The views of Canadians on the harmonization of consumer protection standards

RESEARCH REPORT

Report produced by Option consommateurs
and presented to the Bureau of Industry Canada’s Office of Consumer Affairs

June 2015

Option consommateurs received funding under the Contributions Program for Non-profit consumer organizations and Industry Canada volunteers. The opinions expressed in this report are not necessarily those of Industry Canada or the Government of Canada.

Reproduction of this report, all or part, is authorized provided the source is acknowledged. Its reproduction or any reference to its contents for advertising or profit, however strictly prohibited.

By Annik Bélanger-Krams

Legal Deposit
Bibliothèque nationale du Québec
National Library of Canada
ISBN 978-2-89716-026-5

Option consommateurs
50, Ste-Catherine Street West, Suite 440
Montréal (Québec)
H2X 3V4
Phone: 514 598-7288
Fax: 514 598-8511

Email address: info@option-consommateurs.org
Website: www.option-consommateurs.org

Table of Contents

Option consommateurs

MISSION

Option consommateurs is a non-profit organization whose mission is to promote and defend the rights and interests of consumers and ensure that they are respected.

HISTORY

Option consommateurs has been in existence since 1983, when it arose from the Associations coopératives d'économie familial movement, more specifically, the Montreal ACEF. In 1999 it joined forces with the Association des consommateurs du Québec (ACQ), which had already pursued a similar mission for over 50 years.

PRINCIPAL ACTIVITIES

Option consommateurs helps consumers experiencing difficulties, provides budget consultation and conducts sessions on budgeting, indebtedness, consumer law and the protection of privacy. We also make free visits to low-income households in order to improve energy efficiency in their homes.

Each year we produce research reports on important consumer issues. We also work with policy makers and the media to denounce unacceptable situations. When necessary, we institute class action suits against merchants.

MEMBERSHIP

In its quest to bring about change, Option consommateurs is active on many fronts: conducting research, organizing class action suits, and applying pressure on companies and government authorities. You can help us do more for you by becoming a member of Option consommateurs www.option-consommateurs.org

Acknowledgments

This research was conducted by Mtre. Annik Bélanger-Krams, who also wrote this report, under the supervision of Ms. Maryse Guenette, head of Research and Representation at Option consommateurs. It was made possible thanks to the financial support of Industry Canada's Office of Consumer Affairs. The survey was conducted by the polling firm BIP.

The author wishes to expresses her gratitude to Professor Bruno Marien for his methodological support during the drafting of this report. Professor Marien is a sociologist and lecturer at the Department of Political Science and Law at Université du Québec à Montreal (UQÀM), where he has taught research methodology and statistics for over fifteen years. She is also grateful to Professor Jean-Pierre Beaud, Dean of the Faculty of Political Science and Law at UQÀM, who performed the evaluation of the report.

The author would like to acknowledge the work of all the employees of Option consommateurs who, in one way or another, collaborated in this research. Thanks are also due to all the experts who agreed to be interviewed. Finally, she wishes to thank all the representatives of provincial or territorial consumer protection agencies who granted her a telephone interview.

These representatives are:

- Mr. Leonard Penton, Consumer Affairs Officer, Service NL, Newfoundland and Labrador
- Mr. Adam Peters, Compliance Officer, Consumer, Labour and Financial Services, Government of Prince Edward Island
- Messrs. Mark Coffin, Adam Grant and Rodger Gregg, respectively Acting Director of Market Policy and Consumption, Senior Policy Advisor and Senior Policy Advisor, Service Nova Scotia, Policy
- Ms. Alana Haines and Ms. Katherine Nicholson, Compliance Officers at the Financial and Consumer Services Commission, New Brunswick; Ms. Nicholson is a member of CMC
- Mtre. André Allard and Mtre. Geneviève Duchesne, respectively, Director of Legal Affairs and Advisor at l'Office de la protection du consommateur du Quebec; Mr. Duchesne is a member of CMC
- Mr. Rob Harper, Senior Policy Advisor at the Ontario Ministry of Government and Consumer Services; Mr. Harper is a member of CMC
- Gail Anderson, Director, Consumer Protection Division, Manitoba Tourism, Culture, Heritage, Sport and Consumer Protection Department; Ms. Anderson is a member of CMC
- Mr. Mark Seville and Karen Carruthers, respectively Head of Contracts and Industry Standards and Head of Fair Trade, delegated to Consumer Services, Service Alberta
- Roberta Prilusky, Agent, Consumer Relations, Consumer Services, Yukon Community Services Department; Ms. Prilusky is a member of CMC
- Michael Gagnon, Senior Policy Advisor, Public Safety, Municipal and Community Affairs Department of the Government of the Northwest Territories; Mr. Gagnon is a member of CMC

The author also thanks the representatives of the following government agencies that agreed to a telephone interview:
- Mr. Toby Louie, Director General, Corporate Policy and Planning Office, Department of Justice; Mr. Louie is a member of CMC

- Mr. Russell Getz is a member of the Uniform Law Conference of Canada, Legislative and Civil Section; Mr. Getz is a lawyer in the Office of the Attorney General of British Columbia

Thanks are also extended to representatives of the following organizations for granting a telephone interview:
- Ms. Gloria Desorcy, Executive Director, Consumer Association of Canada (Manitoba)
- Mr. John Lawford, Executive Director and General Counsel of the Public Interest Consumer and Regulatory Affairs at the Public Interest Advocacy Centre (PIAC)
- Mr. Don Mercer, Vice-President, Federal Affairs, Consumers Council of Canada

Thanks also to the following university professors who granted her a telephone interview:
- Professor Vaughan Black, Schulich School of Law, Dalhousie University
- Professor Michelle Cumyn, Université Laval
-Professor Daniel Gardner, Université Laval
- Professor Gautrais, Université de Montréal
- Professor Michael Geist, University of Ottawa
- Professor Sylvette Guillemard, Université Laval
- Professor Craig Jones, Thompson Rivers University
- Professor John C. Kleefeld, University of Saskatchewan (interviewed only regarding class actions and arbitration clauses)
- Professor Marc Lacoursière, Université Laval
- Professor Pierre-Claude Lafond, Université de Montréal
- Professor Geneviève Saumier, McGill University
- Professor Jacques St-Amant, UQÀM
- Professor Nicolas Vermeys, Université de Montréal

Finally she thanks the following private practice lawyers for granting her an interview:
- Mtre. Daniel Belleau, co-founder and director of Belleau Lapointe
- Mtre. Maxime Nasr, Associate, Belleau Lapointe
- Mtre. Julius H. Grey, cofounder and director of Grey Casgrain (interviewed on matters of constitutional law)

Summary

The rules respecting consumer protection vary from province to province[1]. This can cause problems for merchants, who they must adapt to them, and for consumers when they buy goods in a province other than the one where they reside. The exponential growth of e-commerce in Canada has exacerbated the seriousness of this issue. In 2012, online orders by Canadians increased by 24% compared to 2010, reaching a total of $18.9 billion[2].

Our literature review and our interviews conducted with experts[3] allowed us to identify six problem areas. These are e-commerce, consumer credit, legal warranties, class action litigation (and related clauses), gift cards and cell phones. Our research focuses on these six topics.

We also studied the laws regulating these areas in ten provinces and three territories. We observed that consumers are protected by the laws of the province in which their purchase is made. Accordingly, when consumers make a purchase in person in another province, they are protected by the laws of that province.

Our research also permitted us to discover how consumers' rights vary depending on where they live. For example, in certain provinces, consumers are protected by the laws of their province, even if they are making a purchase online from a merchant located in another province. Also, in some provinces, there are prohibitions against including clauses in consumer contracts that either restrict access to the courts or compel consumers to file their case in another jurisdiction. In addition, the laws respecting legal warranties give consumers living in some provinces better protection than others.

We also conducted a web survey of 2000 Canadians. This survey reveals that consumers know very little about their rights. This lack of information is particularly apparent in certain areas. For example, among consumers protected by the laws of their province, very few know that they are protected when they purchase goods online from a merchant located in another province. Likewise, an overwhelming majority of respondents are unaware of their rights with respect to class action litigation (including afferent clauses) and cell phones. Finally, Canadian consumers are also confused as to the applicable law with regard to legal warranties.

Although consumers do not have a good understanding of the laws that are meant to protect them, few have reported experiencing problems regarding a purchase made in another province. The problems reported were either related to a defective product, a disagreement over payments or a warranty that was not honoured.

In addition, our survey reveals that as a general rule, consumers would like the laws to be harmonized across the country. They especially want this be the case for consumer credit, for class action litigation, for cell phones and for gift cards. They also stated that they want better access to information on consumer protection.

---

[1] In this report, for reasons of brevity and style, we used the word ``province`` to designate both the provinces and the territories

[2] www.statcan.gc.ca/daily-quotidien/131028/dq131028a-fra.htm

[3] The list of experts' interviews is available in the Acknowledgements section of this report

The consumers' opinions will certainly be of interest to legislators in the provinces and the Consumer Measures Committee when they have to decide how to better protect Canadian consumers with regard to the six topics addressed in this report.

Introduction

In the last few years, burgeoning international trade has resulted in economies becoming increasingly intertwined. Many countries have signed free trade agreements aimed at reducing trade barriers. Canada first signed a trade agreement with the United States (FTA) in 1988. Then, in 1994, Canada and the United States joined with Mexico to form the *North American Free Trade Agreement* (NAFTA). One of the goals of these agreements is to allow the free circulation of goods between signatory countries.

A cornerstone of all free trade agreements is the elimination of trade barriers. In this regard, Canada's situation is particular, as it has two levels of government and two legislatures, federal and provincial. The *Constitution Act* of 1867 establishes the division of powers and sets out the powers conferred to each legislature[4]. One level of government can only legislate if it has the jurisdiction to do so. Moreover, it cannot impair the jurisdiction of another level of government[5].

In order to establish a free, efficient and stable internal market, the federal government decided it was important to reduce trade barriers between the provinces (internal trade)[6] This occurred in 1995, when all the provinces and the territories, except for Nunavut[7], signed the *Agreement on Internal Trade* (AIT). The objective of this agreement is to promote inter-provincial trade by reducing barriers related to the free movement of persons, goods, services and investments within Canada.

The AIT has contributed in eliminating barriers to internal trade by preventing the establishment of new barriers and by harmonizing inter-provincial standards. It has reduced the extra cost incurred by Canadian businesses by making internal trade more efficient, by making the market more open to Canadian products and by facilitating job mobility for tradespeople and professionals.

The parties to the AIT agreed to six general rules[8], which form the guiding principles of the Agreement:

-Non-discrimination: establishing equal treatment for all Canadian persons, goods, services and investments.

-Right of entry and exit: prohibiting measures that restrict the movement of persons, goods, services or investments across provincial or territorial boundaries.

-No obstacles: ensuring that provincial/territorial government policies and practices do not create obstacles to trade.

[4] The *Constitution Act, 1867*, 30 & 31 Vict, c 3
[5] Ibid
[6] Marco Nocella, *Le développement du droit du commerce intérieur canadien à la lumière de la mondialisation des échanges commerciaux*, Masters of Law, concentration in common law and transnational law, University of Sherbrooke, 2008, Library and Archives Canada, ISBS*:* 978-0-494-61439-6
[7] *Agreement on Internal Trade* (AIT). Nuvanut had only observer status and Marco Nocella, *Ibid*.
[8] Ss.401-407 of the AIT

-Legitimate objectives: ensuring that provincial/territorial non-trade objectives, which may cause some deviation from the above guidelines, have a minimal adverse impact on inter-provincial trade.

-Reconciliation: providing the basis for eliminating trade barriers caused by differences in standards and regulations across Canada[9].

-Transparency: ensuring that information is accessible to interested businesses, individuals and governments.

The AIT focuses on procurement, investment, labour mobility, consumer-related measures and standards, agricultural and food products, alcoholic beverages, natural resource processing, energy, communications, transportation and environmental protection[10].

Chapter 8 of the AIT focuses on consumer-related measures and standards adopted by the parties[11]. In particular, the AIT states that `` Each Party may, in pursuing a legitimate objective, adopt or maintain measures establishing the level of consumer protection that it considers appropriate``[12].

In 1998, the Consumer Measures Committee (CMC) was established with the aim of creating a federal-provincial-territorial (FPT) forum for national cooperation in order to improve the marketplace for Canadian consumers, through harmonization of laws, regulations and practices and through actions to raise public awareness[13].

The CMC must negotiate in order to harmonize the following three areas[14]: direct selling, upholstered and stuffed articles measures and cost of credit disclosure[15].

The CMC is also responsible for establishing other basic measures to be included in any future negotiations and for serving as a forum for intergovernmental discussions on consumer issues. It is for this reason that the CMC has drafted other harmonization agreements (Direct Sellers, Upholstered and Stuffed Articles, Cost of Credit Disclosure, Internal Sales Contracts and Prohibited Collection Practices).

In this report, we will discuss some of these agreements, and will also touch on other areas related to consumer protection that have not been harmonized and that can cause problems for consumers when they buy goods in another province.

[9] The regions studied are the Maritimes, Quebec, Ontario, the Prairies and British Columbia
[10] AIT consolidated version 2015, pp. 3-4
[11] S. 801 AIT
[12] S. 804 AIT
[13] S. 808 AIT and http://cmcweb.ca/eic/site/cmc-cmc.nsf/eng/h_fe00013.html
[14] Schedule 807.1 of AIT
[15] Schedule 807.1 of AIT

Methodology

In writing this report, we wanted to answer the following questions: What are the situations that create problems with regard to the harmonization of consumer protection standards? Do Canadians know that they do not enjoy the same protection in different jurisdictions? What do they know about the laws that protect them? Have they had any negative experiences as a result of the varying standards? Do they want the legislation to be more harmonized?

In seeking answers to these questions, we performed a literature review on the harmonization of consumer protection standards in Canada and we interviewed experts[16]. Our research and interviews brought to light the fact that many areas related to consumer protection have not been harmonized, and that this can be problematic for consumers.

We studied the six areas that appeared to be the most problematic[17].These are e-commerce, consumer credit, legal warranties, class action litigation (including afferent clauses), gift cards and cell phone contracts. In doing so, we conducted legal research on these areas in every province and territory.

Between January 13 and 29, 2015, we conducted a web survey involving 2000 Canadians living in these five regions: the Maritimes, Quebec, Ontario, the Prairies and British Columbia[18]. The survey allowed us to reach consumers directly and obtain their points of view.

The sample used was selected through a random selection of participants listed on a web panel, representing each region. The sample was created in a manner that is non-proportional to the population size of each region in order to obtain a similar margin of error.

Regional Breakdown of the sample

Maritimes	394
Quebec	474
Ontario	384
Prairies	395
British Columbia	396

Our survey allowed us to discover the attitudes, habits and behaviour of Canadian consumers specifically with regard to the enforcement of laws and regulations when making purchases in another province, either in person or online. We asked many questions about their knowledge of the legislations and we also wanted to find out their opinion regarding the harmonization of consumer protection standards.

[16] For the list of experts interviewed, see the Acknowledgements section of this report
[17] We chose the areas identified as the most problematic by the greatest number of our experts
[18] The survey was conducted by BIP, a polling firm located in Montreal

Upon completion of the survey, we conducted a descriptive analysis and another based on statistically significant differences[19].These analyses[20] were done by area of consumer protection, then by region, and if relevant, by province. Given that provincial legislations apply more specifically to certain areas of consumer protection, we chose to analyze the results more specifically for the following provinces: Alberta, Saskatchewan, Manitoba and New Brunswick[21]. We wanted to know if the consumers living in these provinces answered differently from those living in another province in the same region.

Overview of Canadian consumers' behaviour

Some results of our survey concern all Canadians. Notwithstanding their province of residence, consumers buy goods in other provinces. Over half (50.4 %) of the respondents stated that they had made a purchase, in person, in another province in the last year, while just over 83% (83.4%) of respondents reported having made a purchase online, in another province. Last year, on average, consumers made six purchases in another province other than their own. Canadians living in the Maritimes and in the Prairies are the most likely to do so, while residents of Quebec are the least likely to do so ($\chi^2 p<.001$)[22].

Aside from the region, the other statistically significant variables are age, level of education and household income. As such, consumers between the ages of 18-34, those having a university degree and those reporting having a household income over $100.000 are more likely to make purchases in another province than other respondents.

We wanted to know if consumers who made purchases, in person, in another province knew which laws are applicable. Slightly more than 40% of respondents stated that the applicable law is the law of the province in which the good was purchased. This is the right answer. In addition, 29.4% of respondents said they did not know the answer. This proportion is even higher in the Maritimes (37%).

In addition, we wanted to know if consumers encountered problems when making a purchase in another province. Very few respondents stated having experienced a problem (7.5%). The consumers who experienced a problem are statistically more likely to be between the ages of 18 and 34. The type of goods they purchased must be taken into account, namely electronics. Of those that stated they had experienced a problem, 45% said the product was defective, and to a lesser degree, 18% reported having a disagreement over payments and 10% regarding warranties[23]. The respondents who raised the latter two problems were over the age of 55. We did not find any regional differences.

---

[19] We use the term "statistically significant difference" to show that it is unlikely (even highly unlikely) that the difference observed, between two averages for example, is a mere coincidence. This result simply shows that the difference is statistically significant. It does not necessarily mean that the difference was observed to be large. The main tests used were the chi-squared test and student's t-test.

[20] This analysis was performed by Professor Bruno Marien, a sociologist and lecturer in the Political Science department at UQÀM. His report can be found in Schedule 1.

[21] None of the survey questions related to a topic that justified a per-province analysis of the legislation of all three Prairie Provinces.

[22] We did chi-squared and student's t tests to see if the differences were statistically significant. As such, when we state that there is a difference, we base this on those calculations. The p represents the probability, in %, of making a mistake when stating there is a difference that does not result from a mere coincidence.

[23] See Appendix 1.

1. E-commerce

In order to enter into a consumer contract in e-commerce, the wills of the parties, the consumer and the merchant must concur. This is reflected in the contract agreed upon by the parties.

As a general rule, the merchant has experience in sales and in drafting consumer contracts, while consumers do not have that experience. Moreover, most online consumer contracts are of adhesion, i.e. one party (the merchant) imposes the terms of the agreement upon another party (the consumer). The latter does not have the possibility of negotiating the terms of the agreement. It is for this reason that the legislator has intervened to protect consumers when they make a purchase online.

Considering the constitutional context, the provinces have the jurisdiction to legislate in consumer protection. However, when consumers make purchases online, they often make purchases from a province or state other than the one where they live. It is thus possible for consumers to be protected differently depending on the province where they reside, as the standards regulating consumer protection can vary from one province to another.

1.1 Problems Identified by the experts

The majority of our experts identified three major problems in relating to e-commerce.

The first is that consumers do not read the terms and conditions of agreements before giving their consent. Some experts stated that this is due to the length of the contracts, while others believe it is also related to the fact that they are written in legalese and are difficult to understand. Others believe that it is difficult for consumers to locate the terms and conditions i.e. they are written in a small font or sometimes it is necessary to click on another hyperlink in order to access all the information. Moreover, some say it is because consumers know that they will not be able to negotiate and if they want to make the purchase, they must consent to the terms of the agreement. In addition, many claim that consumers are not sufficiently aware of the impact that certain clauses in the agreement can have in the event of a problem.

The second is the difficulty for consumers to assert their rights, especially when the merchant is located in another province or country. The experts are concerned about the existence of certain clauses in agreements that limit access to justice. They criticize the existence of clauses forcing consumers to submit their dispute to arbitration or to renounce their right to go to court (small claims or class action litigation). The experts are also worried that some of these clauses impose a different law on consumers than that of their province of residence or that there may be a clause forcing them to file their claim in another jurisdiction other than the one they reside in. The vast majority of experts want the legislator to intervene to limit or forbid such clauses.

The third problem is related to the fact that the rules governing e-contracts may still vary from province to province despite the *Internet Sales Contract Harmonization Template*. Consequently, despite the inclusion of the principles of this template, differences still exist between the provinces, and these can have an impact on consumers. Moreover, some of these differences are related to the propensity of certain provinces to afford better protection to consumers.

1.2. Harmonization agreements

The rise of online transactions has led the provinces to adopt laws regulating e-commerce. In 1999, the Uniform Law Conference of Canada (ULCC) adopted the *Uniform Electronic Commerce Act* (UECA)[24]. This law was inspired by 1996 *Model Law on Electronic Commerce* established by the United Nations, which applies to all contracts, unless excluded by law. A recommendation was made to the provincial, territorial and federal jurisdictions to integrate the UECA within their own laws. Many provinces have done so. Quebec, for its part, does not follow the UECA, but has integrated similar principles into its laws. Since 1999, all provinces and territories have introduced laws regulating e-commerce that are inspired by the UECA[25].

The UECA regulates the signatures of agreements, the obligation to provide a written document and many other aspects aimed at making e-commerce contractual rules more flexible.

In an effort to achieve harmonization in consumer protection, the CMC has enacted the *Internet Sales Contract Harmonization Template* (hereafter the Harmonization Template)[26].The Harmonization Template provides minimal standards regarding the disclosure of information, rules regarding the formation of contracts, contract cancellation and the reversal of credit charges [27].One of the purposes is to allow consumers to read all the terms and conditions before entering into the agreement. In the event that the merchant does not respect these standards, consumers have access to certain recourses; more specifically, they can ask for the credit charges to be reversed. The ultimate goal is for the provinces to follow the Harmonization Template in the context of e-commerce.

1.3 Discrepancies between provinces on issues covered by the Harmonization Template

Notwithstanding the Harmonization Template, there are still differences between provincial legislations that pose obstacles to harmonization. Most of the provinces have included the Harmonization Template in their provincial legislations. Only the territories, New Brunswick, and Prince Edward Island have not done so[28].Despite this, many differences exists between provincial regulations respecting Internet sales contracts.

Manitoba became the first province to include the Harmonization Template in its Consumer Protection Act (CCSM). Like the Harmonization Template, it allows consumers to cancel online agreement, although the conditions for cancellation differ[29]. Moreover, the law has penal provisions[30]. Alberta introduced legislation clearly influenced by the Harmonization Template relating to types of transactions and their cancellation. However, it differs from the

[24] *Uniform Electronic Commerce Act* (1999) Uniform Law Conference of Canada
[25] Teresa Scassa and Michael Deturbide, *Electronic Commerce and Internet Law in Canada,* 2nd ed., Toronto, C.C.H., 2012, p. 3
[26] *Internet Sales Contract Harmonization Template*, May 2001, http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/Sales_Template.pdf/$file/Sales_Template.pdf
[27] *Supra* note 25, pp. 44-51
[28] *Supra* note 25, p.52
[29] S. 129 *Consumer Protection Act*, CCSM c C200 (hereafter CCSM) and *Ibid.*
[30] S. 136.1 *et seq* CCSM and Michael Deturbide, *Electronic Commerce and Internet Law in Canada,* 2nd ed., Toronto, C.C.H., 2012, p. 52

Harmonization Template by limiting the scope of its law. Specifically, it excludes from the application of its law transactions of less than $50. It also excludes contracts with companies doing business in real estate, time-share sellers and funeral services. It also does not apply to florists[31].

