observatory on the Online Platform Economy noted in 2016 that there was no consensus on the definition of a platform in this context, it explained that platforms can be defined as a place where two or more types of users can interact directly with each other, facilitated and observed by the platform operator: Bertin Martens, “An Economic Policy Perspective on Online Platforms,” JRC Technical Reports, 2016, p. 3, online: https://platformobservatory.eu/app/uploads/2019/07/2016_JRC-Economic-policy-perspective-on-online-platforms.pdf. In a similar way, the OECD states that “an online platform is a digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether businesses

[...]

*The e-marketplace is a business model that involves **three types of actor: the seller, the buyer and the operator**. The platform enables sellers to increase the visibility of their goods and services, and a buyer to gain access to a large number of sellers. As for the operator, it manages the platform, offers certain services (e.g., secure payment, delivery) and may charge various fees¹⁶. [our emphasis]*

Marketplaces differ from Web platforms where only the operator sells goods or services directly to consumers. For example, iTunes is a platform that is not a marketplace, as only the platform operator itself sells goods directly to consumers. In this example, it is clear that the platform operator acts as a seller, as it determines the good's price, promotions and sale conditions¹⁷. Conversely, on a marketplace, the consumer can purchase a good or service from a third-party seller, who determines the good's price, sale conditions, and so on. In such a transaction, the marketplace operator is, at least at first glance, not a seller but rather a third party to the e-transaction¹⁸.

That said, the distinction between these types of platforms is far from always clear-cut. Many marketplace operators sell their goods and services on their own marketplace. For example, Amazon sells goods on its website, but it also allows customers to buy goods from third-party sellers on the same platform¹⁹. Amazon is therefore the seller in some e-transactions that take place on its platform and a third party in others.

Furthermore, marketplace operators exercise a certain degree of control over any e-transaction that takes place on their platform. How can we categorize marketplace operators who control part of the transaction, but not all of it?

Marketplaces can also be categorized according to the type of sellers present on their platforms. Broadly speaking, there are:

1. Marketplaces where only **businesses** (suppliers) sell goods or services to consumers (**B2C**). For example: Amazon, Walmart, Best Buy, Expedia, etc.
2. Marketplaces where both **individuals and businesses** (suppliers) sell goods or services to consumers (**B2C** and **C2C**). For example: eBay, Kijiji, Facebook marketplace, Uber, etc.

or individuals) who interact through the service via the Internet": OECD, "An Introduction to Online Platforms and Their Role in the Digital Transformation," OECD Publishing, 2019, p. 20, online: https://read.oecd-ilibrary.org/science-and-technology/an-introduction-to-online-platforms-and-their-role-in-the-digital-transformation_53e5f593-en.

¹⁶ OQLF, *Grand dictionnaire terminologique*, 2021, "Place de marché électronique," online: https://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?Id_Fiche=8349766. Our translation. See also Thyme Burdon, "The role of online marketplaces in enhancing consumer protection," OECD Going Digital Toolkit Note, No. 7, 2021, p.7, online: https://goingdigital.oecd.org/data/notes/No7_ToolkitNote_ConsumerProtection.pdf.

¹⁷ On these points, see the analysis in Martens, *supra*, note 15 on pp. 16-17.

¹⁸ See Ioannis Lianos, Despoina Mantzari, Gracia Marín Durán, Amber Darr and Azza Raslan, "The Global Governance of Online Consumer Protection and E-Commerce," World Economic Forum, March 2019, online: https://www3.weforum.org/docs/WEF_consumer_protection.pdf.

¹⁹ See Martens, *supra*, note 15 and OECD, *supra*, note 15 for a detailed discussion of this issue in relation to Amazon Marketplace.

This distinction, although not always clear, is useful for analyzing the obligations of the seller (which are different if the seller is a supplier or a private individual) and those of the marketplace operator²⁰.

Marketplace operators perform several functions. They publish sellers' offers on their platform, attract buyers and collect transaction data²¹. They create a structure for the transaction (by establishing parameters and designing features like the shopping cart, checkout, etc.) and set policies for marketplace use. They manage reviews and comments from platform users, and set search parameters when consumers use the search engine on their platform. Marketplace operators may also agree to take on other responsibilities. For example, some assume responsibility for customer service (including money-back guarantees in the event of a problem), dispute resolution, and warehousing and shipping goods²².

Marketplace operator's roles vary considerably from one marketplace to another. Consequently, the liability of operators also varies. The marketplace operator is always contractually liable for all the roles it expressly assumes. In some transactions, the marketplace operator sells its own goods or services. In such a situation, it assumes all the responsibilities imposed by law on sellers. In other transactions, the marketplace operator acts solely as an intermediary, facilitating the transaction between a third-party seller and a consumer; in this case, it is unclear whether the marketplace operator has any additional legal responsibilities arising from Canadian e-commerce laws. It is important to determine whether they do, and if so, what these responsibilities are.

This leads us to some important questions: if the marketplace operator takes control of almost all the elements of the transaction and assumes almost all the responsibilities that traditionally fall to the seller, why should its legal liability be less than that of the seller? What are the marketplace operator's obligations under consumer protection laws when it controls the terms of service, the shipment of the good and dispute resolution in case of a problem with the transaction, but when the actual purchase is made from a third-party seller? These are questions we'll examine in section 5 of the report, but broadly speaking, the degree of control seems to imply the degree of liability: the more control the platform operator has over an e-transaction, the more likely it is to bear legal responsibility for it, even when presenting itself as a mere intermediary to the transaction.

Delivery service providers

The role of the deliverer in e-commerce is to ship the good to the consumer. In some cases, the seller of the good is also the deliverer. Most of the time, however, the deliverer is a third-party intermediary in the e-transaction whose role is to ensure that the good is conveyed from seller to consumer. There is generally no contractual relationship between the deliverer and consumer; the contractual relationships are entirely between the deliverer and seller and between the consumer and seller. As such, deliverers are third parties to the e-transaction and have no legal obligations to the consumer under e-commerce laws.

²⁰ The distinction between B2C and C2C is of limited use in describing marketplaces, as many marketplaces blur the distinction between businesses and consumers, allowing both to sell side by side without any obligation to disclose their status. See Martens, *supra*, note 15 on p. 15.

²¹ See European Commission, "Shaping Europe's digital future," in *digital-strategy.ec.europa.eu*, 2022, online: <https://digital-strategy.ec.europa.eu/en/policies/online-platforms>.

²² See our section 4 (field survey), and see also Lucie Lerchardoy, Alena Sokolyanskaya and Francisco Lupiáñez-Villanueva, "Study on 'Support to the Observatory for the Online Platform Economy'," Observatory on the Online Platform Economy, 2021, online: <https://platformobservatory.eu/app/uploads/2021/01/P2B-Regulation-monitoring-analysis-January-2021.pdf>.

Even if there is no contractual relationship between them, the consumer and the deliverer sometimes come into contact – for example, if the deliverer needs to coordinate the delivery time with the consumer, or is unable to find the consumer's address or enter his building to make the delivery.

Many shipping services, such as Canada Post, FedEx, UPS and Purolator, already existed before the development of e-commerce. While traditional delivery companies are now very active in the delivery of online purchases, new platforms that rely on technology to distribute delivery among multiple parties began to play an increasingly important role in delivery starting in the 2010s²³.

Payment service providers

The payment service provider's main role in the transaction is to enable the consumer to pay for his e-transaction. This provider thus plays the role of a third-party intermediary in an e-transaction.

The consumer and the payment service provider have a contractual relationship prior to the e-transaction or payment in question. For example, the consumer has a contractual relationship with the financial institution that provides access to a credit or debit card, or with the operator of a payment platform²⁴.

The payment service provider has the responsibilities listed in its contract, for example, to ensure payment of the transaction in accordance with certain conditions. In many Canadian provinces, credit card providers are required by law to allow chargebacks in certain situations (see section 2). Many payment platforms offer a dispute resolution service.

According to 2019 statistics, Canadian consumers use credit cards most of the time to pay online, but debit cards and payment platforms (PayPal, Amazon Payments, Google Checkout, etc.) are becoming increasingly popular in the country²⁵. There are also other payment methods, including payment by cell phone²⁶, prepaid card or cryptocurrency (either by direct transfer or via a third-party payment service). Online “buy now, pay later” (BNPL) services, which enable payment in instalments, have become extremely popular in recent years²⁷.

²³ The gig economy model, where independent contractors are given short tasks by a platform (such as Uber Eats or Amazon Flex), establishes a relatively new type of delivery service: Hau L. Lee, Yiwen Chen, Barchi Gillai and Sonali Rammohan, “Technological Disruption and Innovation in Last-Mile Delivery,” Stanford Graduate School of Business, 2016, p.5, online: <https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/vcii-publication-technological-disruption-innovation-last-mile-delivery.pdf>.

²⁴ Often, the consumer can conclude a contract with the operator of a payment platform in the moments before the e-transaction is concluded, for example by signing up to PayPal or a buy now, pay later service during the e-transaction payment stage.

²⁵ See Statistics Canada, “One-quarter of Canadian businesses had at least some e-commerce sales in 2019,” The Daily, 2020, online: <https://www150.statcan.gc.ca/n1/daily-quotidien/201123/dq201123a-eng.pdf>; Statistics Canada, “Methods of payment for goods and services ordered over the Internet by gender and age group,” 2019, online: https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=2210008601&request_locale=en. The same trends can be seen in the United States: see OECD, “Report on Consumer Protection in Online and Mobile Payments,” OECD Digital Economy Papers, 2012, p. 11, online: https://www.oecd-ilibrary.org/science-and-technology/report-on-consumer-protection-in-online-and-mobile-payments_5k9490gwp7f3-en.

²⁶ OECD, *supra*, note 25, p. 18.

²⁷ Straits Research, “Buy Now Pay Later Market,” Market Overview, 2021, online: <https://straitsresearch.com/report/buy-now-pay-later-market>.

Social network operators

For the purposes of this report, a social network is “a Web-based platform that enables people or organizations to connect and interact with each other²⁸.”

Social networks have played a role in e-commerce since the 2000s, particularly with regard to advertising²⁹. More recently, some social networks have become more directly involved in e-commerce and are becoming more like marketplaces. For example, Facebook Marketplace, launched in 2016, is a social network-hosted marketplace that connects consumers with businesses as well as individuals selling goods. More recently, Instagram launched Instagram Shopping, which allows sellers to tag their stores and products in a post. Since the early 2020s, consumers have even been able to pay directly on certain social networks. For example, in the United States, one can pay directly on Instagram with a feature called Instagram Checkout³⁰. In some jurisdictions, sellers can sell products directly on TikTok³¹.

As with marketplaces, the legal responsibility of social network operators in e-commerce depends on the role they play. In this report, we will only address the responsibility of social network operators insofar as they act as online marketplace operators. Their responsibilities in areas such as advertising, content publication and data collection fall outside the scope of this research.

History of E-Commerce

In this section, we examine the history of e-commerce, its evolution and the impact of the recent Covid-19 pandemic on its development in Canada.

The evolution of e-commerce

The term “e-commerce” was coined in the 1980s³². Although some companies attempted to sell goods to consumers via the Internet for the first time in that decade, those initiatives were generally unsuccessful, partly because most consumers did not have easy access to the Internet until the 1990s³³. In the early 1990s, the Internet became more accessible to consumers, notably with the invention of the World Wide Web in 1991 and the introduction of the first popular Web browser, Mosaic, in 1993.

Following those essential developments, companies were quick to recognize the potential of the Internet as a new means of reaching consumers. In the years that followed, numerous e-

²⁸ OQLF, *Grand dictionnaire terminologique*, 2019, “Réseau social,” online:

<https://vitrinelinguistique.oqlf.gouv.qc.ca/fiche-gdt/fiche/26503112/reseau-social>. Our translation.

²⁹ See Christine Riefa, “Consumer protection on social media platforms: tackling the challenges of social commerce” in Tatiana-Eleni Synodinou, Philippe Jougoux, Christiana Markou and Thalia Prastitou (eds.), *EU Internet Law in the Digital Era: Regulation and Enforcement*, Springer, 2020, 321, p. 327 ff, online: <https://doi.org/10.1007/978-3-030-25579-4>. Riefa observes that the integration of shopping on social networking platforms can have effects on consumer decision-making. For example, consumer decisions may be driven by trends and social relationships rather than other factors such as price and merchant identity. See also Christine Riefa, “Facebook ventures further into social commerce: implications for consumer protection,” in *blogspot.com*, May 26, 2020, online: <https://recent-ecl.blogspot.com/2020/05/facebook-ventures-further-into-social.html>.

³⁰ Alain McKenna and Clémence Pavic, “Les réseaux sociaux, tremplin du magasinage en ligne,” in *ledevoir.com*, Le Devoir, August 31, 2021, online: <https://www.ledevoir.com/economie/628596/consommation-les-reseaux-sociaux-tremplin-du-magasinage-en-ligne>; this feature is not available in Canada at the time of publication.

³¹ See, for example, TikTok Shop in the UK.

³² Michael Aldrich, “Online Shopping in the 1980s,” in *squarespace.com*, US IEEE Annals of the History of Computing, November 2010, pp. 57-58, online:

<https://static1.squarespace.com/static/5ef13a3d6947fc50b4ef5d7d/t/600f47ce320696611fe9a267/1611614158605/online+shopping+1980.pdf>.

³³ *Id.* p. 60.

commerce websites were created. Pizza Hut claims to be the first restaurant to offer consumers the option of ordering online, back in 1994³⁴; 1995 saw the creation of three e-commerce giants: Amazon, eBay and Craigslist. Amazon launched its marketplace, Amazon Marketplace, in 2000.

In the early days of e-commerce, consumers paid for their online purchases by non-digital means; for example, eBay transactions were often settled by cheque or money order³⁵. Alternatively, a consumer could provide his credit card number to a business by fax or telephone³⁶. In 1999, PayPal developed a platform that enabled individuals to make payments via online money transfers³⁷. Over the following years, consumer resistance to using their credit cards online melted away following improvements in the security of online payment processing³⁸.

The two decades that followed saw major developments in e-commerce: the creation and sale of digital goods (music and video files, games, software, etc.), the use of personal data for e-commerce purposes (targeted advertising³⁹, price modulation⁴⁰, etc.), the growth of the sharing economy⁴¹ (websites for sharing accommodation, transport, etc.) and the rise of subscription offerings (newspapers, websites, physical goods such as ready-to-cook meals, etc.)... Another clear trend is the increasing use of mobile devices to make online purchases⁴².

Throughout this period, e-commerce has continued to grow in popularity among consumers. In 2012, Canadian consumers spent \$18.9 billion on e-commerce; by 2018, that figure had risen to \$57.4 billion⁴³.

Impact of the COVID-19 pandemic

The COVID-19 pandemic accelerated the growth of e-commerce at an unprecedented rate worldwide. This growth was highly visible in Canada, where government authorities ordered the closure of non-essential businesses in mid-March 2020 for a period of several months and again during subsequent confinement periods throughout the following two years, prompting Canadian consumers to shop increasingly online.

³⁴ Pizza Hut, "Pizza Hut Celebrates 20th Anniversary of World's First Online Purchase with 50 Percent Off Online Deal for Hut Lovers Members," in *prnewswire.com*, January 2, 2014, online: <https://www.prnewswire.com/news-releases/pizza-hut-celebrates-20th-anniversary-of-worlds-first-online-purchase-with-50-percent-off-online-deal-for-hut-lovers-members-238428021.html>; Jay Hoffmann, "The First Thing That Ever Sold Online Was Pizza," in *thehistoryoftheweb.com*, July 30, 2018, online: <https://thehistoryoftheweb.com/postscript/pizzanet/>.

³⁵ PayPal, "History & Facts," in *about.pypl.com*, 2022, online: <https://about.pypl.com/who-we-are/history-and-facts/default.aspx>.

³⁶ Matt Novak, "Here's What People Thought of Amazon When It First Launched in the Mid-1990s," in *gizmodo.com*, July 3, 2019, online: <https://gizmodo.com/heres-what-people-thought-of-amazon-when-it-first-launc-1836008229>.

³⁷ PayPal, *supra* note 35; Funding Universe, "PayPal Inc. History," in *Fundinguniverse.com*, online: <http://www.fundinguniverse.com/company-histories/paypal-inc-history/>.

³⁸ André Vautour, "Commerce électronique: certaines lois et règles que vous devez connaître," in *UNIK.CAIJ.qc.ca*, Lavery Avocats, 2020, online: <https://edoctrine.caij.qc.ca/publications-cabinets/lavery/2020/a121811/fr/i4c30dfca-b16b-4255-8e76-a66ec49ee09b>.

³⁹ For example, Google Adwords was launched in 2000. Facebook embarked on targeted marketing in 2007.

⁴⁰ <https://option-consommateurs.org/wp-content/uploads/2019/04/option-consommateurs-810792-modulation-prix-rapport.pdf>, pp. 9-15.

⁴¹ Option consommateurs, "Économie du partage. Le point de vue des Canadiens," 2017, pp. 17-19, online: <https://option-consommateurs.org/wp-content/uploads/2018/03/oc-809308-economie-du-partage-rapport-final-mars-2018.pdf>.

⁴² OECD, "OECD Recommendation of the Council on Consumer Protection in E-Commerce," OECD Publications, Paris, online: https://www.oecd-ilibrary.org/industry-and-services/oecd-recommendation-of-the-council-on-consumer-protection-in-e-commerce_9789264255258-en.

⁴³ Statistics Canada, "Online shopping in Canada, 2018," 2019, online: <https://www150.statcan.gc.ca/n1/pub/89-28-0001/2018001/article/00016-eng.htm>

In the months following March 2020, more Canadians than ever before were using e-commerce. They also spent more money on online purchases and bought a wider variety of goods and services online than before:

During a year when brick and mortar stores were not always an option, many Canadians turned to the Internet for their purchases. More than four in five Canadians (82%) shopped online in 2020, up from 77% in 2018. Online spending rose by approximately one-half over this period, from \$57.4 billion to \$84.4 billion.

Just over one in five Canadians (21%) said they shopped online for groceries more frequently than before the pandemic, and 45% shopped more frequently for other physical goods⁴⁴.

Some Canadian consumers shopped online for the first time in their lives during this period.

Consumers turned to e-commerce to purchase large quantities of non-essential goods, including clothing, furniture, sporting goods and gardening products⁴⁵; some also used e-commerce to purchase essential goods, such as groceries⁴⁶.

According to Statistics Canada:

Retail e-commerce sales have risen steadily, with the proportion of online sales rising from 2.4% in 2016 to 4.0% in 2019. The month of April highlights the peak of the COVID-19 impact, with the proportion of retail e-commerce sales jumping from 3.8% in April 2019 to a record high of 11.4% in April 2020. In May, as the Canadian retail environment allowed for more in-store purchases, the proportion of retail e-commerce sales was 10.0%.

All 11 retail trade subsectors with e-commerce sales saw an increase in online sales as a result of COVID-19⁴⁷.

In 2021, “the retail trade sector grossed \$35 billion in e-commerce sales over the same period, an increase of nearly 60% since 2019 (\$22 billion)⁴⁸.” These figures are all the more impressive given that sales in general slowed markedly at the start of the pandemic⁴⁹.

The move toward e-commerce did not stop with the end of pandemic-related measures:

⁴⁴ Statistics Canada, “Canadian Internet Use Survey, 2020,” The Daily, 2021, online: <https://www150.statcan.gc.ca/n1/daily-quotidien/210622/dq210622b-eng.htm>.

⁴⁵ Jason Aston *et al*, “Retail e-commerce and COVID-19: How online shopping opened doors while many were closing,” Statistics Canada, 2020, online: <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00064-eng.htm>.

⁴⁶ Statistics Canada, *supra*, note 44; Aleksandra Sagan, “Online grocery shopping expanding across Canada,” in *BNNBloomberg.ca*, The Canadian Press, 2016, online: <https://www.bnnbloomberg.ca/online-grocery-shopping-expanding-across-canada-1.509023>; Jacqueline Hansen and John Mazerolle, “Pandemic expanded online grocery shopping and delivery, but experts say in-store customers will be back,” in *CBC.ca*, January 13, 2021, online: <https://www.cbc.ca/news/business/grocery-delivery-pandemic-1.5869903>.

⁴⁷ Aston *et al*, *supra*, note 45.

⁴⁸ Statistics Canada, “Digital technology and Internet use, 2021,” The Daily, 2022, online: <https://www150.statcan.gc.ca/n1/daily-quotidien/220913/dq220913b-eng.htm>.

⁴⁹ Aston *et al*, *supra*, note 45.

From February 2020 to July 2022, retail e-commerce sales increased by 67.9%, and the share of e-commerce sales as a proportion of total retail sales increased markedly from 2019 to 2022 (July year to date).

As public health restrictions were lifted across the country in 2021 and consumers resumed in-person shopping, e-commerce retail sales began to decline in [retail sub-sectors deemed non-core], while in-store sales trended upwards. Despite the decline in online shopping, e-commerce retail sales are stabilizing at higher levels than before the pandemic. These high levels of e-commerce retail sales may indicate a structural change in consumer preferences and retailers' business models⁵⁰. [our emphasis]

The pandemic accentuated other e-commerce trends. For example, the popularity of online meal ordering services increased in general in the late 2010s, but especially after the start of the pandemic⁵¹. In addition, consumers became more interested in buying locally after the start of the pandemic⁵². On the other hand, a large proportion of their online purchases continued to be made internationally⁵³, sometimes unbeknownst to consumers⁵⁴.

Business entry in the e-commerce market during the pandemic

As Statistics Canada observes, many companies entered the e-commerce market during the pandemic⁵⁵.

One-third (33%) of Canadian businesses had at least some e-commerce sales in 2021, marking an increase from 2019, when one-quarter (25%) received or made sales of goods or services over the Internet.

Large businesses (38%) were the most likely to report e-commerce sales, while medium (36%) and small (32%) businesses did not lag far behind.

In order to remain open during lockdown periods, several small and medium-sized enterprises (SMEs) entered the e-commerce market⁵⁶.

⁵⁰ Salim Zanzana and Jessica Martin, "Retail e-commerce and COVID-19: How online sales evolved as in-person shopping resumed," 2022, online: <https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2023002-eng.htm>.

⁵¹ Kabir Ahuja *et al*, "Ordering in: The rapid evolution of food delivery," in *McKinsey.com*, McKinsey & Company, 2021, online: https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/ordering-in-the-rapid-evolution-of-food-delivery#.

⁵² Statistics Canada, *supra*, note 44. In 2020, 38% of Canadians said they ordered goods or services online from Canadian companies precisely because they were Canadian, compared to 29% in 2018. See also Canadian government efforts to create local marketplaces, e.g. Shop Local Ontario, Le panier bleu in Quebec.

⁵³ Statistics Canada, "Online shopping during the COVID-19 pandemic," 2021, online: <https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2020088-eng.htm>: "the amount spent by Canadian households on online purchases from foreign companies was up 44% in the second and third quarters of 2020 combined compared with 2019."

⁵⁴ Lianos *et al*, *supra*, note 18, p. 4.

⁵⁵ Gabrielle Asselin and Howard Bilodeau, "Changes in the e-commerce strategies of Canadian companies during the COVID-19 pandemic," Statistics Canada, 2022, online: <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2022001/article/00012-eng.htm>.

⁵⁶ Canadian Federation of Independent Business (CFIB), "Small businesses mark the one-year anniversary of COVID lockdowns with delayed retirements, debt and digital leaps," in *Newswire.ca*, Cision, March 15, 2021, online: <https://www.newswire.ca/news-releases/small-businesses-mark-the-one-year-anniversary-of-covid-lockdowns-with-delayed-retirements-debt-and-digital-leaps-839010779.html>. See also Taylor Matchett, Ashley Zia and Mandy D'Autremont, "Small Businesses' Experience with eCommerce during the Pandemic," in *CFIB-FCEI.ca*, 2020, pp. 3-4, online: <https://www.cfib-fcei.ca/hubfs/legacy/2020-11/Small-business-and-ecommerce-deck.pdf>; Tara Deschamps,

Small business owners say their online presence (51 per cent) and selling online (38 per cent) has been essential to their survival through the pandemic. As a result, connecting with customers online is the top focus for small businesses in 2021⁵⁷.

Nonetheless, Canadian businesses of all sizes saw an increase in e-commerce in 2021, both in terms of the percentage of businesses that had e-commerce sales, as well as the average e-commerce sales grossed. Most notably, this growth was greatest for small businesses, where 41% more small businesses sold online in 2021, and had an average increase of roughly 65% in e-commerce sales compared with 2019⁵⁸.

Growing importance of platforms during the pandemic

With the evolution of e-commerce, in which the pandemic played a key role, platforms have become increasingly essential for SMEs wanting to sell online.

One example Shopify, a website hosting platform that makes it easy to create and manage online stores, and that describes itself as “The all-in-one commerce platform to start, run, and grow a business⁵⁹.” Shopify experienced significant growth during the pandemic:

The number of businesses that [...] use the Shopify platform exploded in 2020, reaching 65,000 businesses in Canada and over a million in all in 175 different countries. Many of these are SMEs, but Shopify is also attracting large companies such as Heineken and Bureau en gros, with its Shopify Plus branch. As a result, revenues climbed 86% in 2020, to US\$2,929.5 million⁶⁰. [Our translation]

“Not as easy as it looks: Small businesses share what it takes to move online,” in *CTVnews.ca*, January 10, 2021, online: <https://www.ctvnews.ca/business/not-as-easy-as-it-looks-small-businesses-share-what-it-takes-to-move-online-1.5260897>: “One in five independent companies told the advocacy organization they expect to increasingly rely on that avenue [ecommerce] to survive”; Lucie Lechardoy, Alena Sokolyanskaya and Francisco Lupiáñez Villanueva, “Study on ‘Support to the Observatory for the Online Platform Economy’: Analytical paper on the structure of the online platform economy post COVID-19 outbreak,” *Observatory on the Online Platform Economy*, 2021, pp. 36-37, online: <https://platformobservatory.eu/app/uploads/2021/01/AP6-COVID19-impacts-final.pdf>; <https://platformobservatory.eu/app/uploads/2021/01/AP6-COVID19-impacts-final.pdf>; Karim Benessaïeh and Isabelle Dubé, “Deux fois plus d’entreprises québécoises vendent maintenant en ligne,” in *LaPresse.ca*, October 12, 2020, online: <https://www.lapresse.ca/affaires/entreprises/2020-10-12/commerce-electronique/deux-fois-plus-d-entreprises-quebecoises-vendent-maintenant-en-ligne.php>.

⁵⁷Canadian Federation of Independent Business (CFIB), “A year after the first lockdown, finding customers online tops list of small business priorities,” in *NewsWire.ca*, March 22, 2021, online: <https://www.cfib-fcei.ca/en/media/news-releases/year-after-first-lockdown-finding-customers-online-tops-list-small-business>.

⁵⁸Statistics Canada, *supra*, note 48. Note that these figures include B2B e-commerce.

⁵⁹Shopify, “About Us,” in *Shopify.com*, online: <https://www.shopify.com/ca/about>. Shopify is not the only Web hosting platform of its kind; its competitors also offer “relatively low base costs for hosting and design, templates that the business can customize and various additional services that can quickly run up the bill”: Karim Benessaïeh, “Quelle plateforme choisir pour son entreprise?,” in *LaPresse.ca*, October 12, 2020, online: <https://www.lapresse.ca/affaires/entreprises/2020-10-12/commerce-en-ligne/quelle-plateforme-choisir-pour-son-entreprise.php>. Our translation.

⁶⁰Roxane Léouzon, “Commerce en ligne: la domination Shopify” in *LeDevoir.com*, February 20, 2021, online: <https://www.ledevoir.com/economie/595597/commerce-en-ligne-la-dominacion-shopify>.

Small businesses also relied on other types of platforms during the pandemic, including marketplaces, social networks and search engines⁶¹.

Small businesses are becoming increasingly reliant on online platforms to reach customers. The online advertising services offered by large platforms (e.g. Google, Facebook) enable small businesses to access a broader audience, better target consumers and increase the efficiency of their advertising at low cost.

*According to the first wave of the Observatory business survey conducted in 2019, around half of enterprises that use the services of online platforms derived more than 25% of their revenues from online platforms. For almost 10% of companies using online platforms, online platform sales exceeded 75% of all their revenues. **In the second Observatory business survey conducted in October 2020, around 60% of respondents declared that they are either very dependent or completely dependent on online platforms. In this second survey wave, 60% of companies generate more than 25% of their annual revenues from online platforms, and 13% of companies generate more than 75% of their annual revenues via these platforms. These figures illustrate the increased dependency of business users on online platforms during 2020 and their vulnerability to the platforms' policies**⁶².* [our emphasis, underlined in the original]

According to the OECD, the pandemic reinforced consumers' tendency to turn to marketplaces when shopping online:

For example, in Q2/2020 eBay reported a 24% increase in revenue from its global marketplace platforms and Amazon also reported a 49% increase in revenue from its online stores. The crisis has had a similar effect in marketplaces with a more regional focus. In Q2/2020, Mercado Libre reported a year-over-year increase of 61% in revenue and 45% growth in unique active users. Many other online marketplaces have also seen an increase in the number of active sellers and consumers since the beginning of the global pandemic in 2020⁶³.

Buy now, pay later (BNPL) payment platforms also took off during the pandemic. PayBright is an example of one such platform in the Canadian market. Starting in 2017, the company began offering financing services to online shoppers, giving them the option of paying for their purchase in instalments⁶⁴. According to a PayBright report from 2021,

The growth of BNPL in an online context was accelerated last year by a rapid adoption of PayBright's Pay in 4 and Pay Monthly plans, especially for e-commerce during the early stages of the pandemic. For instance, between March (the beginning of the first lockdown) and June of 2020 alone, PayBright

⁶¹ Lechardoy et al, *supra*, note 56, p. 10. According to Lechardoy et al, the 5 biggest e-commerce platforms are Google, Apple, Facebook, Amazon and Microsoft. On the importance of social networks, see McKenna, *supra*, note 30.

⁶² Lechardoy et al, *supra*, note 56, pp. 36-37.

⁶³ Burdon, *supra*, note 16, p. 8.

⁶⁴ Andrew Boyd, "Are PayBright's installment plans any good?," in *Finty.com*, version updated in April 2021, online: <https://finty.com/ca/buy-now-pay-later/paybright-review/>.

reported that its e-commerce Gross Merchandise Volume (GMV) more than doubled)⁶⁵.

In general, therefore, the major e-commerce platforms were extremely successful during the pandemic⁶⁶.

⁶⁵ Paybright, “2021 Canadian Consumer Trends Guide,” p. 9, online: https://assets.paybright.com/pdf/consumer-reports/PayBright_Consumer_Trends_Retail_Report_2021.pdf.

⁶⁶ Lechardoy et al, *supra*, note 56, pp. 10-11; United Nations Conference on Trade and Development (UNCTAD), “Trade data for 2020 confirm growing importance of digital technologies during COVID-19,” Geneva, 2021, online: <https://unctad.org/news/trade-data-2020-confirm-growing-importance-digital-technologies-during-covid-19>: The total VGM [verified gross mass] of the top 13 B2C e-commerce companies grew by 20.5% in 2020, more than in 2019 (17.9%). Gains were particularly strong for Shopify (+95.6%) and Walmart (72.4%). Overall, the B2C VGM of the top 13 companies amounted to \$2.9 trillion in 2020.

Findings

In this section, we have seen that there are many different players in e-transactions. In particular, we have described the identity and role of sellers and of intermediaries such as delivery service providers, payment service providers and marketplace operators. Some of these players have been around for a long time (such as delivery companies), while others are new and specific to e-commerce (such as third-party sellers, dropshippers, marketplace operators).

The status, roles and responsibilities of some of these players are clearly defined and well understood. Those of others are much less so. For example, some marketplace operators act as both sellers and intermediaries, depending on the transaction, yet even when they act as intermediaries, they sometimes assume more responsibility for the transaction than the seller.

This lack of clarity means that certain fundamental concepts of contract law and consumer protection law are not readily applicable in the e-commerce context. In a traditional sale, there are often only two parties: a seller and a buyer, with third parties present but outside the transaction. Does this model apply to a transaction in which the consumer buys a good from a third-party seller who plays a less active role in the transaction than the marketplace operator? In addition, consumer protection laws generally only apply to contracts between consumers and suppliers. However, it is not always clear which online sellers are suppliers; they may, for example, be private individuals or, conversely, they may be suppliers in name only, having delegated all their roles and responsibilities to other parties. On the other hand, some intermediaries may claim to be third parties to the transaction, but take on almost all the roles of a seller. The actual extent of intermediaries' responsibilities in such cases remains to be defined.

Since the 1990s, online shopping has become increasingly popular with Canadian consumers. This popularity exploded in 2020 with the COVID-19 pandemic, which prompted consumers to turn to online shopping, often one of the few, if not the only option available. As a result, e-commerce experienced a phenomenal growth rate at the start of the pandemic and continued to be popular during subsequent lockdowns and after the pandemic. Many small and medium-sized businesses went online for the first time during this period. Several e-commerce platforms also enjoyed enormous success during the pandemic and became increasingly important not only for consumers, but also for companies selling online.

2. Overview of the Legal Framework

In this section of the report, we will provide an overview of the legal framework for e-commerce in Canada and that found in a recent European Union directive.

Canada has a federal structure based on a division of powers between the federal government and the provinces.

The importance of the role played by federal regulations when it comes to e-commerce is far from negligible. Indeed, the federal government regulates certain relevant aspects of international trade (customs and excise, for example), banking, competition, intellectual property, privacy and the use of personal data, etc. In particular, the *Competition Act* prohibits the use of false or misleading information to promote commercial interests, for example, in falsifying user reviews online⁶⁷.

Although all of these areas are relevant, as many online transactions involve these issues to some degree, this report will focus on the laws that specifically govern e-transactions between suppliers and consumers, which fall under provincial jurisdiction.

Because e-commerce laws fall under provincial jurisdiction, the legislative framework for e-commerce differs across Canada, depending on the province. However, two guidelines have been developed to harmonize e-commerce legislation in Canada: the *Internet Sales Contract Harmonization Template* and the *Canadian Code of Practice for Consumer Protection in Electronic Commerce*. In the next sections of this report, we will examine those guidelines and the provincial legislation and case law regarding e-commerce in Canada before moving on to an overview of European Parliament and Council Directive 2019/2161.

Canadian Legislative Framework: Guidelines

Internet Sales Contract Harmonization Template⁶⁸

The Internet Sales Contract Harmonization Template (“*Harmonization Template*”) is a formal agreement reached by the Consumer Measures Committee, a group created under the 1995 Agreement on Internal Trade⁶⁹. It is a non-legally binding tool that proposes “a set of measures to protect consumers when they make online purchases⁷⁰.” The *Harmonization Template* was ratified by Canada’s federal, provincial and territorial governments in 2001, and the parties agreed

⁶⁷ *Competition Act*, R.S.C. (1985), c. C-34, s. 52 (1).

⁶⁸ Unless otherwise indicated, all references in this section are to the Consumer Measures Committee, *Internet Sales Contract Harmonization Template*, *supra*, note 5.