Nova Scotia has included the Harmonization Template within its Consumer Protection Act (CPA-NS)[32].These are the legislative amendments that most closely resemble the Harmonization Template. Moreover, it modified its legislation to add obligations regarding the disclosure of information, cancellation and reversal of charges. However, just like Alberta, Nova Scotia excludes from the application of its law transactions of less than $50 and to goods that can be downloaded or accessed directly from the Internet[33].

Ontario's Consumer Protection Act (CPA-2002) added provisions related to consumer contracts guided by the Harmonization Template. These provisions apply to transactions of a value of more than $50. One important difference from the Harmonization Template is that the legislation does not require credit cards issuers to cancel or reverse credit charges. According to Scassa and Deturbide, "this notable deviation from the Template perhaps signals that the Template is an illusory endeavour at harmonisation of consumer protection legislation in the online environment"[34].

British Columbia updated its consumer protection legislation to include a section on online contracts in its *Business Practice and Consumer Protection Act* (BPCPA-BC). Although the legislation does not make specific reference to the Harmonization Template, its essence can be found in this law[35].

Quebec also introduced provisions within its *Consumer Protection Act* (CPA) relating to online contracts. This legislation provides similar protections to those in the Harmonization Template. However, some differences do exist. On the one hand, the legislation encompasses Internet transactions under the term "Distance Sales Contracts." On the other hand, the Quebec legislation allows consumers to cancel an online contract relating to the purchase of transportation, lodging or tickets to an event if the merchant does not provide documents allowing consumers to receive the services or attend the event. Moreover, Distance Sales Contracts are deemed to have been entered into at the consumer's address. The CPA therefore applies to all online transactions entered into by consumers living in Quebec[36].

Saskatchewan amended its consumer protection legislation the *Business Practices and Consumer Protection Act* (BPCPA-SS), to include Internet Sales Contracts. It is very similar to the Harmonization Template[37].

Newfoundland and Labrador amended its legislation, the *Consumer Protection and Business Practices Act* (CPBPA-NL) to incorporate similar provisions to the Harmonization Template. This

[31] S. 3 *Internet Sales Contract Regulation*, Alta Reg. 81/2001 and *supra* note 25, *pp.* 54-55
[32] S. 21(X) and ss. *Consumer Protection Act*, RSNS, 1989 *v.* 92 (hereafter CPA-NS), s. 2 *Internet Sales Contract Regulations*, NS Reg 91 and 2001 Teresa Scassa and *supra* note 25, pp. 56-57
[33] S. 2 *Internet Sales Contract Regulations*, NS Reg 91 and 2001 and *supra* note 25, pp. 56-57
[34] *Supra* note 25, p. 59
[35] *Supra* note 25, pp. 60-61 and Business Practices and *Consumer Protection Act*, SBC 2004, c 2 (hereafter BPCPA-BC)
[36] *Supra* note 25, p. 61 and S. 54.2 *Consumer Protection Act*, RLRQ *v.* P-40.1 (Hereafter CPA)
[37] *Supra* note 25, p. 62

law applies to Distance Sales Contracts, which include online transactions. The legislation does not specify the format in which a supplier must provide a contract. Also, it provides that a copy of the contract sent by email is considered to have been received on the third day after it was sent[38].

Another difference between the provinces relates to the notion of consent. Though the Harmonization Template states that consent has to be expressed in order to have an agreement, there appear to be differences between the provinces regarding Click-Wrap Agreements[39].The doctrine states that when a consumer clicks on an icon such as “I agree,” he is consenting to enter into an agreement. The situation regarding these types of agreements is not uniform across Canada. In Quebec, clicking on a link is not necessarily enough to demonstrate consent, but in the rest of Canada, it may be enough[40]. As such, some restrictions do apply with respect to adhesion contracts and the obligation of disclosure of information. More specifically, civil law recognizes tacit acceptance, unless a specific legislation requires a specific type of acceptation[41]. In contrast, in Ontario, when a consumer clicks on an icon to accept the terms and conditions of an agreement and the courts want to determine if there was such consent, commercial certainty will be favoured. The Court will not intervene if the clause is ambiguous or complex, only if it is aberrant[42].

As seen above, when it comes to Internet sales contracts, the rights of consumers can vary significantly from one province to the other.

1.4 Issues not covered by the Harmonization Template

The Harmonization Template does not address all the issues relating to e-commerce. In particular, it is silent with regard to the jurisdiction of the courts. Usually, when consumers file an action against a merchant or a manufacturer, it is usually done in their jurisdiction. However, some merchants have tried to restrain consumers from accessing the courts. This is done by imposing arbitration, by restricting access to class action proceedings, by imposing the laws of another province or territory or by forcing the consumer to file his action in another jurisdiction than his own. We will address this issue in the section on class action proceedings, since these types of clauses are not limited solely to online transactions and since these clauses often seek to limit access to the courts, and consequently, to class action litigation[43].

Moreover, because the Template was created in 2001, it does not address new problems that have appeared as result of technological advancements. These include spy-ware and new ways of entering into agreements. Furthermore, certain provinces have not included the

[38] *Supra* note 25, p. 62 and ss. 30-31 (4) *Consumer Protection and Business Practices Act* SNL 2009, c C-31.1 (hereafter CPBPA-NL)
[39] The term “Click-wrap” relates to the practice employed in the majority of online agreements, which requires the consumer to click on an icon in order to signify consent: “I accept” or “I agree” (…) as opposed to “Browse-wrap” agreements, in which “the consent is not inferred from clicking on a icon, but rather through the mere appearance of a difficult-to-access notice or through accessing a subpage or hyperlink.” Translation of Nicole L’heureux and Marc Lacoursière “Droit de la consommation,” 6th ed., Cowansville, Edition Yvon Blais, 2011, pp. 146-150
[40] Aspencer1 *v. Paysystems Corp.,* 2005 CanLII 6494 (QC CQ), Michael Deturbide, “Consumer Protection Online,” LexisNexis, Butterworthe, 2006, p. 5 and CPA
[41] *Supra* note 39, p. 148 and *supra* note 25, p. 15
[42] *Rudder v. Microsoft Corp.*, 1999 CanLII 14923 (ON SC) and traduction libre *supra* note 25, p. 15
[43] We will discuss this issue in Section IV

Harmonization Template within their laws, which can limit the harmonization of e-commerce regulations.

Finally, several provinces have decided to protect consumers when they make purchases online from a merchant located in another province – this is the case for Alberta, Saskatchewan, Ontario and Quebec[44]. Others have not done so, which is the case for British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and the Territories.

1.5 The results of the survey: the perception of Canadians on harmonizing consumer protection standards relating to e-commerce

We wanted to know the habits of consumers when they make purchases online. We also sought their viewpoints on the standards that protect them when they enter these types of transactions.

1.5.1. Purchases made online in another province

A majority of respondents (61%) said that they had made an online purchase in another province (see table 1) in the last year. If we add the respondents who answered that they were not sure whether they made this type of purchase, the total becomes 84.4%. In this case, the region of residence does have an impact. The practice is very frequent in the Maritimes (82.4%), in the Prairies (70.4%) and in British Columbia (67.4%). For Ontarians (49.8%), the practice is relatively frequent. Quebecers differ from consumers living in the other regions, as they are less likely to make an online purchase in another province: only 35.3% stated that they did so.

Table 1
Question: "In the last year, did you purchase goods online from a seller located in another province? "

Answers	Maritimes	Quebec	Ontario	Prairies	British Columbia	Total Canada
Yes	82.4 %	35.3 %	49.8 %	70.4 %	67.4 %	61.0 %
I don't think so, but it's possible	11.4 %	28.1 %	35.9 %	18.5 %	23.0 %	23.4 %
No	6.2 %	36.6 %	14.3 %	11.1 %	9.7 %	15.6 %

The location of the merchant is important to respondents. In fact, this information influences 78.2% of consumers when deciding on whether or not to make a purchase. The main reason given for this relates to potential problems. Almost half (46.6%) of consumers thought it was important to know this information. Another reason raised related to the willingness to buy from Canadian businesses (32.5%). Moreover, for 19.7% of Quebecers, it is important to buy

[44] Ss. 13-16 *Fair Trading Act*, RSA 2000, *v.* F-2 (hereafter FTA), ss. 101 (1)-102 CPBPA-SS http://www.fcaa.gov.sk.ca/adx/aspx/adxGetMedia.aspx?DocID=3927.3905.3784.3690.1,Documents&MediaID=b6c73d6th-c390-4df5-af7e-3d9d2b7ddb51&Filename=Internet+Sales+Contracts+Nov.+2014.pdf, S. 2 and 7 CPA-2002 and S. 54.2LPC

from a merchant located in their own province, whereas this is less important in the other regions (9.4%).

1.5.2. Reading the terms and conditions

We also wanted to know if respondents enter online agreements with full knowledge (see table 2). We expected consumers to answer that they did not read the terms and conditions before entering into an agreement. This was based on interviews conducted with our experts and our experience in the field, but also because of the length of the contracts and the use of legalese.

Table 2

1. **Question: "Do you read the terms of agreement before entering into a contract?"**

Answers	Maritimes	Quebec	Ontario	Prairies	British Columbia	Total Canada
Yes, always	31.7 %	24.3 %	35.5 %	30.9 %	32.1 %	30.9 %
Yes, often	39.6 %	29.4 %	37.7 %	37.9 %	35.4 %	36.0 %
TOTAL YES	**71.3 %**	**53.7 %**	**73.2 %**	**68.8 %**	**67.5 %**	**66.9 %**
No, rarely	25.2 %	35.6 %	23.6 %	27.6 %	27.9 %	28.0 %
No, never	2.9 %	10.6 %	3.1 %	2.6 %	4.7 %	4.8 %
TOTAL NO	**28.1 %**	**46.2 %**	**26.7 %**	**30.2 %**	**32.6 %**	**32.8 %**

Note: The sum of the two totals is not 100% because 0.3% of respondents did not understand the meaning of "the terms and conditions of the agreement"

It goes without saying that we were very surprised by these results. Our survey reveals (see table 2) that 66.9% of Canadians consumers always or often read the terms and conditions of the agreement. Consumers living in Ontario and the Maritimes (respectively 73.2% and 73.1%) are most likely to read them. Those living in Quebec (with 53.7%) are the least likely to do so.

After a more careful analysis, our results show that the respondents who were more likely to say they read the terms and conditions of the agreement were women, consumers over the age of 55, and those having a secondary diploma or less. On the other hand, those who were the least likely to read them were men, consumers between the ages of 18 and 35 and those having a bachelor's degree or higher.

These surprising results could be related to two factors. The question did not ask whether consumers read the terms and conditions of the agreement in their entirety. It might very well be possible for a respondent to answer that he did indeed read the terms and conditions, even if he only read the headings and highlighted sections. It is also possible that some respondents wanted to show themselves in a positive light. This is what we call an expected answer as opposed to a true answer.

We also wanted to know the reasons why consumers did not read the terms and conditions of the agreement (see table 3). Two reasons were given. The first, given by 61.5% of respondents, was that if they want to complete the purchase, they must agree to the terms and conditions. The second, given by 60.0% of respondents, was that the text is too long. Also to be noted is that 70% of consumers between the ages of 18 and 34 answered that they did not read the terms and conditions, in order to save time.

Table 3
Question: “Why did you answer “rarely” or “never”? (Non-exclusive multiple choice)

	Maritimes	Quebec	Ontario	Prairies	British Columbia	Total Canada
It makes no difference if I read it or not, I must agree if I want to make the purchase	67.6 %	44.5 %	66.0 %	66.0 %	72.0 %	61.5 %
To save time; the document is too long	55.5 %	68.8 %	63.8 %	53.8 %	54.3 %	60.0 %
I don’t understand what it says	14.1 %	9.6 %	16.0 %	16.1 %	13.6 %	13.4 %
No particular reason	5.2 %	5.2 %	4.3 %	6.6 %	4.2 %	5.1 %

Note: This table includes respondents that answered that they rarely or never read the terms and conditions of the agreement

1.5.3. Awareness of applicable laws

On a different note, we wanted to know if respondents knew the applicable laws when they make a purchase from a merchant in another province.

We conducted a regional analysis (see table 4-a) in which we focused on the answers given by consumers living in Ontario and Quebec, since the laws of their province protect them when they make an online purchase from a merchant located in another province.

We also conducted a provincial analysis (see table 4-b), in which we focused on Alberta and Saskatchewan, since their legislation protects consumers when they make an online purchase from a merchant located in another province.

Table 4
Question: "In your opinion, when you purchase goods online from a seller located in another province, which laws are applicable?"

a- Regional analysis

	Maritimes	Quebec	Ontario	Prairies	British Columbia	Total Canada
The laws of my province	11.0 %	15.8 %	11.6 %	10.5 %	12.7 %	12.5 %
The laws of the province where the good was purchased	29.8 %	34.5 %	29.8 %	34.5 %	34.3 %	32.7 %
Both, since the laws are the same	4.2 %	2.9 %	7.4 %	6.4 %	5.1 %	5.1 %
Both laws apply, even if they are different	11.2 %	5.8 %	11.6 %	11.2 %	13.5 %	10.5 %
The federal laws	7.4 %	14.1 %	9.6 %	10.5 %	7.6 %	10.0 %
I don't know	36.4 %	26.9 %	30.0 %	27.0 %	26.7 %	23.3 %

b- Provincial Analysis

	Quebec	Ontario	Saskatchewan	Alberta	Total Canada
The laws of my province	15.8 %	11.6 %	9.5 %	11.0 %	12.5 %
The laws of the province where the good was purchased	34.5 %	29.8 %	37.8 %	34.2 %	32.7 %
Both, since the laws are the same	2.9 %	7.4 %	4.1 %	6.8 %	5.1 %
Both laws apply, even if they are different	5.8 %	11.6 %	8.1 %	11.9 %	10.5 %
The federal laws	14.1 %	9.6 %	8.1 %	12.8 %	10 %
I don't know	26.9 %	30.0 %	32.4 %	23.3 %	23.3 %

A large proportion of respondents (42%) believe that when they make a purchase in person in another province, the laws of the province where the purchase was made will apply (see table 5). These numbers drop when it comes to purchases made online. Indeed, 33% of respondents believe that the applicable law is the one in force in the province where the merchant is located.

In addition, only 12% of Canadians believe that when they make a purchase online with a merchant located in another province, it is the law of their own province that applies.

Table 5
Question: "In your opinion, when you make a purchase (in person or online) from a merchant located in another province, which laws are applicable?"

	Purchases made in person [45]	**Purchases made online**
The laws of my province	9 %	12 %
The laws of the province, where I made my purchase	42 %	33 %
Both, since they are the same	6 %	5 %
Both laws apply, even if they are different	8 %	11 %
The federal laws	6 %	10 %
I don't know	29 %	29 %

In some provinces, the legislator has intervened to protect consumers when making online purchases, whether the merchant is located in their province or in a different province. This is the case in Quebec, Ontario, Saskatchewan and Alberta. We wanted to know if the residents of these provinces were aware of this.

The respondents most likely to answer that the laws of their own province apply in such cases are those living in Quebec. 15.8% of Quebecers answered that they were protected by the laws of their province (see table 4). This difference is statistically significant. Ontario came in second place with 11.6% of respondents answering that the laws of their province protect them. Despite the fact that Saskatchewanians are protected by a provincial law, only 9.5% (the lowest for this question) answered that the laws of their province protected them.

Moreover, under certain circumstances, respondents answering that they were protected by both laws would not necessarily be wrong. For example, the Ontario legislation applies to consumers living in Ontario or merchants having a place of business in Ontario[46]. A consumer living in another province could invoke the law of his province of residence if it applied under these circumstances. However, if the law of the consumer's province of residence is less protective and he made a purchase from a merchant located in Ontario, the CPA-2002 will apply.

Respondents living in British Columbia were the most likely to answer "both, even if they are different[47]." Also, Ontarians are more likely than other Canadians to answer that the law of their province and the laws where they made their purchase are the same.

[45] The numbers in this table have been rounded off.
[46] S. CPA-2002
[47] See report by Bruno Marien in Appendix 1

2. Consumer credit

When consumers buy goods in another province, they quite often enter into consumer credit agreements at the same time. During our research, we identified nine specific areas of consumer credit in which there are differences in the legislation of the provinces in spite of the *Agreement for Harmonization of Cost of Credit Disclosure Laws in Canada* (hereinafter the harmonization agreement). We studied all of these[48] and also paid attention to certain aspects of credit disclosure. Despite the harmonization of rules in this regard, there are still disparities between the corresponding provincial laws. In addition, we did not study the federal rules relating to credit - these are consistent across the country - or payday loans – which rarely figure in the context of internal trade.

2.1 Jurisdiction over consumer credit

Both levels of government can intervene with regard to consumer credit. Because of their jurisdiction over matters of civil law, the provinces deal with consumer protection[49]. The federal government, meanwhile, dictates the rules for the disclosure of credit costs in the areas under its jurisdiction, such as credit granted by banks[50]. In addition, it has jurisdiction in matters of competition, interest and criminal rate[51].The rules in these areas are uniform across Canada.

2.2. The problems identified by the experts

Our experts were concerned about the low level of financial literacy among consumers, as well as their high level of indebtedness. They also identified certain issues as problematic, such as disclosure of the cost of credit and instalment sales. Some experts fear that prohibited practices are continuing despite the harmonization agreement, particularly as regards recovery. In their view, not all the provinces seem to have incorporated the rules of the harmonization agreement[52].

2.3. Harmonization of laws

In matters relating to consumer protection, the provinces have chosen to exercise their jurisdiction by regulating consumer credit, which explains why standards vary from one province to the next.

---

[48] This is discussed in Sections 2.4.1 to 2.4.9.
[49] S. 92 (13) *Constitution Act*, *supra*, note 4
[50] S. (15) *1867 Constitution Act*, *supra*, note 4
[51] *Competition Act*, R.S.C. (1985), *v.* C-34, *Interest Act* RSC (1985), c I-15 and s. 347 *et seq*. *Criminal Code*, R.S.C. (1985), *v.* C-46, the federal government legislates in the areas within its jurisdiction. These rules are applicable across Canada.
[52] On 25 April 2003, the CMC issued the *Harmonized List of Prohibited Collection Practices*. Even though a few experts said that they were concerned about the practices of collection agencies, we did not study these in this report. On the one hand, this is a complex subject that deserves to be studied individually. On the other, we have chosen to address topics that the largest number of experts identify as problematic.

In 1998, in an attempt to make these standards more uniform, the Consumer Measures Committee (CMC) harmonized the laws respecting disclosure of cost of credit. The harmonization agreement establishes standards for disclosing credit costs, the Annual Percentage Rate (APR,) the content of statements, subsequent disclosure, early settlement of loans, cases of default, credit card agreements, brokered loans, cancellation of optional services, informal credit agreements, advertising, leases, and determination of residual value[53]. In these matters, the vast majority of provinces, in their laws respecting consumer protection and disclosure of credit cost, address issues that are also addressed by the harmonization agreement. Even when they do not, existing laws may have provisions that match or exceed those contained in the harmonization agreement, as is the case with Quebec's *Consumer Protection Act.*

Furthermore, there are several important differences in the laws of each province, which could result in some consumers being better protected in one province than in another.

2.4. Differences between provincial laws

2.4.1. Advertising and credit solicitation

Consumer credit advertising has a significant impact on consumers because it encourages them to enter into a contract. The provinces have stepped in to regulate advertising in this area. The federal government also has jurisdiction over credit, notably through the *Bank Act*, the *Cost of Borrowing Regulations* and the *Competition Act*.

The harmonization agreement was created to regulate advertising for consumer credit. The following requirements apply only to ads that give specific information on the cost of borrowing, including the amount of payments, charges other than interest, the interest rate and any other element of the cost of borrowing. The ads must state the annual percentage rate, the term of the loan, the price of the products and the total cost of borrowing (in the case of supplier credit agreements[54]). On the other hand, these restrictions do not apply to credit advertising on television or radio or in supplier credit agreements[55]. As of writing this report[56], we remark that the provincial legislation appears to comply, at least in part, with the provisions of the harmonization agreement as regards credit advertising.

Some provinces have gone even further in regulating credit advertising, one of these being Quebec. The *Regulation Respecting the Application of the Consumer Protection Act* (RACPA) provides that, if one credit term appears in an advertisement, all others must be mentioned; a table illustrating applicable credit charges must also be included[57]. In addition, the CPA prohibits

[53] *Agreement for Harmonization Costs of Credit Disclosure Laws in Canada, Legislative Drafting Template*, Consumer Measures Committee, June 1998
[54] The name given to credit supplied by a retailer.
[55] *Supra*, note 53
[56] This report was drafted between November 2014 and February 2015.
[57] Ss. 81-86 *Regulation Respecting the Application of the Consumer Protection Act*, RCPA, c p-40.1, r. 3 (hereinafter RACPA)

inciting consumers from purchasing goods or services using credit, or even including an illustration of the goods[58]. In Quebec, for example, merchants do not have the right to influence consumers to obtain credit to pay for a trip to the South.

In Ontario, where unilateral issuance of a credit card is legal, there are specific provisions respecting soliciting for credit. In fact, the solicitation must include the interest rate, non-interest charges to pay, the amount payable by the borrower or the method of calculating it, and the grace period[59].

In Manitoba, all forms of solicitation must include the interest rate, the term of the credit, other applicable fees, and, if the credit is for the sale of a specific product, the price of that product[60].In addition, this information should be set out clearly and prominently. If an advertisement states that there are no interest charges, it must also indicate the interest payable in case of default[61].In the event of non-compliance with this obligation, the consumer shall have no interest to pay during the default period. In any advertisement that mentions the interest charged under an open credit agreement[62], the APR and other charges must be specified[63].

The Saskatchewan Act includes obligations similar to those set forth in the Manitoba Act[64]. It goes further, however, by stating that when advertising credit for the purchase of products, the merchant must not only mention the price of the product, but also the total cost that the consumer will have to pay using credit. On the other hand, this obligation does not apply to advertising on radio, TV or to media with space restrictions.