⁶⁹ Innovation, Science and Economic Development Canada, “Consumer Measures Committee,” in *ISED-ISDE.Canada.ca*, version updated March 6, 2019, online: <https://ised-isde.canada.ca/site/consumer-measures-committee/en>: The Committee provides “a federal-provincial-territorial (FPT) forum for national cooperation to improve the marketplace for Canadian consumers.” It “is made up of representatives from the federal government as well as every province and territory. They work on harmonizing laws, regulations and practices, as well as raising public awareness of consumer protection issues.” In July 2017, the Canadian Free Trade Agreement replaced the 1995 agreement.

⁷⁰ Innovation, Science and Economic Development Canada, “Formal harmonization and enforcement agreements,” in *ISED-ISDE.Canada.ca*, version updated on December 27, 2018, online: <https://ised-isde.canada.ca/site/consumer-measures-committee/en/formal-agreements>.

to implement the *Harmonization Template's* principles in their respective laws⁷¹. Eight Canadian provinces subsequently adopted e-commerce rules based on the *Harmonization Template*. It is therefore useful to recall its main principles.

1) PRE-CONTRACTUAL DISCLOSURE OBLIGATION

According to the *Harmonization Template*, a business must disclose several pieces of information to the consumer before entering into an Internet sales contract, including:

- i. the supplier's name, address and contact details;
- ii. a fair and accurate description of the goods or services being sold to the consumer, including any relevant technical or system specifications,
- iii. an itemized list of the price of the goods or services being sold to the consumer and any associated costs payable by the consumer, including taxes and shipping charges;
- iv. a description of any additional charges that may apply to the contract;
- v. the total amount of the contract or, where the goods or services are being purchased over an indefinite period, the amount of the periodic payments under the contract;
- vi. the currency in which amounts owing under the contract are payable;
- vii. the terms, conditions and method of payment;
- viii. the date when the goods are to be delivered or the services are to begin;
- ix. the supplier's delivery arrangements, including the identity of the shipper, the mode of transportation and the place of delivery,
- x. the supplier's cancellation, return, exchange or refund policies, if any;
- xi. any other restrictions, limitations or conditions of purchase that may apply (sec. 3 [1]).

The *Harmonization Template* specifies that this information must be presented in a clear and comprehensible manner, and that it must be accessible in such a way as to ensure that the consumer has access to it and can retain and print it (sec. 3 [2]).

2) THE SUPPLIER'S OBLIGATION TO GIVE THE CONSUMER THE OPPORTUNITY TO ACCEPT OR DECLINE THE TRANSACTION BEFORE CONCLUDING IT

The supplier must provide the consumer with an express opportunity to accept or decline the contract and to correct errors immediately before entering into it (sec. 3 [1]).

3) THE SUPPLIER'S OBLIGATION TO PROVIDE THE CONSUMER WITH A COPY OF THE CONTRACT

The supplier must provide the consumer with a copy of the sales contract within 15 days of concluding the contract (sec. 4).

4) CONSUMER'S RIGHT TO CANCEL THE CONTRACT FOLLOWING A BREACH BY THE SUPPLIER

The consumer has the right to cancel the transaction within 7 days of receiving a copy of the contract if the supplier fails to comply with its disclosure obligations or has omitted to provide the consumer with an express opportunity to accept, decline or correct the contract prior to its conclusion. The consumer may also cancel the transaction within 30 days if the supplier fails to

⁷¹ *Ibid.*

provide a copy of the contract. The consumer also has the right to cancel the contract at any time (before the service is rendered or the goods are delivered) if the goods are not delivered or the service is not rendered within thirty days of the delivery date specified in the contract (sec. 5)⁷².

To cancel the contract, the *Harmonization Template* requires the consumer to give the supplier a notice of cancellation. The notice can be formulated and sent by any means (sec. 7).

The effect of the notice is to cancel the transaction and any ancillary transactions *as if they had never existed*. Within 15 days of cancellation, both parties must return each other to the state they were in before the contract was concluded (issue a refund, return the goods, etc.). The supplier is obliged to pay the reasonable costs paid by the consumer to return the goods (secs. 8 to 9).

The *Harmonization Template* provides that a court of competent jurisdiction may make any other order it deems appropriate if it considers that cancellation of the contract would be inequitable (sec. 6).

5) CHARGEBACKS

Finally, the *Harmonization Template* provides that a consumer who has paid for a purchase by credit card may ask the card issuer to carry out a chargeback, i.e., to cancel payment for the transaction, when the consumer has cancelled the contract in accordance with the applicable rules and the supplier has not reimbursed the consumer within 15 days. The request must be made in writing and contain the information listed in the *Harmonization Template*. If the request meets these criteria, the credit card issuer must cancel the credit card charges and any associated fees within two billing cycles or 90 days, whichever is shorter (sec. 11).

Canadian Code of Practice for Consumer Protection in Electronic Commerce⁷³

While the *Harmonization Template* was intended to harmonize legislative frameworks between provinces, the *Canadian Code of Practice for Consumer Protection in Electronic Commerce* (“Code”) was intended to establish “benchmarks for good business practice for merchants conducting commercial activities with consumers online.”

Like the *Harmonization Template*, the *Code* does not have the force of law. It was drafted by the Working Group on Electronic Commerce and Consumers, a group “composed of representatives of different sectors of the economy [that] was set up in the autumn of 1999 to develop the *Code*,” and endorsed by federal, provincial and territorial ministers in 2004 (Preface).

The *Code* incorporates some of the principles of the *Harmonization Template*, but goes further in guaranteeing consumer rights. Although its principles have not been incorporated into Canadian e-commerce legislation, it is important to examine it as a potential model for e-commerce regulation.

⁷² The thirty-day period begins to run on the date of conclusion of the contract if the latter does not specify a date for commencement of the service or delivery of the goods (sec. 5(3)).

⁷³ Unless otherwise indicated, all references in this section are to the Consumer Measures Committee, *Canadian Code of Practice for Consumer Protection in Electronic Commerce*, *supra*, note 5.

First, the *Code* establishes more specific pre-contractual disclosure obligations for “vendors” (suppliers). Whenever the vendor has an obligation to disclose information, the *Code* specifies that it must be presented clearly, in understandable terms, accurately, conspicuously, in a manner that is easily accessible on the vendor's website at the appropriate stages of the consumer's decision-making process, and in a manner that can be saved or printed by the consumer (art. 1.1).

Vendors must make certain information available to consumers before they initiate a transaction:

- a) the vendor's legal name and any other name under which the vendor does business;
- b) the address, telephone and fax numbers of the vendor's principal office and, where applicable, of local offices or agents;
- c) any restrictions on transactions, whether geographic, age-related or otherwise;
- d) the currency used by the vendor to quote the price and the payment methods and the currencies the vendor accepts;
- e) the vendor's cancellation, return and exchange policies, including any associated charges;
- f) contact information for consumer service and support, including days and hours of operation, when applicable, and any associated charges;
- g) details of the vendor's complaints process;
- h) the vendor's policies on privacy and unsolicited e-mail; and
- i) contact information for any seal, or other self-regulatory programs or applicable dispute resolution processes in which the vendor participates and, whenever possible, an online method of verifying its certification or membership (sec. 1.3).

Before the consumer initiates the transaction, the vendor must also display information about the products offered, including a detailed and accurate description of the product, and any warranties associated with the product or service. Finally, before concluding the transaction, the vendor must ensure that the consumer can read the transaction's terms and conditions, including the product description, total price, payment terms, cancellation, refund and exchange policies, related fees, applicable warranties, method of communication, purchase restrictions or conditions, and delivery times. The vendor must also provide the consumer with a record of the transaction (sec. 1.4 to 1.6).

As in the *Harmonization Template*, the vendor must give the consumer the opportunity to modify or cancel the order before accepting it (sec. 3.1).

The *Code* and the *Harmonization Template* do not treat late delivery in the same way. While the *Harmonization Template* gives the consumer the right to cancel the transaction within 30 days of the scheduled delivery date, the *Code* states: “When an order cannot be fulfilled within the time frame originally specified, vendors shall promptly notify consumers, and provide them with the option of cancelling the order at no charge, except when doing so would be unreasonable” (sec. 3.2).

In addition, there are several circumstances in which the vendor cannot demand payment for the transaction: if the consumer has not consented to the transaction, if the product does not correspond to the description provided, if the vendor has omitted important information concerning the product or service, if delivery has not been made within the specified time, or if the consumer

has been unable, despite acting reasonably, to cancel a transaction made in error. The vendor must refund within a reasonable time any payment made by the consumer, including any costs incurred by the consumer in returning the product. The *Code* does not explain the steps to be taken or the cancellation procedure, but it appears that both parties must be returned to the state they were in before the transaction (sec. 3.4).

The *Code* obliges vendors to guarantee consumers access to means of resolving any problems related to a transaction, and to provide a complaints-handling process. If the parties are unable to resolve their dispute, the vendor is encouraged to offer to refer the matter to an independent dispute resolution service (sec. 6.1 to 6.4).

The *Code* also establishes principles concerning contract language, online privacy, payment and personal information security, unsolicited e-mail and communications aimed at children, all of which are outside the scope of this report.

Canadian Legislative Framework: Provincial

As mentioned above, each Canadian province has its own rules governing contracts. Each province also has its own rules governing consumer contracts (consumer protection laws), the sale of goods, warranties and so on.

Here, we will focus on the legal frameworks that specifically govern e-commerce, that is, we will look at rules adopted to regulate this particular type of transaction. Our study will therefore be restricted to those parts of the law (and regulations) that directly and uniquely affect e-commerce in the context of consumer contracts.

E-commerce laws⁷⁴

In the 2000s, legislators in eight provinces adopted regulations designed specifically to govern contracts for the sale of goods and services concluded between consumers and online suppliers. For the sake of brevity, we will call these *e-commerce laws*, although provincial legislators chose to incorporate those regulations into their laws in several different ways⁷⁵.

British Columbia (2004), Alberta (2001), Saskatchewan (2002 and 2006), Manitoba (2001), Ontario (2005), Quebec (2006), Newfoundland and Labrador (2009) and Nova Scotia (2003) have all passed e-commerce legislation. Ontario, Alberta, Saskatchewan and Nova Scotia have all limited the legislative framework's application to contracts valued at \$50 or more. New Brunswick,

⁷⁴ Unless otherwise stated, all references in this section refer to pages 34 to 43 of Union des consommateurs, "Regulating Distance Contracts: Time to Take Stock," Montreal, 2014, online: <https://uniondesconsommateurs.ca/wp-content/uploads/2020/12/04-Contrats-a-distance-Eng.pdf>. Consult this source for full references to the information cited. The legal references cited in our 2014 report come from the following laws or regulations: BC: *Business Practices and Consumer Protection Act*, SBC, *supra*, note 4; AB: *Internet Sales Contract Regulation*, Alta Reg 81/2001; MA: *Consumer Protection Act*, CCSM c. C200, Part XVI; ON: *Consumer Protection Act, 2002*, *supra*, note 4; QC: *Consumer Protection Act*, *supra*, note 4; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, Part V, Division 2; NS: *Internet Sales Contract Regulations*, NS Reg 91/2002. Saskatchewan's Act was consolidated in 2013 and is now *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; provisions relating to Internet sales contracts are now found in the regulations to this Act: *Consumer Protection and Business Practices Regulations*, RRS c C-30.2 Reg 1.

The relevance and accuracy of these references was checked for the present report in April 2022.

⁷⁵ Legislators "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)": Union des consommateurs, *supra*, note 74, p. 24.

Prince Edward Island, the Northwest Territories, Yukon and Nunavut have not enacted legislation specifically dealing with consumer contracts concluded over the Internet.

In 2014, we conducted an analysis of the e-commerce laws passed in those eight provinces. Since the publication of this report, the laws have changed little or not at all. Much of our 2014 analysis therefore remains relevant. In this section, we will briefly summarize the e-commerce laws in each of the provinces that have legislated on the subject.

Although the approaches and details differ, each of the eight provinces has adopted rules based on the *Harmonization Template*.

1) PRE-CONTRACTUAL DISCLOSURE OBLIGATION

Each of the eight provinces that have enacted ecommerce laws requires the supplier to disclose information before entering into a contract. In our 2014 report on distance contracts, we provided an overview of the elements common to each of those eight provinces. The state of the law has not changed since then. Although the precise wording and content of the disclosure obligations are not identical in each province, all of them require suppliers to disclose the following types of information:

- i. The supplier's name and, if different, the name under which the supplier carries on business;
- ii. The supplier's business address and, if different, the supplier's mailing address;
- iii. Telephone number and, if applicable, fax number and e-mail address;
- iv. Description of goods/services sold, including any technical requirements/specifications;
- v. Detailed price list including associated costs (shipping and taxes);
- vi. Additional charges that may be added to the product's price, or description of these charges if the supplier cannot establish the amount;
- vii. Total amount of the contract or amount of periodic payments;
- viii. Currency;
- ix. Clauses, terms and conditions of payment;
- x. Delivery details (date, carrier, delivery method and location);
- xi. Cancellation, return, exchange and refund policies, if applicable;
- xii. Any restrictions/conditions/limitations that may apply to the purchase.

Some of the laws also specify that information must be presented clearly and fairly:

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.

In addition, six provinces (all those with e-commerce legislation except Quebec and Nova Scotia) require suppliers to guarantee that consumers have access to the information prior to purchase. All eight provinces stipulate that suppliers must provide the mandatory information in such a way that consumers can keep and print it.

2) SUPPLIER'S OBLIGATION TO GIVE THE CONSUMER THE OPPORTUNITY TO ACCEPT OR REFUSE THE TRANSACTION BEFORE CONCLUDING IT

With the exception of Manitoba, every province that has passed e-commerce legislation has introduced this obligation.

3) SUPPLIER'S OBLIGATION TO PROVIDE THE CONSUMER WITH A COPY OF THE CONTRACT

With the exception of Manitoba, every province that has enacted e-commerce legislation has established an obligation for suppliers to provide consumers with a copy of the contract containing the mandatory information within 15 days of the contract's conclusion.

4) CONSUMER'S RIGHT TO CANCEL THE CONTRACT FOLLOWING A BREACH BY THE SUPPLIER

Under the laws adopted by these eight provinces, the consumer has the right to cancel the contract in certain circumstances.

Each of their e-commerce laws gives the consumer the right to cancel the contract if the supplier fails to meet its pre-contractual disclosure obligations. In Manitoba, the consumer can exercise this right at any time prior to delivery of the good or provision of the service. In the other seven provinces, the consumer may do so within seven or ten days (depending on the province) of receiving a copy of the contract⁷⁶. In these provinces, the consumer may also cancel the contract if the supplier failed to give the consumer an opportunity to accept, modify or decline the contract (within seven or ten days of the transaction), or if the supplier failed to provide the consumer with a copy of the contract (within 30 days of the transaction).

In addition, the laws in each of the eight provinces give consumers the right to cancel their contracts if the goods are not delivered within 30 days of the date of the transaction or the delivery date indicated in the contract.

To cancel, the consumer simply sends a notice to the supplier⁷⁷.

After cancellation for one of those two reasons, the parties must return each other to the state they were in before the contract was concluded. Where applicable, the consumer must return the product in the condition in which he received it and the supplier must reimburse the consumer

⁷⁶ In Quebec, Newfoundland and Labrador, and British Columbia, a consumer can also cancel the contract if his copy does not meet the requirements set out by law.

⁷⁷ Only Manitoba requires the consumer to send the cancellation notice in such a way as to obtain confirmation of its remittance to the supplier.

within fifteen days of cancellation of the contract or delivery of the good⁷⁸. The supplier must pay reasonable return costs.

In Alberta and Saskatchewan, the court may make any other appropriate order if it deems the cancellation to be unfair.

5) CHARGEBACKS

Each of the eight provinces with e-commerce legislation provides a right to a chargeback if the consumer has paid by credit card. When the consumer has the right to cancel the contract and the supplier refuses to issue a refund, the consumer can request a chargeback from his credit card issuer, which in turn has the obligation to cancel the transaction and credit the consumer's account.

As with the *Harmonization Template*, the request must include the information indicated in the law. If the request is compliant with the law, the credit card issuer must acknowledge receipt of the request within thirty days and must reimburse the consumer within 90 days of receipt of the request, or within two billing cycles (whichever comes first)⁷⁹. Quebec and Ontario require the consumer to make the request within sixty days after the end of period in which the supplier must issue the refund.

Application of private international law

APPLICABLE LAW

In an e-transaction, the supplier and the consumer are often located in different jurisdictions. This can lead to a lack of clarity as to which laws will apply and which courts will have jurisdiction in the event of a dispute. We will examine those issues in this section.

Some of the provinces that have enacted consumer protection legislation on e-commerce have stipulated that their law applies to sales contracts between suppliers and consumers when the consumer is located in the province in question. Quebec states that contracts concluded remotely (including e-transactions) are deemed to be concluded at the consumer's address⁸⁰. Alberta, Saskatchewan and Ontario have established that their consumer protection laws apply when the consumer or supplier is in the province when the contract is entered into⁸¹. The other provinces that have enacted e-commerce legislation (New Brunswick, Nova Scotia, Prince Edward Island and Manitoba) have not specified the territorial application of their laws to purchases concluded by consumers over the internet.

If the consumer and supplier are in different jurisdictions, there may be a conflict of laws, as two sets of laws potentially apply to the transaction. In addition, the contract may specify that the law of a certain jurisdiction applies to the transaction. In Quebec, if the consumer resides in Quebec and the contract says nothing about which jurisdiction's laws apply, the applicable law is the law

⁷⁸ In Manitoba, the period is 30 days.

⁷⁹ Manitoba stipulates that the credit card issuer must reimburse the consumer immediately.

⁸⁰ *Consumer Protection Act*, *supra*, note 4, sec. 54.2.

⁸¹ Ontario: *Consumer Protection Act, 2002*, *supra*, note 4, s. 2 (1); Saskatchewan: *The Consumer Protection and Business Practices Act*, *supra*, note 74, s. 102 (2); Alberta: *Internet Sales Contract Regulation*, *supra*, note 74, s.2. See also Mariella Montplaisir, "The Missing Hyperlink — An Empirical Study: Can Canadian Laws Effectively Protect Consumers Purchasing Online?" (2018) 16:1 *Canadian Journal of Law and Technology* 1, p. 17.

of Quebec; a clause in the contract stating that the laws of another jurisdiction apply will not be enforceable if it has the effect of depriving the consumer of the protection afforded by Quebec consumer protection laws⁸².

In the common law provinces, the general rule is that the applicable law is the one chosen by the parties and indicated in the contract. If it is not indicated, the applicable law is that of the jurisdiction with which the transaction is most closely connected, a fact which would be determined by a court⁸³.

JURISDICTION OF THE COURTS

In Quebec, the court of the consumer's domicile or residence has jurisdiction to hear a dispute concerning a consumer contract. A clause in a contract stating otherwise is unenforceable against the consumer⁸⁴.

The common law provinces have not legislated a mechanism for determining which court has jurisdiction in a consumer dispute. This problem is therefore left to the courts and is addressed, to some extent, in case law⁸⁵. In *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, [2017] 1 RCS 824, the Supreme Court affirmed that the courts have jurisdiction to settle a dispute relating to an online service when a company offers the service within their jurisdiction. In this case, the Court ruled that British Columbia courts had jurisdiction in a dispute involving Google, which offers an entirely online service, because “Google carried on business in the province through its advertising and search operations [and] this was sufficient to establish the existence of *in personam* and territorial jurisdiction⁸⁶.”

In *Douez v. Facebook, Inc.*, 2017 SCC 33, [2017] 1 SCR 751, the court clarified that where there is a forum selection clause in a contract, the court must decide whether to give effect to that clause by applying a two-stage analysis:

[...] At the first step, the party seeking a stay based on the forum selection clause must establish that the clause is “valid, clear and enforceable and that it applies to the cause of action before the court.”

[...]

Once the party seeking the stay establishes the validity of the forum selection clause, the onus shifts to the plaintiff. At this second step of the test, the plaintiff

⁸² *Civil Code of Québec*, CQLR, c. CCQ-1991, sec. 3117 paras. 1 and 3. Paragraph 3 indicates that in the absence of a designation by the parties, the law of the place where the consumer has his residence is, in the same circumstances, applicable to the consumer contract.

⁸³ Montplaisir, *supra*, note 81, pp. 12, 21.

⁸⁴ *Civil Code of Québec*, *supra*, note 86, sec. 3149.

⁸⁵ Montplaisir, *supra*, note 81, p. 17.

⁸⁶ *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, [2017] 1 RCS 824, paragraph 37. See also Montplaisir, *supra*, note 81, p. 11. For an analysis of the effects of this decision: Michael Geist, “The Unintended Equustek Effect: How one case set a precedent for Canadian courts’ growing jurisdiction over internet activities,” in *CIGOnline.org*, Centre for International Governance Innovation, 2019, online: <https://www.cigionline.org/articles/unintended-equustek-effect/>.

*must show strong reasons why the court should not enforce the forum selection clause and stay the action. [...]*⁸⁷

This second part of the analysis is also known as the strong cause test. The Court went on to explain that “the strong cause factors were meant to provide some flexibility⁸⁸” to the analysis and stated that:

*Irrespective of the formal validity of the contract, **the consumer context may provide strong reasons not to enforce forum selection clauses.** For example, the unequal bargaining power of the parties and the rights that a consumer relinquishes under the contract, without any opportunity to negotiate, may provide compelling reasons for a court to exercise its discretion to deny a stay of proceedings, depending on the other circumstances of the case. [...]*⁸⁹
[our emphasis]

When considering whether it is reasonable and just to enforce an otherwise binding forum selection clause in a consumer contract, courts should take account of all the circumstances of the particular case, including public policy considerations relating to the gross inequality of bargaining power between the parties and the nature of the rights at stake. The burden remains on the party wishing to avoid the clause to establish strong cause⁹⁰.

ARBITRATION CLAUSES

Arbitration clauses can also play a role in determining the applicability of a province's laws and the jurisdiction of its courts. Most provinces have adopted measures, of varying scope, to limit the application of clauses requiring consumers to submit their disputes to arbitration.

British Columbia, Alberta, Manitoba and Newfoundland and Labrador have adopted rules that limit the application of arbitration clauses if their effect is to oblige the consumer to waive his rights. Saskatchewan, Ontario and Quebec, on the other hand, have adopted stricter rules that limit any stipulation having the effect of obliging the consumer to submit a dispute to arbitration. New Brunswick, Nova Scotia and Prince Edward Island have not adopted such measures⁹¹.

Overview of Relevant Canadian Case Law

To date, Canadian case law has not played a major role in the development of e-commerce law⁹². It has played a slightly more important role in determining the place of platforms in existing laws, although there are still very few decisions that touch on these issues as well.

In the 2017 *Douez v. Facebook, Inc.* decision, the Supreme Court examined a contract between Facebook, which operates the Facebook.com social network, and a Facebook.com user. In its decision, the Court treated the contract as a consumer contract, even though it did not involve

⁸⁷ *Douez v. Facebook, Inc.*, 2017 SCC 33, [2017] 1 RCS 751, subsections 28-29.

⁸⁸ *Id.*, subsection 30.

⁸⁹ *Id.*, subsection 33.

⁹⁰ *Id.*, subsection 38.

⁹¹ Montplaisir, *supra*, note 81, pp. 19-20 for a more detailed discussion.

⁹² See, for example, Vincent Gautrais, “La jurisprudence en commerce électronique en quête de maturité,” (2016) 28:2 *Cahiers de propriété intellectuelle* 421, p. 425, who notes that in Quebec, “... case law is rare and it is surprising to see so few decisions on a reality that is well integrated into our daily lives.” Our translation.

any monetary exchange between the parties⁹³. In addition, the Court confirmed that clicking to consent remains a valid form of consent for the formation of an online contract, but it cast doubt on whether clicking to consent in the context of a consumer adhesion contract indicates genuine consent to all of the contract's clauses (such as a forum selection clause)⁹⁴.

In *eBay Canada Ltd. v. Mofo Moko*, 2013 QCCA 1912, the Quebec Court of Appeal also affirmed that a contract between a marketplace user and a marketplace operator can be characterized as a consumer contract. In this case, the user in question was selling a good on the eBay marketplace. The court concluded that a consumer who sells a good or service on a marketplace for personal profit (and who does not trade by profession) remains a consumer, and that the contract between the parties can be considered a consumer contract⁹⁵. In another decision in the same case, the Court of Appeal noted that “eBay is not a party to the transactions between users of its Internet platform. Its role is limited to the management of the online marketplace, which implies in particular the monitoring and verification of advertisements posted by users⁹⁶.” However, the court did not rule on eBay's responsibilities in the transaction⁹⁷.

Thus, case law appears to establish consensus on the fact that platform operators and their users enter into consumer contracts when the platform users use the platform.

Directive 2019/2161 of the European Parliament and of the Council⁹⁸

In 2019, the European Parliament and the Council of the European Union adopted *Directive (EU) 2019/2161 of the European Parliament and of the Council of November 27, 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernization of Union consumer protection rules* [the “2019/2161 Directive”]. This Directive was required to be transposed into the national legislation of the Member States by November 28, 2021 for application starting May 28, 2022 (art. 7).

The Directive is part of the European Union's mandate to contribute “to the attainment of a high level of consumer protection” (preamble); it has multiple objectives and, in order to achieve them, amends several laws and directives. Among its objectives, we are interested in the principles

⁹³ See *Douez v. Facebook, Inc*, *supra*, note 87, subsection 1 and the entire decision for a description of the contract as a consumer contract; see subsections 5-9 for the context and relationship between the parties. This conclusion was affirmed in the civil law context by the Quebec Superior Court in *Demers v. Yahoo! Inc*, 2017 QCCS 4154, subsections 25-37, which rejected the defendant's argument that there was no consumer contract, as a consumer contract requires payment or exchange of a valuable consideration.

⁹⁴ *Douez v. Facebook, Inc*, *supra*, note 87, subsection 99.

⁹⁵ *eBay Canada Ltd. v. Mofo Moko*, 2013 QCCA 1912, subsections 33-36.

⁹⁶ *eBay Canada Ltd. v. Mofo Moko*, 2018 QCCA 1735, subsection 3. Our translation.

⁹⁷ The court did not rule on eBay's liability as a third party in the transaction, but rather that eBay was not at fault in removing the seller's advertisement from its platform.

⁹⁸ Unless otherwise stated, all references in this section are to EU, *Directive 2019/2161 of the European Parliament and of the Council of November 27, 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards better enforcement and the modernization of the Union's consumer protection rules*, [2019] OJ, L 328 of 18.12.2019, pp. 7-28.

concerning the ranking of online search results, marketplaces, the pre-contractual obligations of “traders” (suppliers)⁹⁹, and user reviews¹⁰⁰.

1. RANKING OF ONLINE SEARCH RESULTS¹⁰¹

Directive 2019/2161 aims to improve transparency in the ranking of results in e-commerce search engines in order to better protect consumers, as “higher ranking or any prominent placement of commercial offers within online search results by the providers of online search functionality has an important impact on consumers” (preamble, 18).

The Directive declares it an unfair commercial practice in all circumstances to provide “search results in response to a consumer’s online search query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of products within the search results.” This rule applies to companies and traders dealing with consumers, including intermediaries such as platforms (art. 3(7)(a))¹⁰².

In addition, omitting a description of the main parameters that determine the ranking of products presented to consumers during a search and the order of importance of those parameters may be considered a misleading commercial practice (art. 3(4)(b)). It is important to note that:

[This rule] applies only to traders that allow consumers to search for products offered by other, third party, traders or by consumers, i.e. online marketplaces and comparison tools. It does not apply to traders that provide their consumers with a possibility to search only amongst their own offers of different products¹⁰³.

Nor does the rule apply to online search engine providers, who already have a similar obligation under another law (art. 3(4)(b))¹⁰⁴.

⁹⁹ Note that the Directive uses the term “trader” instead of supplier. According to article 2(b) of EU, *Directive 2005/29/EC of the European Parliament and of the Council of May 11, 2005 concerning unfair business-to-consumer commercial practices in the Internal Market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (e-commerce) No 2006/2004 of the European Parliament and of the Council (“Unfair Commercial Practices Directive”)* [2005] OJ, L 149 of 11.6.2005, pp. 22-39, a trader is: “any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession, and anyone acting in the name of or on behalf of a trader”.

¹⁰⁰ The Directive covers a number of other topics that are beyond the scope of our research. For example: harmonizing and filling certain gaps in national laws concerning consumer protection sanctions and remedies, defining and imposing obligations relating to digital content and digital services, adding or modifying rules governing the resale of tickets for cultural and sporting events, off-premises sales, information disclosure obligations according to the means of communication used to conclude a distance contract, the personalization of sales offers, etc. See the preamble for a summary of all the Directive’s objectives and modifications.

¹⁰¹ Ranking “means the relative prominence given to products, as presented, organised or communicated by the trader, irrespective of the technological means used for such presentation, organisation or communication” (article 3(1)(b)).

¹⁰² See also European Commission, *Communication from the Commission: Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market*, OJ, C 526 of 29.12.2021, p. 1-129, art. 4.2.1.

¹⁰³ *Id.*, art. 4.2.3.

¹⁰⁴ Rules on the transparency of ranking parameters already exist in other European directives, but they do not apply to consumer protection.

The trader must provide a general description of the main parameters determining the ranking, but is not obliged to disclose the detailed operation of its algorithm (preamble, 22)¹⁰⁵.

2. ONLINE MARKETPLACES

a) Definitions

Directive 2019/2161 updates the definition of *online marketplace*: “a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers” (arts. 3(1)(b) and 4(1)(e)). This definition has been updated to include any service using software, rather than referring exclusively to services using a website. The amendment makes the definition more up-to-date and technologically-neutral (preamble [25]).

A “provider of an online marketplace” is defined as “any trader which provides an online marketplace to consumers” (art. 4(1)(e)).

b) Obligations

Before a consumer enters into a contract on an online marketplace, the marketplace provider must disclose certain information to the consumer “in a clear and comprehensible manner and in a way appropriate to the means of distance communication.” The provider must therefore disclose:

- a) The parameters for ranking offers presented to the consumer during a search;
- b) Whether a third-party seller offering a product is a trader or not based on the third-party seller's declaration to the marketplace provider¹⁰⁶;
- c) If the product is offered by a seller who is not a trader, the marketplace provider must inform the consumer that consumer protection laws do not apply to contracts concluded with this seller;
- d) If applicable, the way in which contractual obligations are divided between the third party offering the goods, services or digital content and the online marketplace provider¹⁰⁷.

EU Member States may impose additional disclosure obligations on marketplace providers (art. 4(5)).

3. TRADERS' DISCLOSURE OBLIGATIONS

Directive 2011/83/EU contains a list of information that must be disclosed by a trader before the consumer is bound by a distance contract¹⁰⁸. To this list, Directive 2019/2161 adds that traders

¹⁰⁵ “That information should be succinct and made easily, prominently and directly available. Parameters determining the ranking mean any general criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms used in connection with the ranking” (preamble, 22)).

¹⁰⁶ The omission of this information may be considered misleading (art. 3(4)(a)(ii)).

¹⁰⁷ “such information being without prejudice to any responsibility that the provider of the online marketplace or the third-party trader has in relation to the contract under other Union or national law” (art. 4(5)).

¹⁰⁸ EU, *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*

must disclose a reminder of the existence of the legal guarantee as well as the existence of after-sales service and commercial guarantees, information on the functionality of goods with digital elements, and any relevant interoperability of goods with digital elements, where applicable (art. 4(3)).

Directive 2019/2161 also amends the disclosure obligations found in the 2011 Directive to remove the trader's obligation to provide its fax number from the list of its pre-contractual obligations, "since fax is rarely used now and largely obsolete" (art. 4(4) and preamble, 46).

4. USER COMMENTS AND REVIEWS

Directive 2019/2161 regulates consumer opinions and reviews, since "Consumers increasingly rely on consumer reviews and endorsements when they make purchasing decisions" (preamble, 47). According to the Directive, "information about whether and how the trader ensures that the published reviews originate from consumers who have actually used or purchased the product shall be regarded as material," and its omission can be used to assess whether a trader has committed a misleading commercial practice (art. 3(4)(c)).

In addition, Directive 2019/2161 deems it an unfair commercial practice to assert that reviews have been sent by consumers who have used or purchased the product "without taking reasonable and proportionate steps to check that they originate from such consumers." The practice of sending or instructing another person to send false consumer reviews or recommendations is also deemed unfair (art. 3 (7)(b)). These requirements apply to online platforms, to traders that publish or provide access to consumer reviews, and to any trader that organizes the provision of reviews for the benefit of other traders¹⁰⁹.

repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ, L 304, 22.11.2011, pp. 64-88, article 5(1).

¹⁰⁹ European Commission, *supra*, note 102, 4.2.4.

Findings

Canada's federal government plays an ancillary role in regulating e-commerce, notably by legislating on privacy, competition, copyright and international trade.

In the 2000s, two guidelines, the *Internet Sales Contract Harmonization Template* and the *Canadian Code of Practice for Consumer Protection in Electronic Commerce*, were developed to provide a better framework for online consumer contracts. Eight Canadian provinces have adopted legislation to govern online sales between suppliers and consumers, based on the *Harmonization Template*. The provincial frameworks thus share a number of common elements: the supplier's pre-contractual disclosure obligations, the consumer's right to cancel the transaction if some of the supplier's obligations are not fulfilled or if the goods are not delivered within a certain timeframe, and the right to request a chargeback if the supplier fails to reimburse the consumer following cancellation.

There is no harmonization between the provinces, however, when it comes to rules on conflict of laws, court jurisdiction in international disputes, and arbitration clauses. Some provinces have legislated to clarify these issues, but many have left it to the courts to establish the rules for determining which laws apply and which court has jurisdiction when there is a conflict.

Canadian case law has not affected or changed the application or interpretation of provincial e-commerce legislation. A few decisions have begun to clarify the fact that platform operators may be subject to consumer protection laws.

In Europe, the new Directive 2019/2161 supplements existing e-commerce laws, which establish disclosure obligations similar to those found in Canadian provincial laws. The Directive defines marketplaces and imposes certain obligations on marketplace operators, including disclosure of search engine result ranking parameters and indications as to whether the seller is a trader (supplier) or a private individual. The directive also establishes rules regarding user reviews and comments.

In examining Directive 2019/2161, we note that it broadens the law's scope of application to cover platforms, something not yet found in Canadian e-commerce law. The regulation, to a certain extent, of marketplace operators, of search engine platform parameters, and of user reviews and comments represents a significant difference from Canadian provincial e-commerce laws, which remain silent when it comes to platforms and platform operators. Indeed, Canadian e-commerce laws do not appear to explicitly envisage any role or responsibility for intermediaries in an online sales contract, with the exception of credit card companies, whose role is to effect a chargeback, where applicable. This is perhaps unsurprising, since Canadian e-commerce laws are based on a model that dates back to 2001, when platforms played a less important role in e-commerce. That said, the recent Canadian case law on platform operators, which states that they are suppliers that may be subject to consumer protection legislation, suggests that they would also be subject to these laws.