The Alberta Act is also silent about this type of incitement to take out credit. On the other hand, it does stipulate that if a merchant advertises, information related to the disclosure of the cost of credit must be legible and comply with the Regulation[65]. The British Columbia Act incorporates verbatim the requirements concerning advertising credit set forth in the harmonization agreement. Moreover, this law is similar to the Saskatchewan Act as regards additional requirements[66]. The New Brunswick Act is also similar[67].

The Nova Scotia Act is similar to the laws of its provincial counterparts, but states that all advertising, including radio or television advertising, must include the APR[68]. While the harmonization legislation stipulates that advertisements on radio and television may omit the cost of borrowing, the Prince Edward Island Act is very similar to that of Nova Scotia, including

[58] S. 245 CPA
[59] S. 77 CPA-2002
[60] S. 34.2 *seq* CCSM
[61] S. 13 CCSM
[62] S. 1 CCSM, "open credit" means credit under a credit agreement that:
(a) anticipates multiple advances, which are to be made at the borrower's request, and
(b) whether or not it sets a credit limit, does not establish the total amount to be advanced;
[63] Ss. 13, 14 and 35 CCSM
[64] Ss. 17, 30, 31, 39 and 40 *Cost of Credit Disclosure Act*, 2002, SS 2002, c C-41.01 (hereinafter CCDA-SS)
[65] Ss. 62, 76 and 83 FTA and ss. 6,7 and 12 *Cost of Credit Disclosure Regulation*, Alta Reg 198\1999 12 (hereinafter CCDR-Alta)
[66] S. 60 ss. BPCPA-BC
[67] Ss. 17, 30, 31, 38 40 *Cost of Credit Disclosure Act* SNB 2002, c C-28.3 (hereinafter CCCA-NB)
[68] S. 20 CPA-NS, version in force since May 2013

the obligation to indicate the APR[69]. The Newfoundland and Labrador Act is very similar to those of Saskatchewan and Manitoba. It also incorporates the standards prescribed in the harmonization agreement[70].

The Yukon and Nunavut Acts, although less precise, seem to comply with the principles established in the harmonization agreement[71].The Northwest Territories' *Consumer Protection Act* (RSNWT) incorporates the rules of the harmonization agreement. In addition, it states that when the APR has to be disclosed, this must be done either in writing or verbally[72].

In conclusion, the rules on advertising in the provinces are similar as regards cost of credit disclosure in advertising. Some provinces go into greater detail on certain points; consequently, consumers there have access to more information on consumer credit.

2.4.2 Terminating an agreement

The harmonization agreement does not mention the possibility of terminating the agreement and does not grant a cooling-off period. On the other hand, it does state that it is possible to request cancellation of optional services at one month's notice. Some provinces have incorporated into their legislation the option of cancelling a credit agreement without cause shortly after signing an agreement. Moreover, in the event of non-compliance with the law or in certain other circumstances, the provinces provide for the cancellation of the contract. In Quebec, a contract for the loan of money and a contract involving credit may be cancelled without cost or penalty, at the discretion of the consumer, within two days after each of the parties is in possession of a copy of the contract[73].

In Ontario, consumers may at any time and without any reason, cancel an agreement for loan brokering,[74] credit repair, or the supply of prescribed goods or services, as of the day they enter into the agreement until 10 days after they have received a copy[75].

In Nova Scotia, consumers may cancel a payday loan before the end of the day following the day that they received this loan and within 48 hours of receiving a substantive advance[76].They may also cancel all Internet sales agreements within seven days of receipt of a written copy of the agreement and, if they have not received a copy of the agreement, within 30 days of entering into the agreement[77].

[69] Ss. 16 and 20 *Consumer Protection Act*, RSPEI 1988 *v.* C-19 (hereinafter CPA-PEI)
[70] Ss. 58, 59 and 66 CPBPA-NL
[71] Ss. 26 and 27 *Consumers Protection Act* (hereinafter CPA-RSY), RSY 2002, c -40 and ss. 37 and 38 *Consumer Protection Act*, RSNWT (Nu) 1988 *v.* C-17 (hereinafter CPA-RSNWT (nu)
[72] Ss. 22 and 29 of the *Cost of Credit Disclosure Act*, 2011 c.23 LNT-O (hereinafter CCDA-LNTO)
[73] S. 73 CPA
[74] Services or goods that are intended to help the consumer obtain credit or a loan, including the loan broker who provides them, 1 CPA-2002 Art-O
[75] S. 51 (1) CPA-2002
[76] S. 18 (Q) (1) (2) CPA-NS
[77] S. 6. *Internet Contract Regulation,* NS Reg 91/2002

In Alberta, a direct sales contract within the meaning of s. 24 of the *Fair Trading Act* (FTA) may be canceled for any reason within 10 days[78]. Moreover, the consumer has a period of 30 days to request the cancellation of optional services[79].

In British Columbia, the law provides that a consumer may cancel a direct sales transaction within ten days of purchase[80].The consumer may also cancel a continuing services contract or a timeshare contract within ten days[81].A consumer may cancel a distance-selling contract within seven days of receiving a copy of the contract or within 30 days of purchase if a copy of the contract has not been received[82].However, in credit-related matters, consumers can only cancel contracts for optional services under the harmonization agreement. In addition, a consumer may cancel a payday loan before the end of the day when the loan agreement was entered into[83].

The Newfoundland and Labrador Act permits cancellation of a direct sales contract within 10 days or, if the terms have not been met, within a year[84]. A consumer may cancel a service contract at any time[85]. In credit-related matters, however, the law only provides for the cancellation of optional services within the meaning of the harmonization agreement[86].

The Northwest Territories' *Consumer Protection Act* provides that a consumer may cancel a direct sales contract within 10 days of receipt of the contract. It states that such cancellation extinguishes any credit-related obligation under the contract[87]. In addition, the *Cost of Credit Disclosure Act* also provides for the cancellation of optional services within the meaning of the harmonization agreement[88].

In Nunavut and the Yukon, one can cancel a direct sales contract on the day of purchase and before the end of the following day[89].There is no mention of cancellation of a credit agreement.

The laws of Saskatchewan and New Brunswick are silent with regard to the cancellation of credit agreements and installment sales contracts.

2.4.3 Right of prepayment of loan

The harmonization agreement provides that, except in the case of a mortgage[90], consumers have the right to make a prepayment on a loan without cost or penalty. When the loan is prepaid in full, the consumer benefits from a reimbursement of charges other than interest,

[78] S. 27 FTA
[79] S. 67 FTA
[80] S. 21 BPCPA-BC
[81] S. 25 BC-BPCPA
[82] S. 49 BPCPA
[83] S. 112.05 BPCPA
[84] S. 26 CPBPA-NL
[85] S. 35.7 CPBPA-NL
[86] S. 51 CPBPA-NL
[87] Ss. 76 and 78 (2) CPA-RSNWT
[88] S. 13 CCDA-RSNWT
[89] S. 77.2 CPA-RSNWT (Nu) and s. 61 CPA-RSY
[90] In the case of a mortgage, there are fees and penalties.

calculated in proportion to the term of the loan[91]. The harmonization agreement also provides for the possibility of partial prepayment. The vast majority of provinces have incorporated these principles within their consumer protection laws.

In Quebec, consumers can pay off all or part of their obligation before maturity[92].The balance due is equal to the sum of the balance of net capital and credit charges calculated in accordance with s. 91.

In Ontario, the borrower can make a total or partial payment before the due date stipulated in the contract. If the consumer repays the loan in full, the merchant must remit to the latter all borrowing costs, excluding any interest added to the agreement (s. 76 (2) CPA-2002). A consumer who makes a partial payment will not have the right to a credit refund under s. 76.2[93].

The situation is almost identical in Alberta, Saskatchewan, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, and the Northwest Territories[94]. The situation is similar in some respects in Nova Scotia, except that the law only provides for cases in which the debt is prepaid in full, rather than in part[95].

Yukon and Nunavut also provide the possibility for the consumer to pay off his entire debt before maturity. The laws are different in these two territories, since the law permits the credit grantor to claim a rebate upon redemption, the amount of which may not exceed $10[96].

2.4.4 Required insurance

Some provinces have legislated on the obligation to take out insurance when entering into a credit agreement.

In Quebec, consumers may be obliged to purchase insurance when signing a loan agreement, but do not have to accept the insurance offered by the merchant. They may satisfy this requirement by choosing other insurance or using insurance that they already have[97]. On the other hand, the merchant may, on reasonable grounds, refuse the insurer chosen by the consumer. However, if the insurer has a license issued by the AMF and the coverage offered corresponds to the agreement, the merchant cannot refuse[98].

In Ontario, a borrower who, pursuant to a credit agreement, is required to take out insurance, may do so through any insurer who can provide the type of insurance in question. On the other

[91] *Agreement on the Harmonization of Laws on Disclosure of Credit Costs in Canada*, supra note 53
[92] Ss. 93 and 91 CPA
[93] Ss. 76 (2) (4) and (5) CPA-2002.
[94] S. 68 FTA, S. CCDA-17 SSS. 74 CPBPA-BC, S. 18-20 CCSM c C200, S. 23, S. 23 CCDA-NBS. 52 and S.CPBPA NL-14-LCC NWT
[95] S. 19 *Consumer Protection Act*, RSNS 1989, c 92, version in force since May 2013
[96] S. 28 (1) - (3) the *Consumer Protection Act*, RSY 2002, c -40 S. 39 (1) - (3) *Consumer Protection Act*, RSNWT (Nu) 1988 *v.* C-17
[97] S. 111 *et seq*. CPA
[98] Nicole Lheureux and Marc Lacoursière, *supra* note 41, pp. 216-217

hand, the lender has the right to reject, on reasonable grounds, the insurer chosen by the borrower[99].

The Alberta legislation is identical regarding the choice of insurer. In that province, however, a creditor may act as intermediary and provide insurance for the debtor. The creditor must disclose this fact, specifying that the debtor can choose his own insurance company[100].

The laws of British Columbia, Manitoba, Saskatchewan, New Brunswick, Prince Edward Island, Newfoundland and Labrador and the Northwest Territories are similar to those of Alberta[101]. The corresponding laws of Nova Scotia, Prince Edward Island, Yukon and Nunavut, on the other hand, are completely silent with regard to insurance[102].

2.4.5 Issuance of unsolicited credit cards

One of the major differences between the provinces is in the issuance of unsolicited cards; these are allowed under certain conditions in Ontario, supervised very strictly in Nova Scotia, and prohibited elsewhere in Canada.

In Ontario, s. 68 of CPA-2002 states that consumers who receive a credit card from a credit card company without having requested it or without having signed an application form, are deemed to have entered into a credit agreement with the issuer with respect to the card when they use it for the first time[103].

Since 2013, the Nova Scotia Act states that a consumer has no legal obligation in respect of a credit card that the consumer has not requested or has not accepted in writing. The Act further states that the person whose name is printed on the credit card is presumed to have agreed in writing to that card when he or she uses it to obtain credit. On the other hand, the Act states that a person who receives a credit card without having requested it, without having accepted it in writing, and without having used it, has no legal obligation with regard to its use or its provision[104].

We believe that the legislator intended to limit the unsolicited issuance of credit cards and to protect consumers. Consumer protection laws are generally given a liberal interpretation.

In a decision by the Superior Court of Ontario, it was concluded that when the consumer is the intended user of the issuer's credit card and uses it, he or she is deemed to have accepted the terms of the agreement[105].

---

[99] S. 72 (1) CPA-2002
[100] S. 66 (1) (2) FTA
[101] S. 71 BPCPA-BCS. 21 CCSM CCDA-SS, a. 21 (1) (2) CCDA-NB, s. 50 (1) (2) CPBPA-NL, CPA-PEI and s. 12 (1) (2) *Cost of Credit Disclosure Act*, LNT-O 2011 c.23
[102] CPA-LRY and CPA-RSNWT (Nu) 1988 *v.* C-17
[103] S. 68 CPA-2002
[104] S. 23 (1) - (5) CPA-NS
[105] *Bank of Montreal v. Demakos*, O.R. 31 (3rd) 757.

The other provinces and the Northwest Territories have banned the issuance of unsolicited credit cards, except in cases of replacement or renewal[106]. Yukon and Nunavut appear to prohibit the issuance of unsolicited credit cards without explicitly stating this. In fact, s. 12 (1) of Yukon's *Consumer Protection Act* (CPA-LRY) states that every extension of variable credit by a credit provider is governed by a master agreement, which must be signed by the borrower before variable credit can be granted for the first time. This has the effect of preventing credit being granted before a credit agreement is signed. Here too, the legislator seems to be intervening in order to prevent an issuer from sending a credit card to the home of a consumer who did not request it[107].The situation in Nunavut is identical.

2.4.6 Unilateral amendment of credit card conditions

The provinces have chosen to manage contract alterations by the issuer in different ways. For instance, in two provinces, Quebec and Nova Scotia, such alterations are subject to restrictions.

In Quebec, a variable credit agreement must include certain information, such as the credit limit, the fee for adhesion or renewal, the duration of each period for which a statement of account is provided, the required minimum payment and the grace period before which interest may accrue. The law also states that a table of examples of the credit charges must be present[108].The merchant has no right to unilaterally change the terms of the credit agreement except with respect to membership fees and loan rates.[109] In addition, the credit limit cannot be increased unless the cardholder so requests[110].

The law of Nova Scotia (NS-CPA) states that proceedings may not be instituted against a consumer for an extension of credit unless the consumer expressly requested it. In addition, a lender may not make a cash advance without the borrower requesting it. The wording of this section is so broad that it appears to cover not only initial claims, but also ongoing credit increases[111].

Some provinces permit unilateral changes to a credit agreement. In Ontario, the law classifies changes into two types: those that must be disclosed to the consumer 30 days before they are introduced[112] - these include a change in the interest rate - and those that must be disclosed to the consumer within 30 days of coming into force - these include a change in the credit limit, the lowest annual percentage rate and an extension of the grace period.

In Manitoba, the law has been amended to incorporate the principles set forth in the harmonization agreement. The law of this province is similar to that of Ontario. It provides that amendments to contracts must be opposed thirty days before they come into force. On the

[106] S. 96 BPCPA-BC, s. 88 (3) FTA, s. 35.1 (2) CCDA-SS, s. 35.4 (1) (2) CCSM (In this law, the legislator stipulates a reversal of burden, which implies that the burden of proving a condition set forth in section 35.4 lies with the credit card issuer), s. 120 CPA, s. 43 CCDA-43 NB, s. 17 CPA-PEI, s. 71 and s. 32 CPBPA-NL and s.32-CCDA- NWT
[107] CPA-RSY
[108] S. 126 CPA and s. 85 R.A.CPA
[109] S. 98 CPA
[110] S. 128 CPA
[111] S. 23 (4) and s. 24 CPA-NS
[112] Ss. 69 and 81 CPA-2002

other hand, certain changes must be disclosed subsequently in the account statement, except those relating to a change in the credit limit, a decrease in the interest rate or other charges, an increase in the duration of the interest-free period or grace period, and a change in the variable interest rate[113].

The laws in Saskatchewan, Alberta, British Columbia, New Brunswick and Newfoundland and Labrador are similar. On the other hand, this information should be disclosed in the account statement subsequent to the changes[114].The laws of those provinces and of the Northwest Territories specify some unilateral changes to credit agreements that must be disclosed to the consumer on the next account statement (these are changes related to a decrease in the rate of interest or other charges, an increase in the duration of the interest-free period or grace period or a change of rate). The laws of Prince Edward Island, Yukon and Nunavut are silent in this regard.

2.4.7 Consequences and procedures in the event of default

The harmonization agreement stipulates that only the following charges may be required in case of default on the part of the borrower: charges for a dishonoured check, reasonable legal expenses incurred for collection purposes (successful or not) and reasonable expenses incurred in liquidating the collateral on a loan or security to protect it after seizure by the lender[115].

The provinces have generally incorporated these provisions within their respective consumer protection laws. Alberta did this by reiterating the terms of the harmonization agreement verbatim[116]. Others did so by including an outline of the agreement.

On the other hand, the Nova Scotia Act is silent with regard to charges in the event of consumers' failure to respect their obligations and does not appear to include the provisions in the harmonization agreement.

The provisions of the harmonization agreement have not been incorporated into Quebec law. Indeed, Quebec's *Consumer Protection Act* (CPA) only mentions the costs of installment sales; it also explains how to remedy a default during the execution of a forfeiture of benefit of term. The only charge that may be requested are credit charges, and these must be calculated in the credit rate[117].

Yukon and Nunavut laws make no reference to specific items in the harmonization agreement. On the other hand, they do restrict the charges that may be required when the consumer is in default. Consequently, in Yukon, consumers can avoid forfeiture of benefit of term by paying the charges specified in the law.

[113] Saskatchewan (s. 37 (3) (a) CCDA-SS Alberta (s. 88 (3) FTA, British Columbia (s. 98 (2) (a) (i) BPCPA-BC, New Brunswick (s.45 (2) (a) (i) CCDA-NB and Newfoundland and Labrador (s. 73 (2) (a) (i) CPBPA-NL
[114] Saskatchewan (s. S. 37 (3) (a) CCDA-SS, Alberta S. 88 (3) ETS, British Columbia (s.98 (2) (a) (i) BPCPA-BC), New Brunswick (s. 45 (2) (a) (i) and note 94 *Ibid* CCDA Newfoundland and Labrador (s. 73 (2) (a) (i) CPBPA-NL,
[115] *Supra,* note 53
[116] Alberta (s. 69 FTA), British Columbia (s. 75 BPCPA), Manitoba (s. 33.1 CPA), New Brunswick (s. 24 (1) CCDA), Prince Edward Island (CBDR), Newfoundland and Labrador (s. 53 CPBP) the Northwest Territories (s. 15 CDA)
[117] Ss. 60, 70, 71, 72, 81, 83, 91 and 92 CPA

2.4.8 Payment default in an installment sale

An installment sale is a type of credit agreement whereby a merchant sells goods to a consumer yet reserves ownership of the property until the latter fulfills his obligation, in whole or in part[118].

In Quebec, a merchant may avail himself of the remedies set forth in s.138 of the CPA in the event of consumer default. However, he must send a notice as specified in s. 139 and Schedule 6 of the CPA. This notice gives the consumer 30 days to remedy the default or return the goods[119].The merchant has a right of recovery after 30 days have expired[120].

Under ss. 140 and 142 of the CPA, when the consumer has paid half of his total obligation, the merchant cannot exercise his right of recovery unless he obtains court permission. One of the remedies provided for in s. 138 of the CPA is forfeiture of benefit of term. Before this can be invoked, however, the merchant must send the consumer a notice and a statement of account[121]. The notice must respect the obligations prescribed by law[122]. The consumer may remedy the default within 30 days after receipt of such notice[123].The merchant may not exercise his right of recovery before the expiry of this 30-day period.[124] If the consumer returns the goods to the merchant voluntarily, the obligation between the parties is extinguished.[125] If the consumer has paid at least half of his total obligation, the merchant can only exercise his right of recovery upon receiving the permission of the court[126].

In Ontario, s. 21 (1) CPA-2002 contains clear provisions regarding future performance agreements. The law defines this type of agreement as one in which the consumer must eventually make a total payment, excluding interest charges. Furthermore, unless authorized by the Superior Court, no provision of a performance agreement or any security agreement incidental to it is enforceable if the debtor has paid off at least two thirds of his payment obligation[127].

In Manitoba, forfeiture of benefit of recovery clauses are permitted. In order to exercise this right, a notice must be sent to the consumer. The consumer may remedy the default by paying the due amount before the deadline. If he does this before or during seizure, he may get a reprieve. If there is less than 25% of the amount payable remaining, the merchant may seize the property, but only with the permission of the court, unless the consumer agrees in writing to the recovery of the property[128].

---

[118] S. 132 CPA
[119] S. 140 CPA
[120] S. 140 CPA
[121] S. 105 CPA
[122] S. 139 CPA
[123] S. 140 CPA
[124] S. 140 CPA
[125] S. 141 CPA
[126] S. 142 CPA
[127] Ss. 21 (1) and 25 (1) CPA-2002
[128] S. 44 (1) CCSM

The laws in the territories allow both time sales and forfeiture of benefit of term. The law makes a distinction between default with seizure and default without seizure. If there is no seizure, the consumer can remedy the default by paying the arrears[129]. In the case of seizure, goods can be kept for 20 days before being sold. The consumer may remedy the default and avoid acceleration of payment of the balance if he pays the arrears within this period[130].

The situation is complicated in cases when a seizure has taken place (this may occur if various conditions of the agreement are broken[131]). Within 48 hours after the seizure, the seller must notify the consumer of the reason for the seizure. He must also tell the latter where the property is located and how to remedy the default. If the buyer remedies the default within the time specified, the forfeiture of benefit of term becomes unenforceable. On the other hand, if the consumer issues written consent, the seller may sell the goods before the expiry of the 20-day period[132].

The above-mentioned provisions appear to be less protective than those of the provinces with regard to seizure and forfeiture of benefit of the term. On the other hand, they are protective from the standpoint of the authorization of the court. Indeed, they stipulate that, if the balance owed on the property is less than 25%, the seller can seize the property with the permission of the court or the written consent of the buyer[133].

British Columbia, Alberta, Saskatchewan and Newfoundland and Labrador do not require the intervention of the court in the event that the property is reclaimed following the execution of a clause of forfeiture of benefit of term, even if a large portion of the property has already been paid for. On the other hand, these laws all provide 10 days following the sending of the notice to allow the consumer to remedy the default, thereby preventing execution of the forfeiture of benefit of term clause[134].

Finally, the laws of New Brunswick, Nova Scotia and Prince Edward Island are silent as to installment sales, forfeiture of benefit of term, sending a notice, opportunities to remedy default and legal intervention.

2.4.9 Prohibited clauses

Some provinces have added provisions to their laws to promote consumer freedom with regard to installment sales. In fact, Quebec and the territories explicitly prohibit contract clauses that prevent consumers from moving the property outside their province or territory[135].

[129] Ss. 33 (2) (b) 46 (1)CPA-RSY, 44 (2) (b), 57 and 58 LP-RSNWT 1988 cC-17 44 (2) (b), 57 and 58 CPA RSNWT
[130] Ss. 46 (3) Y CPA, 57 (3) TNW CPA and 57 (3) TNW (Nu) CPA,
[131] Ss. 47 (1) (3) Yukon CPA, CPA-S. 58 and S. 58 TNO TNO-CPA (Nu)
[132] Ss. 46 (3) Y CPA, 57 (3) TNW CPA and 57 (3) TNW (Nu) CPA,
[133] S. 49 Y L.PC, s. 60 and s. 60 TNW CPA (Nu)
[134] CCDA-SS, s. 71 FTA British Columbia (s.98 (2) (a) (i), s. 45 (2) (a) (i) BPCPA- and 77, s. 54 (3) CPBPA-NL and CPA-RSNWT
[135] S. 136 CPA, s. 52 CPA-LRY, s. 63 RSNWT CPA-62 CPA-S and TRTN- (nu)

2.5. Survey results: Canadians' attitudes toward the harmonization of consumer credit standards

We conducted this survey to find out how much consumers know about the harmonization of certain areas of Canadian law. Accordingly, we asked our respondents specific questions about disclosing the cost of credit and prohibited practices of collection agencies. We also asked them for their opinions on various topics such as the importance of harmonization.