3. Survey: Consumer Experiences, Knowledge and Perceptions

Introduction and Methodology

In this section, we take a look at the experience, knowledge and perceptions of consumers who use e-commerce. To that end, we surveyed Canadian consumers on:

- problems they may have encountered at various stages of an e-transaction;
- their knowledge of the different players in an e-transaction (identification, roles and responsibilities) and the recourse available to consumers;
- their concerns when using e-commerce;
- their perceptions of changes in e-commerce since the start of the COVID-19 pandemic.

To conduct our survey, we commissioned a specialized firm, Passages Marketing, to collect responses from Canadian consumers in British Columbia, Ontario and Quebec during the months of April and May 2022. A total of 1,027 people over the age of 18 who had purchased at least six products online in the previous 12 months responded to the poll, which has a margin of error of +/- 3.1%.

To broaden our view of the problems encountered by consumers, we supplemented our survey findings with observations from other consumer rights groups and the media.

E-commerce Usage

We conducted our survey almost two years after the start of the COVID-19 pandemic. 86% of respondents said they have been making more purchases on the Web since the start of the COVID-19 pandemic. This is in line with section 1 of the report's findings about e-commerce growth during the pandemic.

Almost all respondents (93%) use marketplaces when shopping online, the proportion being lower (86%) among respondents aged 65 and over.

More than half (56%) of respondents said they had purchased a product online from a private individual in the previous two years. This trend is particularly marked among respondents aged 18 to 44 (62% to 74%).

Finally, 31% of respondents make more purchases via social networks now than before the pandemic. However, the proportion is 47% among 18 to 24 year-olds.

E-commerce-Specific Problems Reported by Consumers

Our poll revealed that only 15% of respondents have never encountered a problem when shopping online. Respondents mainly reported problems relating to lack of information, delivery delays, products never being delivered or received, and products not matching their descriptions (*figure 1*).

Have you ever experienced any of these situations?

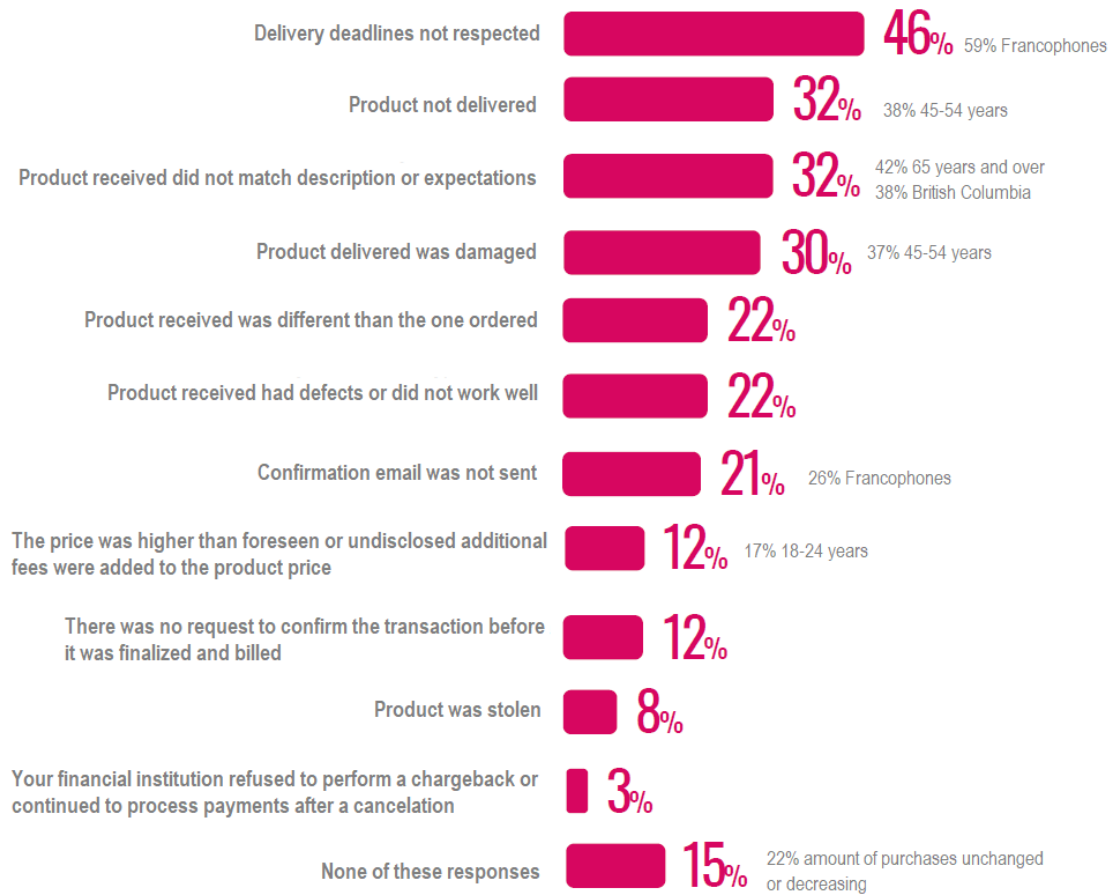


Figure 1 (our translation of the original survey report, written in French)

Lack of information

A significant number of respondents to our poll (63%) reported having encountered a problem related to a lack of information in the context of an online purchase. Lack of information on the supplier's identity ranks first (39%), followed closely by lack of information on product specifications (36%) and on cancellation, termination, return, exchange or refund conditions (33%). However, only 22% indicated they had encountered a problem related to lack of information on payment terms and conditions.

Lack of information can lead to a number of problems for the consumer. It can be difficult, if not impossible, to contact a supplier that has not adequately indicated its identity or contact details; this can, of course, make resolving a dispute or cancelling the transaction much more difficult, if not impossible. Of respondents to our poll who encountered a problem with a transaction and were unable to resolve it fully, 31% cited their inability to identify or contact the supplier as the reason.

Lack of information about the supplier's return (and other) policies can also lead to problems. As we noted in a 2015 report, consumers tend to mistakenly believe that they have the right to return

or exchange products under any circumstances¹¹⁰. A 2011 study by the Public Interest Advocacy Centre found that Canadian consumers find return policies very important in their decision whether or not to buy a product online¹¹¹. The study also surveyed consumers about the problems they encounter when exercising a contractual right to return goods after an online purchase. It found that only 20% of respondents have not encountered problems when making returns or exchanges online; most of those who encountered problems cited the supplier not refunding the return shipping costs or not accepting returns in the store as the cause¹¹². Information on these issues should normally be included in the return policy.

In our survey, we found that respondents most often encountered problems related to a lack of information when buying from a third-party seller on a marketplace (*figure 2*).

With which type of seller did you encounter a problem or a lack of information?

	Merchant selling on own website	Third-party merchant selling on an online marketplace	Individual	Large retailer	Small retailer	Other
Lack of information about the identity of the merchant (name, address, contact information, etc.) n = 403	28%	70%	19%	22%	22%	2%
Lack of information about product specifications n = 366	39%	65%	26%	35%	26%	2%
Lack of information on fees and payment terms and conditions n = 230	40%	61%	19%	28%	25%	3%
Lack of information on conditions for cancelation, termination, return, exchange or reimbursement n = 334	35%	64%	19%	27%	27%	3%

Figure 2 (our translation)

Problems due to a lack of information were experienced by consumers both when shopping from a computer and when using a cell phone¹¹³.

¹¹⁰ See Union des consommateurs, “The Truth Behind the Obligation to Take Back Returned Items: Return policies or take-back times for in-store purchases,” 2015, online: <https://www.uniondesconsommateurs.ca/wp-content/uploads/2015/11/R02-UC-Politique-retour-rapport-F-Eng.pdf>. Note that the report focuses on in-person returns, etc.

¹¹¹ Public Interest Advocacy Centre (PIAC), “Point of No Return: Consumer Experiences Returning Online Purchases,” 2011, p. 4, online: http://www.piac.ca/wp-content/uploads/2014/11/online_returns_final_website.pdf.

¹¹² *Id.*, p. 19.

¹¹³ 58% of consumers experienced this type of problem when using a computer, and 39% when using a cell phone.

Late delivery

After lack of information, the problems most frequently encountered by respondents to our poll were delivery-related. Delivery dates not being respected was the most common, with 46% of respondents saying they had already encountered this problem¹¹⁴.

This problem was encountered more often with third-party sellers than with sellers selling on their own websites. Of those who experienced late delivery, 53% indicated that the purchase was made from a third-party seller and 39% indicated that it was with a seller who sells on its own website. Consumers also indicated that they encountered this type of problem more often with large than with small retailers.

The literature reveals that suppliers sometimes refuse to take responsibility for shipping problems, for example, by claiming the consumer is responsible for dealing with the deliverer to resolve the problem¹¹⁵.

Product never delivered or received

A third of our poll respondents purchased a product that was never delivered. Of these respondents, 53% encountered this problem during a transaction with a third-party seller and 28% indicated that the transaction was with a seller selling on its own website. Consumers also indicated that they encountered this type of problem more often with large than with small retailers.

This problem can occur for a number of reasons, including a simple error on the part of the deliverer or the supplier, theft of the package, or fraud¹¹⁶.

Only 8% of respondents indicated that they had experienced theft of their parcel after delivery (to their knowledge). Respondents encountered this problem more often when the goods came from a major retailer.

According to the *Better Business Bureau* (BBB), selling a good that does not exist and is therefore never delivered to the consumer is the most common type of fraud in e-commerce¹¹⁷.

*In 2020, Canadians reported losing \$8.7 million by ordering [products that are never delivered]. The Anti-Fraud Centre estimates that actual losses are 20 times greater*¹¹⁸.

¹¹⁴ Statistics Canada, *supra*, note 44: Similar trends can be seen in other polls on this subject: “Over two-thirds of Canadians who shopped online (69%) encountered problems while ordering. The most frequent issues included the speed of delivery which was slower than indicated (48%), a foreign retailer did not sell or ship to Canada (30%) or the product ordered was of a lower quality than expected (26%).”

¹¹⁵ For example, Rosa Marchitelli, “Package didn't arrive? Don't get caught between retailers and shipping companies” in *cbc.ca*, CBC News, 2020, online: <https://www.cbc.ca/news/canada/delivery-online-lost-packages-retail-1.5798556>; Isabelle Roberge, “Perdu dans la poste” in *ici.radio-canada.ca*, Radio-Canada, 2021, online: <https://ici.radio-canada.ca/nouvelle/1774178/postes-canada-colis-livraison-erreur-rembourser-commerce-electronique>.

¹¹⁶ On suppliers' lack of responsibility in the event of parcel theft: Stéphane Desjardins, “Quels sont vos recours contre le vol de colis livrés à la maison?” in *tvanouvelles.ca*, TVA Nouvelles, 2020, online: <https://www.tvanouvelles.ca/2020/11/24/quels-sont-vos-recours-contre-le-vol-de-colis-livres-a-la-maison-1>.

¹¹⁷ Better Business Bureau Institute for Marketplace Trust, “BBB Online Purchase Scams Report: How to Stay Safe Online,” 2021, p. 5, online: <https://bbbfoundation.images.worldnow.com/library/d94746d3-524e-4d00-9ae1-8e6e6d542025.pdf>; Better Business Bureau Institute for Marketplace Trust, “2020 Online Purchase Scams Report,” 2020, p. 6, online: <https://bbbfoundation.images.worldnow.com/library/65016b74-abf5-456b-9604-892e46ebc7dd.pdf>.

¹¹⁸ La Facture, “Passez le mot sur la livraison d'articles commandés en ligne” in *ici.radio-canada.ca*, Radio-Canada, 2021, online: <https://ici.radio-canada.ca/tele/la-facture/site/segments/capsule/371129/passez-mot-fraude-arnaque->

Buying animals online, particularly puppies, is a very common example of this type of fraud, where the consumer never actually receives the goods. Scammers pretend to be suppliers or individuals selling puppies or other animals, then:

When a would-be pet parent pursues the listing, the scammer refuses to let the consumer meet the pet before buying - often claiming COVID-19 considerations. The scammer claims that they must use a pet delivery agency of some kind, often an airline. BBB Scam Tracker has received many reports of fake Web pages impersonating real businesses for this purpose. The scammer also may demand fees for vaccinations or other last-minute “needs.” Ultimately, the pet does not exist, and the consumer has lost money and emotional investment¹¹⁹.

Much of this type of fraud originates on social networks¹²⁰.

Product does not match the description

A third of respondents to our survey also replied that they had received a good that did not match the advertised description or their expectations. 22% of respondents had received a product that was different from the one ordered, had defects or did not work. A third of buyers had ordered a product that was damaged when they received it.

Consumers often attribute the need to return online purchases to inadequate or inaccurate product descriptions¹²¹.

A review of the literature reveals numerous examples of how a good may not match its description or to consumer expectations. In addition to representations that mislead consumers about the good's qualities (size, technical specifications, etc.), suppliers may display a description that leads the consumer to believe that:

- the product is of a certain brand (e.g. Nike), when in fact it is a counterfeit¹²²;

[livraison-internet-facebook](#). Our translation. See also Competition Bureau Canada, “Non-delivery scams: When nothing comes to those who wait,” Government of Canada, online: <https://www.canada.ca/en/competition-bureau/news/2021/03/non-delivery-scams-when-nothing-comes-to-those-who-wait.html>.

¹¹⁹ Better Business Bureau, “Purchasing a puppy online remains extremely risky, BBB warns holiday shoppers” in [bbb.org](https://www.bbb.org/article/news-releases/26235-purchasing-a-puppy-online-remains-extremely-risky-bbb-warns-holiday-shoppers), 2021, online: <https://www.bbb.org/article/news-releases/26235-purchasing-a-puppy-online-remains-extremely-risky-bbb-warns-holiday-shoppers>. Consumers lose, on average, \$1,088 when they fall victim to this kind of fraud, according to the BBB. In total, Canadian consumers lost more than \$105,000 between January 2020 and March 2021 to this type of fraud: CBC News, “Puppy scams cost Canadians thousands. Here’s how to avoid being ripped off” in [cbc.ca](https://www.cbc.ca/news/canada/calgary/puppy-scams-day-national-calgary-bbb-1.5960486), 2021, online: <https://www.cbc.ca/news/canada/calgary/puppy-scams-day-national-calgary-bbb-1.5960486>.

¹²⁰ La Fature, *supra*, note 118; Competition Bureau Canada, *supra*, note 118; Better Business Bureau, “BBB Tip: Online purchase overpayment scams” in [bbb.org](https://www.bbb.org/article/news-releases/23276-bbb-research-shows-spike-in-online-purchase-scams-since-covid-started), 2022, online: <https://www.bbb.org/article/news-releases/23276-bbb-research-shows-spike-in-online-purchase-scams-since-covid-started> : “Consumers who lost money to online purchase scams reported the following platforms as the place where they saw the product: Facebook, Google, a direct merchant website, Instagram, or pop up ads on social media when they were actively shopping. According to survey respondents, out of the 57 percent who did not research the website or business via an independent source before making a purchase, more than four out of five lost money.”

¹²¹ Roy Edwards, “US online shoppers say it’s retailers’ responsibility to minimize return rates” in [enterprisetimes.co.uk](https://www.enterprisetimes.co.uk/2020/01/07/us-online-shoppers-say-its-retailers-responsibility-to-minimise-return-rates/), Enterprise Times, 2020, online: <https://www.enterprisetimes.co.uk/2020/01/07/us-online-shoppers-say-its-retailers-responsibility-to-minimise-return-rates/>.

¹²² Better Business Bureau Institute for Marketplace Trust, “BBB Online Purchase Scams Report: How to Stay Safe Online,” *supra*, note 117, p. 15.

- the product originates from a certain place (for example, it was manufactured in the consumer's province or country of residence), whereas it comes from elsewhere¹²³;
- the product is of a certain quality (for example, it is homemade, handmade, or made with high-quality materials), when in reality it is of inferior quality, mass-produced, etc.

A particularly blatant example of this type of fraud involved a company called “Le Petit Écolier,” which claimed to sell high-quality children's products made in Quebec. The company posted testimonials from local experts about the products' benefits, and pledged to donate a certain percentage of its profits to charity. Consumers who bought goods from this website received, after a long delivery time, poor-quality products that were clearly from abroad. Upon investigation, all the information on the website turned out to be false; testimonials and experts were fabricated, product images were altered, the partnership with the charity did not exist, and the company's website changed from one jurisdiction to another, claiming, for example, to be local to Quebec on the Quebec site, to France on the French site, and so on.¹²⁴

The supplier in this example practiced dropshipping, a practice that is often associated with this type of fraud¹²⁵. Although dropshipping is legal, sellers usually do not advertise that they are doing it, and consumers are often unaware that the seller has never seen or handled the goods ordered or that the goods come from abroad¹²⁶. Many dropshipping sites also fail to provide the seller's contact information, and can sometimes disappear from the Internet altogether, leaving consumers with no recourse in the event of a problem¹²⁷.

¹²³ For example: Marie-Ève Fournier, “Gare aux leggings faussement fabriqué à Granby” in *lapresse.ca*, La Presse, 2022, online: <https://www.lapresse.ca/affaires/chroniques/2022-01-31/gare-aux-leggings-faussement-fabriques-a-granby.php>; Roxane Léouzon, “Arnaque aux pantouffles faussement québécoises” in *ledevoir.com*, Le Devoir, 2022, online: <https://www.ledevoir.com/economie/714927/consommation-arnaque-en-pantouffles>. See also the story of Le Petit Écolier (next note).

¹²⁴ For example, Marie-Eve Fournier, “Le Petit Écolier vous fait enrager” in *lapresse.ca*, La Presse, 2022, online: <https://www.lapresse.ca/affaires/chroniques/2022-02-02/le-petit-ecolier-vous-fait-enrager.php>; Jean-Luc Bouchard, “Des jouets 'fabriqués au Québec' qui viennent de Chine” in *ici.radio-canada.ca*, Radio-Canada, 2022, online: <https://ici.radio-canada.ca/nouvelle/1871138/petit-ecolier-arnaque-shopify>.

¹²⁵ See, for example: SPF Economie, “Dropshipping: des achats en ligne risqués” in *news.economie.fgov.be*, SPF Economie, 2021, online: <https://news.economie.fgov.be/193998-dropshipping-des-achats-en-ligne-risquees>; Katie Tasarov, “Dropshippers can make millions selling cheap products on Facebook, Instagram and Tik Tok, but buyers beware” in *cnbc.com*, CNBC, 2021, online: <https://www.cnbc.com/2021/02/06/dropshippers-middlemen-sell-cheap-products-on-social-media.html>.

¹²⁶ Lexology, “What is drop-shipping and how does it differ from a market place?” in *lexology.com*, Lexology, online: <https://www.lexology.com/library/detail.aspx?g=53c4597b-dd04-4541-80c5-2814fe6c7a56>: “As described above, there is generally no transparency about the fact that the order will be fulfilled by a third party supplier. It is indeed not in the seller's interest to be transparent as suppliers may also have their own sales platform or sell on market places. Customers may be tempted to go directly to these platforms to pay even less.” See also Nguyen, *supra*, note 13: “Most drop shippers don't have a direct relationship with the factories they source from, and aren't able to verify the authenticity or quality of the product.”

¹²⁷ SPF Economie, *supra*, note 125: “The online store does not mention the company responsible and does not provide contact details. Often, the site is even no longer accessible shortly after the purchase and after a short burst of advertising on social media. So consumers don't know who they're dealing with, or how to contact them” [our translation]; Alain McKenna, “Dropshipping : Méfiez-vous des soldes de fermeture trompeurs sur Facebook” in *protegez-vous.ca*, Protégez Vous, 2021, online: <https://www.protegez-vous.ca/nouvelles/affaires-et-societe/dropshipping-mefiez-vous-des-soldes-de-fermeture-trompeurs-sur-facebook>: “These items may not have the promised features either. Good luck contacting this seller afterwards: no postal address, no reply to emails, nothing. The aim is simply to make a lot of money quickly from unsuspecting Internet users, then disappear.” Our translation. See also the example of Le Petit Écolier above.

Fakespot, a company whose mission is to identify fraudulent practices and fake reviews, has found that these practices are common among dropshippers (who may sell on marketplaces or on their own website, hosted on a platform like Shopify):

Fakespot recently analyzed the activities of 124,000 merchants using Shopify's sales tools: 72% of them practice dropshipping, which isn't illegal by any stretch of the imagination (Shopify devotes a full training course to best practices in this area...), but which does provide cover for the ill-intentioned. Obviously, Shopify condemns these fraudulent dropshipping activities.

But here's the thing: 25,000 businesses, or a fifth of these websites, are fraudulent, according to Fakespot. In addition to being impossible to reach, they do counterfeiting, buy fake positive reviews on Amazon and eBay sites, or sell products that are defective or inferior to those promised¹²⁸.

In our poll, more than 60% of respondents who encountered problems with goods that do not meet their description or expectations, are not what was ordered, or do not work, say they experienced the problem when dealing with a third-party seller. Only around 30% of respondents have encountered these same problems with suppliers who sell on their own websites¹²⁹. Among respondents who received a damaged product, 52% dealt with a third-party seller and 29% with a supplier selling on its own website. Consumers also indicated that they encountered this type of problem more often with larger retailers than with smaller ones.

Problems related to the COVID-19 pandemic

We observed in the literature that several poor e-commerce practices have multiplied since the start of the COVID-19 pandemic.

The frequency of e-commerce scams has increased significantly¹³⁰. Indeed, the BBB claims that consumers lose more money in fraudulent e-commerce transactions than in any other type of fraud studied, which was not the case previously¹³¹. Several factors may explain this phenomenon. For example: the growth of e-commerce, the increasing use of untraceable payment applications (certain e-wallets, cryptocurrencies) and the scarcity of certain products since the start of the pandemic (consumers are motivated to buy goods they can't find in person quickly)¹³².

Parcel theft also appears to have increased since the start of the pandemic¹³³.

¹²⁸ McKenna, *id*.

¹²⁹ This difference is not due to the fact that there are more purchases made from third-party sellers than sellers selling on their own websites. Indeed, even on Amazon, which is the largest and best-established marketplace, third-party sales account for just over half of all unit sales (although this figure is rising): Statista, "Share of paid units sold by third-party sellers on Amazon platform from 2nd quarter 2007 to 4th quarter 2022" in *statista.com*, Statista, 2022, online: <https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/>. Moreover, many of the biggest e-commerce players are retailers that sell on their own websites (see Section 4 of this report: Field Survey).

¹³⁰ Better Business Bureau, *supra*, note 120. See also Better Business Bureau, *supra*, note 119.

¹³¹ Better Business Bureau Institute for Marketplace Trust, "2020 Online Purchase Scams Report," *supra*, note 117, pp. 2-3.

¹³² Better Business Bureau, *supra*, note 119.

¹³³ Éric Plouffe, "Achats en ligne : gare aux voleurs de colis!" in *ici.radio-canada.ca*, Radio-Canada, 2020, online: <https://ici.radio-canada.ca/nouvelle/1752078/achats-fetes-web-vols-colis-livraison>. "According to a poll of 1,500 Canadians conducted by the carrier FedEx, one in three people said they had been a target this year, whereas in

At the start of the pandemic, consumers experienced a significant increase in delivery problems. As consumers rushed to make online purchases, delivery companies were overwhelmed and fell behind schedule. Delivery times became unpredictable and extremely long, sometimes taking twice as long as expected¹³⁴. Canada Post even suspended all delivery date guarantees¹³⁵. However, the situation quickly stabilized and delivery even seems to have improved, as consumers seem to have a more positive perception of delivery now than before the pandemic. Indeed, 74% of respondents to our poll said that delivery is generally faster and more reliable now than before the COVID-19 pandemic began.

Recourse

876 of our poll respondents (85%) encountered at least one problem when purchasing goods online. 697 of those (79.57% of respondents who had a problem) tried to resolve the issue in some way.

61% of these consumers have tried to resolve a problem by complaining to the supplier's customer service and 45% have tried complaining to the marketplace operator's. 20% of respondents have tried using an online dispute resolution platform to resolve their problem. 24% of respondents have tried to request a chargeback. Few respondents have taken legal action (5% have sent a formal notice, 4% have applied to court) or filed a complaint with a consumer protection office (7%).

61% of respondents said the steps they took had fully resolved the problem; Francophones and Quebecers selected this response more often than the average respondent.

For those who did not succeed in resolving or did not completely resolve the problem, the main reason they cited for their failure was the seller's refusal to help them, particularly among respondents aged 18 to 34. More surprisingly, the second most frequently cited reason was the impossibility or difficulty of identifying the supplier in order to contact them; this reason was cited more often by British Columbians.

20.43% of respondents who encountered a problem made no attempt to resolve it. By far the most common reason given was the low price of the goods purchased, followed by lack of time.

2019, the figure was slightly lower, at around one in four. The Service de police de la Ville de Montréal (SPVM) has no statistics on parcel theft, but believes it is quite possible that this type of theft has increased as a result of the pandemic. The police force has posted a video online to raise awareness of the phenomenon." Our translation. See also Joanna Pachner, "COVID-19 has forever changed e-commerce: FedEx's Canadian head is looking ahead at the trends that are here to stay" in *thestar.com*, Toronto Star, 2021, online: <https://www.thestar.com/business/2021/05/24/covid-19-has-forever-changed-e-commerce-fedexs-canadian-head-is-looking-ahead-at-the-trends-that-are-here-to-stay.html> and John P. Mello Jr, "Package Theft Jumps 7 Percent in 2020" in *ecommercetimes.com*, E-Commerce Times, 2021, online: <https://www.ecommercetimes.com/story/86972.html>.

¹³⁴ See Jay Greene, "Frustrated Amazon shoppers vent at record levels" in *washingtonpost.com*, The Washington Post, 2020, online: <https://www.washingtonpost.com/technology/2020/05/21/amazon-shopper-complaints/>; Karim Benessaïeh, "Postes Canada : les retards de livraison ont doublé en un mois" in *lapresse.ca*, La Presse, 2020, online: <https://www.lapresse.ca/affaires/entreprises/2020-05-15/postes-canada-les-retards-de-livraison-ont-double-en-un-mois>; Rachael D'Amore, "Where's your delivery? Canada Post backlog amid COVID-19 keeps customers guessing" in *globalnews.ca*, Global News, 2020, online: <https://globalnews.ca/news/7048741/coronavirus-canada-post-delay/>; Jason Del Rey, "Amazon Prime delivery delays are now as long as a month" in *vox.com*, Vox, 2020, online: <https://www.vox.com/recode/2020/3/22/21190372/amazon-prime-delivery-delays-april-21-coronavirus-covid-19>.

¹³⁵ Radio-Canada, "COVID-19: Postes Canada change la procédure de livraison de colis" in *ici.radio-canada.ca*, Radio-Canada, 2020, online: <https://ici.radio-canada.ca/nouvelle/1683917/coronavirus-facteurs-bureaux-poste-sonner-deposer-quitter>.

Consumers who feel that their purchases have increased significantly over the last two years are much more likely to say that the low cost of purchases lead them to inaction in the event of a problem.

11% of respondents who did not attempt to resolve the problem did so because they felt they had no rights or recourse. Only 6% indicated that they did not take action because the company is abroad. It is interesting to note that these figures are low, as a supplier's location in another jurisdiction can certainly create obstacles for consumers trying to resolve their problems¹³⁶. We can posit that few respondents raised this issue because many of those trying to resolve problems online try to do so online—either by settling the dispute with an actor in the transaction or by requesting a chargeback—and not through the courts.

Consumer Knowledge

In our poll, we investigated consumers' knowledge of which parties they interacted with in an e-transaction, the roles and responsibilities of those different parties, and consumers' recourse in the event of a problem.

Identification, roles and responsibilities of parties

Consumers cannot always distinguish clearly between the different parties involved in an e-transaction.

THIRD-PARTY SELLERS

We found that consumers using marketplaces are not always aware that they are buying from a third-party seller. 82% of respondents said they had already noticed the presence of third-party sellers on marketplaces¹³⁷. When asked if they had noticed the presence of third-party sellers on the websites of “traditional” stores that have recently integrated marketplaces on their websites (e.g., Walmart, The Bay, Loblaws), 71% of respondents said yes¹³⁸. Although 65% of respondents say they check whether an item on a marketplace is offered by a third-party seller before purchasing it, 52% realized after a purchase that they had bought the good from a third-party seller and not from the website operator¹³⁹. Not surprisingly, the majority of respondents say that the fact that they are buying from a third-party seller on a marketplace is not sufficiently clear¹⁴⁰.

75% of respondents believe—correctly—that third-party sellers have the same obligations and responsibilities as suppliers selling on their own websites. Respondents aged 18 to 24 were more inclined to think that third-party sellers do not have the same obligations as other suppliers, while the opposite was true for respondents over 55.

¹³⁶ See The Public Interest Advocacy Centre (PIAC), “Shopping for Consumer Protection: Current Jurisdictional Issues,” 2014, online: https://www.piac.ca/wp-content/uploads/2014/11/shopping_for_consumer_protection.pdf. See also: Isabelle Ducas, “Quel recours pour les cybermagnasineurs?” in *plus.lapresse.ca*, La Presse, 2013, online: https://plus.lapresse.ca/screens/43d2-6130-520e8d7c-9e1b-484eac1c606d_7C_IKBPWbFtG-.html.

¹³⁷ 7% do not use marketplaces, so only 11% of consumers who use marketplaces have never noticed the presence of third-party sellers.

¹³⁸ 6% of respondents do not use these websites, so 23% of respondents who do use this type of website have never noticed the presence of third-party sellers.

¹³⁹ These figures include the 7% of respondents who don't use marketplaces; therefore, among respondents who do use marketplaces, the proportion who check whether it's a third-party seller and discover after a purchase that they've done business with a third-party seller is actually higher.

¹⁴⁰ 56% for marketplaces and 58% for marketplaces located on a traditional store website. Note that the question was asked to all respondents, including those who do not use these types of websites.

SUPPLIER OR PRIVATE INDIVIDUAL

In addition, the poll revealed that respondents do not always know how to distinguish whether an online seller is a supplier or a private individual. We asked consumers about the status of two examples of sellers who can be considered either suppliers or individuals, depending on the circumstances: a mom who sells her homemade products on a social network, and a TikTok influencer who sells make-up products. As discussed in section 1 (Parties to the electronic transaction: suppliers), the seller's status and designation as a supplier (and therefore his legal obligations) depend on whether he carries out his activity in the course of his business, i.e., whether he regularly sells products for profit in the course of a business or not.

45% of respondents said that the mom has the same obligations as a supplier, and 50% said the same for the influencer. 21% and 23% said they did not know the answer for the mom and influencer respectively, and 19% and 15% said that neither has the same obligations as a supplier. Only 15% and 12% said the answer would vary depending on the circumstances.

People aged 55 and over were more likely to believe that these sellers have the same obligations as typical supplier; on the other hand, younger consumers were more inclined to think that the obligations of this type of seller depend on several factors. There seems to be a parallel here with the question of third-party sellers' obligations; younger people are less inclined to think that non-traditional sellers have the same obligations as traditional suppliers, while older people tend to think that everyone who sells online is subject to the same obligations.

Although the youngest respondents were right to say that a seller's status depends on other factors, they seemed confused when it came to identifying the relevant factors. When asked to do so, respondents aged 18 to 24 selected both relevant factors (whether the person sells products for profit, how often the person sells products, sales volume, etc.) and less relevant ones (whether the person has a business name or pseudonym, the value of the product sold, the annual income the individual makes from sales).

DELIVERY SERVICE PROVIDERS

Respondents in general, and particularly Francophones and Quebecers, are aware that the deliverer is not the person who is ultimately responsible for resolving delivery problems (e.g., when goods are delivered late or are broken or stolen). 18 to 24 year-olds and British Columbians were more likely to answer this question incorrectly, and 16% of respondents admitted to not knowing the answer.

MARKETPLACE OPERATORS

There was some confusion about the legal responsibility of marketplace operators. 51% of respondents said that the marketplace operator is **always** responsible if there is a problem with the delivery of a good sold by a third-party seller, and 48% said the same if there is a problem with the good sold. In both cases, Francophones and Quebecers were more inclined to attribute responsibility to marketplace operators. For both questions, 25% of respondents said they did not know the answer.

These figures demonstrate a lack of understanding among almost three quarters of respondents, as many marketplace operators assume responsibility for delivery in some cases, for example, if they ship the good, but not in **all** cases; on the other hand, it is rare for marketplace operators to assume responsibility for the quality of the good sold by a third party.

OTHER PLATFORM OPERATORS

We also asked whether the operators of meal-ordering platforms (like Uber Eats) are **solely** responsible in the event of a problem with delivery or with the food delivered. A majority of respondents said that the platform is responsible for problems with delivery but not with the food. 28 to 29% of respondents say they did not know, and older people made up a large proportion of this group.

There is a great deal of confusion about the responsibilities personalized delivery service providers, for example, Instacart, which offers shopping at a store (e.g., a grocery store) and delivery services. 41% of respondents said they did not know who was responsible if something went wrong with such a transaction.

Chargebacks

We surveyed respondents on two important issues concerning recourse for e-commerce problems: chargebacks and the application of consumer protection laws to transactions with a foreign seller.

The majority of consumers are unaware of their right to a chargeback. Only 39% of respondents thought they had the right to be reimbursed by their credit card issuer when they encounter a problem with an e-transaction that is not resolved by the supplier. 33% of respondents said that this right does not exist. In fact, respondents were more likely to say that non-credit card payment service providers (e.g. PayPal) have an obligation to reimburse them in the event of a problem: 42% said that this right exists, and only 24% thought it did not. This is the opposite of the truth: the law establishes a chargeback obligation for credit card issuers, but not for other payment service providers.

For both questions, men were more likely to say that credit card companies and payment service providers have an obligation to reimburse the consumer in the event of a problem. Respondents aged 25 to 34 were the most convinced that such obligations do not exist.

Law enforcement

31% of respondents do not believe that their province's consumer protection laws apply when the supplier is abroad, and 46% of respondents admit to not knowing the answer to this question¹⁴¹.

Consumer Perceptions and Concerns

We asked our survey respondents to indicate their perceptions of e-commerce trends over the two years since the start of the pandemic in 2020.

In general, respondents perceived positive changes and trends. 69% agreed that payment is now easier with the growth of buy now, pay later services and 66% agreed that marketplace operators are taking more responsibility when there is a problem with a transaction. 63% of respondents said that the multiplication of marketplaces and third-party sellers makes shopping easier.

¹⁴¹ Polls conducted by Option consommateurs and the Public Interest Advocacy Centre on this issue also show considerable confusion: Option consommateurs, "Le point de vue des Canadiens sur l'harmonisation des normes de protection du consommateur" 2015, pp. 22 and 23, online: <https://option-consommateurs.org/wp-content/uploads/2017/06/option-consommateurs-2014-2015-harmonisation-normes-protection-consommateurs-fr.pdf>. See also PIAC, *supra*, note 136, pp. 11 and 25.

On the other hand, only 55% said that the multiplication of marketplaces and third-party sellers facilitates recourse in the event of a problem, and 45% of respondents disagree (33% strongly disagree) with this last statement. What's more, 64% of respondents say that it is more difficult to know the seller's identity now than before the pandemic.