Participants were questioned regarding their understanding of consumer credit. This was defined in the survey as "any financing related to the purchase or lease of property by a merchant, excluding credit granted by financial institutions, such as credit cards, mortgages, personal loans and lines of credit."

A majority of Canadian consumers (44. 7%) feel they have a good, or very good understanding of the rules. A good proportion of them (36.9%) think they have average understanding of the rules, and finally, only 17.4% feel they have little or no understanding of the rules.

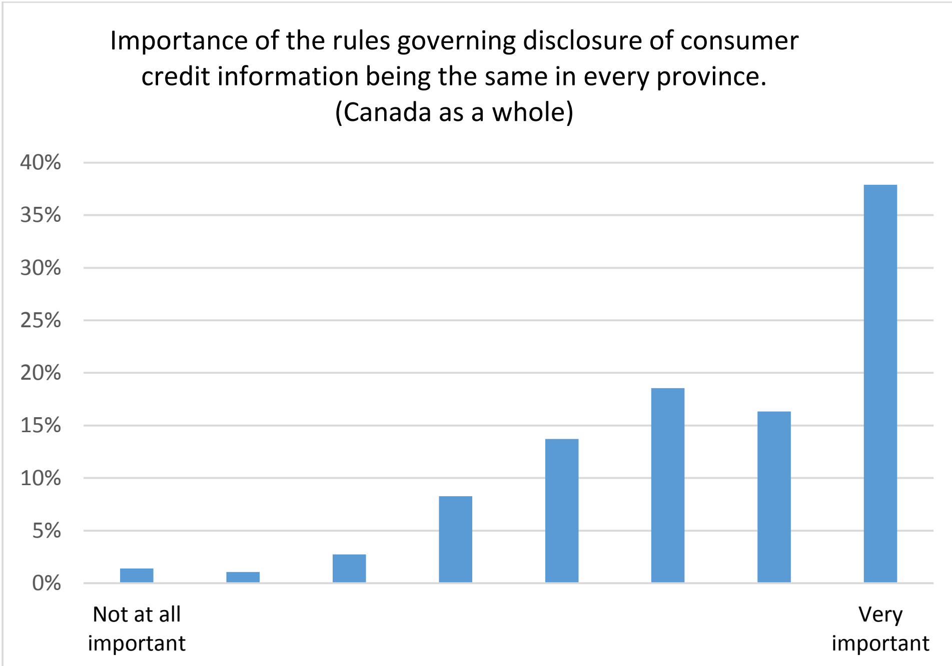
Subsequently, we asked if the rules governing the information to be provided to consumers with regard to consumer credit are the same in all provinces. A majority of respondents (51.3%) indicated that the standards on disclosure of the cost of credit are different. On the other hand, there is a variable statistical variation between regions. In fact, in Quebec, 67.8% of respondents said the rules are different while only 46.2% of respondents in the Prairies believed this to be the case. Moreover, a large number of respondents (38.7%) said they do not know the answer. This percentage is even greater in the Maritimes (49.7%).

We also asked consumers if they think it is important for the rules governing disclosure of the cost of credit to be the same in every province. Canadians believe that the same rules should apply across Canada. In response to the question "On a scale of 1 to 8, 1 being not at all important and 8 being very important, how important do you think it is that the rules governing the disclosure of the cost of consumer credit are the same in all provinces?" The vast majority replied that it is really important to have the same rules. The average obtained was 6.42 out of 8 (80.25%). We even found that 38% of respondents said it is very important to have the same rules in every province. Our expert conducted an ANOVA[136] variance analysis to determine whether there is a mean difference between provinces. The result we obtained was not significant, i.e. F (9, 2033) 0.902p=.518.

[136] The Analysis of Variance (ANOVA) is primarily intended to validate whether there is a statistically significant difference between the averages. In this case, a non-significant result indicates that there is no difference in the averages between the various provinces, and that we can conclude that all the provinces feel that it is equally important to have the same rules.

The following chart shows the distribution of responses for all respondents[137].

Chart 1



Furthermore, we wanted to know how much the respondents knew about the consequences of payment default for a loan that is contracted in another province. The first question was: If you buy a good in another province, and enter into a credit agreement with a merchant but are unable to make your payments regularly, does that affect your credit? The majority of respondents said that it would affect their credit report (75%). However, there was a statistically significant difference between the regions: 4.4% of Quebecers believed that this has no effect while 12.1% of Ontarians felt that way.

The second question concerned the collection agencies. The survey results show that almost half (49.5%) of respondents from every region of Canada did not know whether the rules governing the conduct of collection agencies are the same across Canada. Furthermore, 26.3% of respondents answered, yes, the rules are the same across Canada, while 24.2% answered no, they are not.

In sum, our survey shows that the majority of consumers do not know that the rules governing disclosure of credit and prohibited collection agency practices have been harmonized. It also shows that the majority of consumers want these matters to be harmonized.

[137] We observed more or less the same results for the other 1-8 type questions, except for question 30, which relates to cell phones. We will return to this point in the section on cell phones.

3. Legal warranties

The mass production of consumer goods increases the likelihood of manufacturing defects. A consumer who invests an often considerable amount of money in the purchase of a durable good will suffer a significant loss if the good suffers a defect that renders it unusable[138]. In such circumstances, it seems unacceptable that the unlucky consumer should have to bear the loss, hence the importance of the legal warranty[139].

Certain rules have been designed to prevent defective goods from being put on the market. However, such rules are inadequate if they are not supplemented by other rules enabling consumers to exercise their rights. Given the complexity and variety of goods available on the market, it is natural to expect that the manufacturers, who ensure their designs in accordance with their own standards, should also be responsible for them when they break down[140].

In Quebec, legal warranties are governed by the *Civil Code of Quebec* (CCQ) and the *Consumer Protection Act* (CPA). The other provinces are governed by common law, and in warranty-related matters, by the *Sale of Goods Ac*t (SGA).[141]. In addition, some provinces have legislated to provide consumers with more protection through their own consumer protection laws.

3.1 Problems Identified by the experts

Our experts are concerned about consumers' understanding of legal warranties and their ability to exercise their rights, especially when they do business with a merchant located in another province or state. Views on these topics differ, however, depending on whether the consumer resides in a civil law jurisdiction (Quebec) or a common law jurisdiction (all other provinces).

One source of concern for the experts in Quebec is that they consider that consumers are less well protected when they make purchases outside of the province. The experts in the other provinces, question whether the SGAs of each province, which are harmonized, provide adequate protection to consumers.

Some experts feel that all Canadians enjoy similar protection thanks to the SGAs while others want them to be better protected. Among these, some find it difficult to give consumers better protection while others see no problem doing so. These experts come mainly from other jurisdictions that already have laws to protect consumers in warranty-related matters.

3.2 The system of legal warranties in Quebec

In Quebec, there are three types of warranties that protect buyers: the legal warranty, the conventional warranty and the extended (or supplementary) warranty.

[138] Jacob S. Ziegel, "The Future of Canadian Consumerism" (1973) *Can. Bar Rev*. 191, 193
[139] *Supra* note 41, p. 91
[140] *Ibid.*
[141] In French: *Loi sur la vente d'objets*

The legal warranty is provided by both the CPA and the CCQ. It costs nothing and covers all equipment, whether rented or purchased from a merchant, even if there is no reference to it in the contract.

In consumer contract matters, it is the CPA that applies. Under the legal warranty provided by this law, products purchased must be in good condition, comply with what is stated in the advertisement and in the seller's pronouncements and must be able to be used normally for a reasonable period. Factors to consider with regard to the duration of the warranty are the type of product, its price, its quality and how it is used. For example, if a consumer buys a dishwasher for $800 and submits it to normal use, the dishwasher will be covered by the legal warranty if it breaks down after two years. Another example: on the packaging of an iron, it states that it will turn off automatically after 30 minutes, but it does not[142]; this too is covered by the legal warranty.

The conventional warranty is offered free by the manufacturer or retailer. It ensures the proper functioning of the property for a set period. It can be thought of as a warranty of good working order. For example, a consumer purchases a television worth $1200, and the conventional warranty offered by the manufacturer covers it for a period of one year. If the product breaks during this period, the manufacturer must replace the product or repair it at his own expense.[143]

The extended (or additional) warranty is defined in s. 1 (e.1) of the CPA[144]. This is a warranty offered to the consumer at additional cost. The guarantee may cover items in the conventional warranty or other items. It is often offered to consumers purchasing certain types of goods such as appliances, electronics, computers and automobiles. Because of the considerable profit margin involved, merchants are keen to offer these products to consumers[145].

In Quebec, the CPA requires that before offering an extended warranty, the merchant must inform the consumer of the existence of the legal warranty, both verbally and in writing, in the manner prescribed by the regulation. He must also inform the consumer of the term of the warranty. A merchant who does not provide the consumer with this information before talking about the extended warranty is deemed to have ignored an important fact, which is prohibited[146].

The extended warranty provides similar protection to the legal warranty, but it is obviously much more expensive. On the other hand, it is easier to enforce[147]. It is often pointed out to us that many merchants do not fulfill their obligations under the law in their everyday dealings and that consumers misunderstand the concept of legal warranties.

---

[142] *Supra* note 41, p.92 *et seq* , Union des consommateurs, "Adequacy of Legal Warranty Plans" Final Report presented to Industry Canada's Office of Consumer Affairs, June 2012 and "Coup d'œil sur la consommation", Option consommateurs, 2nd Edition, 2012

[143] *Ibid*.

[144] S. 1 (e.1) of the CPA states: " 'contract of additional warranty' means a contract under which a merchant binds himself toward a consumer to assume directly or indirectly all or part of the costs of repairing or replacing goods or a part thereof in the event that they are defective or malfunction, otherwise than under a basic conventional warranty given gratuitously to every consumer who purchases the goods or has them repaired"

[145] *Supra* note 41, p. 117 and Union des consommateurs, "Garanties prolongées: le consommateur en a-t-il pour son argent?" Final Report to Industry Canada's Office of Consumer Affairs, June 2007

[146] Ss. 228.1 (1) - (3) and 228 CPA, and supra note 142

[147] http://www.protegez-vous.ca/affaires-et-societe/garantie-legale-la-difficulte-cest-son-application.html

The CPA provides that the good must be used for the purpose for which it is normally intended, and for a reasonable period of time[148] talking into account the conditions of its use.[149] The legal warranty also provides that the property must conform to the representations made by the merchant and manufacturer, including those made in advertisements[150]. Furthermore, unless explicitly stated, replacement parts must be available for repair purposes[151].The CPA provides direct recourse between the final purchaser and the merchant. If there is a defect, neither the merchant nor the manufacturer shall plead that they were unaware of it[152].

The CCQ and the CPA are both intended to regulate the application of the legal warranty, but the first applies to all types of contracts, while the second applies only to consumer contracts, for which it offers broader protection. The consumer contract defined in s. 2 of the CPA is more extensive than the one defined in s. 1434 of the CCQ. Furthermore, the CPA is of public order, and is therefore impossible to renounce, while the application of the legal warranty provided for in the CCQ can be widened or diminished[153].

The CCQ and the CPA both contain durability provisions aimed at protecting consumers and ensuring that the goods they purchase will last for a reasonable time[154].The warranty provided by the CPA applies exclusively to movables, whether new or used. It protects not only the original purchaser, but also subsequent purchasers. The durability warranty applies if the product suffers from an unusual or serious defect, after the extinction of the fixed term legal warranty of good working condition provided in exceptional regimes, such as for automobiles, or if the property does not meet the criteria for a legal warranty of good working condition. The reasonable working life of the product is left to the discretion of the court, but the following should guide it in its decision: price, contract provisions and the conditions of use of the good[155].

The CPA also contains other provisions. Section 53, for instance, applies to the security warranty. It gives the consumer recourse against latent defects due to a breach of the warranty of use or the durability warranty[156].

Despite the fact that the legal warranty is codified, it is necessary to rely on case law to determine its duration for a specific product. In fact, the courts have ruled on this on numerous occasions. For example, they decided that a washing machine costing $1.000 is expected to last ten years, a plasma TV costing $2.999 is expected to last more than three years and that an Eclectus parrot should live 20 years[157].

Also, a merchant or a manufacturer cannot claim that they were unaware of the presence of a vice or defect or that they were unaware that the subsequent purchaser had a claim. Hence, the

---

148 These include the durability warranty, which we discuss later.
149 Ss. 37 and 38 CPA
150 S. CPA 40-42
151 S. 39 CPA and Union des comsommateurs, *supra* note 142, p. 22
152 S. 53 CPA and supra note 41, p. 106
153 S. 2 CPA., S. 1434 and 1732 CCQ and Union des consommateurs, *supra* note 151, p. 27
154 s. 38 CPA
155 Union des consommateurs, *supra*, note 152, pp. 40-42
156 S. 53, 37 and 38 CPA
157 Union des consommateurs, *supra* note 142, p. 39, *Côté v.*Sears, 2013 QCCQ 1839, Licatese *v.* Brick Warehouse, 2009 QCCQ 13461, Hobbs *v.* LG Electronics Inc., 2009 QCCQ 6854, Campagna *v.* Animalerie Dyno Inc., 2014 QCCQ 8149

CPA created an irrefragable presumption that cannot be rebutted by evidence to the contrary. In this regard, the CPA offers more protection than the CCQ[158].

The CPA provides remedies if the merchant fails to fulfill an obligation under the law[159].It lightens the burden of proof for the consumer seeking punitive damages. It allows the consumer to use testimonial proof against written proof, whereas the general rule under the CCQ is to limit this practice[160]. Moreover, the merchant can be fined from $600 to $15.000 for an individual and $2.000 to $100.000 for a corporation[161]. Consumers, meanwhile, may opt for the CPA or the CCQ system, whichever is most advantageous.[162].

3.3 The system of legal warranties in other provinces

3.3.1. The *Sale of Goods Act*

The other provinces are governed by common law, a regime in which jurisprudence plays a key role in the development and application of legal principles. In 1893, the UK codified certain rules, which led to the creation of the *Sale of Goods Act* (SGA)[163].It then export that law throughout the British Empire. In Canada, the SGA has been incorporated into provincial law via the model of the *Uniform Sale of Goods Act*, a law proposed at the Uniform Law Conference of Canada (ULCC). The SGA applies to all agreements, including consumer contracts, unless there is a specific provision in the law devoted to consumer protection.

The SGAs includes statutory (implied) warranties for the sale of goods and the provision of services. These warranties are either in the form of warranties or conditions. In either case, they are an obligation imposed on the merchant regarding the sale of goods. The main difference between them is in the remedies that are available in the event of breach or default. In the case of a warranty, the buyer does not have the right of refusal[164] and the contract cannot be renounced. On the other hand, the buyer may institute proceedings against the merchant in order to require the reduction or cancellation of the price plus interest for damages[165].In the case of a breach of a condition, the buyer may reject the product under the terms of the contract, and the contract will be rescinded. This is justified by the fact that conditions, unlike warranties, are considered to be the source of a contract.

Every provincial SGA has two types of statutory warranties. The first is related to the right of ownership, and is intended to protect the buyer against the illegal sale of the property and to provide compensation in the event of a breach (this is comparable to a guarantee against eviction). SGAs provide that the seller is entitled to proceed with the sale, the buyer will have

[158] Union des consommateurs *supra* note *142*, p. 41 and S. 53 (3) (4) CPA
[159] S. 272 CPA
[160] S. 263 CPA and 2862 CCQ
[161] S. 277 CPA
[162] S. 270 and 272 CPA
[163] To avoid confusion, we always use the English name for this law, even though it is translated in certain provinces.
[164] The right of rejection is comparable to the "*remise en état des parties*" meaning each party is bound to restore to the other party whatever was received
[165] http://ulcc.ca/en/home-en-gb-1/529-josetta-1-en-gb/uniform-actsa/sale-of-goods-act/640-sale-of-goods-act

quiet enjoyment of the property free from encumbrances in favour of third parties, except those declared to the buyer[166].

The second type of warranty - Quality and Fitness – comprises the obligations imposed on the seller with regard to the quality of the good, and its fitness to be used for the purpose for which it is intended. In principle, the SGA does not provide warranties when the quality or the conformity of the good sold by the seller is different from the normal use. However, there are exceptions. For example, the buyer may benefit from protection when the item purchased does not match the description provided by the seller in the context of his business dealings, and when, expressly or implicitly, the buyer made known to the seller the specific use for which he intended to use the product and relied on the seller's skill or judgment to decide whether he could use the product as he saw fit.

These conditions apply to certain types of sales. The SGA already provides that the product must match the description provided by the seller. This warranty covers not only all representations that are common to all consumers, but also to all representations made to each consumer. However, one can assume that the seller will not make representations on specific uses without these concerns being communicated to him beforehand. If the purchaser acquires a product for a particular purpose and informs the seller of this, either implicitly or explicitly, there will be an implicit condition of sale to the effect that the product will be reasonably fit for this special purpose[167].

One of the fundamental concepts of the SGAs is that of merchantable quality, the stipulation that a product will be fit for the use or uses that are normally made of it. A quality product is one that is in a condition that meets all legitimate expectations with regard to its description, its price and other relevant factors. It must also comply with standards and correspond to what is stipulated in the contract in terms of quantity and quality. Furthermore, the product must maintain its quality and usefulness for a reasonable period, all reasonable circumstances taken into account. Furthermore, replacement parts and servicing must be available for a reasonable period. Despite the absence of a precise definition in the SGAs, it appears to be an agreement that applies to products that are the substance of a contract, yet the agreement is collateral to the same substance as the contract. Consequently, the stipulation of merchantable quality opens the door to a claim for damages, but does not give the right to refuse the goods or to treat the contract as repudiated. The doctrine considers the warranty to be part of the contract, without constituting a determining condition[168]. The concept of condition in the SGA has been defined over time by jurisprudence.

Moreover, despite the tendency in common law to favour the freedom of the parties, the primacy of the contract and contractual freedom, case law has contributed several nuances, especially regarding the criterion of fundamental breach. The parties are free, when they contract, to exclude warranties or parts of warranties. Such exclusion clauses do not, however, release the contractor from his obligations in the event of a fundamental defect in the product that is the substance of the contract. Under the SGA, the principle of fundamental breach cannot be applied when the obligations of the seller, such as the service or the good to be

[166]Union des consommateurs, *supra* note 151, p. 23
[167] G.H.L. Fridman, *Sale of Goods in Canada,* Sixth Edition, 2013; Carswell and Union des consommateurs, *supra* note 142, p. 24,
[168] *Ibid*.

provided, are completely different from what had been agreed upon[169]. Furthermore, it is permissible to exclude the application of the SGA by a contractual clause in cases where the provincial laws do not so prohibit. Obviously, if the provincial law incorporates the principles of the SAG, the question does not arise.

3.3.2 The additional statutory laws

In matters of legal warranties, the SGAs have been harmonized, whereas provincial consumer protection laws have not. Some provinces have legislated to give consumers greater protection with regard to legal warranties, these are: New Brunswick, Manitoba and Saskatchewan. Their laws have wide application. According author G.H.L. Fridman: “while preserving the existing common law, [they] appear to have broadened the scope and effect of statement relating to consumer goods sold by a retail seller, as defined by those Acts, to a consumer”[170].

Some provinces have incorporated SGA notions within their consumer protection laws. No one who resides in those provinces can renounce the warranties provided in the SAG, since it is a law of public order. In Ontario, s. 9 (2) of CPA-2002 states that the service provider, under a consumer agreement, “is deemed to warrant that the services supplied under a consumer agreement are of a reasonably acceptable quality.” S. 9 (3) specifies that the provisions of the SGA shall apply and that any agreement that negates or varies the application of this law in a consumer contract is void[171].Moreover, the application of the CPA stipulates that the warranties provided in the SGA apply to leased assets and services rendered[172].

Nova Scotia’s *Consumer Protection Ac*t states that, in cell phone contracts, no merchant may request charges for the repair of goods under warranty without specifying the type of warranty in question. The Act prohibits the merchant from charging for repairs to a product covered by a warranty[173]. It also reiterates[174] the SGA principles regarding goods supplied free of charge[175].Furthermore, with regard to automobile sales, it stipulates that express warranties are deemed to form part of the sales contract.

The territories have incorporated legal warranties within their consumer protection laws; this prevents consumers from renouncing the warranties[176].

3.3.3 New Brunswick

In 1980, the *Consumer Product Warranty and Liability Act (*CPWLA) came into force[177]. This law regulates legal warranties and liability for consumer products; services are not included. In our analysis, we shall consider only the section on legal warranties. For a good to be considered a

[169]Union des consommateurs, *supra* note 142, p. 50
[170] G.H.L. Fridman, *supra* note 167
[171] S. 9 (1) -(4) CPA-2002
[172] S. 9 (2) CPA-2002 and *Szilvasyv. Reliance Home Comfort Limited Partnership* (Reliance Home Comfort), 2012 ONCA 821 (CanLII)
[173] Ss. 25R (a) (b) and 25 AI (a) CPA-NS
[174] S. 26 (3) (a) (b) CPA-NS
[175] S. 26 (3) (a) (b) CPA NS
[176] S.CPA-RSY 58, S. 70 SNWT CPA and CPA s. 70 SNWT (nu)
[177] *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1. (Hereinafter CPWLA)

consumer product, it must normally be for personal, family or household use. The scope of the law is broad and extensive. The term "distributor," defined as "a person who provides consumer products in the normal course of his business," covers the producer, the processor, the manufacturer, the importer, the wholesaler, the retailer and the dealer. The Government is also subject to this law[178].The law is of public order and, consequently, it is not possible to renounce it, except as specifically provided in the law[179].

The CPWLA provides two types of warranties: express and implied. The first relates to any oral and written statement about the product given to the buyer as well as to all or a portion of the population about a consumer product. In order for a seller to be bound by an oral statement, the consumer has to make the purchase on the basis of this statement, and it has to be a statement that is reasonable for him to rely on. In addition, the statements of an employee are binding on the seller, unless the employee was not acting within the scope of his duties when he made his statements[180]. Implied warranties, meanwhile, are not related to statements made by the seller, but to the expectations of the buyer, whether or not they are declared to the seller.