Of all the problems mentioned, respondents were most concerned about the risk of a product not matching the description or photos online, or having difficulties with returns or exchanges (figure 3). It should be remembered that the product not matching its description is one of the main reasons for returns and exchanges.

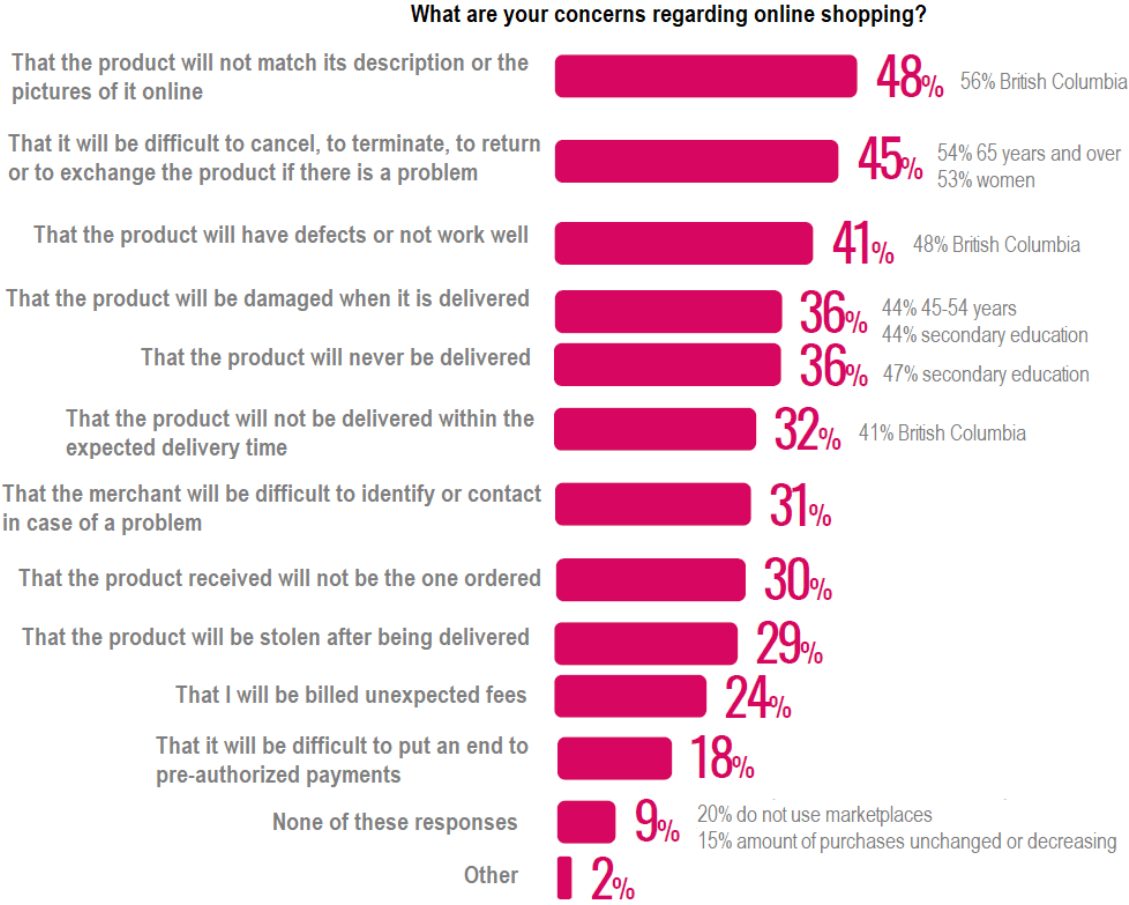


Figure 3 (our translation)

Even though delivery delays are among the most common problems encountered when buying online, respondents were more concerned about the risk of the product being damaged on delivery (36%) or never being delivered (36%) than they were about the possibility of the product not being delivered on time (32%).

Only 31% of respondents said they were concerned about finding it difficult to identify or contact the supplier, although 39% said they had already encountered the problem of a lack of information about the seller's identity and contact details.

59% of respondents indicated that their concerns about online shopping have remained unchanged over the past two years, with 28% saying they have increased and 13% saying they have decreased.

Although e-commerce laws have not changed in recent years, 53% of respondents said they feel better protected by the law now than they did before the pandemic. 70% of respondents aged 18 to 24 agreed with this statement. However, a third of respondents indicated that they strongly disagreed with this statement.

The majority of respondents (73%) indicated that they are no more confident when shopping on a marketplace than when shopping on the supplier's website. However, 46% of respondents aged 18 to 24 are more confident when shopping on a marketplace. 77% said they were no more confident when shopping online than in person, but 40% of respondents aged 18 to 24 are more comfortable online.

Findings

According to our survey, consumers are using e-commerce more frequently today than before the COVID-19 pandemic. The vast majority of respondents to our poll encountered at least one problem during an e-transaction. The main problems observed were as follows:

- Lack of information on the identity or contact details of the seller, on product specifications and on the conditions for cancellation, termination, return, exchange or refund;
- Delivery delays;
- Goods never received;
- Goods not matching the description or the consumer's expectations.

Respondents reported that they encountered these problems far more often with third-party sellers than with those selling on their own websites, and with larger retailers rather than smaller ones. The literature indicates that dropshipping is also often associated with these problems (recall that dropshippers can be either third-party sellers or sellers who have their own websites).

The majority of respondents who encountered a problem tried and succeeded in resolving it, often using the seller's or marketplace operator's complaints service. Those who were unable to fully resolve their problem cited the supplier's refusal to help as the main reason. Respondents who did not try to resolve the problem indicated that this was because of the low price of the good purchased.

Respondents were not concerned about problems in proportion to the prevalence of the problem. They were more concerned about the risk of a product not matching its description than about delivery delays, although the latter problem was encountered more often. We can assume that the former type of problem has more negative consequences and is more difficult to resolve than the latter.

Our study revealed a great deal of confusion concerning the identity and responsibilities of the various parties involved in e-transactions. Although the majority of respondents indicated that they noticed the presence of third-party sellers on marketplaces, they do not always realize that a good is being sold by a third-party seller until after they've bought it. The majority of respondents said that the seller's status is not sufficiently clear when they buy a good from a third-party seller on a marketplace. In general, respondents know that third-party sellers have the same responsibilities as other types of sellers, but half of them incorrectly stated that marketplace operators are also always responsible for the delivery or quality of the good sold on their platform (and 25% said they did not know the answer to this question). There was even more confusion when we asked about the responsibilities of operators of other types of online platforms.

Respondents were unable to identify the obligations of the sellers who resembled private individuals in the two examples we questioned them about.

The survey also revealed that consumers do not necessarily know their rights and recourses in e-transactions. Only 39% of respondents believed they are entitled to a chargeback when using a credit card, and a third of respondents claim that this right does not exist. Respondents are more likely to believe they are entitled to a refund when using another payment service. The majority of respondents did not know whether their province's consumer protection legislation applies to e-transactions when the supplier is abroad.

In general, respondents perceived changes and positive trends in e-commerce in the two years following the start of the pandemic. The majority said their concerns have not changed since the start of the pandemic; however, we do not know whether they had many or few concerns at that time. 28% feel that their concerns have increased.

4. Field Survey

Introduction

Objectives

In order to assess the roles, responsibilities, identity and compliance of the various actors in an e-transaction, we undertook a field survey of online businesses in August 2022, and conducted a review of the results and further research in January 2023¹⁴². The survey had three objectives:

- 1) Analyze the degree of compliance with the law by type of seller (third-party sellers selling on a marketplace vs. sellers selling on their own website);
- 2) Identify the third parties involved in e-transactions, their roles and responsibilities;
- 3) Identify the presence of information on the policies, fees, etc. of those third parties.

The first part of the analysis compares two types of sellers and their compliance with the law. The two types of sellers are those selling goods on their own website and third-party sellers. The sellers identified for this study are all suppliers (businesses). As discussed in the section below (selection of sellers), all sellers that sell on their own website do so in the course of their business or as part of their professional activities. The same applies to all third-party sellers surveyed, which sell on B2C marketplaces and appear to provide a good or service to consumers in the course of their business.

This means that all sellers surveyed should, in theory, have the same obligations under e-commerce laws. The objective of this part of the survey was to assess compliance with the law and to determine whether these different types of sellers assume the same roles and responsibilities in reality.

The second part of the analysis aims to determine which third parties intervene in e-transactions, what roles they play, what responsibilities they assume, and how much information the consumer has about them.

Selection of sellers

We conducted our survey on the websites or Web pages of 50 suppliers.

First, we selected the 20 most popular suppliers among Canadian consumers¹⁴³. Among these 20 suppliers, 15 of them sell goods on their own websites and do not operate a marketplace (e.g. Costco, Home Depot, Ikea, etc.), while five of them sell goods and operate a marketplace on their website: Amazon, Walmart, Best Buy, Hudson's Bay and Loblaw Companies (Real Canadian Superstore). On the website of each of the latter five, consumers can buy directly from the marketplace operator (Amazon, Walmart, etc.), or from a third-party seller selling on that operator's marketplace¹⁴⁴.

¹⁴² While reviewing our data in January 2023, we discovered that many of the Web pages regarding products, return policies and sellers identified during the survey had been deleted or modified.

¹⁴³ We used ecommerceDB's list of the 20 most popular e-commerce stores (by revenue), "Top stores in Canada," in *ecommerceDB*, online: <https://ecommercedb.com/en/ranking/ca/all>.

¹⁴⁴ The status of one of the suppliers, Apple, was unclear. Apple almost exclusively sells its own products on its website. However, we found a small amount of products (mainly accessories) sold by third-party sellers on its website. These third parties are called "manufacturers." On the Web page of these products is the following caution:

Next, we selected 30 third-party sellers selling on those five marketplaces, i.e. six third-party sellers per marketplace. To choose the third-party sellers, we selected three typical products from the product categories most frequently purchased on the Internet: clothing (a **shirt**), electronics (a **speaker**) and beauty or health products (**lotion or make-up**)¹⁴⁵. We then chose two third-party sellers for each product on each marketplace; i.e.: **two third-party sellers selling a shirt plus two selling a speaker plus two selling lotion for each marketplace, to arrive at a total of 30 third-party sellers**. To reproduce the way consumers typically search, we selected the first two sellers who appeared in the search results from a search performed with the marketplace's default search parameters, even if the sellers had clearly paid to be among the first results. All searches were carried out using French keywords, except when these words did not yield results, in which case we used the equivalent English words.

Throughout the field survey, we refer to sellers selling on their own website as “traditional” sellers, to distinguish them from third-party sellers and for simplicity. When a marketplace operator sells a product on its own marketplace, it is considered a traditional seller.

Type	“Traditional” sellers - 15 not operating a marketplace - 5 operating a marketplace	Third-party sellers - 6 per marketplace i. 2 selling shirts ii. 2 selling speakers iii. 2 selling lotion or make-up
Total: 50	20	30 (28 unique) ¹⁴⁶

Degree of Compliance by Type of Seller

In the first part of our survey, we analyzed compliance with pre-contractual disclosure obligations by type of seller (traditional or third-party). Canadian law also sets out certain obligations that must be fulfilled after contract formation, such as sending a copy of the contract to the purchaser and delivering the goods within a prescribed period. However, as our study did not include any purchases, our analysis is limited to the examination of pre-contractual disclosures, and therefore to the study seller’s compliance with their pre-contractual obligations.

Note: Products sold through this website that do not bear the Apple brand name are serviced and supported exclusively by their manufacturers in accordance with terms and conditions packaged with the products. Apple’s Limited Warranty does not apply to products that are not Apple branded, even if packaged or sold with Apple products. Please contact the manufacturer directly for technical support and customer service.

As such, these “manufacturers” are very much like third-party sellers. Information on those sellers, their return policies for example, is not readily available. However, Apple products and those of the “manufacturer” are all listed together at checkout. Due to the limited number of third-party sellers and the lack of clarity regarding their status, we have not treated Apple as a marketplace operator in this analysis, although it does appear, for some transactions, to have the characteristics of one.

¹⁴⁵ See Statistics Canada, *supra*, note 53 and Zanzana and Martin, *supra*, note 50.

¹⁴⁶ A third-party seller called Save on Many appeared in the results of three marketplaces: Walmart, the Bay and Real Canadian Superstore. As the seller’s offer was presented in a different way on each marketplace, we included it in our analysis three times (once for each of the marketplaces). As a result, although we studied 30 transactions with third-party sellers, we only examined 28 distinct third-party sellers. It is also possible that other third-party sellers appeared several times in our research under different names, as closer inspection revealed that many third-party sellers sell under multiple names, but this was not verified in the course of the survey.

We analyzed compliance with the eleven obligations listed below. Although e-commerce laws differ from province to province, all generally require online suppliers to disclose the following prior to entering into a contract:

- i. The supplier's name and, if different, the name under which the supplier carries on business;
- ii. The supplier's business address and, if different, the supplier's mailing address;
- iii. Phone number;
- iv. Description of goods sold, including any technical requirements/specifications;
- v. Detailed price list, including associated costs (shipping and taxes);
- vi. Additional charges that may be added to the product's price, or description of these charges if the supplier is unable to establish the amount;
- vii. Total amount of the contract or amount of instalments;
- viii. Currency (if other than Canadian, in QC, ON and SK);
- ix. Clauses, terms and conditions of payment;
- x. Delivery details (date, carrier, delivery method and location);
- xi. Cancellation, return, exchange and refund policies, if applicable.

According to provincial legislation, this information must be disclosed in a clear and understandable manner, and must be made available in a way that ensures the consumer has access to it, and can retain and print it.

For third-party sellers, we only assessed compliance with the following five criteria:

- The supplier's name and, if different, the name under which the supplier carries on business;
- The supplier's business address and, if different, the supplier's mailing address;
- Phone number;
- Description of goods sold, including all technical requirements/specifications;
- Cancellation, return, exchange and refund policies, if applicable.

Indeed, it was impossible to assess third-party sellers' compliance with the other disclosure obligations, as we discovered that it was **always** the marketplace operator who was responsible for displaying the other mandatory information.

Through online research, we found that 23 of the 28 third-party sellers selling on a marketplace also had their own independent websites. Four of these websites were non-transactional: they displayed products or described the business, but consumers could not make purchases on them. To determine if posting on a marketplace influenced seller behaviour, we studied the sellers' compliance with their disclosure obligations on these websites (including the non-transactional sites) and compared it to that of these same third-party sellers when selling on marketplaces. As we will see, we found that sellers often complied better with pre-contractual disclosure obligations on their own websites than when selling on a marketplace.

As we did not actually purchase the goods in question, the investigation did not analyze the veracity of the information disclosed, such as a description of the good (unless we found in users' reviews that the product description was not accurate), the delivery date, the deliverer's identity, the total amount charged for the transaction, etc. Nor did we analyze the legal compliance of the information disclosed; for example, certain shipping or refund policies did not, at first glance,

appear to be legally enforceable. We simply verified whether the information was provided, not whether it was valid.

This part of the survey was inspired by the article “The Missing Hyperlink – An Empirical Study: Can Canadian Laws Effectively Protect Consumers Purchasing Online?” by Mariella Montplaisir, who conducted a similar study in 2013 to 2015 with re-verification of selected suppliers in 2017 (*supra*, note 81). Her analysis of the pre-contractual disclosure obligations has informed our interpretation of these requirements in the sections that follow.

i. Supplier’s name

Canadian e-commerce laws require a supplier to disclose its legal business name on its website, as well as the name under which it conducts its business, if different.

Among the traditional sellers, 18 out of 20 complied with this obligation.

All third-party sellers clearly indicated a name on the marketplace on which they were selling. However, we found it difficult to determine whether a third-party seller has another name under which it carries on its business, or even whether the name displayed is actually the business’s legal name, simply by looking at the information displayed on the marketplace,

We can assume that third-party sellers sometimes do business under other names that they do not clearly display on the marketplace, given that we found two examples of this practice on Walmart’s marketplace. One third-party seller, called Jovati on the website’s French version, had another name on the English version of its return policy (Shenzhen Skege Household Products Co. Ltd.). Another third-party seller was called Fast Media USA Vendeur on the French version of the marketplace, but Ami Ventures Inc. on the English version.

It seems that Fast Media USA Vendeur is another name for Ami Ventures, as the two sellers appear identical. Upon investigation, it was discovered that this company also does business under the name Ergode, among others, and sells goods under several names on several marketplaces¹⁴⁷. It was difficult for us to know whether one of these names was the company’s actual legal name (and if so, which one).

When we examined the independent websites of third-party sellers, we found that each website clearly indicated one or more names, but again, it was often difficult, if not impossible, to know what the company’s actual legal name was or whether the company used other names. For example, we found no indication on the Ami Ventures website that this company uses other names, including Fast Media USA Vendor. This lack of clarity, even on the seller’s website, makes it very difficult, if not impossible, to determine whether third-party sellers are complying with this obligation.

ii. Business address

In analyzing suppliers’ compliance with this obligation, we adopted Montplaisir’s interpretation of the rule, namely that displaying a branch address in a store locator application does not meet the

¹⁴⁷ Ergode’s website (<https://ergode.com/about-us/>) explains that the company sells products on 21 separate websites, and at Amazon, Walmart, eBay, Wish.com, Newegg, Facebook, and Google in the U.S. and more than 75 locations abroad.

requirement to display the business's legal address. This seems insufficient, as this requirement is probably intended to oblige the supplier to indicate the address from which it manages its online activities¹⁴⁸.

Of the 20 traditional sellers, only 11 displayed their address in a complete and accessible way. Six suppliers provided an application to find a branch instead of a single address. Three displayed no address at all, or their address was so difficult to find (for example, it was only in the website's terms and conditions or on a related website) that they did not meet the requirement to divulge the address in a clear and obvious manner.

However, **none** of the 30 third-party sellers displayed their address when selling on marketplaces. While some gave their postal code, province, state or country, none ever gave a full address.

On the other hand, when we examined the independent websites of third-party sellers, we found that 14 of them clearly indicated their address and two others provided an application to find a branch or sales outlet. This fact tends to suggest that marketplace operators, and not third-party sellers, are responsible for the omission of this information on marketplaces.

iii. Phone number

16 traditional sellers clearly indicated a telephone number.

Only three third-party sellers, all on Amazon, provided their phone number when selling on a marketplace. However, this criterion was met on 19 of the third-party sellers' websites. This result suggests once again that the marketplace operators, and not the third-party sellers, are responsible for this failure.

iv. Description of the good

In assessing compliance with this obligation, we examined the description in relation to the type of good in question. Where possible, we also checked user reviews to see if any had mentioned that the description might not be accurate, or, on the contrary, that it was perfectly accurate.

For a shirt, we expected a description that included the item's size, material and colour. We checked whether the size was explained in detail, for example, with measurements in the description or with a reference to a size guide with measurements. We did not accept a size of "large" or "small," for example, as a complete description.

For speakers, we checked for basic information, such as their size and weight, as well as technical specifications, including battery life, how the product is charged (USB C, wall connector, etc.), what technologies it is compatible with (Bluetooth, for example) and what is included with the purchase (wires, wall brackets, batteries, etc.).

For lotions and make-up products, we checked whether the description precisely indicated the product's quantity and included a list of ingredients.

For traditional sellers, we checked the description of the first result for the product most compatible with the nature of the store. For example, for clothing stores, we looked at the description of the first shirt displayed in the search results. With electronics and home stores, we looked for speakers. Some stores, such as Canadian Tire or Real Canadian Superstore, did not clearly specialize in one product rather than another. In these cases, we chose the product that the store

¹⁴⁸ Montplaisir, *supra*, note 81, p. 40.

seemed to sell most often, from among the three types of items. For example, Canadian Tire sold almost no speakers, but many types of lotions and even more shirts, so we based our analysis on the first result for shirts.

17 traditional sellers met the obligation to provide what appeared to be a complete description of the product we examined on their websites. However, we cannot comment on the accuracy of those descriptions. In general, the users' reviews of the products analyzed were positive. One supplier did not meet the obligation, although it did provide a detailed description of the item (lotion), since the reviews indicated that the list of ingredients had changed and that the list of ingredients displayed in the description was no longer valid.

Sometimes the seller explained that the description was not necessarily reliable; for example, the lotion description found on Walmart's website included a disclaimer:

At Walmart Canada, we actively work to ensure that the information on the products we sell is always as accurate as possible. However, because products are regularly improved, the product information, ingredients, nutritional guides and dietary or allergy advice may occasionally change.

As the legal requirement is not to say whether the description is accurate, but rather to give an accurate description of the product, we do not believe that this type of disclaimer has any influence on the adequacy or otherwise of the description. Rather, the disclaimer merely casts doubt on the accuracy of the descriptions provided.

12 out of 30 third-party sellers fulfilled this obligation. In general, descriptions of lotions and make-up products were the least detailed; between the 10 third-party sellers who sold lotion or make-up, only one included a list of ingredients, and several descriptions of these products contained virtually no useful information. Speakers were, by far, the best-described products.

The quality of descriptions provided by third-party sellers tended to vary from marketplace to marketplace. Third-party sellers on Amazon's marketplace generally provided very complete descriptions; each of the descriptions we evaluated was detailed, although some information we considered essential was missing (no ingredient list for the lotions, no measurements for one of the shirts). In general, the descriptions of goods sold by third-party sellers on the Bay marketplace also appeared to be compliant. The quality of the descriptions offered by third-party sellers on Walmart varied greatly; three of the descriptions analyzed were detailed, but one changed considerably depending on the language selected (French or English), another was clearly inaccurate and contradictory, and a final one was virtually blank. On the Best Buy website, the descriptions for all the goods analyzed were incomplete, except for the speakers, for which the descriptions were very detailed. Descriptions of products sold by third-party sellers on Real Canadian Superstore were generally insufficient.

This variation by marketplace leads us to believe that marketplaces have different standards for product descriptions. We also note that the third-party sellers that sold the products most appropriate to the marketplace's specialization had more detailed descriptions. For example, the two third-party sellers that sold speakers on Best Buy (an electronics store) provided very detailed descriptions; on the Real Canadian Superstore website, which is primarily a grocery store, only one seller out of six provided a detailed description of the goods we searched for.

Save On Many, a third-party seller of speakers on three marketplaces – Walmart, The Bay and Real Canadian Superstore – displayed different descriptions on each marketplace. Its speaker

description was complete on The Bay and Real Canadian Superstore, and in English on Walmart's website, but important details were missing from Walmart's French version.

In general, third-party sellers that provided detailed descriptions on the marketplaces also did so on their own websites; we did not find a trend toward providing more detailed descriptions on their own websites compared to the marketplaces. The four non-transactional websites did not display detailed descriptions.

v. Detailed price list including associated costs

Every traditional seller fulfilled its obligation to display a detailed list of the price of the products at checkout prior to purchase, including associated costs such as delivery fees and taxes. That said, several sellers indicated that fees or taxes could vary. For example, Walmart's website states at checkout that:

Prices, taxes and environmental fees are subject to change based on your location. Environmental fees, shipping and taxes are estimates. Final taxes and fees will be calculated and charged (including any refund adjustments for the taxes or fees) as each item ships.

As this function is entirely managed by the marketplace operator and not by third-party sellers, we did not perform an analysis of third-party sellers' compliance with this obligation. Each marketplace operator met this obligation.

vi. Additional charges likely to be added to the product price

None of the traditional sellers indicated that there were any additional charges that were likely to be added to the product price. This may simply be because no additional charges were applicable to the transactions we tested. One supplier clearly explained that the price indicated is the total price and that the customer was not required to pay anything extra (such as a tip to the delivery person).

We were unable to ascertain whether this absence of information on additional charges reflected reality or rather constituted a breach of obligation; as we did not carry out the transaction in question, it was impossible for us to verify whether any additional charges would have been added to the price.

As this displaying this information is managed entirely by the marketplace operator and not by third-party sellers, we did not perform an analysis of third-party sellers' compliance with this obligation.

vii. Total contract amount

All traditional sellers complied with this obligation by indicating the contract's total price at checkout.

As this function is entirely managed by the marketplace operator and not by third-party sellers, we did not perform an analysis of third-party sellers' compliance with this obligation.

viii. Currency

Only four sellers indicated the currency of the amount owed. None of the marketplaces indicated this. As this function is entirely managed by the marketplace operator and not by the third-party seller, we did not perform an analysis of third-party sellers' compliance with this obligation.

Since we performed our analysis in Quebec, where the supplier is not obliged to disclose the currency unless the amount is not indicated in Canadian dollars, we did not consider that sellers were in breach of this obligation if they did not indicate the currency.

ix. Clauses, terms and conditions of payment

All traditional sellers indicated the payment methods available to consumers. This is a matter of course when it comes to e-commerce, since the purchaser must select a type of payment in order to purchase the good in question.

As this function is entirely managed by the marketplace operator and not by third-party sellers, we did not perform an analysis of third-party sellers' compliance with this obligation.

All sellers indicated that they accept payment by credit card; 11 also accepted payment by PayPal (and sometimes other payment services), six accepted payment by "buy now, pay later" services, and four accepted payment by a payment service linked to the seller (Walmart MasterCard Rewards, Hudson's Bay MasterCard credit card, etc.).

We will examine the terms and conditions of these payment services below.

x. Delivery information

To meet the obligation to disclose certain delivery information, the supplier had to indicate the delivery date, the carrier's identity and the method and place of delivery. As marketplace operators manage the disclosure of this information, even though third-party sellers are responsible for the delivery of the goods they sell, we did not perform an analysis of this obligation for third-party sellers.

a) Date

Among the traditional sellers, 17 indicated the item's delivery date. One of the sellers gave no date at all, another gave the shipping date but not the delivery date, and another simply indicated that the good would be delivered in 3 to 5 working days.

Each marketplace operator indicated the delivery date of goods, including goods shipped by third-party sellers.

b) Identity

Only 5 traditional sellers indicated the carrier's identity or provided a short list of potential carriers. The others omitted this information entirely or provided long or non-exhaustive lists.

Only one marketplace operator, Best Buy, clearly indicated the carrier's identity; Amazon provided a list of possible carriers.

c) Location

The place of delivery was indicated by each supplier; indeed, we were obliged to provide a delivery address or choose a collection point before being able to proceed with the transaction.

xi. Cancellation, return, exchange and refund policies, if applicable

Suppliers are not obliged to have a return policy. However, if they do, it must be clearly indicated.

Among traditional sellers, 18 clearly displayed their cancellation, return, exchange or refund policy on the Web page for the product, at checkout, on a Web page dedicated to returns, or in another

easy-to-find location on their website. One of the sellers did post a return policy on its website, but it was too difficult to find to be judged clearly or easily accessible.

Third-party sellers who sold on Amazon, Best Buy and Hudson's Bay provided their own cancellation, return, exchange and refund policies. Walmart and Real Canadian Superstore have established a single return policy for their third-party sellers.

Although all third-party sellers indicated their cancellation policies, three of them provided virtually useless policies. For example, one policy was for cell phone accessories, but the product in question was a shirt; another provided no useful details, and the third mentioned "We reserve the right to refuse the return" without any further explanation.

Of the third-party sellers, 18 indicated their return policy on their own website.

Results: compliance by type of seller (in number and percentage)

Required information	Traditional sellers, including marketplace operators (x/20)		Third-party marketplace seller (x/30)		Third-party seller on its own website (x/23)	
	Number	Percentage	Number	Percentage	Number	Percentage
i. Name	18	90%	27	90%	22	95.65%
ii. Address	11 (+ 6 store locator applications)	55%	0	0%	14 (+2)	60.87%
iii. Telephone number	16	80%	3	10%	19	82.61%
iv. Detailed description	18	90%	12	40%	8	34.78%
v. Detailed price list	20	100%	*		*	
vi. Additional charges	-	-	*		*	
vii. Total amount	20	100%	*		*	
viii. Currency	-	-	*		*	
ix. Method of payment	20	100%	*		*	
x. Delivery	Date: 17	85%	*		*	

	Identity : 5	25%				
xi. Cancellation policies, etc.	18	90%	27	90%	18	78.26%

** The display of this information is managed by marketplace operators.*

Only three obligations were fulfilled by all sellers: the disclosure of a detailed price list, the transaction’s total amount and the payment methods accepted. All these elements were disclosed at the checkout of every traditional seller, including every marketplace. Third-party sellers therefore benefit from this compliance, since marketplace operators disclose this information and present it to consumers who enter into transactions with third-parties.

Three traditional sellers fulfilled all their obligations, according to our analysis. None of the third-party sellers fulfilled all their disclosure obligations when selling on a marketplace; however, four fulfilled all the obligations for which they were assessed on their own website.

Both traditional and third-party sellers scored highly when it came to displaying their names, but as discussed, it is virtually impossible to determine the actual legal names of third-party sellers.

In general, traditional sellers were more compliant than third-party sellers, particularly when it came to disclosing their address, telephone number and a detailed description of the item. Third-party sellers performed well when it came to displaying cancellation and return policies, although it should be noted that the return policies of two marketplaces applied to all their third-party sellers, and in these cases it was the marketplace operator that complied with this disclosure obligation instead of the seller.

Two obligations were virtually never met by third-party sellers when selling on marketplaces: disclosure of an address and telephone number. However, third-party sellers generally provided this information on their own websites. The availability of this information suggests that it is the choice of marketplace operators not to display it, and not the third-party seller's reluctance to share it, that explains its absence.

Review of Third Parties: Roles, Responsibilities and Information

In the course of our investigation, we came across three types of third parties that are not sellers, but that act as intermediaries in e-transactions: marketplace operators, payment service providers and delivery service providers.

Marketplace operators

As mentioned, five of the 20 e-commerce websites most popular with Canadian consumers are marketplaces where the consumer can purchase goods either from the marketplace operator (that then acts as the seller) or from a third-party seller. In both cases, we can regard the marketplace operator as a supplier: when acting as a seller, it supplies the good or service sold to the consumer; when acting as a marketplace operator, it supplies the marketplace services to the consumer. However, the exact scope of the marketplace operator’s responsibility seems, at first glance, to depend on whether it is acting as a seller or as an intermediary in the transaction.

Our field survey reveals that marketplace operators play an important role as third-parties in the e-transactions that take place on their marketplace. They intervene in e-transactions by controlling the seller's ranking in search results, the presentation of the Web page displaying the product and the Web page displaying the seller's profile, as well as the display and management of user comments and reviews. Moreover, the marketplace operator manages the entire transaction process, including the payment stage at checkout. It is because marketplace operators manage the checkout process that we were not able to assess whether third-party sellers complied with the obligation to disclose the price of goods, additional charges, the total transaction amount, currency, payment terms or delivery information; all this information was displayed at the marketplace checkout and was, presumably, controlled entirely by the marketplace operator. In addition, marketplace operators can play an important role in resolving disputes, managing returns, refunds, exchanges and cancellations, as well as shipping goods.

Because of the large number of roles and responsibilities they assume, marketplace operators have several policies that apply when a user makes a purchase on their platform.

In order to examine the roles and responsibilities of marketplace operators, as well as the information they provide on their policies, we now will go step-by-step through an example of an e-transaction on each marketplace we identified.

1. AMAZON

For Amazon's marketplace, amazon.ca, we will take the example of a transaction for the purchase of a shirt from Zeagoo Ltd., one of the third-party sellers identified in our field survey.

Zeagoo Ltd.'s offer was displayed as the first search result when we searched for "shirt" on Amazon using the default search setting. The default search setting was "featured" and the first results, including those from Zeagoo, were marked "sponsored."

We selected this result, which brought us to the product's Web page. Although the content of this page was provided by the seller, the Web page's configuration was clearly determined by the marketplace operator (*Figure 4*).

Several company names appear on this page: COOFANDY, Zeagoo Ltd. and Amazon. Upon inspection, we discovered that the product brand is "COOFANDY" and the consumer can click a link at the top of the page to visit the COOFANDY store, which takes them to a Web page featuring other products from this brand¹⁴⁹. On the other hand, the name of the seller, Zeagoo Ltd., is indicated below, in the right-hand column, next to the text indicating that the good is shipped by Amazon (see *Figure 4*, on which we have circled those references).

¹⁴⁹ Products displayed on this COOFANDY shop page are sold by a number of distinct third-party sellers, not just Zeagoo Ltd.

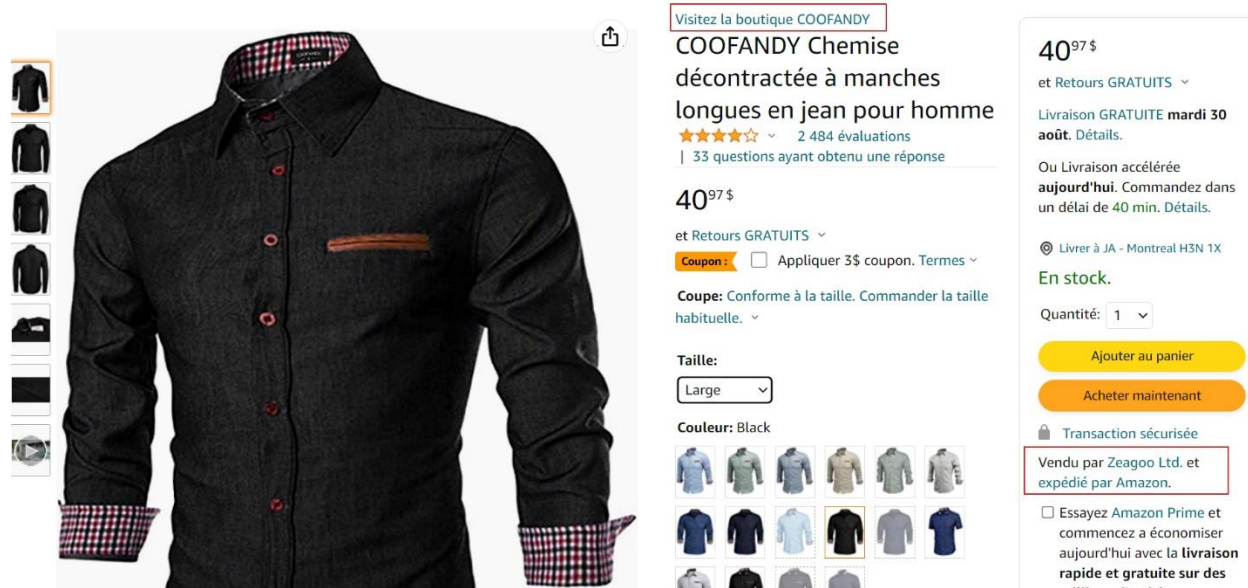


Figure 4

The circled sections read (from top to bottom): “[Visit the COOFANDY boutique](#)” and “[Sold by Zeagoo Ltd. and shipped by Amazon](#)” (our translation).

When we clicked the name “Zeagoo Ltd.”, we were directed to a Web page that displayed information about the third-party seller, user ratings and reviews of this seller as well as its return, shipping, and other policies, and a link to its boutique, where the other products it sells are displayed.

We found that Zeagoo Ltd. displayed almost no information about its company on this Web page (no seller description, address, phone number, etc.), although Amazon's marketplace allows sellers to do so.