The CPWLA also protects the consumer against any defects in title to the property. Accordingly, the seller warrants that he has the right to sell the property, that the property is not encumbered by any right or privilege of whose existence the buyer is aware, and that the buyer shall enjoy quiet possession of the property.

Implied warranties protect the consumer with the assurance that the product is new and unused[181].

The CPWLA also provides an implied warranty of quality and fitness[182].The consumer can benefit from this warranty if he knows about the defect, if the seller told him about it or if an examination of the product in the case of used goods or a sample would have enabled him to discover it. Finally, the Act provides a tacit warranty of the durability of the product[183].

In the event of a breach of a warranty provided in the Act, law, the consumer has recourse to remedies (which are also available to commercial buyers). To avail himself of these remedies, he must first make the defect known to the seller and give the latter a reasonable opportunity to rectify it. If he does not, the buyer may refuse the product[184] and terminate his contract. If the seller takes back the product, the costs of returning it shall be at the seller's expense.

In sum, the law explicitly defines the protections afforded by the legal warranties, prevents the consumer from renouncing them and eases the burden of proof in the performance of his recourse against the seller. Thanks to the CPWLA, consumers in New Brunswick may be better protected than their counterparts in other provinces where the only protection is the SGA.

[178] S 1 (1), 1 (2) 1 (1), 2 (5) CPWLA.
[179] S. 2 (3) and 24, 25 and 26 CPWLA
[180] S. 4 (1) - 4 (4) CPWLA
[181] S. 9 CPWLA
[182] S. 10 CPWLA defines implied warranty as: "[the assurance] that the product is of such quality, in such state or condition, and as fit for the purpose or purposes for which products of that kind are normally used as it is reasonable to expect having regard to the seller's description of the product, if any, the price, when relevant, and all other relevant circumstances."
[183] S. 8 (1) (2) and CPWLA 1S. 8-12 CPWLA and Union des consommateurs, *supra* note 142*, p.* 59
[184] Ss. 16 and 17 CPWLA, *supra* note 177

3.3.4 Saskatchewan

Saskatchewan has chosen to legislate with regard to legal warranties through the provisions of its *Consumer Protection and Business Practices Act* (CPBPA-SS). The scope of this law applies to people who buy consumer goods. It also applies to non-profit organizations, provided that the contract is for a consumer good[185]. In addition, the Act provides that the buyer's rights can be transferred to any subsequent buyer[186].

The express warranties are defined in s. 16 of the Act. This section states that any promise, representation or statement about the quality, quantity, condition, performance or efficiency of a consumer product constitutes an express warranty. The legislator does not distinguish between verbal and written statements. In addition, the responsibility is incumbent upon the merchant, defined as the seller or manufacturer, or an agent or employee of either of these[187].

The legislator stipulates that it is not possible to limit, exclude or disclaim the legal obligation laid down in s. 19. The Act also provides that the seller is bound by the express warranties made in advertisements, unless the seller has explicitly informed the consumer that he (the seller) did not offer such warranties. On the other hand, the seller shall not be bound by the statements that are made in an advertisement by a manufacturer unless expressly or tacitly, he endorses such statements. Nevertheless, the seller shall be bound by the manufacturer's labelling[188].In addition, the legislator lightens the burden of proof for the buyer by allowing extrinsic evidence in contesting written testimony[189].

The statutory warranties are set forth in s. 19 CPBPA-SS. It is not possible to renounce them[190]. They provide that the seller has the right to sell the property that the property is free from any charge to the benefit of a third party, except for charges declared prior to the sale, and the buyer shall enjoy quiet possession of the product. Moreover, at a sale by description, the seller must guarantee to the consumer that the product complies with the description he has given. The consumer also benefits from the statutory warranty that the property must be of acceptable quality, except in the case where a defect is brought to the attention of the buyer before the contract is concluded or in the case of an apparent defect that could have been discovered during the examination of the product[191].

The statutory warranties also protect the consumer when the seller implicitly provides a warranty of use, e.g. if the consumer had informed the seller, either explicitly or implicitly, of the use he intended to make of the product (whether or not such use is usual). However, the seller will not be bound this statutory warranty if the circumstances surrounding the sale show that the consumer did not rely on the seller's skill competence or judgment or that it would be unreasonable to rely on the latter[192].

---

[185] S. 10 (1) (d) (i) - (ii) CPBPA-SS
[186] Ss. 12, 19 and 21 CPBPA SS
[187] Ss. 16 (2) and 18 CPBPA SS
[188] S. 18 (1) - (3) CPBPA-SS
[189] S. 17 CPBPA-SS
[190] S. 16 (3) CPBPA-SS
[191] S. 19 (b) CPBPA-SS
[192] S.CPBPA 19-SS

The statutory warranties provide that a consumer is entitled to expect that the product sold is of the same quality as the sample[193]. They also provide that the product and its components must be durable for a reasonable period given the circumstances of the sale, including the description of the nature of the product, the price paid and the express warranties given by the seller or manufacturer[194]. Finally, the seller must guarantee to the consumer that if the property requires maintenance, replacement parts will be available for a reasonable period. The CPBPA-SS provides no mechanism for evading this obligation[195]. Furthermore, with regard to sales by description, the legislator states that it is not possible to omit from the statutory warranties the fact that the sale is of a specific consumer product.

In cases of breach of warranty, the law provides for three types of remedies. These vary depending on whether the breach is substantial and not remediable or substantial and remediable. S. 10 (c) of the Act defines what constitutes a breach of a substantial nature. Furthermore, the legislator states that the breach is remediable and not substantial if the seller remedies the defect or if it is possible to award damages for it[196]. A breach is substantial and not remediable if the consumer rejects the consumer product or if he could reject the product and obtain compensation.

In the event of a breach of an express or statutory warranty of a substantial and irremediable nature, the consumer can refuse the product, which also entitles him to a reimbursement of the price paid and damages. The consumer may also resort to remedies that are provided for non-substantial and remediable braches, or the seller or the manufacturer may remedy the breach without charge, which would allow the consumer to retain the property[197].

If the breach of an express warranty or statutory warranty is remediable and not substantial, the consumer can also obtain compensation for damages. The Act specifies that the person responsible for the breach is required to remedy it and must do so within a reasonable time, without incurring expense for the consumer. If the manufacturer or the seller does not remedy the breach within a reasonable time, the consumer is entitled to enforce the guarantee and also to require repayment from the seller or manufacturer. This reasonable period within which the seller or manufacturer shall be required to remedy the breach begins as soon as the latter has the product in their possession. In addition, to exercise his right of rejection, the consumer must also act in a reasonable time. Finally, the law recognizes the possibility of the subsequent purchaser bringing an action against the manufacturer or seller[198].

In the general provisions of the CPBPA-SS, s. 93 states that the consumer has the right to claim exemplary damages for a breach of the law or for a prohibited practice. Moreover, a consumer who brings an action for a breach of warranty cannot be ordered to pay costs even if the action is unsuccessful, unless the action is frivolous[199].

[193] S. 19 (f) CPBPA-SS
[194] S. 19 (g) (i) - (iv) CPBPA-SS
[195] S. 19 (1) (h) CPBPA-SS
[196] S. 28 (a) (i) (ii) CPBPA SS
[197] Union des consommateurs, *supra* note 142, p. 71
[198] Union des consommateurs*, supra* note *142*, pp. 71- 72
[199] S. 37 (1) (2) CPBPA-ss

3.3.5 Manitoba

Manitoba has also chosen to legislate on legal warranties through its *Consumer Protection Act* (CCSM). The scope of the section devoted to legal warranties extends to all consumer contracts related to the retail sale or hire of objects[200].The CPML is of public order and consequently, its application cannot be waived[201].The system of legal warranties in Manitoba provides for two types of warranties: statutory (implied) warranties and express warranties.

The statutory warranties are defined in s. 58 of the Act. They include the seller's ability to sell the product, or in the case of a credit sale, the right to consent to the sale or lease of the product. This right exists as of the time of transfer of ownership. The seller must ensure that the buyer will have free use of the product and that the product is free from encumbrances in favour of a third party (unless the contrary is agreed to in writing), that the product is new (unless otherwise indicated) that the product is of merchantable quality and that the description of the product is correct. Other conditions apply when goods are sold by sample[202].The interpretation of s. 58 follows the common law interpretation[203].Moreover, s. 58 (6) provides a guarantee of quality of services rendered, unless otherwise agreed.

The express warranties, in turn, are defined in s. 58 (8) of the Act. This section states that any oral or written statement made by the vendor or by a third party on behalf of the seller regarding the quality, condition, quantity, performance or efficiency of goods or services that is either contained in an advertisement, or made to the buyer, shall be deemed to be an express warranty in respect of the goods or services[204].

This law provides three possibilities of recourse with regard to legal warranties. The first gives the buyer the right to ask the seller to remedy the defect by repairing the product. In this case, the seller must give the buyer a written report which details everything that has been done to correct the defects[205]. Section 58.1 provides that the seller is liable for any defect in the warranty under the law and the contract. The seller is also responsible for all expenses incurred in repairing the product under any warranty given by himself, a third party or the manufacturer. The Act provides that the buyer can submit any dispute to the mediation service offered by the Consumer Protection Office of Manitoba[206].

The CCSM also provides for administrative penalties. In fact, if an authorized person is of the opinion that the seller has contravened the provisions of the law, a maximum administrative fine may be imposed of $5.000 for an individual and $20.000 for a legal person[207].

Finally, the CCSM provides recourse to criminal law. Anyone who is convicted of breaking the law can be ordered to pay a fine of $300.000 or, if the amount received by the defendant is

[200] S. 58 (1) CCSM
[201] S. 96 CCSM
[202] Ss. 58 (1) (a), (b), (c), (d), (e), (f), (g) and (h) CCSM
[203] Union des consommateurs, *supra* note *142*, p. 74
[204] S. 58 (8) CCSM
[205] S. 58 (9) CCSM
[206] S. 58.1 CCSM
[207] S. 136 (2) CCSM

more than $300.000, a fine equivalent to three times the amount received as a result of the offense and up to 3 years' imprisonment, or both[208].

3.4. Survey results: Canadians' views on harmonizing legal warranty standards

In our survey, we attempted to determine if consumers are aware of their rights when a consumer product breaks after the manufacturer's warranty has expired. We devised three scenarios.

Scenario I
In the first scenario, a consumer buys a product, in person, in another province. It breaks after the manufacturer's warranty is over, and the consumer did not purchase any additional warranty. Does the buyer have any protection? Where does this protection come from?

It was the Quebecers who considered themselves most protected when purchasing products in another province, even if the product breaks a few months after the manufacturer's warranty expires. In fact, over 40% (40.5%) of respondents in Quebec said that they were protected by the law of the province where they made their purchase, whereas respondents in other regions did not believe they were protected (see Table 6). On average, only 19.5% of respondents believed they were protected.

Table 6

a- Analysis by region

	Maritimes	**Quebec**	**Ontario**	**Prairies**	**British Columbia**	**Total Canada**
No, the consumer is not protected	50.4%	16.8%	42.0%	47.8%	49.8%	40.4%
Yes, the consumer is protected by laws of his province	4.6%	8.7%	11.8%	9.8%	8.3%	8.6%
Yes, the consumer is protected by the laws of the province where the purchase was made	11.0%	40.5%	16.3%	13.7%	12.0%	19.5%
Yes, the consumer is protected by both: that of his province and the one where the purchase was made	5.4%	10.0%	6.4%	4.4%	6.1%	6.6%
TOTAL YES	**21.0%**	**59.2%**	**34.5%**	**27.9%**	**26.4%**	**34.7%**
I don't know	28.6%	24.1%	23.5%	24.3%	23.8%	24.8%

Scenario II

[208] S. 136.1 (1) and ss. CCSM

In the second scenario, a consumer buys a product, in person, in his own province. This product breaks when the manufacturer's warranty has expired and the consumer did not purchase an additional warranty. Does the buyer have any protection? The purpose of this question was to determine whether consumers were aware of the law their province. We conducted an analysis by region (see table 7-a). We then did a by-province analysis for Saskatchewan, Manitoba and New Brunswick (see table 7-b); these provinces have a more explicit warranty regime than the SGA.

Tables 7

a- Analysis by region

	Maritimes	**Quebec**	**Ontario**	**Prairies**	**British Columbia**	**Total Canada**
No, the consumer has no recourse	63.7%	32.8%	57.6%	64.7%	69.3%	56.7%
Yes, the consumer has a recourse provided by the laws of his province	14.4%	60.2%	25.1%	17.1%	16.7%	28.0%
I don't know	21.9%	7.0%	17.3%	18.2%	14.0%	15.3%

b- Analysis of the provinces with a statutory regime

	Manitoba	**Quebec**	**Saskatchewan**	**New Brunswick**	**Total Canada**
No, the consumer has no recourse	63.2%	32.8%	68.9%	69.8%	56.7%
Yes, the consumer is protected by the lawsof his province	17.1%	60.2%	14.9%	13.5%	28.0%
I don't know	19.7%	7.0%	16.2%	16.7%	15.3%

An even higher proportion of Canadians believe that there is no protection in such circumstances (56.7%) (see table 7-a). What is even more interesting is that a large proportion of respondents residing in a common law province that provides additional statutory protection believe that they are not protected (see Table 8b). In fact, a significant proportion of residents of Manitoba (63.2%), Saskatchewan (68.9%) and New Brunswick (69.8%) believe that they are not protected.

In contrast, Quebec residents do believe that they are protected in such circumstances. In fact, (see table 7-a), 60.2% of Quebec consumers say they are protected, as only 28% of other Canadians feel that way. The Quebecers' feeling of being protected is similar to their feeling about purchases made in another province (59.2%) (see table 6-a). Quebecers therefore see little difference depending on place of purchase.

Scenario III

In the third scenario, a consumer purchases a product, online, from a supplier in another province. The product breaks at the end of the manufacturer's warranty and the consumer did not buy an extended warranty. Does he have consumer protection?

Tables 8

a- Analysis by region

	Maritimes	**Quebec**	**Ontario**	**Prairies**	**British Columbia**	**Total Canada**
No, the consumer has no recourse	62.1%	48.3%	53.6%	57.4%	66.2%	57.2%
Yes, the consumer is protected by the laws of his province	3.9%	7.0%	11.3%	6.6%	6.9%	7.1%
Yes, the consumer is protected by the laws of the province where the purchase was made	6.1%	17.7%	10.4%	8.1%	6.4%	10.0%
Yes, the consumer is protected by the laws of both provinces: his own and where he made his purchase	4.4%	4.6%	2.5%	3.6%	2.5%	3.6%
TOTAL YES	**14.4%**	**29.3%**	**24.2%**	**18.3%**	**15.8%**	**20.7%**
I don't know	23.5%	22.3%	22.3%	24.3%	18.1%	22.1%

The answers vary by province (see table 8-a). Hence, among consumers who reside in a province with an additional statutory regime, Quebecers are least likely to think they are not protected (48.3%), followed by Ontario (53.6%). Respondents who believe they are protected live mainly in the Maritimes (62.1%) and British Columbia (66.2%). The percentage of people in the Prairies who believe they are not protected corresponds to the Canadian average (57.4%),

Table 8

b - Analysis of provinces having a statutory protective scheme

	Manitoba	**Quebec**	**Saskatchewan**	**New Brunswick**	**Total Canada**
No, the consumer has no recourse	52.1%	48.3%	62.2%	68.8%	57.2%
Yes, the consumer is protected by the laws of his province	6.0%	7.0%	5.4%	5.2%	7.1%
Yes, the consumer is protected by the laws where the purchase was made	8.5%	17.7%	8.1%	4.2%	10.0%
Yes, the consumer is protected by the laws of both provinces: his own and where the purchase was made	4.3%	4.6%	1.4%	1.0%	3.6%
TOTAL YES	**18.8%**	**29.3%**	**14.9%**	**10.4%**	**20.7%**
I don't know	23.0%	22.3%	23.0%	20.8%	22.1%

The survey (see table 8-b) shows that Saskatchewan (62.2%) and New Brunswick (68.8%) have the highest proportion of consumers who say they do not feel protected. Consumers in Quebec, with 29.3%, and Ontario, with 24.2%, are most likely to believe they enjoy some legal protections (see table 8a). Also, consumers in Ontario who responded that they were protected were not necessarily wrong, since the *Consumer Protection Act* grants certain warranty protections that prevent the consumers from waiving the warranties provided under the SGA.

However, consumers perceive that the laws protecting them differ depending on whether the purchase is made in person or online. Just over 20% of respondents did not know whether they are protected or not.

4. Class actions

Class actions have existed in Canada since 1978, when the first law was enacted in Quebec[209]. In the United Kingdom, a similar action, through the courts of equity, has existed since the 17th century[210].It was only in 1992 that a second law was enacted in Ontario, followed by British Columbia in 1996[211].Today, all the provinces, except for Prince Edward Island and the territories, have adopted class action legislation.

In the last 20 years, class actions have played an increasingly important role in our Canadian judicial system[212]. Class actions allow several persons having a similar cause of action to commonly institute proceedings, in accordance with the criteria established by law, against one or many defendants.

Class actions have three objectives. First: *to improve judicial efficiency.* By aggregating similar individual actions, class actions serve judicial economy by avoiding unnecessary duplication in fact-finding and legal analysis. Second: *to improve access to justice*. Class actions allow fixed litigation costs to be divided over a large number of plaintiffs. Third: *to achieve behaviour modification*. Class actions aim at ensuring that actual and potential wrongdoers[213] do not ignore their obligations to the public[214] .

In many situations, if class actions did not exist, consumers would have only theoretical rights. The low value of their claims, the difficulty of obtaining access to court and the low propensity of the average consumer to institute proceedings to resolve a dispute would result in very few consumers filing an action in court. Class actions counter systemic inequalities and compensate damages that otherwise would not be compensated[215]. By increasing access to justice and by allowing small claims to be aggregated, class actions induce merchants to modify their behaviour[216]. It is not surprising that a large proportion of class actions are rooted in consumer law. In 2009, a Canadian study revealed that 66% of class actions are related to consumer

209 Pierre Claude Pierre-Claude Lafond, “Le recours collectif et la loi sur la protection du consommateur: complicité, unité, complémentarité,” *The Canadian Class Action Review,* 2012-2013, vol. 8, pp. 3-23

210 Uniform Law Conference of Canada, Civil Law Section, *Report of the Uniform Law Conference of Canada's Committee on the National Class and Related Interjurisdictional Issues: Background, Analysis and Recommendations*, Vancouver, March 2005 and *Western Canadian Shopping Centre Inc*. *v. Dutton* [2001] 2 S.C.R. 250

211 Honourable Frank Iacobucci, “*What is Access to Justice in the Context of Class Action?*” 2011, vol. 53, S.C.L.R. (2d) 17-30

212 Canadian Bar Association, National Task Force on Class Actions, *Consultation Paper: Canadian Judicial Protocol for the Management of Multijurisdictional Class Action,* Ottawa, June 2010

213 This term was used by Chief Justice Beverly McLaghlin in *Western Canadian Shopping Centre Inc*. *v. Dutton* [2001] 2 S.C.R. 250

214 *Western Canadian Shopping Centre Inc*. *v. Dutton* [2001] 2 S.C.R. 250 and Janet Walker, *Class Actions in Canada: Cases, Notes and Materials,* Walker & Watson, Toronto, Emond Montgomery Publications, Toronto, 2014, chapter 1 Craig jones and Janet Walker, “Introduction: Class Proceedings”

215 *Supra* note 209

216 John Kleefeld,”Homo Legislativus: Missing Link in the Evolution of “Behaviour Modification*”*?” 2011, 53 *S.C.L.R.* (2d) 169-217 and Janet Walker, *Class Actions in Canada: Cases, Notes and Materials,* Walker & Watson, Toronto, Edmond Montgomery Publications, Toronto, 2014, chapter 8, Michael Rosenberg, “*Chapter 8: Consumer Protection and Product Liability.*

protection[217]. Class actions give teeth to consumer rights[218].This is probably why, since the beginning, there has been such a close relationship between class actions and consumer protection. The structure of the one perfectly complements the goals of the other[219].

4.1. Problems identified by the experts

During the interview, most experts who discussed class actions were concerned that not all provinces had intervened to limit clauses restricting consumers' access to courts or clauses that limit access to class action proceedings. These clauses also limit the jurisdiction of the court or force consumers to file their action in a jurisdiction other than their own. The experts interviewed were also concerned about variances in provincial legislation with respect to cost awards. These differences may have significant consequences for consumers, as the financial impact of a defeat in court can vary greatly depending on the jurisdiction in which the class action was filed.

The experts also discussed multi-jurisdictional class actions at length. The main issue was the lack of uniformity between the provinces with regard to non-resident members of the national class. The reason for this is that some provinces have adopted an opt-out regime, while others favour an opt-in regime. In such a context, how can one ensure that Canadians have the same rights?

The experts were also worried about several actions being filed in various jurisdictions when a cause of action arises across Canada. Multiple actions can be problematic for the administration of justice as there is a risk of contradictory decisions being rendered on similar cases.

In either case, the plaintiffs can be affected negatively. The uncertainty of the class can lead the number of plaintiffs to be reduced, which in turn could reduce the economies of scale. This situation is also negative for defendants, as it increases their legal fees and their uncertainty.

In addition, some experts mentioned issues with the Canadian class action database. It seems that some attorneys are slow in registering their action in the database, which may lead to duplications of proceedings.

4.2. Multijurisdictional class proceedings and various provincial legislations

In the current economic context, an event that occurs in one province can often have an impact all across the country. This is the case for instance, when a defective good is sold to consumers in different parts of the country. In Canada, the concepts of national class and multijurisdictional class actions came into being in the 1990s. At that time, the goal was to extend the Ontario legislation so that other provinces that did not have their own class action legislation could benefit from it. Since *Dutton V. Western Canadian Shopping Center Inc.*, nine provinces have enacted class proceeding legislation[220].

[217] Jasminka Kalajdzic, "Consumer (in)Justice: Reflections on Canadian Consumer Class Actions," *Canadian Business*. 2001, vol. 50, *Canadian Business Law Journal*
[218] As mentioned by Pierre Claude Lafond, *supra* note 209
[219] *Ibid.*
[220] Dutton, *supra* note 210, Craig Jones and Janet Walker, *supra* note 214, and *supra* note 211

Multijurisdictional class actions achieve multiple objectives. They are useful for the administration of justice. They also favour judicial economy by eliminating the multiplication of the determination of facts and law and the preparatory measures for the same case. They also prevent contradictory judgments[221].

They are also useful for the plaintiffs. For instance, the presence of the largest possible group enables them to maximize pressure on defendants for potential compensation, which is a powerful incentive to reaching a settlement. Also, they permit better access to justice by splitting costs between the members of the class.

Finally, class actions are also useful for the defendants, since they aggregate similar multiple causes of action into one class, regardless of whether the members do or do not live in the jurisdiction where the class proceeding was filed. A single action helps reduce costs.

These proceedings allow defendants to confront all potential plaintiffs in one action. They can settle the dispute with a certain degree of certainty. All of the benefits listed above are entirely within the objectives established in the Supreme Court trilogy of economy of justice, accessibility to justice and behaviour modification[222].

2005 saw the publication of the *Report of the Uniform Law Conference of Canada's (ULCC) Committee on National Class and Related Interjurisdictional Issues: Background, Analysis and Recommendations.* This report concluded that it was important to give more weight to strategic questions related to abstainers from the national class. It recommended allowing non-resident members to be included within the national class, unless they decided to opt-out[223]. The ULCC no longer seemed as concerned about the constitutional issue of non-resident class members and the opt-out regime as it had been back in 1996.

According to Craig Jones:

> In an opt-in action, passive claimants drop through the cracks, and not just to their own disadvantage: the value of their claims and the costs of their injuries do not factor into the assessment against the defendant, diminishing deterrence. Moreover, the claims-value they represent does not contribute to the economy of scale of the litigation, and therefore per-claim litigation is increased; as a result, as explained earlier, both global settlements and per-claim compensation will be decreased. As such, the decision not to opt-in (or even the failure to make the decision) does not simply deprive the passive class member of compensation, it also diminishes the recovery if his or her fellow class members who do not opt in.[224]

In 2006, the ULCC wrote recommendations regarding the national class. It sought to clarify the consequence of a judgment at the certification stages. It recommended that when a certification motion is granted, a notice should be given to all the attorneys in different jurisdictions who are

[221] Dutton, *Ibid*.
[222] Dutton, Ibid and Craig Jones and Janet Walker, *supra* 214
[223] Uniform Law Conference Of Canada, Civil Law Section, *supra* note 210
[224] *Ibid*. and Craig Jones, "The Case for the National Class," 2004, 1 Can. Class Act. Rev. 29, pp. 40-41

invested in similar class actions[225]. Moreover, the ULCC emphasized the implementation of uniform rules and the creation of a database. The main goal was to keep the courts and attorneys apprised of the developments in other jurisdictions and to avoid conflicts through the principles of judicial comity[226].Furthermore, in this report, the ULCC recommended the establishment of a database to avoid the duplication of actions.

In 2011, the Canadian Bar Association published *Consultation Paper: Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions*. The purpose of this protocol is to use the various provincial class action legislations and to create a system in which various actions, which have a risk of overlapping, can continue their course of action in a more orderly fashion. One of the solutions envisioned by the protocol was to create a list of attorneys involved in these types of files. The goal of the protocol was to foster cooperation among the courts with regard to case management. It also sought to allow joint-settlement hearings[227].

Despite attempts at uniformization, many differences still exist with regard to multijurisdictional class proceedings, this ultimately has an impact on the rights of consumers who may be part of these class actions.

4.3. National class and non-resident class members

The first difference in the various provincial legislations concerns members of the national class who are not residents of the provinces in which the class action was filed. The provinces can be divided into two groups: those that have an opt-in option for non-residents and those with an opt-out option for non-residents.

When class actions are filed in an opt-in jurisdiction, non-resident class members who want to be part of this action must ask to be included. Residents of the province are automatically included. If resident members wish to be excluded from the action, they can ask to be removed from the class. The following provinces have adopted an opt-in regime for non-resident class members: British Columbia, Alberta, New Brunswick and Newfoundland and Labrador. Similarly, in 1996, the ULCC favoured this option for non-resident class members[228].

The case of British Columbia merits further study. When it comes to certifying a national class, this province follows a criterion similar to Ontario's (see below). In *Harrington*, the Court of Appeal recognized the competence of British Columbia courts to hear cases involving non-resident class members because there exists an issue common to all plaintiffs, which is a sufficient connection for the Court to establish its competence[229]. The Court based its analysis

[225] We are referring to the notion of common issues. As such, Ontario courts have found to be sufficient the existence of common issues between the resident members and the non-resident members in order to have jurisdiction in a multi-jurisdictional class action. (…) Thus, Ontario courts decided that non-resident members can legitimately be included within the national class when they have the same claim against the defendants than the resident members. Even if their claim is based on facts that occurred outside of the province-[translation], Daniel Belleau, Maxime Nasr and Alexandra Scott, "Les recours collectifs nationaux au Quebec-Mais de quelle nation s'agit-il?" *Développements récents en recours collectifs 2009*, vol. 312

[226] Uniform Law Conference of Canada, Civil Law Section, *Supplementary Report on Multi-Jurisdictional Class Proceedings in Canada,* The Special Working Group on Multi-Jurisdictional Class Proceedings, Edmonton, 2006

[227] *Supra* note 212

[228] Craig Jones and Janet Walker, *supra* note 214

[229] *Harrington v. Dow Coining Corp.*, 2000 BCCA 605 (CanLII)

on the Supreme Court findings in *Hunt*, in which it was decided that in order to determine the appropriate forum, it is sometimes necessary to look beyond traditional rules when the latter are insufficient to ensure order and equity. An example of this would be if a manufacturer sells a defective product to a given consumer, the action can be instituted in any province in which the consumer purchased the product[230].

In *Harrington,* the Court had to determine the fate of non-resident class members. Given that the province had favoured an opt-in regime, in which non-residents opt into the class action, they admitted that their claim was similar to that of resident class members[231].This act is equivalent to non-resident class members submitting to the jurisdiction of the Court.

Other provinces have enacted an opt-out regime for non-resident class members. Non-resident class members are included in the national class without having to ask to be included. At this stage of the proceedings, there is no difference in status between resident and non-resident members of the class. The following provinces have adopted an opt-out regime for non-resident class members: Quebec, Ontario, Manitoba and Nova Scotia. In 2008, Saskatchewan modified its legislation and adopted an opt-out regime for non-resident class members.

The situation in Ontario merits further study. The Ontario legislation does not address the fate of the national class. However, the absence of a mention in the law is not to be interpreted as a prohibition against certifying a national class but rather a possibility of doing so. Since the 1990s, the Ontario courts have accepted the inclusion of non-resident class members[232]. As such, the Ontario courts have been welcoming to national classes[233]. Consequently, Ontario became the jurisdiction of choice for certifying national classes. If members of the class want to be excluded, they must ask to be removed[234].

To determine whether individual claims can be aggregated there must be a real and substantive connection between the members. It seems that when there is a substantive connection between the members of the class and the province called upon to settle a dispute, this is sufficient to demonstrate the existence of common questions between resident and non-resident class members in order for the court to have the jurisdiction to hear the non-resident class members' claim[235]. The Ontario courts based their liberal interpretation of territorial jurisdiction on a Supreme Court judgment[236].

[230] *Ibid*. and Daniel Belleau, Maxime Nasr and Alexandra Scott, *supra* note 225
[231] *Harrington, supra* note 229
[232] *Nantais v. Telectronics Proprietary (Canada) Ltd.*, 1995 CanLII 7113 (ON SC), *Carom v. Bre-X Minerals Ltd*., 1999 CanLII 1478 (ON SC) and Marie Audren and Emmanuelle Rolland, "Overview of the Canadian Class Action," in *National Symposium on Class Actions: Recent Developments in Quebec, Canada and the United States*, 2014
[233] Daniel Belleau, Maxime Nasr and Alexandra Scott, *supra* note 225
[234] Uniform Law Conference of Canada, Civil Law Section, *supra* note 210 and *Dutton*, *supra* note 210
[235] Daniel Belleau, Maxime Nasr and Alexandra Scott, *supra* note 225 and *Boulanger v. Johnson & Johnson Corp.*, 2003 CanLII 45096 (ON SCDC), *Serhan v. Johnson & Johnson Corp.*, 2004 CanLII 1533 (ON SC), *Segnitz v. Royal & Sun Alliance Insurance Co. of Canada*, 2003 CanLII 34059 (ON SC), *Chadha v. Bayer*, 1999 CanLII 14812 (ON SC), *Bre-X,* supra, *Robertson v. Thompson Corp.* 1999 CanLII 14768 (ON SC) and *Nantais*, *supra.*
[236] *Ibid.*

The situation in Quebec also merits further study. The Quebec legislation mentions neither the national class nor the situation of non-resident members of the class. However, in class action matters, the law can be applied to non-resident class members[237].

Just as in the other provinces, the courts recognize that in order for a court to have the jurisdiction to hear a case, there must be a real and substantive connection between the cause of the action and the court[238]. Moreover, in 2008, in *Brito v. Pfizer*, Justice Grenier wrote that it was not appropriate to decline jurisdiction. Rather, Justice Grenier stated that for the Court to have jurisdiction to hear the matter, there must be the strongest link between the actionable misconduct and the jurisdiction. More specifically, the applicable test is whether each action, taken individually, has a legal basis in Quebec. In order to oust the jurisdiction of the court, a defendant must establish that another court is better suited to exercise its jurisdiction.

These distinctions between the provinces are important. The choice of jurisdiction may have a significant impact on the rights of consumers, which in turn has an impact on their ability to seek justice.

4.4 Cooperation between the courts

Another cause of divergence between provinces is related to cooperation between the courts. Notwithstanding the various protocols that foster cooperation, there are still ongoing issues. In 2013, for example, judges from Quebec and Ontario held a joint hearing in Edmonton to facilitate a settlement in a case related to blood tainted with Hepatitis C. The Court of Appeal of British Columbia held that judges from this province could only sit and hear a joint hearing in the context of multijurisdictional class actions if they physically sat in a courtroom and participated in the hearing through videoconferencing or other technological arrangements[239].

4.5 Communication between attorneys

The third cause of divergence between the provinces is related to communications between the attorneys working in class action proceedings with similar causes of action. The Canadian Bar association (CBA) protocol sought to establish and maintain a national class action database. As discussed previously, despite the creation of the database, it seems that in practice not all attorneys comply with this practice. Indeed, some attorneys are slow in registering their action in the database, which can affect its effectiveness[240]. Some jurisdictions have included the database in their rules of practice. This is the case of the Federal Court, Newfoundland and Labrador, Nova Scotia, Quebec, Ontario, Saskatchewan, Alberta, British Columbia and Yukon. However, some rules go further than others, as in the case of Quebec. All actions filed in the Province must be registered in the provincial database. In turn, the information contained in this

---

[237] Daniel Belleau, Maxime Nasr and Alexandra Scott, “Les recours collectifs nationaux au Québec-Mais de quelle nation s’agit-il? ”, *supra* note 225 and *Brito v. Pfizer Canada Inc*., 2008 QCCS 2231 (CanLII)

[238] Daniel Belleau, Maxime Nasr and Alexandra Scott, *supra* note 225 and *Morguard Investment Ltd v. De Savoye*, [1990] 3 R.C.S. 1077 and *Hunt v. T&N PLC*, [1993] 4 R.C.S. 299

[239] *Endean v. Canadian Red Cross*, 2013 BCCS 1074*, Parsons v. The Canadian Red Cross Society*, 2013 ONSC 3053 and in appeal *Endean v. British* Columbia, 2014 BCCA 61

[240] Civil Litigation Conference-2014 http://static1.1.sqspcdn.com/static/f/299713/24639955/1396021370360/Whither+Canada+Why+Don%27t+We+Know+Where+to+Litigate+and+Why+do+We+Take+So+Long.pdf?token=B7XLkuWlH77PEqrOVvcs%2BDRFRRM%3D

database is transferred into the Canadian database. This probably explains why there are such a large number of Quebec class action proceedings registered in the Canadian database.

4.6. Differences in cost awards

When a party loses its case, it may have to pay a cost award. This can have a significant important impact on class actions. In Canada, the rules regarding cost awards vary from one province to another. Some provinces have adopted a no-cost regime (except for exceptional cases), one has adopted a regime in which costs are restricted by law and others have adopted regimes that can involve substantial cost awards[241].

The following provinces have adopted a no-cost regime: British Columbia, Saskatchewan, Manitoba and Newfoundland and Labrador.[242] In these provinces, plaintiffs risk far less when they file an action. Costs can be awarded in exceptional cases if the defendant is able to prove that the action filed by plaintiffs is frivolous and abusive. The burden of proof in such cases is heavy.

The situation is different in Quebec. Article 477 of the *Code of Civil Procedure* (CCP) states that the losing party must pay the costs[243]. Class actions are governed by art. 1050.1 of the CCP. This section states that judicial fees are computed as in the case of an action of class II-A in the Tariff of judicial fees of advocates, which means that the value of the action is between $1.000 and $3,000[244]. Other fees can also be computed based on the tariff[245]. However, they will be calculated on the basis actions of class II-A. The Tariff includes fees for incidental proceedings, examinations, final judgments and appeals.

Moreover, the legislator intervened to limit the consequences of a cost award in class actions. Art. 1050.1 CCP states that the additional fee set out in section 42 of the Tariff does not apply to class actions. If did apply, the winning party would be able to get the additional fee, which represents 1% of the amount exceeding the $100.000 that is taxable. For example, if the value of the action is $1 000.000, the additional fee will be calculated on $900 000, which would come to $9.000. Nevertheless, the *Fond d'aide au recours collectifs* would pay for the costs incurred by the plaintiffs[246].

Furthermore, in 2016, a new *Code of Civil Procedure* will come into effect. This code also reiterates the principle that the losing party must pay the costs. We prepared this report in the winter of 2014-2015 and studied the Code that was in effect at that time. On January 1, 2016, most of the provisions of the new *Code of Civil Procedure* will come into effect. The principle

[241] Janet Walker, *Class Actions in Canada: Cases, Notes and Materials,* Walker & Watson, Toronto, Emond Montgomery Publications, Toronto, 2014, Chapter V, “Fees and Costs,” Luciana Brasil and Jasminka Kalajdzic and Marie Audren and Emmanuelle Rolland, *supra* note 232
[242] Luciana Brasil and Jasminka Kalajdzic*, supra* note 241
[243] Article 477 of the *Code of Civil Procedure*, CQLR c C-25
[244] Tariff of judicial fees of advocates, CQLR c B-1, r 22 and André Durocher, “Une grosse carotte, un gros bâton: l'accès à la justice et les aspects financiers de la pratique en matière de recours collectifs,” in *National Symposium on Class Actions: Recent developments in Québec, Canada and in the United States*, 2013
[245] In this research, we did not study other costs that could be included such as court office fees
[246] *An Act Respecting the Class Action*, CQLR *v.* R-2.1

that the losing party must pay the costs will be maintained, but the tariff will be repealed and thus there will some modifications with regard to cost awards[247].

Some provinces allow the courts to require large cost awards when a party loses an action. These provinces are Ontario, Alberta, New Brunswick and Nova Scotia. A losing party can be ordered to pay a wide range of fees, regardless of whether it is in the certification stages or after a final judgment.

In Ontario, at the certification stage, it is not unusual for a cost award to be over $500,000. Justice Belobaba of the Ontario Superior Court is worried about the risks involved in a large cost award, as this can be an obstacle to the accessibility of justice[248]. However, it is possible to ask the court to exercise its discretion and not award the costs. In Ontario, the Court will have to ask if it is a test case or if it raises a novel point of law or if it involves a matter of public interest. In these three cases, the court can exercise its discretion not to award the costs. In Nova Scotia, when exercising its discretion, the court must take into account whether a cost award will serve the economy of justice[249].

The risks of a cost award are generally not assumed by the Plaintiff, but rather by the Plaintiffs' attorneys or a third party. In Ontario, this can also be assumed by the Ontario Class Proceedings Fund[250]. Given the financial risk of having to pay a large cost award, those assuming this financial risk must be careful in choosing which action to take, since a couple of cost awards could prove financially crippling[251].

Despite the risk of a large cost award in the event of a defeat, Ontario remains a favoured jurisdiction for filing multijurisdictional class proceedings[252].This can in part be justified by the existence of the Ontario Class Proceeding Fund. However, many say that this organization is under-funded. This means the Fund has to be careful in choosing which action it will support, since too many consecutive defeats could exhaust its funds.

4.7. Clauses limiting access to justice for Canadians: clauses forcing arbitration

One of the three objectives of class actions is the behaviour modification of defendants. The idea is that "actual and potential wrongdoers" will modify their behaviour in order to avoid being named as defendants in a class action[253]. However, it seems that defendants react to this risk not by modifying the wrongful behaviour itself, but rather by creating private dispute settlement procedures. One way they do this to include anti-class action clauses in consumer contracts. This forces consumers to submit their disputes to arbitration and prevents them from

[247] *Code of Civil Procedure*, CQLR c C-25
[248] Marie Audren and Emmanuelle Rolland, *supra* note 232, *Sankar v. Bell Mobility*, 2013 ONSC 6886 (CanLII), *Crisante v. Orthopaedicts*, 2013 ONSC 6351 (CanLII), *Canada (A.G.)*, 2013 ONSC 6887 (CanLII), *Dugalv. Manulife Financial*, 2013 ONSC 6354 (CanLII) and *Rosen v. BMO Nesbitt Burns Inc.*, 2013 ONSC 6351 (CanLII)
[249] Luciana Brasil and Jasminka Kalajdzic*, supra* note 241
[250] This fund also exists in Quebec, where costs awards are much lower.
[251] Craig Jones and Janet Walker, Chapter 1 and CHLC, supra note 210
[252]Ibid.
[253] Dutton, supra note 210

becoming a member of a class[254]. On many occasions, the courts have recognized the validity of these clauses, thereby preventing consumers from accessing the courts[255].The courts have decided that the consumers accepted the terms and conditions and that the contract reflects the autonomy of the parties. Many authors and organizations that promote consumer rights denounce this interpretation of the autonomy of the parties, since a consumer contract is a contract of adhesion that is imposed on consumers, who are not in a position to negotiate the terms of the agreement[256].

The Alberta legislator was the first to intervene. In 1998, Alberta decided not to prohibit these clauses completely, but rather to restrict them severely. Consequently, the FTA provides that for these clauses to be allowed in a consumer contract, two conditions must be met. The first is that the arbitration clause must be approved by the Minister. The second is that the consumer must agree to the clause in writing[257].These conditions have greatly limited the use of such clauses in consumer contracts.

In 2002, the Ontario legislator intervened to prohibit these types of clauses[258]. Following a judgment by the Supreme Court, in which it recognized the principle of supremacy of the autonomy of the parties and arbitration[259] the Quebec legislator intervened to ban these clauses in consumer contracts[260]. Recently, in September of 2014, Saskatchewan also decided to ban these clauses in consumer contracts[261].

The situation is much less clear in the other provinces. The situation of British Columbia was addressed in 2011, by the Supreme Court of Canada in *Seidel v. Telus Communications Inc.* The Supreme Court held that clauses imposing arbitration and restricting access to class actions were invalid as they contravened the Business Practices and Consumer Protection Act (BPCPA-BC [262].The court concluded that a section in the law granted jurisdiction to the Supreme Court of British Columbia to hear matters regarding specific actions and the other section states that consumers cannot waive their rights beforehand in a consumer contract. The Supreme Court of Canada decided that the law implicitly prohibits these types of contracts. Thereafter, the legislator did not modify the law and the courts continue to apply Seidel in matters of arbitration clauses.

The situation is even more complex in provinces in which the legislator has not intervened to prohibit such clauses. When an action is filed with regard to an arbitration clause, the courts will verify whether there is a provision in the law that restricts such clauses. Since Seidel, it has been

---

[254] John Kleefeld, ”Homo Legislativus: Missing Link in the Evolution of “Behaviour Modification”?” 2011, 53 *S.C.L.R.* (2d) 169-217

[255] Ibid., Shelley McGill “Consumer Arbitration after *Seidel v. Telus*,” *Canadian Business Law Journal, 2011*, vol. 51, pp. 190-192, *Kanitz v. Rogers Cable Inc,* 2002 CanLII 49415 (ONSC), *Dell Computer Corp. v. Union des consommateurs,* [2007] 2 R.C.S.34 and in *Frey v. Bell Mobility,* 2010 SKCA 30 (CanLII), the court said it was bound by the Supreme Court’s decision in Dell Computer

[256] John Kleefeld, *Ibid*., Shelley McGill, ”Ibid.and Option consommateurs “L’arbitrage collectif: une solution pour les consommateurs,” Étude présenté au Bureau de la consommation d’Industrie Canada, 2007

[257] Section 16 FTA.

[258] Section 7 (2) CPA-2002

[259] *Dell Computer Corp. v. Union des consommateurs,* [2007] 2 R.C.S.34

[260] Section 11 (1) CPA

[261] Section 101 (1) (2) CPBPA-SS

[262] *Seidel v. Telus Communication Inc.*, [2011] 1 S.C.R. 531

possible for the courts to foreclose arbitration clauses and hear the matter if there is implicit intent from the legislator to restrict these clauses.

In this respect, in Nova Scotia, certain sections of the law (CPA-NS) are similar in nature to the ones in British Columbia. At the time that this report was drafted, the courts in Nova Scotia had not rendered a decision on this issue[263].

Moreover, if a law is silent, the court will usually conclude that the legislator does not want to restrict these clauses. This is what happened in the Dell Computer decision, in which the Supreme Court favoured the principle of the autonomy of the parties[264].

In conclusion, as regards clauses forcing arbitration in consumer contracts, what matters is the jurisdiction in which the consumers exercise their rights and where they reside, and not the cause or the chances of success of their actions. Many provincial laws are silent about these clauses. In those provinces, it is likely that a court will prevent consumers from exercising their rights in the courts due to a mandatory arbitration clause. As a general rule, courts have favoured the principle of the autonomy of the parties, although consumer contracts are generally contracts of adhesion and consumers do not have an opportunity to negotiate the terms of the contract.

4.8 Clauses imposing the laws of another jurisdiction or a foreign tribunal

As previously mentioned, one of the objectives of class proceedings is for defendants to modify their behaviour. Unfortunately, certain companies decide to minimize the risks, costs and number of lawsuits by including clauses in consumer contracts that either state that the laws of another jurisdiction will apply in the event of a future dispute or that the dispute will be heard by a court in a foreign jurisdiction. The provinces have enacted different laws to address this problem.