We also observed that all the policies displayed on this page are Amazon's. We found references to Amazon's return, refund, delivery, privacy and gift-wrapping policies (see *Figures 5 and 6*, where we circled or underlined these elements). The text in these sections appears to be generally applicable to third-party sellers, as we found it on the pages of every other third-party seller we examined on Amazon. Indeed, the template of this Web page appears to be essentially identical for all the third-party sellers we surveyed, except that three of them listed a phone number and some listed return policies that apply in addition to Amazon's return policy.

Zeagoo Ltd.

Visitez le Vitrine de Zeagoo Ltd.

★★★★★ | 100 % positif dans les 12 derniers mois (441 évaluations)

Précédent Suivant

Laisser un commentaire au vendeur

Politiques de retour et de remboursement

Veuillez consulter la [Politique de retour de produit d'Amazon.ca](#).

Politiques de livraison

Cet article est traité par Amazon.ca et est expédié selon [Taux et politiques de livraison de Amazon.ca](#).

Figure 5

The circled sections read (from top to bottom): “[Amazon.ca’s return policy for the product](#)” and “this item is fulfilled by Amazon.ca and is shipped according to the [Delivery rates and policies of Amazon.ca](#)” (our translation).

Autres politiques

Confidentialité et sécurité

Amazon sait que vous vous préoccupez de la façon dont vos informations sont utilisées et partagées, et nous reconnaissons que vous avez confiance que nous le ferons de façon diligente et sensible. En visitant Amazon.com, vous acceptez les pratiques décrites dans [Avis de confidentialité d'Amazon.ca](#). De plus, vous voulons vous aviser que Amazon.com donnera à Zeagoo Ltd. les informations liées à vos transactions pour ses produits (y compris, par exemple, votre nom, votre adresse, les produits que vous avez achetés et le montant de la transaction) et que ces informations seront assujetties à la Politique de confidentialité de Zeagoo Ltd..

Pratiques de confidentialité

Zeagoo Ltd. donne une grande importance à la confidentialité de vos données personnelles. Consulter [Avis de confidentialité d'Amazon.ca](#).

Emballage-cadeau et message-cadeau

Vous pouvez ajouter un message-cadeau lorsque vous commandez des articles envoyés par Amazon.ca ou certains marchands Amazon. Les messages-cadeaux sont limités à 240 caractères, soit environ 10 lignes de texte. N'oubliez pas d'indiquer le nom de l'expéditeur et du destinataire dans votre message. Pour les articles envoyés par Amazon.ca, vous pouvez également utiliser l'emballage-cadeau Amazon.ca conçu exclusivement pour nos clients, auquel cas nous imprimons votre message sur une carte-cadeau. Sinon, nous incluons votre message sur le bordereau d'emballage.

[En savoir plus](#)

Figure 6

The English version of the text reads:

Other policies

Privacy and Security

Amazon knows that you care how information about you is used and shared, and we appreciate your trust that we will do so carefully and sensibly. By visiting Amazon.com, you are accepting the practices described in [Amazon.ca's Privacy Policy](#).

In addition, we want you to be aware that Amazon.com will provide Zeagoo Ltd. with information related to your transactions involving their products (including, for example, your name, address, products you purchase, and transaction amount), and that such information will be subject to Zeagoo Ltd.'s Privacy Policy.

Privacy Practices

Zeagoo Ltd. values the privacy of your personal data.

See [Amazon.ca's Privacy Policy](#).

Gift Wrap and Gift Messaging

You can add a gift message when ordering items fulfilled by Amazon.ca or selected Amazon Merchants. Gift message are limited to a maximum of 240 characters - about 10 lines of text. In your message, be sure to include who the gift is from and the name of the gift recipient. For items fulfilled by Amazon.ca, [you can also choose to use Amazon.ca gift-wrapping](#) designed exclusively for our customers, in which case we will print your message on a gift card. Otherwise, we'll include your message on the packing slip.

The return and shipping policies displayed on this page are links to Amazon's policies, as the seller uses the “Fulfilled by Amazon” service, which means that Amazon handles many aspects of the transaction for the seller. In addition, Amazon also provides customer service for orders that are fulfilled by Amazon¹⁵⁰. We found that each of the third-party sellers we examined on Amazon used this service. The seller’s Web page would likely have more information specific to the seller if it managed delivery and returns itself.

The only information that seemed unique to Zeagoo Ltd. on this page was user comments and reviews. That said, we found that Amazon crossed out certain negative reviews on the seller's page, saying “Message from Amazon: This item was fulfilled by Amazon, and we take responsibility for this fulfilment experience.” (*Figure 7*). This suggests that the consumer must contact Amazon to resolve this type of problem, and that the seller is not to blame if a consumer is dissatisfied. We found that Amazon did not only cross out comments concerning shipping, but also certain comments about the product in question (concerning the size or material of the product or even its lifespan – see, for example, the comment stating “sizing was not as described” in *Figure 7*). This seems to indicate that Amazon even guarantees that the product description is accurate when the order is fulfilled by Amazon.

¹⁵⁰ Amazon Canada, “Help and customer service,” Amazon Canada, online: <https://www.amazon.ca/gp/help/customer/display.html?nodeId=G239KSGYPUFUY8TQ>.

Zeagoo Ltd.

Visitez la Vitrine de Zeagoo Ltd.

★★★★★ | 100 % positif dans les 12 derniers mois (579 évaluations)

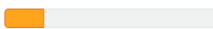
Commentaires

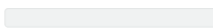
★★★★★ 4,8 sur 5
579 évaluations

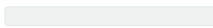
12 mois ▾

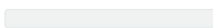
579 total des commentaires en 12 mois

5 étoiles  84%

4 étoiles  16%

3 étoiles  0%

2 étoiles  0%

1 étoile  0%

✓ En savoir plus sur le fonctionnement des commentaires des vendeurs sur Amazon

Partagez vos idées avec d'autres clients

Laisser un commentaire au vendeur

★★★★★

"belle qualite bonne grandeur bon service"

Par alc99 le 17 janvier 2023.

★☆☆☆☆

"sizing was not as described"

Par Jason Pereira le 17 janvier 2023.

Message de Amazon : Cet article est traité par Amazon, et nous assumons la responsabilité de cette expérience de traitement.

★★★★★

"Vest is very well made, true to described size and colour. Highly recommended and have already purchased a second in a different colour!"

Par Michelle Moreau le 17 janvier 2023.

★★★★★

"Très beau"

Par J.T le 17 janvier 2023.

★★★★★

"Good quality products and fantastic delivery services."

Par Hylton Fernandes le 16 janvier 2023.

[Précédent](#) [Suivant](#)


Figure 7

The English version of the text under the crossed-out comment reads: "**Message from Amazon:** This item was fulfilled by Amazon, and we take responsibility for this fulfilment experience."

Finally, once we had added the shirt sold by Zeagoo Ltd. to the shopping cart and proceeded to checkout, all other elements of the transaction were handled by Amazon, although the third-party seller's name was displayed over the item at checkout (*Figure 8*). At checkout, Amazon indicated that the purchaser accepts Amazon's privacy statement and terms of use when placing the order. We were notified of these conditions at the very last stage of the transaction, after entering our delivery address and payment details. In addition, an account was required to make a purchase on this marketplace.

Date de livraison : 21 janv. 2023 Si votre commande est dans les prochains 4 heures et 51 minutes (Détails)

Articles expédiés par Amazon.ca




BASSDASH T-shirt de pêche à manches longues pour homme, protection solaire UPF 50 +, Logo bleu ciel/blanc, Large
29,98 \$
 Qté: 1

Vendu par : Bassdash-CA
 Admissible à Amazon Prime Inscrivez-vous
 Ajoutez les options cadeau

L'article arrive dans un emballage qui révèle ce qui se trouve à l'intérieur. Pour le dissimuler, choisissez Expédier dans un emballage Amazon.

Expédier dans un emballage Amazon



COOFANDY Chemise décontractée à manches longues en jean pour homme - Black, size: Medium
35,58 \$
 Qté: 1

Vendu par : Zeagoo Ltd.
 Admissible à Amazon Prime Inscrivez-vous
 Ajoutez les options cadeau

Choisissez un mode de livraison :

Livraison en deux jours GRATUITE avec un essai gratuit de Prime
Livraison GRATUITE prime
 - Recevez-le samedi 21 janv.

Livraison GRATUITE - Recevez-le dimanche 22 janv.

13,35 \$ Livraison - Recevez-le samedi 21 janv.

Passer la commande

Lorsque vous passez votre commande, vous acceptez la déclaration de confidentialité et les conditions d'utilisation d'Amazon.

Récapitulatif de Commande

Articles (4) :	244,48 \$
Frais de livraison :	22,21 \$
Frais réglementaires estimés :	2,00 \$
Sous-total :	268,69 \$
TPS/TVH estimée :	6,66 \$
TVP/TVQ/TVQ estimée :	13,28 \$
dépôt des frais de douane	18,69 \$

Montant total : 307,32 \$

Comment calculer les coûts d'expédition?
 Qu'est-ce qu'un frais réglementaire?

Figure 8

The English versions of the circled text on the left side of the page read (from top to bottom): "Items shipped from Amazon.ca", "Sold by: Bassdash-CA" and "Sold by: Zeagoo Ltd." The circled text on the right side of the page reads "By placing your order, you agree to Amazon's privacy notice and conditions of use".

Clicking the link to "conditions d'utilisation" (conditions of use) took us to a Web page with a wide range of policies, including ones on privacy, communication between the parties, intellectual property, the publication of reviews and comments, risks to the parties, refunds and returns, the accuracy (or not) of descriptions, as well as on prices, warranties, dispute resolution, and so on.

2. WALMART

During our investigation of this marketplace, the default search setting on Walmart's marketplace, Walmart.ca, was to sort by best match. One of the first two results we obtained when searching for a speaker was the Sony brand speaker sold by Fast Media USA Vendeur, shown in Figure 9, which we will use as our example for our analysis of a transaction on Walmart's marketplace.

The screenshot shows the Walmart Canada website interface. At the top, there is a search bar and navigation links for various services like Bell, Rogers, and Telus. Below the navigation, a banner reads "L'école, c'est réglé à petits prix. Énergisez vos sessions avec le repas parfait." The main product area features a large image of a black Sony SRSXB01/B speaker, with three smaller thumbnail images to its left. To the right of the image, the product details are listed: "Haut-parleur Sony SRSXB01/B", the brand name "Sony" (circled in red), "1 pièce", a 4.5-star rating with 355 reviews, and the price "58,41 \$". A stock status message indicates that Walmart's stock is depleted and suggests checking third-party offers. Delivery and arrival dates are provided for a specific location. Below this, the color is set to "Noir" with four color selection options. A quantity selector shows "1" and an "Ajouter au panier" button. At the bottom right, the seller information is displayed: "Vendu et expédié par [Fast Media USA Vendeur](#)" (circled in red). Links for "Politique de retour" and "En rupture de stock aux magasins proches" are also visible.

Figure 9

The English versions of the circled sections read (from top to bottom): “[Sony](#)” and “Sold and shipped by [Fast Media USA Vendeur](#)”.

Just as on Amazon's marketplace, it appears that the Web page's configuration for the good sold by a third party on Walmart's website is determined by the marketplace operator. Here again, the manufacturer's name appears at the top of the page, below the name of the good (as a hyperlink for the consumer to click) and the seller's name at the bottom right.

When we clicked the seller's name, we were taken to a Web page that contained no information about the third-party seller. In fact, it appeared to us that there was no where on this Web page for the third-party seller to display this information. Instead, the page is simply a storefront that displays the products offered by this seller (Figure 10).

The screenshot shows the Walmart Canada website interface. At the top, there is a search bar with the text 'Que recherchez-vous?' and a search icon. To the right of the search bar are logos for Bell, Rogers, Fido, and Telus, along with a 'Choix de pub' button. Below the search bar is a navigation menu with 'Rayons' and several category links: 'Chute de prix', 'Électronique', 'Vêtements', 'Aubaines', and 'Le retour au campus'. There are also icons for 'Magasiner l'épicerie', 'Trouver un magasin', 'Circulaires', and 'Se connecter / Mon compte'. The main heading is 'Fast Media USA Vendeur'. Below this, there are filters for 'Offert en magasin', 'Économies en ligne', and 'Trier par: Meilleure concordance'. The product grid consists of ten items, each with a small image, a title, a price range, and a 'Ajouter au panier' button. The products include: Sally Hansen Hard As Nails Xtreme Wear - Violet... (price: 2,77 \$ - 46,57 \$), Always Serviettes d'incontinence Discreet... (price: 14,97 \$), Pare-fuites contre l'incontinence pour homme... (price: 54,19 \$), Revitalisant Aussie Miracle Curls, avec huile de noix de... (price: 30,72 \$), Assiette à diner CorelleMD Classic Winter Frost White (price: 162,34 \$), Amlactin Daily (price: 76,66 \$), Keratin Color de Schwarzkopf Crème... (price: 9,97 \$ - 47,83 \$), Ma vie comme poupée ballerine posable 18"... (price: 20 \$ - 76,86 \$), Cosmopolitan Cosmetics, Inc. REVLON/SUPER... (price: 8,47 \$ - 38,79 \$), and Sinful Colors Nail Polish, Green Ocean (price: 2,97 \$ - 67,82 \$).

Figure 10

Strangely, when we clicked the links to other products displayed on Fast Media USA Seller's page, we were sometimes taken to products sold by other third-party sellers¹⁵¹! Unlike what we had seen on this type of page on Amazon's marketplace, this third-party seller's Web page contained no user reviews or comments that would enable a consumer to assess the seller's reliability. Indeed, we did not see a single review about the seller throughout our investigation. The only reviews we found concerned the product, never the seller. The seller's Web page also did not indicate any policies, such as its return or shipping policies.

We therefore fail to understand the purpose of this Web page, since it provides no information about the third-party seller, and since it does not even exclusively display products sold by the seller. Recall that the law requires suppliers to disclose information about their identity and contact details; this page seems to us like a missed opportunity to do so.

The return policy that applies to a purchase made from a seller on the Walmart marketplace can be found on the product's Web page. Walmart appears to have a single return policy that applies to all third-party sellers (at least, this was the case for all the third-party sellers we studied), which reads as follows:

Return policy

¹⁵¹ For example, clicking on the Sally Hansen nail polish shown on the Fast Media USA Seller page in Figure 10 took us to the product's Web page, which stated that the item is sold by Klever Kosmetics. We also found that the Always towels, Keratin Color hair dye and Cosmopolitan Cosmetics lipstick displayed on the Fast Media USA Seller page are sold by Walmart instead.

Most items sold by Third Party Sellers with a retail price of \$150.00 CAD and below can be returned to any Walmart store within 30 days, subject to certain exceptions. If you wish to return items with a retail price above \$150.00 CAD, please reach out to the Third Party Seller directly.

Final Sale items cannot be returned: Prescription medication, diabetic products, prepaid phone cards, trading and collector cards, pierced earrings, special order jewelry, photo custom services, underwear or items that include underwear, swimwear when hygiene liner is removed, sexual wellness items, family planning products, and food items.

Before returning an item sold by a Third Party Seller, please review the following Third Party Seller Returns Policy to confirm that your return is eligible.

Since Walmart does not display any contact information for these third-party sellers, the consumer can only contact the seller after purchase by using the Walmart platform. According to the third-party return policy, if the seller does not respond within three business days or if the consumer is not satisfied with the response, the consumer can then contact Walmart customer service¹⁵².

Finally, when we selected the product and proceeded to checkout, Walmart was responsible for all the rest of the purchase process, by managing, for example, the checkout, payment, etc. As with Amazon's marketplace, the only indication that the transaction was between the consumer and a third-party seller is the mention at checkout that the good is sold and shipped by Fast Media USA Seller (*Figure 11*).

There was no indication at checkout that the consumer must agree to any terms of use or that there are any other relevant policies to review before completing the purchase. The only other Walmart policy we detected was the privacy policy (there was a link to it at the bottom of every page).

¹⁵² Walmart, "Buying from a third party seller," Walmart Canada, online: <https://www.walmart.ca/en/help/faq/buying-from-a-third-party-seller/b125b72817d04ff8af6762cbf4ad8b96/buying-from-a-third-party-seller/e52dbef0218848bb8279abc61ba72789>.

The screenshot shows the Walmart Canada website interface. At the top, there is a search bar with the text "Que recherchez-vous?". Below the search bar, there are navigation tabs for "Rayons" (Categories) and "Magasiner l'épicerie" (Shop Groceries). The "Rayons" dropdown menu is open, showing categories like "Vêtements", "Aubaines", "Électronique", "Nouvel An lunaire", and "Articles de maison".

The main content area is divided into two sections. The top section is "Votre panier" (Your cart), which contains one item: "Haut-parleur Sony SRSXB01/B" (Sony SRSXB01/B speaker). The item is priced at 61,75 \$ and has a quantity of 1. A red box highlights the text "Vendu et expédié par Fast Media USA Vendeur" (Sold and shipped by Fast Media USA Vendeur). Below the item name, it says "Offert pour l'expédition, arrivée le: 6 févr. - 7 févr." (Offered for shipping, arrival on: Feb 6 - Feb 7). There are minus and plus buttons for quantity adjustment, and a "Supprimer" (Remove) link.

The bottom section is "Nous pensons que vous aimerez aussi" (We think you'll also like). It features four product recommendations:

- Caisson de basse stéréo CD/cassette avec radio... Noir (Black stereo subwoofer with CD/cassette and radio). Rating: 4.5 stars (1277 reviews).
- Haut-parleurs multimédias Z213 avec... Compact design (Z213 multimedia speakers). Rating: 4.5 stars (59 reviews).
- Lotion Corporelle Vaseline Intensive Care Aloe Vera 600 ml (Vaseline Intensive Care Aloe Vera body lotion). Rating: 4.5 stars (345 reviews).
- Exfoliant pour le corps Dove Brown Sugar &... 298 g (Dove Brown Sugar &... body scrub). Rating: 4.5 stars (57 reviews).

On the right side of the page, there is a summary of the cart:

- Coûts selon le J7V0H1: [Modifier](#)
- Sous-total: 61,75 \$
- Expédition de Fast Media USA Vendeur: Sans frais
- 5% TPS: 3,09 \$
- 9.98% TVQ: 6,16 \$
- Total estimatif: 71,00 \$
- Buttons: "Passer à la caisse" (Checkout)
- Footnote: "† Expédition standard seulement. Sauf pour les commandes d'épicerie sur rendez-vous, les régions éloignées et les articles surdimensionnés et lourds." († Standard shipping only. Except for grocery orders on appointment, remote regions and oversized and heavy items.)
- Footnote: "Le prix des articles varie selon votre emplacement d'expédition et est sous réserve de modification." (Item prices vary by shipping location and are subject to change.)
- Footnote: "Les codes promotionnels s'appliquent lors du paiement." (Promotional codes apply at checkout.)
- Méthodes de paiement acceptées (Accepted payment methods): VISA, AMERICAN EXPRESS, Mastercard, Walmart, PayPal.

Figure 11

The English version of the circled text reads "Sold and shipped by Fast Media USA Vendeur".

3. BEST BUY

At the time of our investigation, the default search setting on Best Buy's marketplace, bestbuy.ca, was to sort by best match. The results page indicated whether the item is offered by a third-party marketplace seller or by the marketplace operator, Best Buy. Let us take the example of the third-party seller "Eleganscents Canada," which sells lotion on bestbuy.ca, to illustrate this marketplace operator's roles and responsibilities, and the information it provides.

As with the other marketplaces, it seems that the marketplace operator here determined the configuration of the Web page of the product being sold. On this page, the seller's name is shown on the right-hand side of the item. The seller's average rating is displayed in the same place (Figure 12).



1 sur 2



Alyssa Ashley Musk par Houbigant Lotion pour le Corps (Femme) 25.5 oz

Modèle n° : 457127 Code Web : 12905164

☆☆☆☆ Pas encore d'évaluations. Soyez le premier! >

Vendu et expédié par EleganScents Canada | Évaluation du vendeur 4,3; (33 évaluations)

Économisez 20 \$

43⁷⁴ \$

Le solde prend fin le: 30 mars 2023

Livraison

Ramassage



Disponible uniquement en ligne

La plupart des articles quittent l'entrepôt de ce vendeur dans les 2 jours ouvrables. Prévoyez un délai supplémentaire pour l'expédition à votre adresse.

Ajouter au panier

Comparez ces 3 offres à partir de 43,74 \$ >

Figure 12

The English version of the circled text reads “Sold and shipped by EleganScents Canada | 4.3 seller rating (33 reviews)”.

Clicking the third-party seller's name took us to a Web page where we found a short description of the seller and a link to its storefront on Best Buy, as well as tabs that showed customer reviews and shipping and return policies. We did not see the seller's contact information, although it seems possible that a seller could post it on this page. There were also links to the shipping policy, return policy and manufacturer information on the item's Web page.

When we clicked the policies on the seller's page, we found that they were clearly Best Buy's general policies and not those of the third-party seller. The shipping policy simply stated that free standard shipping may be offered for orders over the minimum amount and that charges may vary depending on item size and shipping address.

The return policy on seller's page stated the following:

To review a specific return policy for a product, simply select the “Seller Return Policy” tab on the product page, under the product details tab.

However, when we went to the product page, the link to the return policy led us to Best Buy's policy, which states that “[partner sellers] have their own return policy” and invites the purchaser to consult that policy on the very page we were already on, where no such policy was to be found. Best Buy's return policy stated:

Marketplace products are products sold by our trusted seller-partners through BestBuy.ca.

Because of this, they have their own return policies (specified by each seller), and they **cannot be returned to a Best Buy store**—they must be returned to the seller **by mail**. To learn how to find a Marketplace seller's return policies, and how to return a Marketplace product by mail, see below.

[...]

On the product page for a Marketplace product, select the “Seller Return Policy” tab for the number of days and condition that you are allowed to return a product for a refund after delivery.¹⁵³

Thus, in the case we examined, we were unable to find any return policy specific to the seller or product in question. On the other hand, we did find seller-specific return policies on the pages of products sold by other third-party sellers. It therefore seems that the display of this information depends on the third-party seller.

After adding the item to the cart, we proceeded to the checkout, which is managed by Best Buy. A message at checkout indicated that a product was being sold and shipped by a third-party seller. We were notified at the last step of the transaction, after entering the shipping address and our payment information, that by placing an order, we accepted Best Buy's legal and privacy policies (Figure 13).

The screenshot displays the checkout process on the Best Buy website. It is divided into two main columns. The left column is titled "Vérification" (Verification) and contains sections for "Adresse de livraison" (Shipping Address) and "Détails de livraison" (Shipping Details). The right column is titled "Résumé de la commande" (Order Summary) and lists the total price, discounts, shipping fees, and taxes. At the bottom right, there is a yellow "Passer la commande" (Place Order) button and a disclaimer about accepting Best Buy's policies.

Vérification	
Veuillez vérifier vos coordonnées avant de passer votre commande.	
Adresse de livraison	Modifier l'adresse
Ja JA - 7000 Avenue Parc, Bureau 201	
7000 Avenue Parc, Bureau 201 Montreal, QC H3N 1X1	
Détails de livraison	Modifier la livraison
Expédition 1 sur 1 (1 article)	
Vendu et expédié par EleganScents Canada	
	\$43.74
Alyssa Ashley Musk par Houbigant Lotion pour le Corps (Femme) 25.5 oz Quantité: 1	

Résumé de la commande	
Total partiel des produits	63,76 \$
Rabais de la commande	-20,02 \$
Frais de livraison	11,95 \$
TPS	2,79 \$
TVP/TVQ	5,55 \$
Total de la commande	64,03 \$

Votre carte de crédit se terminant par **3434** sera débitée de **64,03 \$** lorsque vos articles auront été envoyés.

Passer la commande

En passant votre commande, vous acceptez les politiques juridiques et la politique de confidentialité de Best Buy. Les clients de Best Buy peuvent recevoir des courriels promotionnels sur les produits. Vous pouvez vous désabonner en tout temps.

Figure 13

The circled text reads (from left to right) “Sold and shipped by EleganScents Canada” and “By placing your order, you accept the legal policies and the privacy policy of Best Buy. Customers of Best Buy may receive promotional emails on products. You can unsubscribe at any time” (our translation).

¹⁵³ Best Buy, “Returning a Marketplace Product,” Best Buy Canada, online: <https://www.bestbuy.ca/en-ca/help/returns-and-exchanges/marketplace-returns>.

4. THE BAY

On The Bay's marketplace, labaie.com, one of the first third-party sellers to appear in the search results when we searched for a shift was Mosmann Australia. The default search setting on The Bay's website was to sort by "featured." The search results indicated whether a product was sold by a marketplace seller or by The Bay.

As with other marketplaces, the Web page configuration for the product was managed by the marketplace operator. On this marketplace, the brand name was displayed at the top right of the page and the third-party seller's name was displayed at the bottom right (*Figure 14*).

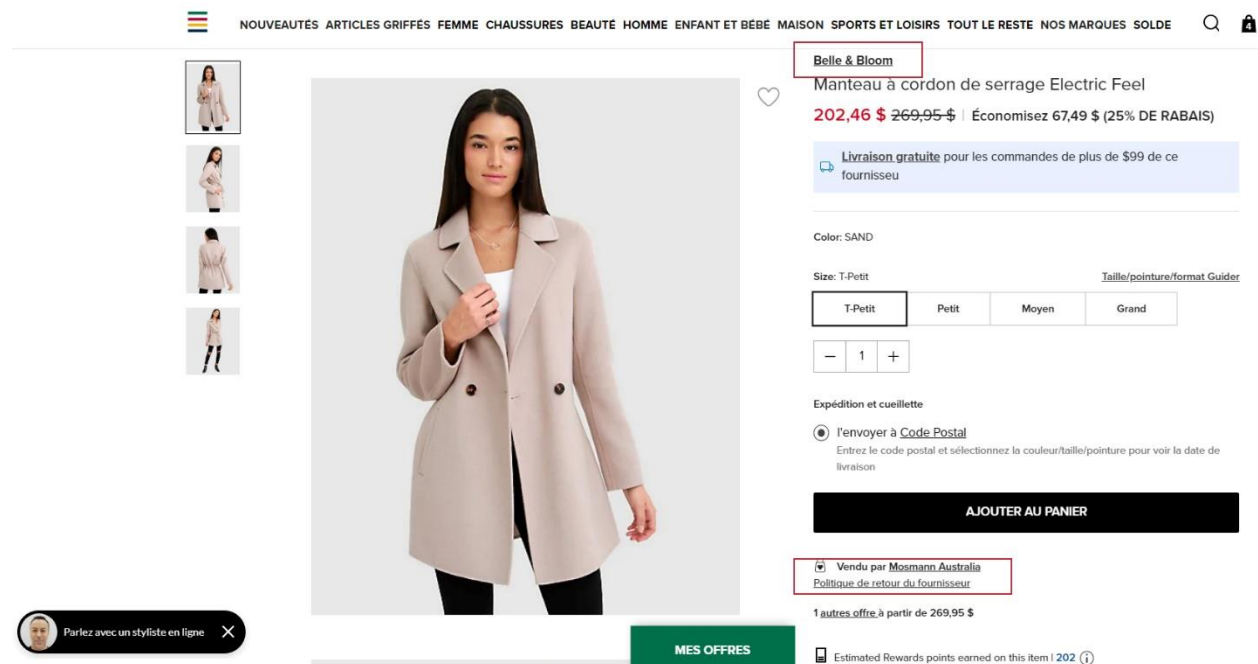


Figure 14

The English version of the circled text reads (from top to bottom): "Belle & Bloom" and "Sold by Mosmann Australia. [Seller Returns Policy](#)".

This page contains a link to the seller's return policy. Clicking this link opens a new window, where the seller's return policy is explained. However, this return policy seems to be of general application to third-party sellers, since we saw it on the pages of other products sold by other sellers on the same platform, and since we found essentially the same policy in The Bay's general shipping and return policy (*Figure 15*).

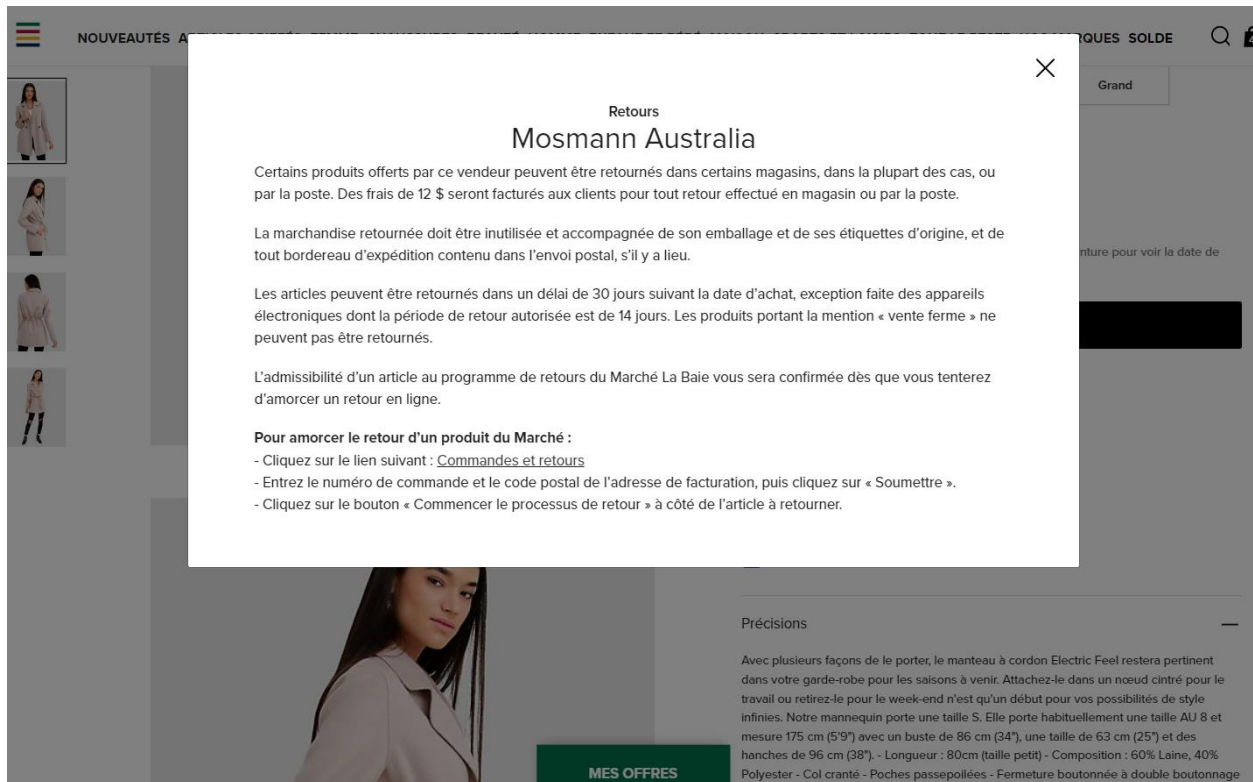


Figure 15

The English version of the text reads:

Select Products sold by this vendor may be returned in select stores, in most instances, or via mail-in. In-store and mail-in returns will have a flat fee of \$12, payable by the customer.

Returned items must be unused with original packaging and tags, if applicable. If provided in the original order, the packing slip must be included with the returned item.

Purchases are eligible for returns within 30 days of date of purchase, except for electronics which have a 14-day return window. Any items marked "final sale" in the product description will not be eligible for a return.

Specific item return eligibility for The Bay Marketplace Returns Program is defined upon initiating a return online.

To initiate a return for a Marketplace product:

- Use this link: [Orders & Returns](#)
- Enter your order number and billing postal code, then click submit.
- Choose "START A RETURN" next to the item you want to return.

We also noted a link on the product's Web page to "find out more" about the credit offered by Paybright, a buy now, pay later service. This link opened a new tab that briefly explained this payment service and provided a link to the Paybright website for more information.

By clicking the seller's name, we were taken to the seller's Web page, which offered a description of the seller and communicated its return policy. There was no information on this page regarding the seller's contact details, other policies, or customer reviews.

At checkout, we observed that the marketplace displayed the name of the third-party seller and the fact the product was sold and shipped by this seller. We saw no policies or conditions of use at this stage of the process and we were not given notice that we were implicitly accepting any policies or conditions of use when we proceeded to the transaction's final step (Figure 16).

The screenshot shows the checkout process for LA BAIE. At the top, there is a progress bar with four steps: 'Adresse d'expédition', 'Mode d'expédition', 'Mode de paiement', and 'Revoir la commande'. The 'Adresse d'expédition' step is active.

Adresse d'expédition et fiche-cadeau (Modifier)

Ja JA
7000 Avenue Parc
Bureau 201
Montreal, QC H3N 1X1
jatack@uniondesconsommateurs.ca
5145216820

Mode d'expédition (Modifier)

Vendu par La Baie & Zellers (1 Article)
Standard - SANS FRAIS
Livraison prévue au plus tard le Mardi Avr. 04, 2023

Vendu par Mosmann Australia (1 Article)
Standard - SANS FRAIS (Délai de livraison prévu : 7 à 10 jours)

Mode de paiement (Modifier)

Mode de paiement
Mastercard ****3434

Adresse de facturation
Ja JA
7000 Avenue Parc
Bureau 201
Montreal, QC H3N 1X1

Paiement sécurisé

Sommaire de la commande

Sous-total	695,90 \$
La Baie and Zellers Expédition	SANS FRAIS
Expédition par Mosmann Australia	SANS FRAIS
TPS/TVH	34,80 \$
TVG	69,42 \$
Total	800,12 \$

Obtenez environ 695 points Primes pour cette commande

Mastercard ****3434 - 800,12 \$

Ajouter un Code Promo +

PANIER D'ACHATS (4) (Modifier)

Belle & Bloom
Liberty manteau en laine mélangée à col sherpa
BLUSH, Petit
~~229,05 \$~~ 209,96 \$ x 2
Vendu par Mosmann Australia

GlucksteinHome
Ensemble housse de couette en coton ultra fin 7...
ANTHRACITE, Grand lit
~~220,00 \$~~ 137,99 \$ x 2
Vendu par La Baie

PASSER LA COMMANDE

Figure 16

The English version of the circled text on the left side of the page reads (from top to bottom): “Sold by The Bay & Zellers (1 item) – Standard – FREE. Estimated Delivery On Or Before Tuesday Apr. 04, 2023” and “Sold by Mosmann Australia (1 item) – Standard – FREE (Estimated delivery 7 – 10 days)”. The English version of the text on the right side of the page reads (from top to bottom): “Sold by Mosmann Australia” and “Sold by the Bay”.

5. REAL CANADIAN SUPERSTORE

For the Real Canadian Superstore marketplace, let us take the example of the third-party seller Toys on Fire, who appeared in the search results when we searched for a shirt on realcanadiansuperstore.ca. The default settings on this marketplace were to sort by relevance¹⁵⁴. On the search results page, it was indicated whether an item was “sold on marketplace” or not.

As with the other marketplaces, Real Canadian Superstore managed the parameters of the product Web pages. We observed the manufacturer's name at the top right of the page and the

¹⁵⁴ As this marketplace was not available in Quebec or in French at the time of our investigation, we conducted this part of the research with an address in Ontario and in English.

seller's name at the bottom right. On this page, we also found a link to a return and exchange policy (Figure 17). The return policy seems to be generally applicable to all third-party sellers:

Most Marketplace items can be returned by mail within 45 days from the date of delivery, unless they are labeled as "Exchange Only" or "Final Sale" on the product description page. Your item may even qualify for a scheduled pickup, depending on the size and dimensions of the product. Please note we are no longer accepting in-store returns¹⁵⁵.