In 2004, the Consumer Measures Committee (CMC) and the ULCC published a report in which they recommended that a “consumer has the choice to institute proceedings against the merchant either in the jurisdiction of the consumer or the jurisdiction of the merchant

In circumstances where:

(a) the consumer contract resulted from a solicitation of business in the consumer's jurisdiction by or on behalf of the vendor and the consumer took all the necessary steps for the formation of the consumer contract in the consumer's jurisdiction;

or

(b) the consumer's order was received by the vendor in the consumer's jurisdiction;

or

(c) the consumer was induced by the vendor to travel to a foreign jurisdiction for the purpose of forming the contract and the consumer's travel was assisted by the vendor; the consumer has the option to bring proceedings against the vendor either

[263] Shelley McGill, *supra* note 255 and CPA-NS
[264] Shelley McGill, *supra* note 255 and CPA-NS

> in the courts of consumer's jurisdiction or in the courts of the vendor's jurisdiction."[265]

As discussed in Section I of this report, the *Internet Sales Contract Harmonization Template* is silent regarding the jurisdictional issue[266].

Some provinces have decided that clauses that compel the consumer to file his claim in another jurisdiction or clauses that apply the laws of another jurisdiction may not be set up against the consumer.

In Quebec, art. 3149 of the CCQ states that Quebec courts also have jurisdiction to hear an action based on a consumer contract and the waiver of such jurisdiction by the consumer may not be set up against him[267]. Moreover, section 19 of the CPA prohibits the application of any law to a consumer contract other than one originating from the Parliament of Canada or the Parliament of Quebec[268]. In Ontario, section 7 (1) (2) of the CPA-2002 states that any provision stating the contrary of the jurisdiction of the Superior Court of Ontario is invalid[269]. The Alberta legislation is also similar in this regard. Section 2 (10) of the FTA provides that any waiver of rights conferred by this act is void.[270] Section 13 of the FTA provides that when consumers suffer damages as a result of a consumer contract or are subject to unfair practices, they can commence an action for relief in the Court of Queen's Bench[271].

The new legislation in Saskatchewan came into force in September 2014. After reading section 101 and 102 of the CPBPA-SS, we understand that, when a damage related to a consumer contract occurs, the legislation that will apply is the one in force where the consumer resides, even if during an online transaction, the merchant is located in another province. The law also applies if the merchant is located in Saskatchewan[272].

In 2013, Nova Scotia added s. 25 (AN) (CPA-NS), which states that any term or provision in a contract that restricts the application or the law of the Province or restricts jurisdiction or venue to a forum outside the Province is void and of no effect[273].

To summarize, the abovementioned province, have enacted legislation that states that these clauses cannot be set up against the consumer. This means that in the event of a dispute, it will be less costly for consumers to exercise their rights in court, as they will not have to incur additional costs, such as travel expenses, when an action is filed in another jurisdiction other than in the one where they reside.

---

[265] Consumer Measures Committee "The Determination of Jurisdiction in Cross-Border Business-to-Consumer Transactions: A Consultation Paper," 2001 and Cara Neumueller, "Are we 'there' yet? An Analysis of Canadian and European Adjudicatory Jurisdiction Principles in the Context of Electronic Commerce Consumer Protection and Policy Issues ."3 U. Ottawa L. & Tech J. 421
[266] *Internet Sales Contract Harmonization Template*
[267] Section 3149 CcQ, CQLR c C-1991 and Cara Neumueller, *supra* note 266
[268] Section 19 CPA
[269] Section 7 (2) CPA-2002
[270] Section 2 (1) FTA
[271] Section 13 FTA and Cara Neumueller, *supra* note 266 "
[272] Section 101 (1) (b) and 102 CPBPA-SS
[273] Section 25 AN CPA-NS

In British Colombia, the legislator did not explicitly prohibit such clauses. However, given *Seidel*, we believe that it can be argued that there is an implicit intent on the part of the legislator to limit these clauses. In 2011, the Supreme Court of Canada concluded there was implicit legislative intent to restrict clauses that limit consumers' access to courts[274].Section 3 of the *Business Practices and Consumer Protection Act* states that a consumer cannot waive his rights provided by the Act[275]. Section 172 states that a consumer may bring an action in Supreme Court[276].Section 29 of the Interpretation Act states that Supreme Court means the Supreme Court of British Columbia[277]. In a judgment rendered in 2014 in a case on the territorial jurisdiction of British Columbia, at the certification stage of a class action, Justice Griffin rejected the submission that *Seidel* was only procedural in nature[278]. In this case, Facebook made submissions that a certain clause binds users to file future disputes in California instead of in British Columbia. Facebook also argued that s. 11 of the *Court Jurisdiction and Proceedings Transfer Act* (CJPTA) applied. Justice Griffin concluded that the facts of the case did not meet the criteria. Moreover, s. 12 of the same legislation states that if there is a conflict between this part and another Act of British Columbia or of Canada that expressly confers jurisdiction or territorial competence on a court or denies competence to a court, then the other act prevails[279].[280]

In 2006, an author wrote that the legislator of New Brunswick remained silent with regard to clauses limiting the jurisdiction of the court when consumers waives their rights in a consumer contract[281].

To summarize, when the legislator does not explicitly limit waivers of court jurisdiction, consumers are less protected. Moreover, if it can be found that there is an implicit intent by the legislator to limit these clauses, then the jurisdiction of the court can be recognized. However, when the legislation is silent, there is a real danger that a consumer might be compelled to file his action in another jurisdiction. According to Cara Neumueller, "the lack of harmonized, precise, reliable and predictable rules to govern the choice-of-forum question" reduces consumer protection[282].

4.9. Survey Results: the perception of Canadians regarding the harmonization of standards regulating class actions

In this survey, we focused on the respondents' awareness of class actions. We simplified complex legal questions to enable non-lawyers to understand them. We wanted to know whether there were regional differences in awareness of class action regulations. Given that many class actions spill over provincial boundaries, it was particularly interesting to know if there were regional differences regarding the understanding of the rules that govern class actions. It is also particularly interesting to assess the knowledge of respondents living in a

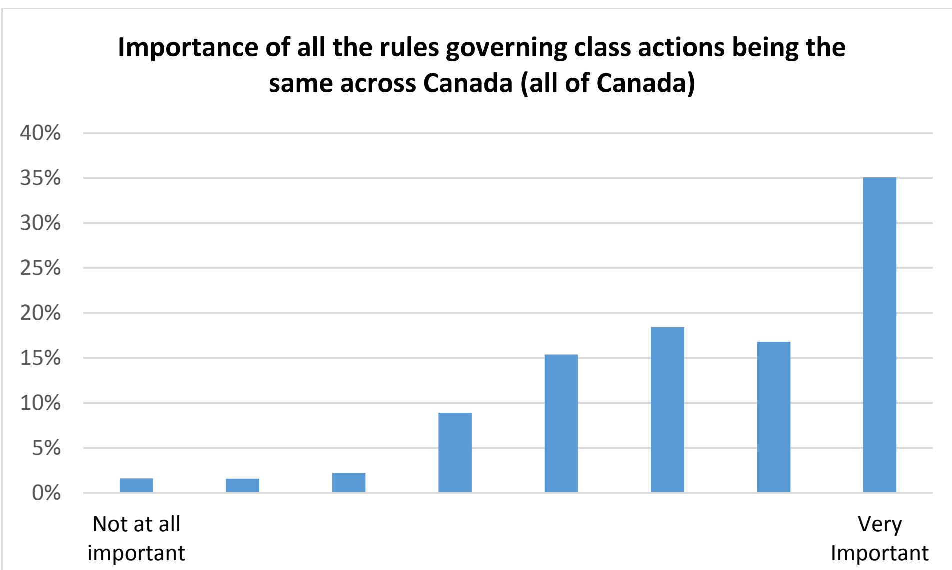
[274] *Seidel, supra note 262*
[275] Section 3 BPCPA-BC
[276] Section 172 BPCPA-BC
[277] Section 29 *Interpretation Act*, RSBA, *v.* 238
[278] *Douez v. Facebook*, 2014 BCSC 953
[279] Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28
[280] As we publish this report, a judgment of the Court of Appeal reversed the Queen's Bench decision. Our analysis in the aforementioned paragraph was based on the Queen's Bench decision. *Douez v. Facebook*, 2015 BCCA 279
[281] Cara Neumueller, *supra* note 265
[282] Cara Neumueller, *supra* note 265

province that prohibit clauses that limit access to the courts. It is possible that the awareness of the rules governing class actions will have an impact on whether consumers participate in an action[283].

We asked respondents whether the rules governing class actions were the same in all the provinces. More than two out of five (41.5%) answered that they did not know. Although very few respondents answered that they were the same (7.9%),a large proportion (31.4%) answered that they were similar, but that there are differences from one province to the other. We did not find any regional differences.

In addition, we asked the respondents whether they would like the rules governing class actions to be the same in all the provinces. We asked, “On a scale from 1 to 8, 1 being not at all important and 8 being very important, do you think it would be important for all the rules relating to class action litigation be the same in every province?” The vast majority of respondents answered that it was important. The average obtained is 6.33 out of 8 (79.1% score). We also find that 35 % of respondents answered that it was very important for the rules to be the same in every province. Once more, our expert performed an ANOVA to determine whether there was a provincial difference between the averages. The result obtained is non-significant $F(9, 2033)$ 1.676 $p=89$. The following graph shows the distribution of answers among respondents[284].

Chart 2



In addition, we wanted to know the perceptions of respondents with regard to clauses restricting access to class actions.

[283] Cara Neumueller, *supra* note 265

[284] The results observed are substantially similar for the questions with answers ranging from 1 to 8, except for question 30, which is on cell phones. We will have an opportunity to address this further in the section on cell phones.

Table 9

Question: “You would like to be part of a class action lawsuit. However, a clause in your contract forces you to use arbitration in the event of a dispute. What can you do?`

a- Regional Analysis

	Maritimes	**Quebec**	**Ontario**	**Prairies**	**British Columbia**	**Canada**
I can take part in the class action as the clause in my contract is illegal	7.6 %	24.5 %	15.3 %	10.8 %	14.0 %	14.8 %
I must resolve my dispute through arbitration	34.7 %	30.3 %	39.7 %	39.5 %	38.5 %	36.3 %
I don’t know	57.7 %	45.2 %	45.0 %	49.7 %	47.5 %	48.9 %

b- Analysis of the Provinces Explicitly Restricting these Clauses

	Qubec	Ontario	Saskatchewan	Alberta	Canada
I can take part in the class action as the clause in my contract is illegal	24.5 %	15.3 %	5.4 %	11.4 %	14.8 %
I must resolve my dispute through arbitration	30.3 %	39.7 %	43.2 %	39.7 %	36.3 %
I don’t know	45.2 %	45.0 %	51.4 %	48.9 %	48.9 %

Again, almost half (48.9%) of respondents did not know the answer to the question.

We wanted to know if respondents living in the provinces that restrain or prohibit such clauses answered differently than other respondents. In Quebec, almost one out of four (24.5%) answered that the clause was illegal and so they could take part in the class action, notwithstanding the contract. This answer reflects the state of the law.

Despite the fact that these clauses have been prohibited in Ontario for many years, only 15.3% of respondents living in that province believed that they could take part in the class action. The difference compared to Quebec is statistically significant. Nevertheless, Ontarians are more likely to answer this question correctly than respondents living in Alberta and Saskatchewan. This difference is also statistically significant.

Moreover, 14% of respondents living in British Columbia believed that they could take part in the class action notwithstanding the presence of an arbitration clause. We can hypothesize that their answer was influenced by the well-publicized judgment from the Supreme Court allowing a class action. Respondents living in British Columbia were more likely than those living in the Prairies to answer that they could take part in the class action, despite the absence of an express provision in their law. In Alberta and in Saskatchewan the law explicitly restricts these clauses, which is not the case in Manitoba. However, only 5.4% of respondents living in Saskatchewan believed that these clauses do not limit access to the courts, compared with 11.4% of respondents living in Alberta. This difference could perhaps be explained by the fact that the new Saskatchewan legislation only came into effect in September 2014. In addition, respondents living in Saskatchewan are more likely to feel bound by their consumer contracts (43.2%). Could it be that they did not know about the new provision in the law? We can conclude that Quebecers are more aware of their rights regarding these clauses than other respondents[285]. It is important for consumers to be better informed on this issue.

In addition, we wanted to know the perception of consumers regarding these clauses on other Canadians. We asked the following question: " In your opinion, do you think that all Canadians can be stopped from taking part in a class action lawsuit due to this type of clause? ." One in four of respondents (25.5%) answered "No, since certain provinces ban these types of clauses." Almost 65% (64.5%) cannot answer the question. However, even if it is a small margin, 13% of respondents living in Ontario believe that the answer is "yes since all the laws are the same." In Saskatchewan, more than 70.3% of respondents said they did not know.

5. Gift Cards

Prepaid cards, known in some jurisdictions as gift cards, are more and more popular. All the provinces have enacted legislation to regulate gift cards. Some provinces have enacted specific legislation relating to gift cards, while others have amended their consumer protection legislation to include provisions regarding gift cards. In Canada, there is no harmonization of the various gift card legislations. As such, legislation regarding gift cards can vary from one province to another, even in the case of a gift card from a national store that has branches in several provinces

Many of the experts interviewed in this research, especially those dealing directly with consumers, reported having received complaints or being concerned about the impact the different laws might have on consumers.

5.1 Main differences between the provincial legislations

The laws regulating gift cards are similar in their application. However, some differences exist between the provincial laws, which could have a significant impact on the rights of consumers, depending on their province of residence.

It is important to distinguish between the different types of gift cards, as not all laws apply to them in the same way. There are three types of gift cards. The first can be used to make a purchase from one specific merchant. An example would be a gift card to be used in a bookstore. The second type can be used to purchase from multiple merchants who accept a

[285] We can hypothesize that Quebecers are more aware of their rights due to the presence of consumer protection groups and committees on access to justice in the media.

particular credit card. These cards are usually issued by businesses that fall under federal jurisdiction. The third type can be used to purchase from several merchants. An example would be a mall gift card. Among mall gift cards, it is important to make the distinction between those issued by the mall itself and those issued by businesses that fall under federal jurisdiction, such as banks or VISA, which belong to the second type[286].

5.2. The legal framework for gift cards issued by businesses falling under federal jurisdiction

Canada is a federation in which certain jurisdictions fall under provincial authority and others fall under federal authority. Sections 91 and 92 of the *Constitution Act* set forth the division of powers. Banks and certain businesses fall under federal jurisdiction in by virtue of ss. 91 (2) and 91 (15) of the *Constitution Act, 1867*. The provinces have jurisdiction to legislate property and civil rights as set forth in s. 92 (13). The provinces can also legislate with regard to matters within the provinces of a merely local or private nature by virtue of s. 92 (16)[287].

It is possible for both levels of government to legislate about the same area of activity while respecting the principle of the division of powers. Consequently, a provincial legislation could touch an area that is in a federal sphere of activity, yet still respect the principle of division of powers. The Supreme Court has had to rule on this issue.

In 2007, the Supreme Court recognized that provincial legislation regulating insurance, an area of provincial jurisdiction, could apply to banks when they sell insurance products, even though banks fall under federal jurisdiction, given that selling insurance is not at the core of their activities[288].Then, in 2014, the Supreme Court reaffirmed this principle, by reiterating that provincial legislations, such as the CPA, can apply to banks[289]. In this case, the question was whether sections of the CPA regarding variable credit were applicable to banks.

The provinces have decided to regulate gift cards. The definition of a gift card can vary from one province to another. For instance, s. 170 CCSM[290] gives a broad definition of a gift card, whereas the legislations of Alberta and New Brunswick give a narrower definition, since they exclude gift cards from financial institutions[291].

In May 2014, new federal legislation came into force, aimed at regulating, among other things, gift cards issued by financial institutions[292].

Notwithstanding the absence of a specific mention in provincial legislation, many provinces including Ontario, Manitoba, British Columbia and Nova Scotia state on their official websites

[286] Jacqueline D. Shinfeld, "Regulation of Prepaid Cards in Canada," *Canadian Business Law Journal, vol. 51* 2011
[287] *The Constitution Act*, *supra* note 4
[288] *Canadian Western Bank v. Alberta,* 2007 SCC 22, [2007] 2 SCR 3
[289] *Bank of Montreal v. Marcotte*, 2 RCS 725
[290] Section 170 CPLM
[291] *Gift Card Regulations*, Alta 146|2008
[292] *Prepaid Payment Products Regulations*, SOR |2013-209

that their provincial laws do not apply to gift cards, given that these fall under federal jurisdiction[293].

The situation is different in Saskatchewan, where new consumer legislation (CPBPA-SS) came into force in September 2014, i.e. after the federal legislation came into force. On the province's website it states that its consumer legislation applies to these cards[294]. It even states that the law applies to cards issued by businesses such as Visa, with the exception of "cashback" cards.

In Quebec, some sections of the CPA apply to these types of cards[295]. The CPA was enacted before the federal legislation. The Quebec legislator did not subsequently intervene, nor is there any mention on the Province's websites that the CPA does not apply to these cards given the federal legislation.

The situation is relatively clear with regard to the application of the federal legislation: it is uniform and applies across Canada. Some provinces have chosen to exclude these cards from their provincial legislation. In the other provinces, the laws on gift cards should apply to these products. However, some provinces have declared that their provincial legislation does not apply to these gift cards given the federal legislation. Yet others maintain that their provincial laws do apply. At the time of drafting this report, this issue has not yet determined by the courts. We believe that such a lack of harmonization in the context of internal trade can create confusion among consumers.

5.3 Other types of gift cards

The other provinces agree that the other types of gift cards should be regulated by consumer protection legislation. However, there are still multiple disparities between the provinces regarding gift cards.

The first is related to the application of the law. Some provincial legislation regulates gift cards. This is the case in New Brunswick, Prince Edward Island, Saskatchewan and Quebec. More specifically, in Quebec, the legislation applies to the contract rather than the gift card itself. Whereas in Ontario, Manitoba, Alberta and British Columbia, Nova Scotia and Newfoundland and Labrador, the legislation applies to the supplier, the issuer, the distributor and the retailer of the gift card[296].

As a general rule, consumers can expect to be able to use their gift cards in another province. However, some distinctions exist between the provincial legislations. The main ones are:

-User Fees

As a general rule, gift card legislation restricts fees related to the use of the gift card. The laws regarding permitted exceptions vary from one province to another. For example, in the

[293] https://www.ontario.ca/consumers/gift-cards,http://www.consumerprotectionbc.ca/consumers-other-businesses-home/how-can-we-help/gift-cardshttp://www.novascotia.ca/sns/access/individuals/consumer-awareness/consumer-purchases/nova-scotia-gift cards.asphttp://www.gov.mb.ca/cca/cpo/faqprepaidretailers.html#question1
[294] http://www.justice.gov.sk.ca/giftcard-q-a
[295] Section 79.6 RRACP and Section 187.4 and 187.5 CPA
[296] Jacqueline D. Shinfeld, *supra* note 286

Maritimes, the legislation permits user fees for cards sold for a charitable purpose[297].In Manitoba, on the other hand, the law permits user fees for a gift card that has no monetary value or was issued for a promotional purpose[298].

-Activation Fees

The legislation respecting activation fees varies from one province to the other. Alberta allows them without restriction[299]. In sharp contrast, provinces such as Manitoba, Saskatchewan, New Brunswick, Prince Edward Island and Newfoundland and Labrador prohibit activation fees[300].In between these two extremes, Quebec, Ontario and British Columbia allow activation fees, but in a restricted manner[301]. Ontario and British Columbia allow activation fees of up to $1.50, while Quebec allows activation fees of up to $3.50 for multi-merchant gift cards.

-Maintenance and Dormancy Fees

The rules relating to maintenance fees vary from one province to another. These fees are prohibited in Saskatchewan and Alberta,[302] whereas the Maritimes, except for New Brunswick, allow them for gift cards sold by charitable organizations[303]. Moreover, New Brunswick, Quebec, Ontario, Manitoba and British Columbia allow fees for multi-merchant gift cards up to a limit of $2.50.

In addition, the rules vary from one province to the next regarding the delay after which dormancy fees can be charged. For example, in Ontario and British Columbia, dormancy fees can be imposed as of 15 months after the date when the card was purchased or when it was last used[304]. In Quebec, dormancy fees can be charged at the end of the 14th month. In addition, in the three provinces mentioned previously, it is possible to ask for this period to be extended before the end of the grace period referred to above.[305] New Brunswick also allows dormancy fees to be charged after a period of 15 months from when the card was purchased or last used[306]. In Manitoba, dormancy fees can be charged after a period of 12 months if the card has not been activated[307].

-Expiry Dates

As a general rule, gift cards cannot have expiry dates. This principle was integrated into every provincial legislation. However, there are exceptions to this rule in various provinces. In Ontario, Alberta and Saskatchewan, a gift card cannot expire, without exception[308].In Quebec, they cannot expire, but they can be replaced in accordance with the rules in the CPA and a date of replacement must be provided[309]. The gift cards must be replaced free of charge and their

[297] Newfoundland and Labrador, *Gift Card Regulations*, NLR 14/11, Prince Edward Island, RSPEI 1988, C g-4.1, Nova Scotia, *Gift Card Regulations*, NS Reg 325/2009 and New Brunswick, *Gift Card Act,* RSNB 2011, c 165
[298] CCSM
[299] *Gift Card Act,* Alta
[300] CPBPA-SS, *Gift Card Act* NB, Gift Card PEI and Gift Card NL
[301] BPCPA-BC, CPA-2002 and RRACP
[302] Section 77 Gift Cards Alta
[303] Gift Cards NL, Gift cards PEI, Gift cards NS
[304] Section 3 (2) (b) BPCPA-BC and CPA-2002
[305] Section 79.4 RRACP
[306] Section 4 (3) Gift Cards Act
[307] Section 2 (1) CCSM and Jacqueline D. Shinfeld, *supra* note 286
[308] Section 2 (1) Gift Cards Alta and Section 25.3 CPA-2002
[309] Section 79.6 RAPCA, 187.4 and 187.5 CPA

balance transferred to the new card. However, prepaid card for mobile phones can expire[310]. In British Columbia, gift cards can expire if they are purchased for less than their full monetary value.[311] In Manitoba and Saskatchewan they can expire if the card provides nothing of value. Moreover, in Manitoba, New Brunswick and Prince Edward Island, gift cards can expire if they were issued for a specific service, for example, a gift card for a manicure issued by a beauty salon.

-Disclosure of information

All provincial legislation regarding gift cards requires disclosure of information. Generally speaking, all provinces require disclosure of the restrictions, limitations and terms of condition for use, redemption and replacement, including disclosure of fees and expiry dates. Alberta requires more disclosure than any other province. Other provinces set specific obligations regarding the disclosure of information relating to gift cards. As such, in Ontario, it is required to disclose the way in which the holder can obtain the remaining balance on the card[312]. In British Columbia, the law requires disclosure of information regarding dormancy fees, renewals and delays. In Ontario, Quebec and New Brunswick, dormancy fees must be disclosed on the gift card. In Quebec, it is mandatory for multi-vendor cards to display a statement to the effect that the card can expire, but that the amount on the card does not expire. In Quebec, it is also mandatory to disclose all activation fees on the card itself[313].