The policy states that the seller must be contacted through the marketplace in order to initiate a return.

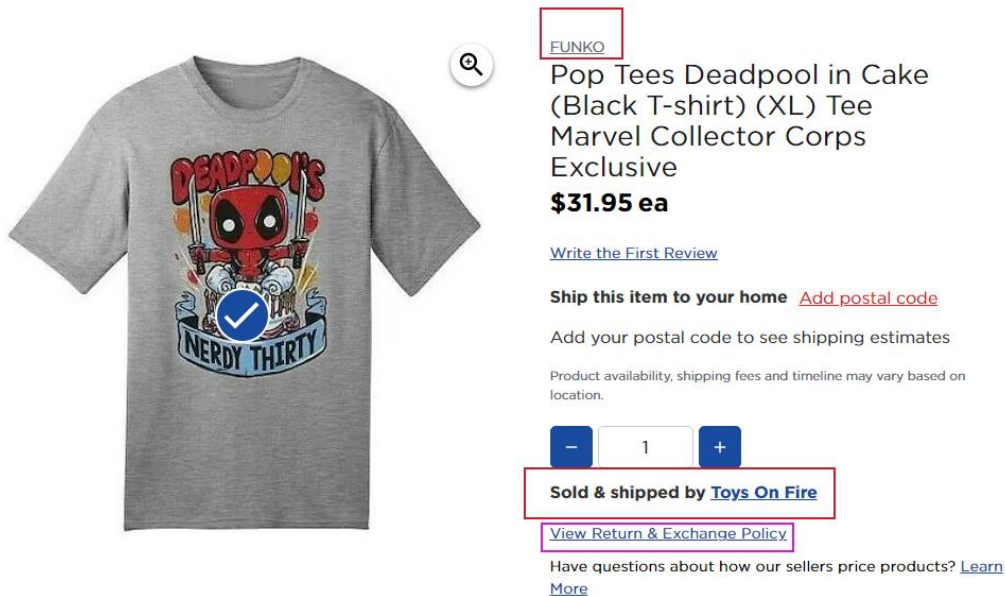


Figure 17

When we clicked the seller's name, we were taken to its storefront, where we could see the other items that it sold. There was no information about the seller (ratings, contact information, description, address, etc.) or its return or shipping policies. There did not seem to be a place to display this type of information on this Web page.

At checkout, the fact that the good is sold and shipped by a third-party seller was indicated above each product. We did not have to agree to any policies to place the order. However, we did have to open an account to be able to buy anything on the site and we had to accept the platform's terms and conditions of use and its privacy policy in order to create an account.

SUMMARY OF THE ROLES, RESPONSIBILITIES AND POLICIES OF MARKETPLACE OPERATORS:

Our study revealed that marketplace operators exert enormous control over transactions that take place on their marketplaces. Indeed, in transactions with third-party sellers that take place on the

¹⁵⁵ Real Canadian Superstore, "Return and Exchange Policy," Real Canadian Superstore, online: <https://www.realcanadiansuperstore.ca/return-exchange-policy>.

operators' marketplace, the operators are responsible for the majority of obligations normally assumed by a seller, including:

- The presentation of the product's Web page, including how the product's description, user ratings and reviews are displayed;
- The seller's Web page, its storefront, the layout for displaying the company's name, address, telephone number, email address and user ratings and reviews;
- Checkout, including the disclosure of extra fees and charges, the total transaction amount, currency, payment terms, delivery information, and the third-party seller's name;
- In some cases, return and refund policies, management of returns, refunds, exchanges, etc., dispute resolution, and management of reviews concerning these aspects of the transaction;
- In some cases, shipping and managing reviews concerning this aspect of the transaction.

In this type of transaction, the third-party seller's only roles are to:

- Provide information about itself and its contact details, if possible; however, three out of five marketplaces did not even provide a Web page where third-party sellers could publish this information;
- Provide a detailed description of the product (however, we found that several third-party sellers failed to provide adequate descriptions);
- Ship the product, if the seller has not delegated this task to the marketplace operator;
- Manage returns and exchanges, if the seller has not delegated this task to the marketplace operator, or if the marketplace operator has not chosen to have a single return policy for all third-party sellers¹⁵⁶.

Thus, it seems to us that the marketplace operator, who is theoretically a third party to the transaction, often plays a more important role than the seller.

On the Amazon and Best Buy marketplaces, the purchaser had to accept terms and conditions and privacy policies at the final stage of the transaction. Real Canadian Superstore required customers to accept terms and conditions as soon as they created an account, which was required to make a purchase. Walmart and The Bay do not appear to require explicit acceptance of these policies in order to make a transaction.

During our study, we were struck by the fact that an important piece of information – the third-party seller's name – was always visible during the transaction, **but never highlighted**. On every marketplace, the name of the third-party seller was on the right-hand side of the product page. For the Amazon, Walmart, The Bay, and Real Canadian Superstore marketplaces, the name of the product's manufacturer or brand was displayed at the top of the page, and it was easy to confuse this with the seller's name. It was at the checkout that the seller's name was most clearly indicated.

¹⁵⁶ Walmart, The Bay and Real Canadian Superstore appear to have a single return policy applicable to all third-party sellers. On Best Buy, sellers have their own return policy, in theory, although one of the sellers reviewed does not appear to have posted one. On Amazon, the third-party sellers examined used Amazon's shipping service and therefore used Amazon's return policy, although some also indicate their own return policies.

The marketplaces studied had a very large number of policies of varying degrees of relevance to users: on using the website generally, on intellectual property, privacy, returns, etc. Some marketplace operators asked users for explicit consent at the final stage of the transaction, while others did not.

In some cases, it was not clear whose policy we were looking at. For example, on the Best Buy and The Bay websites, we thought we were reading the third-party seller's return policy, only to find that it was identical for all other third-party sellers, which suggests that it was a general policy for the marketplace. On the Walmart and Real Canadian Superstore marketplaces, the application of a single return policy for all goods sold by third-party sellers was more obvious, but these policies seemed vague to us, as they applied to a large number of different products.

Finally, we noticed at each marketplace checkout that purchases with different sellers were grouped into a single transaction. Although we added several items from different sellers to our cart, we only received one invoice and (it seems to us) one contract. This means that the consumer can transact with several sellers in a single contract, and that different policies can apply during a single transaction.

Delivery services

Although delivery services or carriers play an important role in e-commerce, we found that they play only a very minor role in online transactions. Only five sellers (including one marketplace operator) indicated the carrier's identity or provided a short list of potential carriers. The rest omitted this information entirely, or provided long lists of potential carriers. Several sellers displayed delivery policies that offered, for example, guaranteed delivery dates, but these were the policies of the seller, not the carrier.

For some transactions, the user had to choose a delivery time and date, to ensure they would be at home to receive the product, but again, this was organized by the seller, not the carrier. In all other cases, we observed that consumers did not have the option of choosing their carrier nor the date or time of the delivery.

If the consumer interacts with the carrier, it is likely to be later in the process, for example when the consumer receives notification from the carrier that the delivery is on its way, or in the event of a problem with the delivery. This makes sense: the transaction is supposed to take place between the seller and the consumer, with the former ensuring that the latter receives the product he has purchased. In theory, the consumer has no need to interact with the carrier.

Payment services

The last type of intermediary we identified in our field study was payment service providers. We noted the presence of three types of payment service providers in e-transactions: credit card issuers, providers of other payment services (notably PayPal; we only saw the Google Pay payment option once) and providers of "buy now, pay later" (BNPL) services¹⁵⁷.

All the sellers in our survey accepted payment by credit card. To pay with a credit card, users simply had to provide their credit card information at checkout. Although this type of payment is processed by a third party, the credit card issuer, the involvement of this third-party in the transaction is essentially invisible to the user. In general, sellers did not communicate any clear

¹⁵⁷ Some sellers also offered payment services linked directly to their stores: Walmart Rewards MasterCard, Costco Shop Card, Wayfair credit card, Hudson's Bay credit card, Best Buy financing and gift cards.

and accessible policy or information regarding credit card payment when we selected this payment method. This is probably because consumers have contracts with these payment service providers already, and these contracts include policies and practices that are applicable by default when the payment method is used. In other words, useful information and applicable policies are disclosed by the payment service provider in its own contract with the consumer, and not when the consumer uses the payment service to enter into a transaction with a seller. That said, we found that most sellers did not disclose their own billing policies (for example, whether billing would be done upon delivery or upon completion of the transaction), which we think should be indicated.

Many sellers also accepted payment via PayPal. When we chose to pay with PayPal, we were presented with the choice of opening a PayPal account, logging into our existing PayPal account or providing our credit or debit card information to PayPal in order to pay with that service. To do so, a new window or tab would open, allowing us to interact directly with PayPal. Before we could make a payment with PayPal, we had to check a box indicating that we had read and accepted its terms of use and other policies, with hyperlinks to those policies. The fact that we were interacting with a third party, which had its own policies and rules, seemed clear to us.

During the field survey, we identified the following BNPL services on the sellers' websites we examined: Affirm, Paybright, Klarna and Afterpay. Sellers offering BNPL payment options displayed the service's logo at checkout. Some sellers indicated that credit was offered by an BNPL service, and a phrase such as "find out more" or "terms and conditions", which allowed the user who clicked it to access details about the service. Some of the sellers who offered payment by BNPL indicated the breakdown of the amount to be paid in installments (for example, see *Figures 18 and 19*):

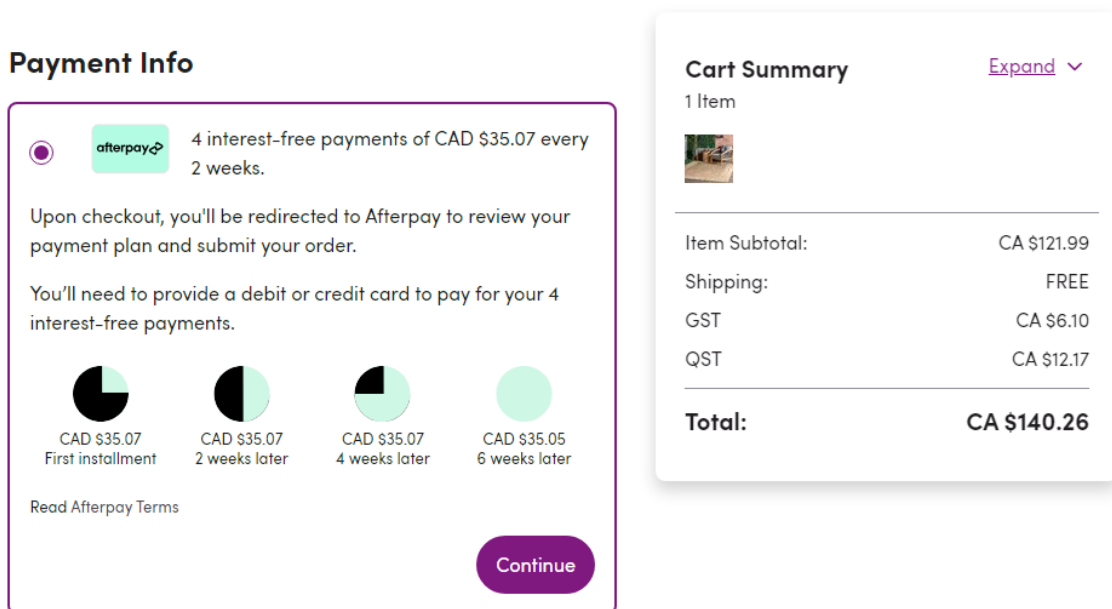


Figure 18

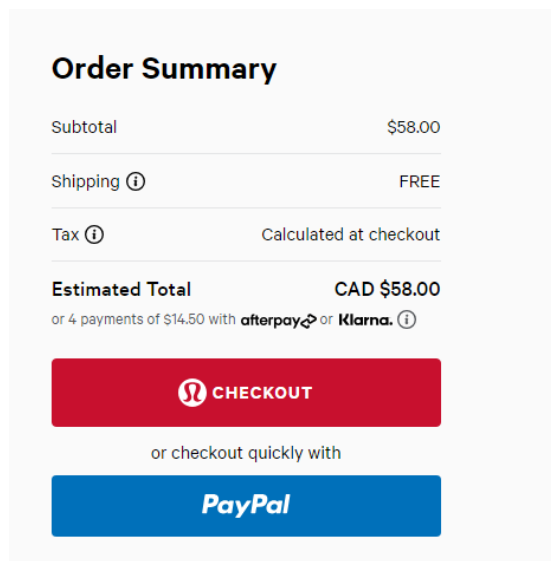


Figure 19

When we chose to pay with an BNPL service, we were directed to the service provider's website to create an account or log into an existing account. So, as with PayPal, we were clearly interacting with a third party for this part of the transaction. To open an account with one of these payment service providers, the user must accept the conditions by checking a box. In all cases studied, a link to the conditions of use was provided.

Findings

As part of our field survey, we examined the compliance of 50 sellers with their pre-contractual disclosure obligations: 20 “traditional” sellers selling on their own websites and 30 third-party sellers selling on marketplaces.

Our survey revealed that few online sellers comply with all their pre-contractual disclosure obligations. This finding adds to those of Montplaisir, who found in her study that none of the sellers she surveyed complied with all their pre-contractual obligations¹⁵⁸.

Some types of information were disclosed by every seller, such as the detailed price list including additional charges, the total transaction amount and available payment methods. Other types of information were disclosed less frequently, such as the seller's address and telephone number.

During our survey, we discovered that it was difficult or impossible to determine whether or not a seller was complying with certain obligations. In particular, we found that it was virtually impossible to know whether a third-party seller was displaying its actual legal name and all of its business names online. It would have been equally difficult, if not impossible, to find this information for lesser-known sellers selling on their own websites. It was also difficult for us to know whether all the fees were included in the amount charged at checkout before making a purchase, since we could only have discovered the omission of certain fees after finalizing the purchase, which we did not do for our survey. Finally, it was difficult to assess the accuracy of a product's description prior to purchase, although we noted that user reviews helped us in this respect.

In general, third-party sellers were less compliant with their pre-contractual disclosure obligations than traditional sellers; no third-party seller displayed its address, and only three displayed a telephone number. Less than half of third-party sellers published a detailed product description. We did find, however, that third-party sellers tended to provide an address and telephone number much more frequently on their own websites than on marketplaces. This finding is largely consistent with the results of our poll, which revealed that respondents were much more likely to encounter a problem related to a lack of information when buying from a third-party seller.

We assume that marketplace operators can require third-party sellers who sell on their marketplaces to disclose information; this is possibly why all third-party sellers displayed a return policy when selling on a marketplace (although some of those policies were clearly inadequate). It is therefore significant that marketplace operators do not require third-party sellers to display other information that is required to be divulged according to Canadian law, such as their address, telephone number, or an adequate description of the product.

In the second part of our survey, we looked at the practices, policies, roles and responsibilities that marketplace operators assume in transactions between a consumer and a third-party seller. We noticed that marketplace operators, who are theoretically third parties, play an outsized role in the transactions that take place on their marketplace – a role that is often greater than that of third-party sellers. In reality, marketplace operators assumed responsibility for meeting almost all of the pre-contractual obligations set out by e-commerce laws, including disclosing almost all the information required by law. In addition, marketplace operators took responsibility, in some cases, for shipping, returns and refunds, customer service and dispute resolution, and even for guaranteeing the product's lifespan or the accuracy of its description. All of the marketplace

¹⁵⁸ Montplaisir, *supra*, note 81, p. 51.

operators studied were involved in managing user comments and reviews. Some marketplace operators chose to display both seller and product reviews, while others did not. Some appeared to play a more active role in managing reviews than for others; for example, we noticed that Amazon crosses out any third-party reviews that pertain to an aspect of the transaction for which it assumes responsibility (shipping, for example).

Since marketplace operators manage their website's layout, it seems to us that they are responsible for displaying the third-party seller's name on a product's Web page. We found that the manner in which this information was displayed was counter-intuitive and sometimes confusing.

The marketplace operators' policies were generally available, but not always clear and not always brought to the user's attention during the transaction. It seemed to us that the consumer never even had to click to agree to the policies of two of the marketplace operators studied in order to complete a transaction.

It was sometimes difficult for us to know whether we were looking at the policies of the marketplace operator or those of the third-party seller, particularly when it came to return policies. Indeed, return policies were often presented as if they were the seller's policy, but upon examination, they sometimes turned out to be the general policy applicable to all third-party sellers on the marketplace. We also noticed on several occasions that the return policy was not always clear. For example, Walmart had a generic return policy that applied to all third-party sellers, but it was worded in such a way as to leave doubt about whether it applied to the sale of certain items. The return policy of the third-party seller we examined on Best Buy's marketplace was circular and impossible to understand.

In general, the division of responsibilities between the seller and marketplace operator was far from clear. For example, Walmart's return policy required the consumer to contact the third-party seller first in the event of a problem, and then the marketplace operator if the seller failed to respond. Recall also that Amazon indicated in its responses to user reviews that it was responsible not only for shipping the product, but also for guaranteeing the accuracy of its description and its durability, if the seller was using the Fulfilled by Amazon service.

We also found that for each marketplace, the last step of the transaction grouped all purchases into a single transaction, even if several different sellers were involved. One might even be led to believe that the marketplace operator was the actual seller in such a transaction, were it not for the fact that goods were marked as "Sold by" third-party sellers. This presumably means that several policies were potentially applicable to the transaction and that a consumer can contract with several sellers at the same time.

On many of these points, there were considerable variations between sellers on a marketplace and between the marketplace operators themselves. For example, some sellers on Amazon essentially relinquished all their responsibilities and delegated them to Amazon (shipping the product, guaranteeing its quality, etc.), while others retained more responsibilities. The way in which marketplaces handled returns varied considerably as well: for example, Best Buy allowed third-party sellers determine their own return policies, while others, such as Walmart, applied a single return policy to all transactions with a third-party seller.

Finally, during our survey, we noted the role of two other types of third parties in e-transactions: delivery services and payment service providers.

The former played virtually no role in e-transactions – their involvement was generally mentioned during the online transaction, but more or less vaguely. The relevant relationships were clearly between seller and carrier, and between the seller and the purchaser. The purchaser has no direct communication with the delivery service provider, except occasionally at the final stage of the transaction.

Payment service providers played a necessary role in completing the transactions. As far as credit card issuers were concerned, their roles, responsibilities and policies were totally invisible to the user in the transaction at the time of purchase, as the contract governing this part of the transaction already existed between the consumer and the payment service provider, and the seller has nothing to do with it. Other payment service providers, such as PayPal and BNPL providers, required the user to interact openly with them and click to agree with their policies before completing a transaction through them – an interaction to which the seller is not a party, for the same reasons.

5. Analysis: Adequacy of Canadian Legislative Frameworks

In this part of the report, we will analyze, on the basis of the problems identified in our research, the adequacy of Canadian e-commerce legal frameworks to regulate and address them.

Application and Suitability of the Legal Frameworks

As discussed in section 2 of this report, all Canadian e-commerce laws are based on the same basic concepts. They establish obligations for suppliers selling online: suppliers must disclose certain information prior to purchase, ensure that the consumer has the opportunity to accept, modify or refuse the transaction, and send a copy of the contract to the consumer. The consumer has the right to cancel the contract if the supplier fails to meet these obligations or fails to deliver the goods within a certain period. If the supplier refuses to reimburse the consumer and the consumer has paid by credit card, the consumer may demand a chargeback from the credit card issuer.

Are these rules respected and applied? Are they useful and appropriate? In the following section, we attempt to answer these questions.

Pre-contractual disclosure

We observed in our field survey that sellers rarely disclose all the information required by provincial e-commerce laws. Respondents to our poll also indicated that they were often missing essential information from a supplier when shopping online.

In both our survey and our poll, we found that the information most often missing was the seller's contact information (name, address, telephone number, etc.). In our view, this information is of the utmost importance; consumers cannot easily resolve a transaction-related problem if they can't identify or contact the seller. In fact, 31% of respondents to our poll who indicated that they had not fully resolved a problem encountered during an e-transaction said it was because they had not been able to identify or contact the seller. In such a situation, the consumer cannot send the e-transaction cancellation notice in the event of a problem, or take the seller to court if necessary. In theory, if the consumer cannot send the cancellation notice, he will not be able to request a chargeback from his credit card issuer. In practice, however, it seems that credit card issuers will sometimes issue a chargeback if the seller cannot be found (and therefore *de facto* refuses to reimburse the consumer).

In addition, our field survey and our poll results indicate that sellers often fail to provide a detailed description of the product and information on their policies. A detailed product description is necessary for consumers to be able to buy a product that matches their expectations in terms of quality, material, specifications, and so on. It should be remembered that being misled about those factors is a major issue in e-commerce. If a product is correctly described, these problems are likely avoided. It is important to note a major gap in the law concerning this problem: e-commerce laws require suppliers to disclose a detailed description of the product, and a consumer has the right to cancel a transaction if the merchant omits that disclosure. But the e-commerce laws do not explicitly state that the consumer has the right to cancel the contract if the product he receives does not correspond to its description. Of course, in such a case, there is a breach of general contract law and a violation of other elements of consumer protection law. However, this right to cancel the contract in such a situation is not explicitly provided for in the e-commerce laws.

That said, our survey reveals that sellers generally comply with certain other disclosure obligations, for example those relating to disclosing the transaction's total amount, the price of each item, the delivery date, and so on.

One of our key findings from both our poll and our field survey is that information is generally less available or complete when the seller is a third-party seller, particularly when it comes to disclosing a telephone number, address and detailed product description.

The fact that suppliers are not meeting all their disclosure obligations has already been established in our 2014 research and in Montplaisir's 2014 research, the results of which are generally similar to ours¹⁵⁹. Interestingly, a study conducted in 2002, prior to the passage of e-commerce legislation, revealed that the majority of Quebec and Ontario websites failed to display basic information, such as: "the subject of the contract and certain terms and conditions of its performance, including the price of products available online, the currency used for billing, shipping costs, tax or customs information and terms relating to delivery or payment policy"¹⁶⁰.

We can therefore assume that the situation has improved somewhat since 2002, but not noticeably since 2014. Indeed, with the growth in the number of third-party sellers on marketplaces, the situation could even be worse.

We can hypothesize that this lack of compliance with a legal obligation stems from a lack of awareness of the disclosure obligation (on the part of both suppliers and consumers), and a failure of consumers to make use of the remedies available under the law when obligations are not met.

Suppliers are not always aware of their pre-contractual disclosure obligations and thus fail to comply with them. In her study, Montplaisir sent cancellation notices in transactions on the basis of failure to disclose information as required by law, but she found that suppliers were often unaware of the law and proved reluctant to follow it:

Many did not see how their failure to comply with a disclosure requirement could result in the consumer's right to request the cancellation of the transaction. Frequently, they refused to refund the purchase on this basis. One business representative claimed that the cancellation request based on the business' failure to disclose its address was done in bad faith. Another business refused to refund the purchase, claiming that its website complied with all regulations, and that even if the link leading to the terms and conditions appeared among other links at the bottom of the Web page, consumers bore the responsibility of finding the link and reading the terms and conditions before following through with the online transaction¹⁶¹.

Moreover, consumers who are unaware of their rights may be led to believe that they have no right to cancel a transaction, simply because they lack the information. In our 2014 report on the subject, we noted that only 14% of Canadian consumers surveyed were aware that there was a legal framework applicable to contracts concluded online¹⁶². Our survey in the present report also

¹⁵⁹ Union des consommateurs, *supra*, note 74, pp. 95-102; Montplaisir, *supra*, note 81, pp. 51-54. Note that those two surveys also examined suppliers that sell digital services or products (our survey examined only suppliers who sell physical products) and that our survey is the only one that analyzes third-party sellers.

¹⁶⁰ Serge Kablan and Arthur Oulaï, "La formalisation du devoir d'information dans les contrats de cyberconsommation : analyse de la solution québécoise" (2009) 54:4 *McGill Law Review* 627, p. 647. Our translation.

¹⁶¹ Montplaisir, *supra*, note 81, p. 44.

¹⁶² Union des consommateurs, *supra*, note 74, p. 63.

found that consumers are unaware of the state of the law in this area. In addition, we found that 37% of respondents to our poll who were unable to resolve a problem encountered in an e-transaction gave up after the supplier refused to help them. Presumably, a supplier or a consumer's lack of awareness of the right to cancel a transaction because the supplier failed to disclose certain information prevents this part of the law from being applied. As the European Commission observes in its working paper on the adequacy of the e-commerce framework, the application of e-commerce rules, including information disclosure, is closely linked to consumers acting in accordance with those rules and asserting their rights:

The consumer survey showed that consumer rights awareness is an important driver of the actions that consumers take when faced with breaches to their consumer rights. Accordingly, the percentage of respondents complaining to the seller or service provider increased with increasing consumer rights awareness: no less than 64% of respondents with very high consumer rights awareness (i.e. scoring between 75% and 100% on the consumer awareness index) took action to solve their problem, as opposed to just 47% doing so among the respondents with a very low consumer awareness (i.e. scoring between 0% and 25%)¹⁶³.

Greater awareness of pre-contractual disclosure obligations would therefore likely lead to better compliance by suppliers, or better outcomes for consumers when suppliers fail to comply.

While we think it vital that consumers have access to basic information before entering into a transaction, such as the supplier's contact details and name, a detailed and accurate description of the product, etc., we note that the details of some of the pre-contractual disclosure obligations found in the law may be obsolete or unsuited to e-commerce as it is practiced today. This could be another reason why suppliers fail to meet their obligations, and why consumers do not complain about the absence of required information. Serge Kablan and Arthur Oulaï studied the relevance of the disclosure obligations in Quebec in 2009 and found that some of them were not necessarily appropriate for the digital context. For example, suppliers generally prefer to put a contact form on their website rather than an e-mail address, to avoid spam. The same applies to telephone numbers, which may be less practical and relevant than e-mail addresses in the context of inter-jurisdictional communications. The authors also note that some of the obligations are not well thought-out, for example: the obligation to disclose "other restrictions and conditions applicable to the contract." This obligation can result in the disclosure of an enormous amount of information, which could lead to a situation where the consumer is inundated with irrelevant information¹⁶⁴.

Thus, while we think the obligation to disclose certain information prior to conclusion of the contract is an essential element of the legal framework and should be respected to a greater extent, we note that the content of the disclosure requirements may need updating. We also posit that consumers and suppliers should both be made more aware of these disclosure requirements and of the consumer's right to cancel a transaction if they are not met.

¹⁶³ European Commission, « Report on the Fitness check of consumer and marketing law », 2017, p. 33, online via: <https://ec.europa.eu/newsroom/just/items/59332/en>.

¹⁶⁴ Kablan and Oulaï, *supra*, note 160.

Delivery

E-commerce laws give consumers the right to cancel the transaction if goods are not delivered within 30 days of the contract being concluded or of the delivery date established in the contract. We noted in our poll that almost half of respondents had experienced longer-than-expected delivery times. However, we did not ask whether the delivery times exceeded the expected or contracted delivery date by more than 30 days, or whether they had exercised their right of cancellation. We are therefore unable to comment on the application of this right in practice.

That said, this right seems to create an inconsistency in the law. In our field survey, we found that almost all sellers stipulate a delivery date or range of dates in the contract. Normally, suppliers are obliged to respect the deadlines they set in their contracts with consumers. Giving consumers the right to cancel the transaction only after a delay of more than 30 days appears to give the supplier a grace period that is not, in our view, justified. We think that a rule that gives consumers the right to cancel the contract if the supplier fails to meet its own delivery deadlines would be more appropriate¹⁶⁵.

Chargebacks

When the consumer has the right to cancel the transaction and the supplier refuses to refund, the consumer who has paid by credit card can resort to a chargeback. This recourse seems essential to guarantee the application of consumer protection laws in the field of e-commerce, where suppliers are not always identifiable, reachable, located in the same jurisdiction as the consumer, etc.¹⁶⁶. As indicated above, the consumer must normally send a cancellation notice to the supplier before he can request a chargeback; in cases where this is impossible because the supplier has disappeared or has not indicated any contact information, the consumer should not be required to comply with this obligation.

Although chargebacks have many advantages, we have noted a number of problems with their implementation.

Firstly, the right to a chargeback established in the e-commerce law is limited to consumers who have made an e-transaction with a credit card. While it is true that most online payments are still made by credit card, Canadian consumers are increasingly using other types of payment, such as debit cards, payment services offered by third parties like virtual wallets, PayPal, cryptocurrency payment services, and BNPL services. Some of those payment service providers offer dispute resolution mechanisms akin to chargebacks, others do not. However, consumers only have a **right** to chargeback if they use a credit card; if non-credit card payment service providers offer refunds in the event of a problem, this is a contractual commitment, not a legal obligation.

¹⁶⁵ The delivery date is part of the information that must be disclosed before the contract is concluded; if the delivery date is not mentioned in the contract, the consumer should be able to cancel the transaction on the basis of failure to disclose that information.

¹⁶⁶ Several authors have commented on the importance of chargebacks. See in particular: Montplaisir, *supra*, note 81, p. 68 and Consumers Council of Canada, "Consumer Redress, Chargebacks and Merchant Responses in Distant Transactions," 2017, pp.9-10, online: <https://www.consumerscouncil.com/wp-content/uploads/sites/19/2020/03/809268-ccc-chargebacks-report-pdf-en-web.pdf>.

This means that consumers have different rights depending on the payment method they use¹⁶⁷. For example, consumers may encounter problems when using BNPL services, which sometimes continue to bill consumers even when a transaction is disputed or cancelled until the supplier informs them of the cancellation¹⁶⁸. In contrast, PayPal offers a dispute resolution and refund service that resembles a chargeback to users who have a PayPal account (but not for those who use their services without an account)¹⁶⁹.

The different levels of legal protection for different types of payment are not well understood by consumers¹⁷⁰. Indeed, Canadian consumers do not appear to be well informed about chargebacks in general. According to a poll conducted by the Consumers Council of Canada (CCC):

Consumers are not well informed about the protections available to them in payment card transactions. A significant portion of them – about one quarter – profess no knowledge of credit card chargeback protections, while fewer than one-third are strongly aware of chargebacks. In the aggregate, consumers show little understanding of the type of disputes that chargebacks are designed to address¹⁷¹.

Our survey results confirm this finding. We asked respondents to our poll whether they believed their credit card issuer has an obligation to reimburse them if there is a problem with the transaction and the supplier refuses to reimburse them. Only 39% of respondents said such an obligation exists; 33% said it does not, and 28% said they did not know. Even more striking is that more respondents (42%) indicated they are entitled to chargebacks when dealing with third-party payment services, such as PayPal, than with credit card companies (39%). In other words, consumers are more likely to believe they are entitled to a chargeback when they are in a situation where, in fact, they are not.

The CCC study explains this confusion:

The consumers' lack of understanding reflects the disclosure choices of card issuers. With few exceptions, card issuers do not disclose this protection to consumers in agreements or promotional materials. No law compels this. Newer entrants such as PayPal and Amazon provide more information about consumer protections and how disputes are resolved¹⁷².

¹⁶⁷ On this problem, see also: Jacques St-Amant, "La rétrofacturation : un remède peu efficace en matière d'exécution fautive du contrat conclu à distance" in Pierre-Claude Lafond, Vincent Gautrais (dir.), *Le consommateur numérique : une protection à la hauteur de la confiance*, Cowansville, Éditions Yvon Blais, 2016, pp. 94-97.

¹⁶⁸ Penelope Wang, "The Hidden Risks of Buy-Now, Pay-Later Plans," Consumer Reports, 2021, online: <https://www.consumerreports.org/shopping-retail/hidden-risks-of-buy-now-pay-later-plans-a7495893275/>. See also: Tara Siegel Bernard, "Consumers and Companies Are Buying In on Paying Later" in *nytimes.com*, The New York Times, 2021, online: <https://www.nytimes.com/2021/09/03/your-money/buy-now-pay-later-afterpay-affirm-amazon-square.html>.

¹⁶⁹ See Consumers Council of Canada, *supra*, note 166, p. 88.

¹⁷⁰ OECD, *supra*, note 25, p. 36. See also OECD, "Consumer Policy Guidance on Mobile and Online Payments" in *oecd.org*, OECD, 2014, p. 4, online: <https://www.oecd-ilibrary.org/docserver/5jz432cl1ns7-en.pdf> and OECD, *supra* note 42, p. 16.

¹⁷¹ Consumers Council of Canada, *supra*, note 166, p. 7.

¹⁷² *Id.*, p. 7.

In fact, credit card companies often do not announce this right to their clients, or they often formulate it (for example, in contracts and agreements) in a way that tends to make it obscure¹⁷³. It is thus not surprising that a majority of consumers are not fully aware of this right.

To ensure greater consistency here, e-commerce laws should include an obligation for all third parties acting as online payment intermediaries to contribute to dispute resolution, in a manner akin to chargeback. In all cases, consumers should be informed of the existence and modalities of this remedy.

Another problem with chargebacks is that chargeback requests seem to be implemented differently and unequally depending on the financial institution and the consumer's province. The chargeback process is managed by the financial institution that issued the credit card to the consumer. Unfortunately, there is a lack of transparency about these processes, making them difficult to study. Financial institutions do not publish statistics on chargeback requests, which makes it impossible to study how many are accepted or rejected, and for what reasons¹⁷⁴. Indeed, when we tried to assess the use and usefulness of chargebacks by approaching financial institutions in 2014, we were confronted with this lack of transparency:

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 met¹⁷⁵.

However, there are indications that financial institutions handle chargebacks differently from one another. In a 2023 investigation on the subject, journalists from La Facture found that two out of four of the financial institutions they investigated had provided incorrect information to consumers who had called them for a chargeback. When a consumer called her institution twice, she received two somewhat different responses. In one case, the financial institution refused to process a chargeback request because the request exceeded a time limit that is not in the law, but which rather appears to come from Visa and MasterCard policies¹⁷⁶.

In its report on the subject, the CCC noted that:

Implementation of [Visa or MasterCard] network policy is left to issuers. They are the first point of contact, and make an initial decision on consumer complaints. Numerous efforts to gain card issuer perspectives met limited success. Researcher calls to personal card “help” facilities often led to a few answers and

¹⁷³ *Id.* p. 41.

¹⁷⁴ Ducas, *supra*, note 136; Montplaisir, *supra*, note 81, pp. 29-30 and footnote 137.

¹⁷⁵ Union des consommateurs, *supra*, note 74, p. 98.

¹⁷⁶ La Facture, “Rétrofacturation : Des banques hors-la-loi?” in [ici.radio-canada.ca](https://ici.radio-canada.ca/tele/la-facture/site/segments/reportage/431696/retrofacturation-banque-droit-credit-loi), Radio-Canada, 2023, online: <https://ici.radio-canada.ca/tele/la-facture/site/segments/reportage/431696/retrofacturation-banque-droit-credit-loi>.

then referrals to others and the Canadian Bankers Association. Researchers interviewed retired executives with experience from issuer and acquirer perspective who provided insight into how card network policies are implemented. Card networks agreed that the human element cannot be eliminated. “Every issuer and acquirer is required to follow our chargeback rules exactly as written. Having said that, it is impossible to guarantee that every issuer interprets every rule identically 100 percent of the time, given the human involvement”¹⁷⁷.

These investigations add to the experience recounted by Montplaisir, who attempted in her e-commerce research to make a chargeback claim on a product she purchased online while in Ontario. Although the researcher was entitled to chargeback on this transaction, her credit card issuer refused her request on the grounds that the supplier's business was incorporated in England and English law applied¹⁷⁸. This is incorrect¹⁷⁹, but according to the CCC's study, “[Ontario] Provincial officials hold the view that Ontario’s rules only apply to Ontario issuers, not federally chartered institutions” i.e., banks¹⁸⁰. The CCC notes that “Representatives of other provinces did not share this opinion.” They state that they “have never encountered an issue with regards to cancellation under the legislation, whether the issuer is a federally regulated bank or not¹⁸¹.”

Thus, it appears that the implementation of chargebacks varies from one financial institution to another, and possibly from one province to another.

Broadly speaking, then, there are three obstacles to the application of e-commerce law through chargebacks:

- 1) The right is limited to credit card users;
- 2) Little is known about the right;
- 3) The right is not always respected and seems to be applied differently depending on the financial institution and the province;

We therefore agree with the CCC's recommendations on these points:

Consumer protection legislation and industry best practices should ensure that basic information about credit card chargeback protection is included in card agreements, web sites, other consumer communications and as part of industry codes, as required in the United States by law¹⁸².

And:

Legislation should expand the types of protections available on distant credit card purchases to all electronic payment types – not just current alternatives (debit,

¹⁷⁷ Consumers Council of Canada, *supra*, note 166, pp. 27-28.

¹⁷⁸ Montplaisir, *supra*, note 81, p. 60.

¹⁷⁹ As noted below (section 2, application of private international law), section 2(1) of the *Consumer Protection Act, 2002*, *supra*, note 4 states that “this Act applies in respect of all consumer transaction if the consumer or the person engaging in the transaction with the consumer is located in Ontario when the transaction takes place.”

¹⁸⁰ Consumers Council of Canada, *supra*, note 166, p. 33.

¹⁸¹ *Id.*, pp. 34.

¹⁸² *Id.*, p. 90.

*PayPal, etc.), but also to future payment technologies without constricting their development*¹⁸³.

Deadlines and procedure

Provincial e-commerce laws set deadlines for consumers to exercise remedies if there is a problem with the transaction¹⁸⁴. Those deadlines vary from province to province and depending on the problems encountered. For example, the consumer has seven to ten days (depending on the province) after receiving the contract to cancel the transaction if the supplier has not disclosed all the required information prior to conclusion of the contract; the consumer can also cancel the contract if the supplier has failed to provide him with a copy of the contract within 30 days of the transaction. Cancellation is effected by sending a notice to the supplier. In Quebec and Ontario, if the supplier fails to issue a refund, the consumer must request a chargeback within 60 days of the expiry of the period within which the supplier was required to issue the refund.

Those time limits appear to be an obstacle for consumers. It is not obvious that the latter will notice the lack of relevant information within 7 or 10 days of concluding a contract. As we discovered in our field survey, it is very difficult to verify whether certain information has been accurately disclosed prior to receiving a product: for example, buyers may not know whether a description is accurate until they receive the product. They will probably not realize that the supplier has not provided a telephone number or address until they encounter a problem with the product and seek the supplier's contact information to try to resolve it with them.

In addition, consumers may be unaware that they must send a cancellation notice before a certain deadline for in order to benefit from this recourse. If they try to rectify the situation by first discussing the problem with the supplier, before cancelling the contract, they may not be able to meet the deadline for doing so¹⁸⁵.

We therefore think these deadlines are inappropriate. At the very least, the period for cancelling a transaction based on a lack of information should begin from the moment the consumer receives the product, as is already the case in some jurisdictions¹⁸⁶. In addition, the deadlines should be extended to give the consumer more time to identify and remedy the problem.

Gaps in the Existing Legal Framework

In the course of our research, we found significant gaps in existing e-commerce legislation. In particular, we noted the absence of regulations concerning third-party actors in e-transactions, user reviews and the application of e-commerce laws to inter-jurisdictional transactions. We find this absence problematic.

Application of the law to third parties

The e-commerce legal frameworks adopted by Canadian provinces apply to sales contracts concluded between a consumer and a supplier. As indicated in section 1, the concept of supplier is broad; anyone who supplies a good or service to a consumer in the course of his professional activities is a supplier. This term can apply to a seller, a marketplace operator, a financial services

¹⁸³ *Id.*, p. 91. The OECD suggests that "at the very least, consumers should be better informed about the protection levels available when they use different payment mechanisms": OECD, *supra*, note 25, p. 35.

¹⁸⁴ Even after those deadlines have passed, consumers can still exercise their civil remedies (until they become time-barred).

¹⁸⁵ St-Amant, *supra*, note 167, p. 92.

¹⁸⁶ For example, *Consumer Protection Act*, *supra*, note 4, sec. 54.8 subsection 2.

provider, etc. Nevertheless, the suppliers addressed by these regulations seem to refer to one party in particular: the seller. Virtually all the obligations arising from e-commerce laws apply only to the seller, and not to third parties involved in the transaction. The major exception to this rule is the obligation of the credit card issuer—a third party to the transaction—to carry out a chargeback if the legal criteria are met¹⁸⁷.

The usefulness of imposing obligations on third parties in certain circumstances is well demonstrated by chargebacks, which give consumers important protection by placing a burden on an intermediary who has the resources and control to rectify the situation¹⁸⁸. We think the explicit extension of e-commerce laws to other third parties and the adoption of provisions that set out specific obligations for these actors, could be equally beneficial.

Third parties are not generally held liable for the acts of others. However, there may be reason to hold third parties liable or to impose certain obligations on them if they share responsibility for an act, or if they are in the best position to put an end to an illegal practice, which may be the case if they act as intermediaries¹⁸⁹.

The question of the liability of online intermediaries remains unresolved in a number of contexts. There are laws that establish regulations concerning the liability of intermediaries in the context of copyright or the preservation of online documents, for example¹⁹⁰. At present, the extent of the liability of platforms that are intermediaries in the transmission of communication (social networks, for example) is also an issue generating a great deal of interest in the fields of online discourse, for example in relation to defamation or hate or illegal speech¹⁹¹.

¹⁸⁷ On the history of obligations for credit card issuers, see St-Amant, *supra*, note 167, pp. 100-102.

¹⁸⁸ *Id.*, pp. 100-101.

¹⁸⁹ See PIAC, *supra*, note 136, p. 33 and Martens, *supra*, note 15 at pp. 34, 100-105; see also European Parliamentary Research Service, “Liability of online platforms,” European Parliament, 2021, pp. 44-46, online: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/656318/EPRS_STU\(2021\)656318_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/656318/EPRS_STU(2021)656318_EN.pdf).

¹⁹⁰ See Innovation, Science and Economic Development Canada, “Consultation on a Modern Copyright Framework for Online Intermediaries,” version updated April 14, 2021, online: <https://ised-isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/copyright-policy/consultation-modern-copyright-framework-online-intermediaries> for a discussion of the application of this concept to copyright; in the context of online document preservation, see as an example section 22 of the *Act to establish a Legal framework for information technology (LFIT)*, CQLR, c. C-11 and a discussion of this section in: Option consommateurs, “Les plateformes numériques d’économie partagée. Plus qu’un simple annuaire téléphonique virtuel?,” 2021, pp. 21-22, online: <https://option-consommateurs.org/wp-content/uploads/2021/03/les-plateformes-numeriques-deconomie-partagee.pdf>.

¹⁹¹ For example, see Sarah E. Whitmore, Lara Guest and Adrienne Oake, “Media and communications: Risks of liability emerging for online platforms in Canada,” *Torys*, 2021, online: <https://www.torys.com/our-latest-thinking/publications/2021/11/risks-of-liability-emerging-for-online-platforms-in-canada> for a discussion of defamation case law and see Sonja Solomun, Maryna Polataiko and Helen A. Hayes, “Platform Responsibility and Regulation in Canada: Considerations on Transparency, Legislative Clarity, and Design,” (2021), *Harvard Journal of Law & Technology* 34: Spring, 1, for a summary on illegal or hate speech.

In the U.S., there is case law on the liability of marketplace operators, including Amazon, for the safety of products sold on their marketplace. See summaries at: Jon Brodtkin, “Amazon’s plan to avoid lawsuits: Pay customers \$1,000 when products injure people,” *Ars Technica*, 2021, online: <https://arstechnica.com/tech-policy/2021/08/amazons-plan-to-avoid-lawsuits-pay-customers-1000-when-products-injure-people/?comments=1&comments-page=1>, David Fung, “Online Marketplace and E-Retailer Liability: A New Hope,” in *WT.ca*, Whitelaw Twining, 2021, online: https://wt.ca/online-marketplace-and-e-retailer-liability-a-new-hope/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration and Smith Gambrell Russell Law Firm and James Bikoff, “Supporting Liability for Online Marketplaces that Allow Third-Party Sellers to Offer Defective and or Counterfeit Products,” *JD Supra*, 2021, online: <https://www.jdsupra.com/legalnews/supporting-liability-for-online-3180683/>.

In a recent report, Option consommateurs examined various ways in which a digital sharing economy platform can be held liable for a problem arising from a transaction on its platform. After examining the notion of third-party liability from multiple angles, the report concludes:

One concept seems to be common to all the legal principles and regimes discussed above: the concept of control. The control exercised by the platform over the service provider sometimes justifies holding the platform liable for the provider's acts. In fact, this is one of the foundations of most vicarious liability regimes¹⁹².

[...]

Control takes a variety of forms and extends along a continuum, from total to almost non-existent. By analyzing the law, doctrine and jurisprudence, we have been able to identify the main criteria for determining the degree of control exercised by traditional as well as sharing economy platforms and those involved in the sharing economy. Here is a non-exhaustive list of the criteria identified, in no particular order:

- *Knowledge or control of stored data;*
- *An editorial choice in the classification of advertisements;*
- *The presence of a code of conduct, advice or instructions;*
- *Receipt of revenue from use of the platform (commission, subscription, user fees, etc.);*
- *Freedom in determining the algorithm;*
- *Having played a role in securing transactions, for example by verifying the identity of the parties involved;*
- *The form and content of advertisements;*
- *Setting minimum quality standards for service providers;*
- *Setting up an electronic payment service;*
- *The development of tools to promote and optimize the sales offer;*
- *The opportunity for salespeople to become “power sellers” or “superhosts”*
- *Price or service control;*
- *Setting contract terms and conditions;*
- *Ownership of the main assets used to provide the service;*
- *Between the platform and the service provider, the presence of a contract akin to an employment contract;*
- *The ability to choose service providers, check their background and provide training;*
- *An offer of insurance or guarantees;*
- *Platform access control;*
- *Control of the mechanisms put in place (online reputation or dispute resolution mechanisms, for example)¹⁹³.*

¹⁹² Option consommateurs, *supra*, note 190, p. 32. References omitted. Our translation.

¹⁹³ *Id.* pp. 33-34. References omitted. Our translation.

The degree of activity and control exercised by the third party is also crucial in assessing its liability under the European Union's e-commerce regulation, which addresses this issue¹⁹⁴. European legislation has already incorporated intermediary undertakings into law and jurisprudence to a certain extent. Directive 2000/31/EC of the European Parliament and of the Council of June 8, 2000 (the “Directive on electronic commerce”) establishes a series of rules limiting the liability of an intermediary that transports, caches or hosts illicit information if it plays a mostly passive and automatic role in transporting, caching or hosting that data, and if it complies with the rules laid down in the directive to correct the situation when it becomes aware of it¹⁹⁵. The Directive also states that EU Member States must not impose a general obligation on these intermediaries to monitor stored, cached or hosted content in order to determine whether it is unlawful¹⁹⁶. Otherwise, Member States may act to hold online intermediaries liable for their participation in certain illegal or unlawful acts¹⁹⁷.

In the European Directive 2019/2161, discussed above, we have seen that certain obligations have been extended to intermediaries who play a much more active role in an e-transaction. Notably, the directive obligates marketplace operators to disclose search engine result ranking parameters, to indicate whether a seller is a supplier or a private individual on the basis of the seller's declarations, to indicate, where applicable, that consumer protection laws do not apply to sales between private individuals, and to disclose the division of obligations between the marketplace operator and the trader. The directive also lays down rules for managing user reviews, which apply to both sellers and third parties¹⁹⁸.

The Commission Communication on Directive 2005/29/EC, which has been amended by Directive 2019/2161, explains that the new provisions establishing obligations for intermediaries and disclosure of the intermediary's role in the transaction add to existing European case law, including that established in the *Wathelet* case. In this case,

¹⁹⁴ Martens, *supra*, note 15, p. 34, European Parliamentary Research Service, *supra*, note 189, p. 29, Pablo Baistrocchi, “Liability of Intermediary Service Providers in the EU Directive on Electronic Commerce,” (2002) 19 *Santa Clara High Technology Law Journal*, 19:1, 111, pp. 117-125.

¹⁹⁵ EU, *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”)*, OJ, L 178, 17.7.2000, p. 1-16, arts. 12 to 14.

¹⁹⁶ *Id.*, art. 15.

¹⁹⁷ For an example of action taken by an EU Member State against a platform, see the case of France against Wish. France had a number of grievances against Wish, including a lack of third-party seller monitoring: “Furthermore, it was found that Wish did not carry out product withdrawals and recalls in a satisfactory manner, as it is obliged to do as a distributor. Although offers for notified dangerous products are withdrawn within 24 hours, in most cases these products are still offered under a different name and, what's more, sometimes by the same seller. The company does not keep any records of the sale of non-compliant and dangerous products”. [Our translation] See *Ministre de l'Économie, des Finances et de la Relance*, “Bruno Le Maire, Alain Griset et Cédric O annoncent des mesures exceptionnelles à l'encontre de la place de marché Wish pour sensibiliser et mieux protéger les consommateurs,” Paris, 2021, online: https://minefi.hosting.augure.com/Augure_Minefi/r/ContenuEnLigne/Download?id=B8B80B7F-2ABD-499B-A002-02E52583C099&filename=1705%20-%20CP%20-%20mesures%20exceptionnelles%20C3%A0%20l'encontre%20de%20la%20place%20de%20march%C3%A9%20Wish.pdf.

¹⁹⁸ These types of obligations also exist in other jurisdictions. For example: “Other models concerning a duty to inform the consumer of the contractual role of the platform exist. The Republic of Korea's Act on Consumer Protection in Electronic Commerce is one example, where an online intermediary must explicitly inform consumers that they are not a party to the main supply contract. Another is provided by Brazil's e-commerce rules, which require e-commerce portals to provide clear information about the product or service and supplier from which they are buying”: Lianos *et al.*, *supra*, note 18, p.18.

The Court stated (paragraphs 33-34) that, whilst Directive 1999/44/EC does not address the issue of liability of intermediaries vis-a-vis consumers, 'it does not in itself preclude the possibility that the concept of 'seller', within the meaning of Article 1(2)(c) of Directive 1999/44, can be interpreted as covering a trader who acts on behalf of a private individual where, from the point of view of the consumer, he presents himself as the seller of consumer goods under a contract in the course of his trade, business or profession. That trader could create confusion in the mind of the consumer by giving him the false impression that he is acting as the seller-owner of the goods.'

The Court also stated (paragraph 44) that 'The degree of participation and the amount of effort employed by the intermediary in the sale, the circumstances in which the goods were presented to the consumer and the latter's behaviour may, in particular, be relevant in that regard in order to determine whether the consumer could have understood that the intermediary was acting on behalf of a private individual.'

These Court's conclusions concerning the liability of the offline intermediary for the conformity of goods could also be relevant for other intermediaries and other obligations of traders under EU law, including in an online context. In particular, online intermediaries could be found liable for the trader's obligations regarding pre-contractual information or contractual performance where, from the point of view of the consumer, they present themselves as traders under the (proposed) contract.

In the Wathelet case, the Court stressed (paragraph 37) that 'it is essential that consumers are aware of the identity of the seller, and in particular whether he is acting as a private individual or as a trader, so that they are able to benefit from the protection conferred on them by the directive.' However, even where the actual supplier was also a trader and the consumer was not, accordingly, deprived of his or her rights, the consumer may not have concluded the contract if the identity of the actual trader was known due to, for example, concerns about the reliability of such a trader and the possibility of enforcing consumer rights towards it'¹⁹⁹.

In this report, we took a close look at the role of operators of marketplaces where consumers buy products from suppliers (B2C). We found that the marketplace operators identified in our field survey play an active role in, and exercise significant control over, e-transactions that take place on their websites. In particular, they control the setting of website parameters, the display of Web pages concerning both the third-party seller and the product, the checkout process including the summary of the transaction's basic elements (the price of each item, total price, delivery date, etc.), as well as the drafting, disclosure and management of policies applicable to use of the website and certain policies applicable to the transaction. Marketplace operators are also sometimes responsible for shipping goods, managing user reviews, customer service, managing returns, refunds, exchanges and cancellations, and resolving disputes. As a result, marketplace operators often play a greater role in transactions than do third-party sellers selling on the marketplace, to the point where a consumer who does not read the fine print indicating that the

¹⁹⁹ European Commission, *supra*, note 102, art. 4.2.2 (emphasis in the original).

product is offered by a third-party seller may well be under the impression that the party with whom he is transacting is actually the marketplace operator.

We also found that:

- Third-party sellers post the information required by Canadian e-commerce legislation less often than sellers who sell on their own website;
- Third-party sellers are less likely to post certain information required by law when selling on a marketplace than on their own website;
- Consumers encounter problems related to a lack of information more often when buying goods from third-party sellers;
- Consumers often confuse the third-party seller with the marketplace operator when making a purchase, and they often only notice after the purchase that they have bought a good from a third-party seller and not from the marketplace operator.

In view of those observations, and given the enormous control and active participation of the marketplace operator in transactions between consumers and suppliers, we argue that marketplace operators have legal responsibilities for the transactions that take place on their marketplaces, and that the law should ensure that those responsibilities are more clearly defined.

Indeed, these responsibilities are not explicitly stated in Canadian e-commerce laws, which, as mentioned, appear to have been envisaged to apply only to sellers. **Yet, looking at these facts, it is clear to us that the appropriate party to ensure the application of Canadian e-commerce laws in a transaction taking place on a B2C marketplace is the operator of that marketplace.** Indeed, this is already the case in many respects, as marketplace operators very often take responsibility for disclosing much of the required information, as well as for shipping, disclosing policies, handling returns, etc.

However, this responsibility needs to be clarified in law, as the reality on the ground poses certain problems. Namely, it is far from easy for the consumer to know who is supposed to be responsible for the transaction. For example, a consumer may think that the third-party seller is responsible in the event of a problem, but then discover that the marketplace operator assumes responsibility for resolving certain issues. Conversely, the consumer may contact the marketplace operator to obtain a refund in the event of a problem, only to discover that the third-party seller must be addressed to resolve the dispute. Indeed, we discovered in our field survey that:

- The division of responsibilities between a third-party seller and the marketplace operator in a transaction is unclear;
- The division of responsibilities between a third-party seller and the marketplace operator is not necessarily the same for all sellers on the same marketplace;
- The division of responsibilities between a third-party seller and the marketplace operator may vary depending on the marketplace.

A degree of consistency needs to be introduced here to ensure greater clarity and better consumer protection.

One way of solving this problem would be to consider the B2C marketplace operator as the supplier responsible for ensuring compliance with e-commerce laws in a transaction taking place on its platform. In many respects, it seems that this should already be the case. After all, marketplace operators assume, to varying degrees, many of the responsibilities that e-commerce laws impose on the seller. In fact, the marketplaces examined here are structured in such a way

that the third-party seller **cannot fulfil** many of the obligations that normally fall to a supplier (for example, disclosing a phone number or address) if the marketplace operator has not provided a place to do so on the website. In reality, the contract appears to be with the marketplace operator, as the third-party seller is the seller in name only. Making this explicit in e-commerce laws would clarify the roles and responsibilities of the parties in e-transactions, for marketplace operators, third-party sellers and consumers alike²⁰⁰.

While most of our research focused on platform operators where suppliers or businesses sell to consumers (B2C), we also identified some issues with platforms where consumers sell to each other (C2C). We saw in our poll that respondents do not know the obligations or status of a mom selling homemade sweets or an influencer selling make-up products on social networks, and do not know whether they are suppliers and thus whether consumer protection laws apply to transactions of this type. For marketplace operators that allow sales between private individuals, an obligation as set out in Directive 2019/2161 should be imposed to ensure that consumers know whether they are buying from a private individual or a supplier, and what their rights and remedies are in each case. That said, we have our doubts about the application of such a rule: will the seller know precisely what its status is under the law (or declare it correctly to the marketplace operator)? Would such an indication often lead consumers to believe they have fewer rights than they actually do²⁰¹? An analysis of the implementation of this rule in Europe would enlighten us as to its effectiveness and the corrective measures to be taken, if any.

We did not examine in sufficient detail the activity, control or role of other platforms that play a part in e-commerce, such as social networks or Web hosting sites, to be able to comment on the extent of their responsibilities. Social networks, in particular, seem to be playing an increasingly important role in e-transactions, and consumers may well be relying on them more and more to make their purchasing decisions²⁰². We think an in-depth study of the responsibilities of those platforms in e-transactions would be perfectly justified.

With regard to other intermediaries in online transactions, we repeat our position from the previous section that all types of payment intermediaries (not just credit card issuers) should be obliged to provide a service similar to chargeback.

User comments

Another major gap in the current legal framework appears to be the lack of regulation of user reviews. This is an issue we did not intend to address in this report, but we noted it so often in our research that we must mention it here, even if we have not studied it in depth. The importance of user reviews for purchasing decisions is well established, as is the fact that user reviews can be

²⁰⁰ Recall that 48% to 51% of respondents to our poll said that a marketplace operator is *always* responsible if there is a problem with the good or with delivery of a good sold by a third-party seller. See also Consumers International, "Consumers International Guidelines for Online Product Safety," p. 7, online:

https://www.consumersinternational.org/media/368991/online-product-safety-guidelines-report_final.pdf: "Consumers expect online marketplaces to be taking more responsibility for the safety of products sold online. In 2019, *Which?* found that only 21% of UK consumers were aware that online marketplaces had no legal responsibility for overseeing product safety on their sites. When presented with information on the risks, 70% of online shoppers thought the law needed to be changed so that marketplaces were legally responsible. This mirrored the outcomes of a survey conducted by the German Federation of Consumer Associations (VZBV), which found that 93% of German consumers surveyed expected online marketplaces to ensure that traders on the platform comply with EU law."

²⁰¹ Riefa, "Consumer protection on social media platforms," *supra*, note 29, pp. 324-325.

²⁰² See *id.*, p. 334 for a discussion of liability regulation of social networks.

manipulated or falsified²⁰³. The practice of buying or falsifying reviews is widespread; the World Economic Forum estimates that on average, 4% of online reviews are false, and that the influence of false online reviews can be quantified as approximately \$152 billion²⁰⁴.

This practice exists on both marketplaces and websites, including dropshipper's websites hosted on Web hosting platforms²⁰⁵.

As mentioned above, the *Competition Act* prohibits false representations, and the Competition Bureau can prosecute suppliers who falsify or manipulate comments and notices on this basis. Provincial consumer protection laws also generally prohibit misrepresentation²⁰⁶. However, Canadian legislation seems to lack an approach specifically dedicated to this issue. In contrast, European Directive 2019/2161 attempts to address the problem of fraudulent reviews by requiring traders (suppliers), marketplace operators and other intermediaries to disclose information that “ensures that the published reviews originate from consumers who have actually used or purchased the product” and prohibits claims that reviews come from consumers who have purchased the product unless reasonable steps have been taken to verify their veracity²⁰⁷.

This is not an easy problem to solve, as it is not easy to detect fake reviews, and reviews do not even have to be fake to be untrustworthy (for example, users tend to give positive ratings more often than negative ones because they do not want to tarnish the seller's reputation or because they do not want to be sued for defamation). Here, we simply seek to point out that this issue should eventually be addressed in Canadian e-commerce legislation.

Application of private international law

When consumers are unable to assert their rights through cancellation and chargebacks, they can turn to other mechanisms for enforcing their rights; in particular, they can have recourse to the courts or to an alternative dispute resolution method. However, consumers also face obstacles when it comes to exercising their civil remedies, and this type of recourse can be further complicated by a seller being located in another jurisdiction.

As we explained in Section 2 (application of private international law), not all of the provinces that have passed e-commerce laws have adopted rules making it clear that the law applies to suppliers abroad and that the courts of the consumer's province have jurisdiction in the event of a dispute.

²⁰³ See, for example, Competition Bureau Canada, “The Deceptive Marketing Practices Digest,” Gatineau, 2015, online: https://ised-isde.canada.ca/site/competition-bureau-canada/en/deceptive-marketing-practices-digest-volume-1#s3_0; Better Business Bureau Institute for Marketplace Trust, *supra*, note 117, p. 35; See also Consumers Council of Canada, “Strengthening the marketplace through a Consumer Protection Framework for online customer reviews,” 2016, online: <https://cccshop.consumerscouncil.com/ca/Strengthening-the-marketplace-through-a-Consumer-Protection-Framework-for-consumer-online-reviews-%5BEPUB%5D/p/139986>; Competition Bureau Canada, “Five-star fake out,” 2022, online: <https://www.canada.ca/en/competition-bureau/news/2022/03/five-star-fake-out.html>; PIAC, *supra*, note 136, pp. 17-18. In the context of shared economy digital platforms, see Option consommateurs, *supra*, note 41, pp. 45-47.

²⁰⁴ Jonathan Marciano, “Fake online reviews cost \$152 billion a year. Here's how e-commerce sites can stop them,” World Economic Forum, 2021, online: <https://www.weforum.org/agenda/2021/08/fake-online-reviews-are-a-152-billion-problem-heres-how-to-silence-them/>; see also Burdon, *supra*, note 16, pp. 10-11.

²⁰⁵ McKenna, *supra* note 127; Damien Leloup, “Devenir riche sur Internet sans rien faire : les mirages du ‘dropshipping’,” in *LeMonde.fr*, July 31, 2019, online: https://www.lemonde.fr/pixels/article/2019/07/31/devenir-riche-sans-rien-faire-les-mirages-du-dropshipping-sur-internet_5495194_4408996.html.

²⁰⁶ See, for example, *Richard v. Time Inc*, 2012 SCC 8, [2012] 1 RCS 265. See also Véronique Abad, “L'effectivité des recours en matière de publicité sur Internet” (2005), 10:2 *Lex Electronica*, 1.

²⁰⁷ EU, *Directive 2019/2161*, *supra*, note 98, art. 3(4)(c).

In addition, some provinces have no clear rules on arbitration clauses, which can remove consumer disputes from the courts' jurisdiction.

At the very least, this inconsistency between provinces can lead to confusion for consumers. As we found in our survey, many consumers do not know whether their province's laws apply when dealing with a supplier located abroad. At worst, this will create problems for consumers seeking to exercise their rights in jurisdictions where these issues are not clearly defined in legislation.

We maintain that harmonizing these standards across Canada and adding them to e-commerce rules where they are not already in place would benefit consumers²⁰⁸.

²⁰⁸ See Montplaisir, *supra*, note 81, pp. 61-64; Option consommateurs, *supra*, note 141 p. 82. See also Uniform Law Conference of Canada, "Uniform Rules on Jurisdiction and Choice of Law in Consumer Contracts" (2004), online: <https://www.ulcc-chlc.ca/ULCC/media/EN-Uniform-Acts/Uniform-Jurisdiction-and-Choice-of-Law-Rules-for-Consumer-Contracts-Act.pdf>. Note that harmonizing these standards is not the recommendation made by the PIAC in its report on jurisdictional issues in online shopping, which notes the inconsistency between provincial laws on the application of laws and court jurisdiction over online transactions with foreign suppliers, and the widespread confusion faced by consumers in this area. The report notes that "use of formalistic legal mechanisms to resolve disputes may be time consuming and costly for consumers involved in relatively small transactions," and suggests that consumers should be better informed and equipped with the tools they need to seek redress: PIAC, *supra*, note 136, pp. 47-49.

Findings

Canada's e-commerce laws are not always adapted to consumer problems, nor are they always adequately put into effect. In addition, they are too limited in scope to respond effectively to certain problems.

Firstly, suppliers generally fail to comply fully with disclosure obligations. We hypothesized that this could be due to suppliers' lack of knowledge of those obligations. Consumers are also unaware of their rights in this area, making them less likely to react in the event of a problem. We also hypothesized that this may be because some pre-contractual disclosure rules are not adapted to e-commerce realities. Revising the details of those rules and educating consumers and suppliers about them could be useful.

We also found that e-commerce laws do not explicitly ensure full compliance with suppliers' contractual obligations. For example, suppliers must provide a detailed description of the products they are selling, but e-commerce laws do not stipulate that they must supply products that match this description (even though suppliers certainly have this obligation under their contract and other parts of the law). Stranger still, e-commerce laws apparently grant suppliers a longer delivery time than that stipulated in the contract, since the laws only give consumers the right to cancel the contract if the product has still not been delivered after 30 days' delay. We maintain that the law should clearly state that the contract can be cancelled if the goods do not correspond to the description. Similarly, the law should not grant a grace period if the supplier fails to meet its delivery obligations and the contract should be voidable as soon as the supplier is in default.

As for chargebacks, it turns out that this recourse is very useful for consumers who make online purchases using their credit card. Since this recourse is particularly useful in a situation where, for example, the consumer is unable to contact a supplier that cannot be found or never posted its contact details, e-commerce laws should explicitly state that consumers are entitled to chargebacks, in certain circumstances, even if they were unable to send a cancellation notice to the supplier.

Moreover, there are three obstacles that limit the widespread usefulness of chargebacks in e-transactions:

- 1) The right is granted to credit card users only;
- 2) The right is not well known;
- 3) The right is not always respected and seems to be applied differently depending on the financial institution and the province.

We agree with recommendations to introduce industry codes of conduct in order to ensure better enforcement of the chargeback right. Such an initiative could also help to raise awareness of the right by requiring financial institutions to disseminate information on chargebacks. We also think consumers should have access to this type of recourse when paying via other online payment services. Many payment services already offer this, but a basic obligation should exist in law.

Finally, we have noted that the timeframes provided in the law for exercising remedies are short and sometimes inappropriate for the e-commerce context, and thus can hinder consumers from exercising their rights. We think the period of time available for a consumer to cancel a contract on the grounds of lack of information should only start to run from the time they receive the product. We also think the timeframes should be longer.

In addition to noting these inadequacies with the existing legal framework, we also identified a number of gaps in it.

Firstly, e-commerce laws appear to be designed to regulate sellers; they almost entirely ignore the important role played by other players in e-transactions. We argue that certain third parties should be held responsible when they act as intermediaries in transactions. Intermediary liability is a complex issue; in general, an intermediary is only held liable if it has a high degree of activity and/or control in the situation. Given our findings on the active role played by B2C online marketplace operators, the control they can exert over the transaction, and the fact that consumers confuse them with sellers, we maintain that e-commerce laws should explicitly impose specific obligations on marketplace operators. It is possible that they are already subject to e-commerce laws, since they are suppliers, but given how the laws generally regulate sales, and given that marketplace operators claim that third-party sellers are the real sellers in the transaction, this should be clarified.

We have seen in our field survey that marketplace operators already assume a large proportion of the obligations laid down in e-commerce laws. However, the degree of responsibility varies from one transaction to another, and from one marketplace to another, causing confusion for consumers. Our survey reveals that it is far from easy for the consumer to determine who is responsible for which part of the transaction.

We therefore argue that the law should clearly recognize that the operator of a B2C marketplace is the supplier responsible for ensuring compliance with e-commerce laws for any sale that takes place on its marketplace, and that the law should stipulate this responsibility.

In addition, marketplaces that enable sales between private individuals must clearly indicate whether the seller is a supplier or a private individual. European Directive 2019/2161 provides a model for doing so, although we have questions about its application.

The question of whether legal liability should be extended in some cases to operators of other types of platforms involved in e-commerce, such as certain hosting sites or social networks, remains open, as we have not studied them in sufficient detail to be able to comment on their liability in this report.

Finally, we noted that user reviews play an essential role in helping consumers make purchasing decisions, but that those reviews and comments can be falsified. It could be useful to complement existing e-commerce laws with regulations that would expressly prohibit suppliers from inventing or falsifying reviews and comments attributed to consumers. These rules could also impose obligations on platform operators to ensure that the comments published on their platforms meet certain standards, as is the case in the new EU directive.

6. Expert Interviews

In order to obtain a variety of viewpoints on the results of our research, we contacted federal and provincial consumer protection regulators, consumer rights groups, business associations and academics to set up an interview. After contacting these various stakeholders, we first invited them to read a document outlining the highlights of our research and then to answer a few questions in writing or orally.

The objective of this exercise was to paint a picture of the views of these stakeholders on the highlights of our report, the state of e-commerce in Canada, the problems encountered by consumers, and the adequacy of the existing legislative framework. We also sought input from these stakeholders regarding possible solutions to the problems identified.

Of the 40 stakeholders we contacted, only three agreed to answer our questions: two representatives of consumer rights groups, the **Public Interest Advocacy Centre** and **Option consommateurs**, and University of Ottawa Professor **Michael Geist**.

The **Public Interest Advocacy Centre (PIAC)** is a national non-profit corporation and charitable organization based in Ottawa that protects consumer interests in regulated sectors such as telecommunications, energy, financial services, privacy and transportation. PIAC submitted written comments in response to our consultation request.

Option consommateurs (OC) is a Quebec-based non-profit association dedicated to helping consumers and defending their rights. We spoke with Alexandre Plourde, lawyer and analyst at OC, in an interview.

Michael Geist holds the Canada Research Chair in Internet and E-Commerce Law, is a regular researcher at the Centre for Law, Technology and Society, and a full professor in the Faculty of Law, Common Law Section, at the University of Ottawa. We spoke to Mr. Geist in an oral interview.

The State of E-Commerce in Canada and Problems Encountered by Consumers

In its comments on this topic, PIAC notes that there are new risks for consumers due to the evolution of e-commerce, the development of new tools and the involvement of new parties in e-transactions. It stresses that consumers need to be well informed about new risks. For example, PIAC lists some of the risks associated with new payment services, such as BNPL (buy now, pay later) services, which are often overlooked:

[Buy now pay later] may lead consumers to overspend [more] than they would have if they had to pay the full-costs upfront. The installment limits may appear to be manageable, which may not be the case always. This can be particularly concerning for the younger demographics who likely have limited to no credit history and may be tempted to use this option to buy products. Moreover, late payments could affect credit scores with potentially high late fees, possibly even more than what credit cards charge.

Moreover, PIAC argues that the greater role played by third parties in e-transactions can have an impact on consumer rights, and notes the huge role played by social networks in e-transactions, particularly in terms of advertising.

As for Option consommateurs, Mr. Plourde reports that consumers encounter many problems in their dealings with online third parties, particularly intermediaries for services such as flight and travel booking and ticket resale. OC has observed that those intermediaries often present themselves to consumers as mere third parties in online transactions and attempt to evade responsibility for the transaction in the event of a problem. For example, a consumer who buys an airline ticket on an intermediary's website would tend to contact the intermediary when his flight is cancelled, but the intermediary often disclaims responsibility and says that the consumer should speak to the airline instead.

Another problem often encountered by consumers who contact OC concerns dropshipping and short-lived websites. OC has found that the growth of Web hosting services such as Shopify allows for the quick, easy and low-cost creation of websites that are often used for dropshipping. Consumers experience difficulties after purchasing from such a site:

[...] the product is never delivered, the product is delivered late... Sometimes, the consumer realizes that the product has been sold for much more than it was worth. There may also be problems with the product matching its description, that is, the product does not look at all like what was shown on the photos. [Our translation]

In addition, these sites can disappear quickly, making the problem very difficult to resolve for a consumer who encounters it. In such circumstances, one of the consumer's only recourses is to request a chargeback or to use PayPal's dispute resolution system.

Although dropshipping also exists on online marketplaces, Mr. Plourde thinks it generally poses fewer problems for consumers than dropshipping on independent websites. If the third-party seller disappears from a marketplace, the consumer can always contact the marketplace operator to try and resolve the problem; moreover, it is often in a marketplace operator's interest to build

consumer trust and have good customer service, which is not true for a seller selling on an unknown, temporary website.

Professor Geist agrees with our observation that more consumers are now using different payment methods, not just credit cards, and that this may have an impact on rights and remedies. He notes that in the early days of e-commerce, many consumers used credit cards, which offered them protection, for example by allowing chargebacks. He observes that the reason some consumers use other payment services is probably that they are perceived as offering even greater convenience in e-transactions. Some of those service providers are quite reliable, but it is not always clear whether they participate in resolving disputes to the same degree as credit card issuers.

With regard to marketplaces, Mr. Geist notes that the long-term trend in e-commerce is toward the growth of marketplaces. He observes that consumers are not necessarily aware that they are buying goods from a third-party seller and not from the marketplace operator. This is not necessarily because the information is not displayed on the website, but because consumers make decisions quickly and focus on other things, such as price. If they shop on a marketplace they trust, they will put their trust the marketplace operator, even if that operator is not in fact the seller.

He also observes that operators of marketplaces such as Amazon can help consumers solve problems in transactions with third-party sellers, but that the integration of third-party sellers on their marketplaces can create other problems, for example regarding the quality of goods and the presence of counterfeiting on the marketplace, the publication of unreliable user reviews, etc.

Mr. Geist recalls that eBay was a pioneer in this field and spent a lot of time thinking about how to build user trust in its marketplace. To that end, eBay established user reviews and ratings, an online dispute resolution process and insurance in the event of a problem with a seller. These types of initiatives have not necessarily been integrated into new marketplaces, such as Facebook's, which may have their own trust mechanisms (via the social network, for example). In online transactions, everything hinges on a certain level of trust; many consumers are unaware of their rights and do not turn to the remedies available to them under the law in the event of a problem. For consumers, the main question is whether they can be confident enough to carry out a transaction. Sometimes they feel confident because of the protections put in place by payment service providers, sometimes they are reassured because of the reputation of a large company like Amazon, and sometimes the user reviews or other reputational criteria will allay their fears.

Canadian E-Commerce Laws

We asked the experts who we interviewed to indicate whether they thought the current e-commerce legislative framework, and in particular the obligation to disclose information before entering into a contract, was useful and adequate.

PIAC believes that the disclosure requirements found in the law are useful:

*These disclosure requirements are certainly useful in closing the prevailing information gaps when it comes to e-commerce transactions, and should be provided for under the specific provincial regimes. **Such requirements in our view are not only integral for providing clarity to consumers but would also***

ensure that merchants and/or market operators have a uniform reference point and know what they have to comply with. It will also provide regulators an opportunity to periodically review such standards and improve them in the future as necessary. [emphasis added]

On the other hand, PIAC states that the current legal regime appears inadequate:

The rise of e-commerce transactions and online services during and since the COVID-19 pandemic is undeniable but so has been a rise in fraud and risk of consumers being exposed to unfair business practices with an average consumer often not knowing or fully understanding what are one's rights. This makes us seriously question the adequacy of the current laws in being able to sufficiently protect consumers.

PIAC highlights the inadequacy of the legislative framework in protecting consumers from certain unfair commercial practices, notably a supplier's unilateral modification and automatic renewal of certain types of online consumer contracts. PIAC also points out that a consultation is currently underway in Ontario on the concept of consent per click, as it seems that this framework does not meet the needs of consumers or businesses. In addition, PIAC notes that it can be difficult or complicated to sue a supplier that is abroad.

Finally, PIAC points to shortcomings in e-commerce regulations concerning privacy and personal data security, a problem documented in a 2010 report but that has only grown worse since.

OC, which works primarily with Quebec rules in this context, maintains that e-commerce disclosure requirements are useful, but Mr. Plourde points out that the current legal framework is overly complex. In general, consumers typically encounter two types of e-commerce problems: they do not receive the product within the stated delivery time, or they receive products that do not match their descriptions. However, the remedies laid out in the laws are mainly related to whether the contract is correct and whether the supplier disclosed the required information prior to the contract's formation. Although the legal framework clearly states that a consumer can cancel a transaction when the contract is not correct, it remains silent on the remedies applicable when there is a problem with the product not matching its description.

Moreover, if consumers wish to exercise their rights, they must comply with strict and little-known legal deadlines and formalities:

It puts a significant burden on consumers to meet those deadlines, and it does not take into account the reality [of e-commerce]... when you have a problem with an online purchase, you often make informal phone calls or send emails to merchants, but you may not have cancelled the contract within the seven-day deadline.

The reality of the consumer experiencing a delivery problem or a problem with the good matching its description is not adequately addressed in the legal framework, and then there are strict time limits that apply in this area.

The law's complexity contrasts sharply with the simplicity of e-commerce. It's extremely simple to make an online purchase with just a few clicks, but the law

adopted to govern it is extremely complex... This can pose access to justice problems for consumers who want to understand the rules. [Our translation]

In addition, the requirements concerning delivery times set out in the law are not adequate, according to Mr. Plourde. A consumer can cancel a contract if the supplier has not delivered the goods within 30 days of the date specified in the contract, or within 30 days of the conclusion of the contract if it does not specify a delivery date. That period is no longer reasonable, given the reality of e-transactions, where same-day delivery is now possible. The rule also gives suppliers an opportunity to breach their contractual obligations that does not exist in other commercial contexts: “If I enter into a contract with [suppliers] in person and they tell me the product will be delivered on July 15th, they are obliged to deliver on July 15th. They have no grace period.”

In order to simplify the law and better meet consumer needs, Mr. Plourde wonders whether a rewrite of e-commerce rules to make them clearer and more relevant to consumers, and to mitigate time and form requirements, might be useful.

Like PIAC, OC points out that consumers often have problems with unsubscribing from certain online contracts. The fact that this issue was raised by consumer groups in both Quebec and Ontario, which have different rules on the matter, suggests that it is a common problem for Canadian consumers buying online.

Finally, Mr. Plourde points out that when consumers exercise their right to cancel a contract, they are expected to return the goods in question to the supplier. This can pose problems for the consumer, particularly when the supplier does not indicate its address, or when the supplier is far away, which is often the case. Although the law states that the supplier bears the reasonable costs of the return, it can be difficult for the consumer to enforce this right and be reimbursed for returning the good.

Professor Geist notes that the value of e-commerce rules probably does not come from their use in litigation, since the amounts in dispute are often too small to justify legal action. Rather, the value comes from the fact that these rules give consumers certain rights on which to base a claim when they have a dispute with a merchant. Moreover, they provide a framework that sets a certain level of expectation regarding merchants, by sending out the message that there are standards for online sales. In general, Mr. Geist observes that merchants acting in good faith go beyond the rules to try to satisfy customers.

Regarding the laws' adequacy, Mr. Geist points out that there will always be enforcement problems in e-commerce, and that it will be difficult to solve them by using consumer protection laws. Accordingly, it is important to understand what consumers rely on when making their e-commerce purchasing decisions. Reputation measures are very important for decision-making, whether in the form of user reviews, reviews posted on social networks or the like. It could be useful to ensure good practice in this respect through further regulation. For example, the Competition Bureau plays a role in regulating fake user reviews or comments, which seems appropriate, but further rules to improve practices regarding user reviews would probably be useful. Mr. Geist also states that it is necessary to improve consumer education so that consumers can correctly decipher the information on which they base their decisions, such as reviews.

Chargebacks

PIAC observes that the average consumer is generally unaware of his rights regarding cancellation and chargebacks, and that these remedies should be better communicated to consumers. Chargebacks can, in PIAC's view, provide an important remedy for consumers who are victims of fraudulent or unfair practices. PIAC supports the idea that all payment service providers should be obliged to offer chargebacks when a supplier refuses a refund following a cancellation. Establishing uniform standards for the application of chargebacks could be beneficial; in addition, payment service providers should provide users with clear and specific standards to implement this practice.

Mr. Plourde also observes that consumers are often unaware of the existence of the right to a chargeback, even though it is an effective recourse for consumers. He maintains that it is a very good way for consumers to exercise their rights, and that OC would be in favour of expanding it. He notes that it is sometimes the only recourse left to the consumer, particularly when the supplier is located abroad and is therefore difficult to sue. That said, he observes that chargeback procedures can vary from one financial institution to another, since the procedures laid down by law are not always applied by those institutions.

Again, short deadlines and formal requirements can harm consumers by restricting their ability to exercise their right to a chargeback, according to Mr. Plourde, particularly when a consumer makes his request over the phone and in the course of several conversations, which can lead him to exceed the statutory deadlines for filing the written request. To simplify recourse and meet consumer needs:

We could eliminate the procedural requirement for chargebacks. Moreover, it would be important to ensure that financial institutions apply them in accordance with the law. It would also be the role of government agencies to verify this. [Our translation]

European Union Directive 2019/2161

We summarized the measures concerning e-commerce in the European Directive 2019/2161 for our experts in order to ascertain their views on these measures.

PIAC believes that the measures which we summarized will better protect consumers when they shop online:

To begin with, online search results are often an important starting point for many consumers when making online purchases and it is only fair to identify any sponsored results in this regard and clearly label them as promoted or sponsored so that consumers know that these options are generally appearing at the top not necessarily because of their popularity but because of paid advertisements/sponsorships.

That said, PIAC stresses that thought needs to be given to the standard of disclosure, as what is considered concise and intelligible for some consumers may be inaccessible for others.

PIAC also agrees with some of the other measures proposed in the European regulations, in particular those aimed at providing a better framework for user reviews:

The other measures listed here in relation to reminding consumers about the existence of legal warranties and for dealing with false consumer reviews are also important aspects for better protecting consumers when they shop online. Reviews of products and services in particular are often checked by consumers when making a decision on what to purchase, thus, the authenticity of these reviews is crucial for ensuring provision of accurate and honest information to consumers to facilitate their decision-making.

[...]

For consumers, the impact of fake reviews is deceiving them into purchasing goods and services that are lower in quality than shown by reviews and/or facing other issues that render them either unfit for use and/or affect their long-term viability. Thus, we strongly support measures and safeguards to address issues concerning false reviews.

PIAC maintains that Canadian laws should provide a framework for user reviews and comments:

Considering the importance of user comments and reviews in influencing consumers' decisions on whether they should purchase a product or not, it is crucial that there are clear and high standards set to ensure that there is some oversight over these comments and reviews to ensure consumers are not deceived, and to protect the consumer interests.

Finally, PIAC approves of the obligations imposed on marketplace operators to disclose whether a seller is a supplier or a private individual and to explain the division of responsibilities between the parties.

Such measures can be extremely useful for informing consumers about the different parties involved in an online transaction and importantly, [to] identify who is responsible for what part of this transaction. As consumers often do not know and/or understand how these responsibilities are allocated and whom to reach out to in case of any issues. This will likely not only assist in speeding up the process of any dispute resolution but also facilitate in ensuring that all parties and consumers are clearly aware of their rights and responsibilities and provide for better compliance, checks and overall accountability.

Professor Geist has mixed views on the measures adopted in the Directive, as we have presented them. He pointed out that search engine providers have long been expected to distinguish between paid and organic search results. The idea that it is a lack of information about how a search engine works that is causing problems for consumers buying goods online appears to be misguided. It is more likely that bad commercial practices, like selling counterfeit products or using fake reviews, are causing problems. However, this does not mean consumers would be comfortable with search engine providers putting their own search results ahead of organic results without indicating they are doing so. It is therefore useful to have rules to guard against that kind of practice.

As for user reviews, Mr. Geist observes their importance in e-commerce, particularly in certain fields such as travel, where the reputation of service providers is very important and zealously guarded. Because of this importance, sellers have an incentive to find ways of obtaining positive reviews and comments. Steps must therefore be taken to ensure that reviews remain as legitimate as possible. In this sense, the interest of an online marketplace operator is generally aligned with

that of the consumer, as both have an interest in ensuring that reviews on the platform are not distorted. That said, platform operators sometimes have an incentive to ensure that reviews are positive, which can create an incentive for self-dealing and potentially cause competition problems.

It would therefore probably be useful to go further in regulating user reviews than is currently the case:

Some basic standards for businesses, like non-interference with consumers' rights to post reviews, guarding against businesses self-reporting or deleting or otherwise tampering with reviews would, I think, be welcomed by the platforms and I think it would be useful for consumers as well. To the extent to which these rules provide and buttress the ability for a platform to take action [against false reviews] without fear of potential repercussions, that's useful too. It might be useful to create some sort of obligation on the platforms to take action where they are aware of fraudulent posts - some sort of process to either remove the seller altogether, or certainly to remove the fraudulent reviews.

Responsibilities of Marketplace and Platform Operators

PIAC believes that the roles and responsibilities of marketplace operators should be clarified in Canadian e-commerce legislation:

Specific and clear disclosure obligations should be introduced to ensure that marketplace operators are required to comply with uniform standards and meet consumers' reasonable expectations in relation to integral matters, such as finding their merchants' contact information, easy access to customer support, billing options and related details, and accessing their contract, to note some examples.

According to PIAC, marketplace operators should exercise control over the sellers they allow on their marketplaces:

At the baseline, we believe that these platforms should be required to vet all merchants before they can sell on their platforms. This might be argued by some to be too onerous if a platform has many merchants but this vetting process could potentially save many consumers from falling for overt frauds and other forms of deception, which provides strong support for adopting such a practice. The vetting process that should ultimately apply could be developed by taking into account platforms' input, but it is important that certain stringent checks are put in place to ensure better protections and public accountability. It seems that this will likely fall under the provincial regimes, which carries a risk of having inconsistent standards across different provinces. Thus, we would suggest that provinces should seek to ensure that their approaches align well with each other or at least as far as feasible.

In addition, PIAC believes that marketplace operators should have greater liability for problems arising during transactions that take place on their marketplace.

In our view, the marketplace responsibilities should extend beyond merely removing sellers who have committed fraud, and should trigger liability in case there is a problem with a transaction and the third-party merchant does not take responsibility. The platform could mitigate this risk by having stringent

conditions in their dealings and/or contracts with these third-party merchants to avoid such liabilities or requiring them to purchase insurance coverage. That said, if the merchant does not take responsibility, marketplace/platform should be held liable because otherwise consumers would be likely left with no recourse.

Of course, if the law stipulated that the operator is liable in all cases (or at least as soon as the third-party seller is in default), it would be in its interest to carry out its vetting conscientiously, even without any legal obligation to do so.

OC often encounters consumers who have had problems with several types of e-commerce platforms, for example ticket sales sites, travel platforms and sharing economy platforms. These platforms act as sellers, but present themselves as third parties to a transaction between the consumer and the provider of the service being sold. When the consumer enters into such a contract, Mr. Plourde argues, the law should provide a clearer framework for the intermediary's responsibilities:

Insofar as the consumer makes his transaction with that company, the online intermediary, I see no reason why the intermediary shouldn't be just as responsible as the third-party supplier itself, if that's who I made the contract with as a consumer. It's [the intermediary] I'm buying from, even if there's a third-party supplier behind it. [Our translation]

The argument can be made that this is in fact the current state of the law, according to Mr. Plourde:

A supplier that presents itself as the intermediary, but controls all the transaction parameters and eventually collects the money, is still the supplier. In a lot of the policies I've read, a clause says "we're just an intermediary between the service provider and the consumer." I don't think such a clause can prevent the application of consumer protection law.

[Platforms] with which consumers directly transact require consumers to sign an adhesion contract. Those platforms define the terms and conditions of the transaction. Those platforms have control over the transaction. They should [be subject to] consumer protection legislation. [Our translation]

Mr. Plourde thinks it might be useful to specify that consumer protection laws apply to this type of platform operator, and in what way. Indeed, he argues that online intermediaries should be jointly and severally liable with the service provider, because "they're the party able to assume the risk. And they're the party able to resolve the problem with the service provider." [Our translation]

For Professor Geist, the idea of clarifying disclosure obligations for third-party sellers on marketplaces seems logical. While the interests of platforms and consumers are aligned in some areas, that this is not necessarily the case for the disclosure of certain information:

Part of what [marketplaces like Amazon] are able to offer to third party-sellers is a sort of veneer of legitimacy by selling on an Amazon platform, so that if anything, the incentives are not to disclose—or not to bring it to the customer's attention anymore than they have to—the fact they are purchasing on Amazon but not from Amazon. They're quite happy for the consumer to think that this is an Amazon purchase.

Requiring marketplace operators to make a clear distinction between themselves and third-party sellers could be useful, as marketplaces and third-party sellers may have an incentive to minimize the distinction between them.

However, Mr. Geist points out, giving marketplace operators the same responsibilities as suppliers may be too onerous an obligation for them and may dissuade them from operating in a jurisdiction. On the other hand, it may be feasible to assign responsibility to them when they know, or should know, that there is a problem with a third-party seller on their marketplace. For example, if the operator receives an excessive number of complaints about a third-party seller, this is a good indication that something is wrong, like that the third-party seller is selling counterfeit products. We might think that the marketplace operator should have an obligation to remove the seller from the platform when it is aware, or should be aware, of such a problem.

With regard to vetting third-party sellers, Mr. Geist points out that filtering on large platforms is usually automated, and that users tend to find ways around such processes. A vetting process could potentially be an obstacle to sellers who engage in bad practices, but it is not a perfect solution.

Findings

Our interviews with the Public Interest Advocacy Centre (PIAC), Option Consommateurs (OC) and Professor Michael Geist enabled us to delve deeper into a number of points in our research.

All of the experts interviewed agreed that the current legal framework is useful to some extent. PIAC thinks it provides clarity for consumers and establishes a uniform point of reference for suppliers. Professor Geist also observed that the rules are useful because they set baseline expectations and indicate that we have certain standards in e-commerce.

All also agreed that the framework's usefulness is limited. PIAC pointed to several problems not addressed in the current legislation, for example, automatic renewal of online subscriptions. For OC, the e-commerce laws have major gaps; for example, the law says that a consumer can cancel a transaction if information has not been disclosed, but it remains silent on the consumer's recourse when the product delivered does not match its description. Moreover, the consumer is not entitled by operation of law to cancel the contract if the goods are merely delivered late; they may only do so if the delay exceeds 30 days. In addition, the legal framework imposes tight deadlines and formal rules on consumers who want to cancel the transaction, and thus creates additional obstacles. Finally, the consumer is expected to return the goods to the supplier once the transaction has been cancelled, which can be difficult or very costly (although the supplier must reimburse the reasonable costs of return, in theory).

Professor Geist noted that it will always be difficult to enforce consumer protection laws regulating e-commerce. In general, he noted, consumers conduct online transactions when they have trust. That trust can come from many different sources, including the identity of the seller (or marketplace), user reviews, dispute resolution systems offered by payment service providers, etc.; it is therefore important to examine these mechanisms and verify whether that trust is well-founded.

As far as user reviews are concerned, all parties agreed that they were very important for consumer decision-making. Both PIAC and Mr. Geist spoke of the value of using the law to try to solve the problem of fake reviews.

As for chargebacks, PIAC and OC acknowledged that they were a very useful remedy, although little known by consumers and unevenly applied by financial institutions.

Lastly, our interlocutors had several comments about online sellers and marketplace operators. OC noted that setting up a website for dropshipping is now very easy because of Web hosting services such as Shopify. When consumers encounter a problem with a third-party seller on a marketplace, they can at least contact the marketplace for help with the problem, which is not the case when they encounter a problem with a dropshipper or other merchant selling on an independent website. Marketplaces have an incentive to satisfy consumers and are likely to help them.

This ties in with an observation made by Professor Geist, who noted that the interests of consumers and marketplace operators often align, and that the latter can help consumers resolve problems encountered on their marketplaces. Marketplace operators may also have an interest in ensuring that user reviews on their marketplace are genuine, and can help remove fake reviews.

Our interlocutors also noted some drawbacks with marketplaces. Mr. Geist pointed out that consumers are not always aware that they are buying goods from a third party rather than the marketplace operator; they may have trust in the transaction because they think the seller is the marketplace operator. Marketplaces may therefore have an interest in not clarifying this point for consumers. For its part, OC has noticed a problem with platform operators that act as suppliers, but that present themselves as intermediaries and fail to take responsibility in the event of a problem. While OC has observed this particularly in the case of intermediaries we have not studied, such as operators of platforms selling airline tickets, we think the same observation could apply to marketplace operators.

All the interviewees approved of the idea of imposing legal disclosure obligations on marketplace operators with respect to third-party sellers.

Should the responsibility of marketplace operators go further? According to OC, if a platform operator acts as a supplier, it should be treated as a supplier. It would be useful to clarify this point in the law. PIAC argued that marketplace operators should have a duty to help customers, to a certain extent, and to verify that merchants selling on their marketplaces show no obvious signs of fraud. Professor Geist referred to other standards of liability, for example holding the platform operator responsible if an evident problem with a third-party seller is brought to its attention and it fails to act.

7. Conclusion

In one sense, nothing is simpler than e-commerce; in a matter of seconds and with a few clicks, a consumer can find and buy a product online and have it delivered from the warehouse to their living room, sometimes within 24 hours. On the other hand, e-commerce is complicated and messy. Who is the consumer dealing with when he buys something online? How many parties are involved in the transaction? Who should the consumer contact in the event of a problem: the delivery company, the payment service provider, the seller or the marketplace operator? What are the roles and responsibilities of these different players? What rules apply to foreign merchants?

The answers to these questions are not always clearly laid out either on commercial websites or in Canadian e-commerce legislation.

In this report, we have attempted to paint an overall picture of e-commerce from a consumer protection perspective. Along the way, we discovered that the reality of e-commerce has outgrown its legal framework. This is not surprising, since Canada's e-commerce laws were adopted in the 2000s, on the basis of the *Internet Sales Contract Harmonization Template* ratified in 2001. While the laws have remained virtually unchanged, e-commerce has continued to evolve. Not only has it become more and more popular, it has also evolved in such a way that transactions today include a number of important new players. In particular, the operators of certain types of platforms, like marketplaces, have come to play a more important role. Marketplaces are now among the most popular websites with consumers and they host a growing number of third-party sellers.

The emergence of these new players has created a conceptual problem with Canadian e-commerce laws. When several players are involved in an online transaction, who is or should be responsible for meeting the obligations imposed by e-commerce laws, such as disclosing certain information or reimbursing the consumer in the event of a problem? In general, Canadian e-commerce laws apply to suppliers. The term "supplier" is defined as a person who provides a good or service to a consumer in the course of his business or profession. The distinction between a supplier and a private individual is not always obvious online. What's more, many actors that play a role in e-commerce can be considered suppliers offering goods or services to consumers, whether they are professional sellers, marketplace operators, payment service providers and so on.

However, although Canadian e-commerce laws ostensibly apply to all suppliers, they seem to have been designed to apply to sellers in particular. This leaves ambiguity as to how the regulations apply to other actors in a transaction. In our field survey, we observed this ambiguity when we examined B2C (business-to-consumer) marketplaces. In our investigation, we found that third-party sellers on marketplaces often played a much less important role in the transaction than the marketplace operators themselves; indeed, the latter often assumed most of the seller's obligations under the law, including those related to pre-contractual disclosure of information, as well as sometimes shipping the product, providing dispute resolution, customer service, etc. In some cases, marketplace operators even appeared to assume responsibility for the seller's obligations to guarantee that the product matched its description and was suitable for use.

In this sense, marketplace operators often appear, if only in the consumer's eyes, to be the most important suppliers in transactions that take place on their marketplaces. And this seems perfectly

logical, since consumers go to marketplaces to make their purchases on the basis of trust in these operators, rather than in third parties that sell on marketplaces who are more often than not unknown to consumers. Thus, it appears to us that marketplace operators should be primarily responsible for ensuring that such transactions comply with Canadian e-commerce laws. However, this responsibility on the part of operators is by no means explicit in e-commerce legislation, and this lack of clarity leads, in our view, to a certain confusion as to the application of these laws.

We argue that there needs to be greater clarity regarding the responsibility of the different parties involved in online consumer transactions. Our poll revealed a great deal of confusion among consumers as to the different players involved in online transactions and their respective responsibilities. In particular, our research demonstrated the need to clarify the roles and responsibilities of the players involved in transactions taking place on an online marketplace.

Firstly, transactions with third-party sellers on marketplaces appear to pose more problems for consumers than transactions with suppliers selling on their own websites; this was one of the key findings of our poll, where respondents consistently reported encountering problems more often with third-party sellers. Our field survey also revealed that third-party sellers were generally less likely to comply with their disclosure obligations under the law than sellers selling on their own websites, and even complied less on marketplaces than on their own websites. Secondly, our field survey uncovered how difficult it is for consumers to determine who is responsible for which elements of a marketplace transaction. We often found it difficult to identify the seller and to determine whether the seller or the marketplace operator was responsible for delivery of the good, returns, posting certain information, and so on. This task was made all the more difficult because the policies and practices of different marketplaces are not uniform and the division of responsibility may even vary from one transaction to another on the same marketplace. How can consumers make sense of all these different practices and policies? This confusion makes it virtually impossible for them to accurately understand their rights and remedies – all the more so because Canadian e-commerce laws do not explicitly clarify these issues.

Our research also revealed other problems in current e-commerce legislation: the lack of a legal framework for user reviews, the absence of a specific remedy if the goods ordered do not match their description, the grace period granted to merchants who fail to meet delivery dates, the narrow scope of the chargeback remedy...

It is clearly time to review our e-commerce laws. The European Union recently revised its legislation to include roles and responsibilities for marketplace operators, among other third parties, in e-commerce transactions. The same work needs to be done here too, so that our e-commerce laws respond to the reality of e-commerce in Canada today and so they ensure maximum protection for the ever-increasing number of consumers who choose to buy goods online.

8. Recommendations

Union des consommateurs recommends that provincial legislators update the following aspects of their e-commerce laws:

DISCLOSURE OBLIGATIONS:

Whereas Canadian provinces have the power to legislate consumer protection measures, particularly with respect to online commerce;

Whereas eight of the provincial legislatures have chosen to use this power and regulate online contracts between suppliers and consumers by passing e-commerce laws;

Whereas these laws date from the early 2000s and have not been substantially revised or updated since their adoption;

Whereas these laws require, among other things, the disclosure of certain information by the supplier prior to conclusion of the contract;

Whereas these disclosure requirements do not necessarily reflect the modern reality of electronic commerce:

Union des consommateurs recommends updating pre-contractual disclosure obligations to ensure they are useful and appropriate for the digital context, given the evolution of e-commerce.

Whereas third-party sellers selling on marketplaces are less likely to provide all the information required by law than sellers selling on their own websites, including their identity and contact information;

Whereas this information is important for consumers trying to resolve problems with an online transaction;

Whereas marketplace operators control the presentation of all information displayed on their platform, including the names and information of third-party sellers;

Whereas the third-party seller's name and information is often presented by the marketplace operator in a way that is not obvious to the consumer;

Union des consommateurs recommends updating the pre-contractual disclosure obligations:

- 1. To clarify the responsibility of marketplace operators to disclose information required by e-commerce laws, and in particular, to disclose the information of third-party sellers selling on their marketplace;**
- 2. To determine the remedies available to consumers in the event that a marketplace operator fails to meet its pre-contractual disclosure obligations.**

REMEDIES:

Whereas consumers report that goods purchased online are sometimes delivered after the delivery date stipulated in the contract;

Whereas consumers also encounter problems where goods purchased online do not correspond with the description provided;

Whereas fear that a good will not match its description is one of the main obstacles to consumers adopting online shopping;

Whereas e-commerce laws have gaps regarding the consumer's right to cancel a contract when a supplier fails to fulfill all of his contractual commitments;

Whereas the consumer may not notice a problem with an e-transaction until some time after the good has been delivered to him:

Union des consommateurs recommends updating the rules on remedies so that, in particular:

- 1. The consumer may exercise his right of cancellation as soon as the seller fails to meet its delivery obligations stipulated in the contract;**
- 2. The consumer may exercise his right of cancellation if the good or service delivered does not match its description;**
- 3. The consumer has a reasonable period in which to exercise his right of cancellation and this period begins, when applicable, only after delivery of the product.**

CHARGEBACKS

Whereas chargebacks are an important mechanism for the implementation of e-commerce laws and for consumers to effectively exercise their cancellation rights;

Whereas, according to several surveys, the majority of consumers are unaware of their right to a chargeback under e-commerce laws or of the process for using such a right;

Whereas consumers only have the right to request a chargeback when they use a credit card to complete their online transaction;

Whereas respondents to our poll were more likely to believe that the law gives them a right to a chargeback when they use other payment methods than when they use credit cards:

Union des consommateurs recommends:

- 1. Extending to all online payment service providers the obligation to issue a chargeback when a supplier refuses or neglects to issue a refund following the consumer's cancellation of an online transaction;**
- 2. Imposing an obligation on all online payment service providers to inform their users of the existence of this remedy.**

Whereas the consumer exercises their right to cancel a transaction by sending the supplier a notice, and that sending this notice starts the period within which the supplier must proceed with the refund;

Whereas some sellers disappear or never give their contact details, making them unreachable;

Whereas the consumer may have difficulty exercising his right to a chargeback if he was unable to send to the seller the notice required by law:

Union des consommateurs recommends stipulating that the payment service provider cannot refuse to issue a chargeback on the grounds that the cancellation notice has not been sent to the seller if it is impossible for the consumer to contact the seller.

DISCLOSURE OF THE SELLER'S STATUS

Whereas electronic commerce laws in Canada apply only to transactions between consumers and suppliers, as these rules are found in consumer protection laws;

Whereas, on certain marketplaces, it is often difficult for the consumer to know whether a seller is a supplier or a private individual and, consequently, whether consumer protection provisions apply to transactions with that seller;

Whereas the European Union has adopted a directive to oblige marketplace operators to disclose the seller's status, based on the seller's own declaration;

Whereas certain suppliers may be tempted to declare themselves private individuals in order to prevent consumers from asserting their rights under consumer protection laws, thereby leading consumers to believe that they have fewer rights than they actually do:

Union des consommateurs recommends that provincial legislators carefully study the success of the measure adopted in European law to oblige marketplace operators to disclose seller status, and that the legislators consider adopting a similar approach in Canadian e-commerce legislation.

B2C MARKETPLACES

Whereas online B2C marketplaces, which are among the most popular websites for Canadian consumers making online purchases, occupy an extremely important place in e-commerce;

Whereas consumers often think that they are transacting with marketplace operators when they conclude the transactions that take place on their platform;

Whereas a marketplace operator's messaging or the conditions of the transaction suggest to the consumer that he is transacting with the marketplace operator when he makes a purchase on a marketplace;

Whereas the operators of the marketplaces studied in this research have systematically assumed responsibility for disclosing certain information required by e-commerce laws, managing certain parts of the transaction and accepting payments, and they have often also assumed responsibility for many of the seller's other obligations, such as delivering the product and processing returns;

Whereas the marketplace operators' degree of responsibility varies considerably, not only from marketplace to marketplace, but also from transaction to transaction;

Whereas these variations and lack of clarity in the division of responsibilities are likely to confuse consumers;

Whereas Canadian e-commerce legislation does not explicitly define the roles and responsibilities of marketplace operators:

Union des consommateurs recommends that provincial legislators:

- 1. Add definitions of “marketplace” and “marketplace operator” to the legislation;**
- 2. Make explicit the obligations incumbent on marketplace operators, particularly with regard to the disclosure of information, the responsibilities they must assume jointly and severally with the seller, as well as the circumstances in which these responsibilities are shared.**

Union des consommateurs also makes the following recommendations:

MODERNIZATION OF THE LAW

Whereas e-commerce is a constantly evolving field and new technologies and business practices are bound to present new challenges:

Union des consommateurs recommends that provincial legislators monitor emerging e-commerce practices to ensure that the law is properly applied and that they are in a position to quickly make any changes that may be required to guarantee maximum consumer protection.

RULES ON THE APPLICABILITY OF THE LAW ABROAD

Whereas the parties in many online transactions are likely to be in different jurisdictions;

Whereas many consumers do not know whether the law of their jurisdiction applies to a contract concluded online when the supplier is located abroad;

Whereas there are significant differences between provinces in terms of private international law or the applicability of consumer protection provisions, and those differences can be a source of confusion and uncertainty for consumers;

Whereas this uncertainty can limit the laws' effectiveness and consumers' use of the legal remedies available to them, and can thus limit incentives for suppliers to comply with the law:

Union des consommateurs recommends that provincial legislators ensure that rules regarding the applicability of e-commerce law to inter-jurisdictional contracts:

- 1. Are unambiguous;**

2. **Guarantee maximum consumer protection in online transactions;**
3. **Are easy for consumers to understand.**

CHARGEBACKS

Whereas the processing of chargeback requests by payment service providers lacks transparency and those requests appear to be handled differently depending on the provider:

Union des consommateurs recommends that the federal and provincial governments set up a roundtable to adopt a code of conduct applicable to all payment services used online, to ensure consistency and transparency in the handling of chargebacks.

BETTER CONSUMER EDUCATION

Whereas consumers are not sufficiently aware of their rights when it comes to e-commerce;

Whereas knowledge of their rights is an essential condition for consumers to assert them and exercise their remedies;

Whereas consumers' knowledge of their rights and the exercise of their remedies encourage compliance with legislation:

Union des consommateurs recommends that provincial legislators and government agencies responsible for consumer protection take steps to promote consumers' awareness of their rights in e-commerce transactions.

USER REVIEWS

Whereas user reviews and comments are important for establishing consumer confidence in an online transaction or with respect to a product or a supplier;

Whereas user reviews can be purchased, modified or falsified by suppliers;

Whereas those practices can lead consumers to make poor purchasing decisions or fall victim to scams;

Whereas Canadian laws do not specifically target the problem of fake reviews:

Union des consommateurs recommends that provincial legislators study the problem of misleading user reviews and adopt a harmonized approach to regulating or banning their use.