-Other Differences

Finally, there are differences between the provinces regarding specific areas. In Alberta, the merchant must provide a receipt as proof of purchase. Also in Alberta, the legislation states that merchants cannot refuse a partial payment with the use of a gift card or to place a hold on the balance. In Quebec, the law allows the remaining balance to be refunded when the balance is $5.00 or less[314].

5.4 Harmonization of laws

There is no harmonization with respect to gift card legislation. Although the differences are minimal, they can have a negative impact on consumers. The harmonization of laws would enable consumers to use their gift cards in the same way in every province.

Jacqueline Shinfield has studied the possibility of establishing a Canadian program that would make gift card laws uniform. She believes that harmonization would be difficult for multiple reasons. First, all the rules would have to be the same with regard to the terms of the agreement, user fees and activation fees. Second, the system would have to be uniform, which could be costly for gift card issuers. Third, all the provincial regulations regarding the disclosure of information on gift cards will have to be respected. However, the rules vary from one province to another, some require lengthy explanations. Fourth, the information provided would have to be available in both languages. In light of the foregoing, the author believes that

[310] Section 79.3 RAPCA
[311] Section 2 (c) BPCPA BC and Jacqueline D.Shinfeld, *supra* note 306
[312] Section 23 CPA-2002 et Art 5 (2) (b) Gift Cards Alta
[313] Section 79.4 RRACP and Jacqueline D. Shinfeld, *supra* note 286, p. 116
[314] Section 79.4 RRACP and Section 6 Gift Cards Alta

it would be difficult to find the space required to disclose all this information. For this reason, she believes that introducing a Canadian regime for regulating gift cards would be a challenging prospect[315].

We understand the author's reservations regarding the various provincial rules, yet we respectfully disagree, as we believe that it would be beneficial for consumers to have uniform standards across Canada. We believe that it would be interesting if the CMC were to study this question.

In our opinion, this committee has the experience in harmonization with regard to a variety of consumer issues. It is crucial that the best practices of each province be included in the harmonization process in order to ensure that consumers enjoy maximum protection. In addition, regarding the fundamental differences between the provinces regarding gift cards issued by businesses such as Visa, we believe that it is preferable for consumers that these provinces exercise their jurisdiction concurrently with the federal government, if they so choose, to ensure that consumers are better protected.

5.5 Survey results: the perception of Canadians regarding the harmonization of rules relating to gift cards

In this survey, we sought to determine how much the respondents knew about the harmonization of gift card legislation and what their perceptions were. We also wanted to know consumers' opinions on the harmonization of gift card legislation.

81.7% of respondents believe it is rather important, to very important for the rules to be the same across Canada. Of this number, over half (51.8%) of respondents said it was very important for the rules relating to gift cards be the same across Canada. Respondents living in New Brunswick were the most favourable to this idea (t p< ,05).

We also wanted to determine consumers' level of awareness of gift card legislations. We asked the following question: "Assume that you purchased a gift card from a store that has locations across Canada. In your opinion, do you think you can use your gift card in the same way in all the provinces?" The purpose of this question was to find out the opinion of consumers on the use of gift cards and the relevant laws. By "in the same way," we meant "using it in the exact same manner under all circumstances." We chose to write our question in this way to avoid the respondents answering "no" to the question out of the fear of not knowing all the circumstances related to the use of gift cards. Our choice of words took into account the fact that the vast majority of respondents certainly were not attorneys specializing in consumer protection.

Respondents answered yes in a proportion of 76%. Respondents living in the Maritimes and British Columbia were the most likely to answer yes. The respondents also had to answer a question explaining why they could use their gift cards in the same way. Many respondents (48.8%) said that they could use their gift card in the same way because "since the store has

[315] Jacqueline D. Shinfield, supra note 286

locations across Canada, the federal rules apply" while 43% said "it was the rules at the head office" that applied.

Only 9% of respondents answered "no." These respondents also had to give a reason for their answer. A large proportion of them (46%) said that the provincial laws are applicable while 39.6% answered "It all depends on what the contract states."

6. Cell phone contracts

6.1 Legal framework

In determining the legal framework for cellular phones and in telecommunications in general, it is first necessary to determine which level of government makes the laws. The rules in force also need to be determined.

Since Canada is a federal state, certain jurisdictions are provincial and others federal. The division of powers is dealt with in ss. 91 and 92 of the *Constitution Act, 1867* (LC1867)[316].As explained in s. V, the Supreme Court has already ruled on the question of subjects that can be legislated by both levels of government.

There is obviously no mention of modern telecommunication devices such as cell phones in the *Constitution Act, 1867*, the technology in the era when the law was framed being very different from what it is today. Section 92 of the Act lists the exclusive powers invested in the provincial legislature. Section. 92 (10) should be read in conjunction with s. 91, which sets out the powers of the federal legislature. Section 91 (29) lists the classes of subjects that are not specifically assigned to the provinces under federal jurisdiction. Section 92 (10) lists the works and undertakings that are not of "local" (provincial) jurisdiction. These include "Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province." In Canadian constitutional law, the metaphor of the living tree[317] finds a specific application in this situation and, consequently, the notion of the telegraph in the meaning of s. 92 (10) (a) includes cellular telephones[318]. Retail mobile wireless voice and data service providers (more commonly known as cell phone companies) are subject to federal jurisdiction[319].

There are several federal regulations governing cell phones, the most important of these being the *Telecommunications Act*[320].The Canadian Radio-television and Telecommunications Commission (CRTC) is the independent public body responsible for regulating and supervising broadcasting and telecommunications in Canada.

[316] *Constitution Act*, *supra* note 4

[317] The theory of the living tree is a constitutional interpretation that says that the Constitution should be interpreted broadly and liberally in order to adapt to the evolution of Canadian society.

[318] S. 92 (10) (a) *Constitution Act, 1867* supra note 3, and Michael Ryan, "Telecommunications and the Constitution: Re-Setting the Bounds of Federal Authority," 2010, Vol. 89, *The Journal of the Canadian Bar Association*, pp. 695-727

[319] Michael Ryan, *Ibid*

[320] The *Telecommunications Act*, SC 1993, c 38

Some provinces have also intervened to regulate cell phone contracts and protect consumers. The provinces have jurisdiction to legislate on civil law under s. 92 (13) of the *Constitution Act, 1867*.

In fact, some provinces (Newfoundland and Labrador, Nova Scotia and Quebec) have seen fit to legislate cell phone contracts.

Also, the *Wireless Code* came into force on December 2, 2013[321]. The CRTC created the Code so that consumers can know their rights and obligations with regard to their cell phone contracts. The Code helps individuals and small businesses to obtain and understand the information contained in their contracts. It also helps the industry to implement consumer-friendly business practices and contribute to the establishment of a more dynamic wireless market. This is a mandatory code of conduct that applies to all cell phone providers. The Code also provides that all ambiguous provisions should be interpreted in favour of consumers. Consumers who believe that the service provider is not acting in accordance the Code must try to resolve the issue directly with the latter. If they are not satisfied with the response, they can contact the Commissioner for Complaints for Telecommunications Services Inc. (CCTS).

The *Wireless Code* is intended to promote clarity. The service provider must use simple, easy-to-understand language. He must also ensure that all documents (contracts, etc.) are written in similar language. In addition, the service provider must ensure that prices are clearly indicated in the contract. The service provider cannot charge excess fees in the case of an unlimited data plan, unless this is clearly stated in the contract. Similarly, it cannot limit the services unless this is explicitly stated[322].

Also, the Code regulates the terms of postpaid service contracts. It lays down the formal requirements for copies, the right to terminate, within 15 days, contracts that are not agreed to in person and the disclosure of specific information (costs, time commitment, date of termination, termination fees and information on subsidized devices). There is also a description in the contract of related documents and a list of one-time expenses and discretionary services, a statement in case of extension of the service, the amount of the security deposit and the conditions for replacement of the device. The service provider must also inform the consumer how to contact customer service and how to submit complaints to the CCTS[323].

The Code specifies a list of information that the service provider must provide to the customer. This list includes the early termination fee, the outstanding balance[324] for the cell phone, the date on which the charge will no longer apply, the retail price of the device, the amount payable and the unlocking fee, if applicable. The service provider must inform the customer of the conditions and fees that apply to the prepaid balance and how to find out the number of unused minutes. The customer must also be informed where he can get information on the manufacturer's warranty, and be fully notified of all changes in contracts and related documents.

[321] *The Wireless Code* (*Telecom Regulatory Policy*) CRTC 2013-271, June 2013
[322] *Ibid.*
[323] *Ibid*.
[324] The amount by which the termination fee decreases each month

The Code also stipulates that the rules cannot be changed unilaterally during the commitment period, except with the consent of the consumer, whether to reduce costs or to increase the limit of use. Moreover, in matters relating to bill management, the service provider must disclose information about international roaming charges, the limits that apply to these, the limit applicable to overage charges, unsolicited wireless services, and optional mobile services at additional charge[325].

Furthermore, the service provider must provide information on unlocking the phone, warranties, lost or stolen devices and repairs. The service provider must also inform the customer of early termination fees for "subsidized" and "non-subsidized devices," the duration of the contract, the trial period, the date of termination and contract extension. The Code provides for various situations and explains how the service provider can request a deposit. Also included in the Code are the terms relating to disconnection. Finally, the code also regulates prepaid wireless service cards[326].

6.2 The problems identified by our experts

Several of our experts believe that the telecommunications sector faces a challenge with regard to harmonization, particularly in the case of cell phones[327]. Due to the mobility of the workforce, some experts have received complaints from consumers who were surprised to learn that the rules were different in another province. Some were concerned about the differences between the various provincial laws respecting cell phone contracts.

6.3 Provinces and cell phone contracts

Newfoundland and Labrador, Nova Scotia, Quebec and Manitoba have passed legislation to regulate cell phone contracts. For example, Manitoba's *Consumer Protection Act* (CCSM) makes it mandatory to inform consumers how costs will be calculated. It appears that the laws of Newfoundland and Labrador, Nova Scotia, Quebec and Manitoba are similar in several respects and offer better protection to consumers than those of the other provinces.

Following our review of the legal framework, we believe that the Code is a very good initiative because it ensures that wireless service providers meet the same standard across Canada and helps standardize consumer laws respecting cell phones. On the other hand, since this is a federal initiative, there may be some differences from one province to another.

When a provincial law provides less protection than the Code – as is the case, for example, with both renewal and cancellation fees – it is the Code that applies, since it is the minimum standard that must be met. Due to the doctrine of federal paramountcy, if, in the application of a provincial law, a federal law is violated within its field of competence, the federal law must be respected.

[325] *Supra* note 321
[326] *Supra* note 321
[327] At the time of the interviews we conducted with our experts, the Code had been in force for nine months and no report on its effectiveness had yet been made public.

When the provincial law provides more protection than the Code, the Supreme Court's Marcotte ruling has established the following criteria to determine whether it can be applied: provincial legislation may be applied to a federal undertaking if it does not infringe on federal law, if it does not contradict it, or if the federal law is silent in this regard.

Similarly, the Code provides that the service provider must inform consumers of the existence of the manufacturer's warranty before attempting to sell the extended warranty, while the CPA obliges the merchant to inform consumers of the legal warranty before selling them the extended warranty.

Another example: the Newfoundland and Labrador Act contains disclosure obligations concerning rebates and the calculation of discounts on long-distance service contracts, including for cell phones. The Code is silent with regard to disclosure of information[328].

What applies if the Code and the law do not say the same thing? We found two contradictory judgments in this regard. In the first[329], the judge wrote that it was up to the Quebec legislature to determine whether adjustments to the CPA were needed in order to take into account the findings and conclusions included in the Code and in the CRTC policy, since it was not up to the Court to relax the requirements of s. 12 CPA. This judgment was appealed and, at the time of writing this report, no decision had been reached[330]. In the second, a judgment dated October 4, 2013 (before the Code came into in force), the Superior Court of Ontario wrote that if the Code had been in force, the *Consumer Protection Act* would not have applied, because of the doctrine of federal paramountcy[331].

This decision was reached before the Supreme Court's Marcotte ruling. If it had been made afterwards, things might have been different. The case law needs to be monitored to see how this is interpreted.

We talked with experts in November 2014, more than 11 months after the Code's entry into force. Some of them had received calls from consumers who believed that the cell phone laws continue to be different from one province to another, despite the Code. This discrepancy between the code and the complaints can mean three things: either the provincial standards are higher than those of the Code, or companies in a province are not following the Code, or the consumers' perception of the situation is faulty.

6.4 Survey results: Canadians' perceptions on the harmonization of standards for cell phone contracts

We wanted to know how Canadians feel about the standards governing cell phones.

The majority of consumers admitted that they have only an average knowledge of the rules governing cell phones (45%). However, there was a statistically significant difference between regions ($\chi 2$ $p < .001$). This difference is particularly marked between respondents in Ontario, who

[328] S. 35.1 (1) (b) (f) s. 35.2 (1) (h) - (k) CPBPA-NL and the Code *supra* note 321
[329] This is *Martin v. Telus Communications Company*, 2014 QCCS 1554 (CanLII), a Quebec ruling in the matter of class actions on the unilateral amendment of a contract within the meaning of s. 11.2 CEA.
[330] *Martin v. Telus*, 2014 QCCS 1554 (CanLII)
[331] *Sankar v. Bell Mobility* 2013 ONSC 5916 (CanLII).

believe they have a very good understanding of the rules, and respondents in Quebec, who consider themselves to have zero understanding of the rules. Consumers in British Columbia, on the other hand, consider themselves to be moderately knowledgeable.

In the same vein, Quebecers consider it very important to have information about the various rules related to cell phones to be easily accessible to Canadian consumers, while consumers from the Prairies and Ontario consider it to be less important (5 on a scale of 1 to 8).

Nevertheless, a large majority of consumers (83.5%) think it is important for information about the various cell phone rules to be accessible to Canadian consumers.

Table 10
Question asked: "Suppose that one year ago, you bought a new cell phone and signed a contract with a telecommunications company that does business across Canada. You move to another province. In your opinion, what are the rules governing your cell phone contract? "

	Maritimes	Quebec	Ontario	Prairies	British Columbia	Canada
The rules of the province where I signed my contract	32.8%	25.7%	32.6%	34.7%	34.8%	31.9%
The rules of the new province where I now live	10.8%	5.3%	14.3%	12.2%	7.4%	9.8%
The federal rules, since it is the federal government that has jurisdiction over telecommunications	16.2%	27.7%	19.7%	18.3%	22.8%	21.7%
The federal rules and the regulations of the province where I signed my contract	11.2%	12.6%	10.6%	14.6%	11.5%	12.1%
I don't know	29.0%	28.7%	22.8%	20.1%	23.5%	25.0%

Respondents in Quebec (27.7%) are more likely than others to believe that when a person who has a cell phone moves to another province, it is the federal rules that apply after their move, since "the federal government has jurisdiction over telecommunications," On the other hand, respondents in other provinces are more likely to believe that it is the rules of the province where they signed their contract that apply. Interestingly, all regions combined, over 20% of participants responded "I don't know."

Conclusion and recommendations

Thanks to our literature review and our interviews conducted with the experts, we were able to identify the problematic areas related to the harmonization of consumer protection standards. These areas are the following: e-commerce, consumer credit, legal warranties, class actions, gift cards and cell phones. In these areas, Canadian consumers do not all benefit from the same legal protections.

Our recommendations:

- E-Commerce

Option consommateurs recommends that the CMC modifies the Internet Sales Contract Harmonization Template in order to add supplementary provisions relating to jurisdiction of the courts. This will enable consumers to exercise their rights in the courts of their province. Option consommateurs recommends that amendments be made in order for consumers to be protected (by the law of their province or territory residence or the law of the purchase), whichever offers the most protection.

- **Consumer Credit**

Option consommateurs recommends that the CMC studies the possibility of modifying the *Agreement for Harmonization of Cost of Credit Disclosure Laws in Canada* in order to include the best practices relating to consumer protection in the following areas: contract resolution (cooling-off period), insurance, unsolicited issuance of credit, unilateral modification of variable-credit agreements, consequences of default and subsequent procedures in both credit agreements and instalment sales agreements.

- Legal Warranties

Option consommateurs recommends that provincial legislators who do not offer sufficient protection to improve their laws regarding legal warranties by adding to them the best practices in consumer protection.

Option consommateurs recommends that the CMC study the possibility of harmonizing legal warranty regimes to include the most protective practices for consumers.

Option consommateurs recommends that provincial legislators who have adopted legislation respecting legal warranties, establish programs to educate consumers on their rights and programs to educate merchants on their obligations in order to better address the needs of consumers.

- Class Actions

Option consommateurs recommends that provincial legislators adopt laws in a uniform way, using the most protective practices with regard to consumer protection, and prohibit certain restrictive clauses in consumer contracts, including:

-Clauses forcing consumers to submit disputes to arbitration that limit their access to the courts;

-Clauses forcing consumers to file an action in a court located in a jurisdiction other than that of their place of residence;

- Clauses imposing the laws of a jurisdiction other than that of the residence of the consumer, or that of the place where the purchase was made.

- **Gift Cards**

Option consommateurs recommends that the CMC study the possibility of drafting a harmonization agreement on gift cards which includes the most protective measures for consumers.

- **Cell phones**

Option consommateurs recommends the provincial and federal agencies and consumer protection organizations provide information on the rights of consumers and ensure that it is easier for them to understand.

Option consommateurs recommends that consumers inform themselves of their rights when they purchase these products or services.

Appendix 1 – Rapport sur le sondage portant sur l’harmonisation des normes

Rapport

Sondage portant sur l’harmonisation des normes

Préparé par

Bruno Marien

Février 2015

L’auteur

Monsieur Bruno Marien enseigne la méthodologie de la recherche et les statistiques au département de Science Politique de l’Université du Québec à Montréal (UQAM) depuis plus de 15 ans. Il a également travaillé à Statistique Canada et comme consultant méthodologue. Il a en outre collaboré à la mise sur pied de l’Institut National de la Statistique du Cap Vert et est l’auteur de manuels techniques au profit de l’Agence Universitaire de la Francophonie (AUF).

L’enquête

L’enquête a été complétée à partir d’un sondage web qui s’est déroulé du 13 au 29 janvier 2015[332]. Il s’agit d’un échantillon aléatoire à partir d’une liste de participants à un panel web représentatif des différentes régions du Canada. L’échantillon a été construit de façon non proportionnelle à la taille de la population des cinq régions retenues afin d’établir une marge d’erreur similaire dans chacune de ces régions. La marge d’erreur est donc de + ou – 5 % pour chacune des régions. La marge d’erreur est plus faible pour les analyses par provinces. Au total, 2043 personnes ont été contactées. De ce nombre, 1159 ont déclaré avoir acheté un bien alors qu’elles étaient dans une autre province que leur province de résidence. Les résultats ont été, par la suite, pondérés en fonction de la région, du sexe, de l’âge.

Répartition régionale de l’échantillon

Maritimes	394
Québec	474
Ontario	384
Prairies	395
Colombie-Britannique	396

Nous avons effectué une analyse descriptive ainsi qu’une analyse basée sur des différences statistiquement significatives[333]. L’enquête a été effectuée afin de déterminer les habitudes d’achat ainsi que les attitudes et comportements des consommateurs canadiens notamment en ce qui concerne l’application des lois et règlements lors d’achat en personne ou par internet dans les autres provinces canadiennes.

Quelques questions portent sur la connaissance des consommateurs notamment au niveau des garanties légales. Comme les lois sont différentes selon les provinces, un examen comparatif entre ces provinces a été effectué.

L’analyse a surtout été effectuée en fonction de la variable région puisque les lois reposent sous la responsabilité des provinces. Les autres variables (le sexe, le revenu, la scolarité et l’âge), bien que d’un intérêt certain, n’ont pas fait l’objet d’une analyse poussée. Toutefois, des tableaux de certaines provinces d’une région[334] qui possèdent des lois et règlements qui traitent certains sujets de consommation différemment seront analysés. Le rapport d’Option Consommateurs fera état de ces différences et particularités.

Résumé général

Les résultats du sondage démontrent qu’il existe une variation du comportement et des attitudes selon les régions. L’enquête indique également que ce sont les consommateurs des Maritimes qui consomment le plus dans une autre province alors que les Québécois sont ceux qui le font le moins. L’enquête indique également que les produits achetés hors province sont différents selon la région.

[332] Ce sondage a été réalisé par le Bureau d’Intervieweurs Professionnels (BIP).

[333] On utilise le terme différence statistiquement significative pour indiquer qu’il est peu probable (voire improbable) que la différence observée, entre deux moyennes par exemple, soit le fruit du hasard. Ce résultat montre simplement qu’il existe une preuve statistique de la différence. Ceci n’implique pas que la différence est nécessairement grande au niveau de l’observation. Les principaux tests utilisés ont été Khi deux et le t de Student.

[334] Par région, nous entendons ici les régions telles que déterminées pour les fins du sondage.

Les résultats de l'enquête démontrent également que les consommateurs ne connaissent pas toujours leurs droits lorsqu'ils achètent un bien dans une autre province. Nous pouvons poser l'hypothèse que les consommateurs font un transfert hypothétique[335] du cadre légal de leur province sur la province ou ils font leur achat. Nous n'avons pu valider cette hypothèse dans le cadre de l'enquête.

Nous avons constaté que les consommateurs du Québec, bien qu'ils achètent moins souvent dans d'autres provinces, ont une opinion générale différente des autres Canadiens notamment en ce qui concerne les lois sur la consommation.

Règle générale, les consommateurs disent lire les conditions et modalités avant d'effectuer un achat internet. Toutefois, il a été impossible d'évaluer si les répondants lisaient l'ensemble des informations ou seulement une partie. Ce sont les consommateurs avec une plus faible scolarité qui disent lire les conditions et modalités.

Puisque les lois peuvent varier d'une province à l'autre, il est normal que les consommateurs donnent parfois, pour une même question, des réponses différentes. Il leur arrive aussi d'être confus quant aux lois qui s'appliquent. Ceci indique que plusieurs consommateurs ne connaissent pas quelles lois s'appliquent lorsqu'ils sont soumis à différents scénarios hypothétiques, notamment au chapitre des garanties.

Les consommateurs admettent qu'ils ont une compréhension moyenne des règles régissant les téléphones cellulaires et ne sont généralement pas en mesure de connaître les limites des transferts de contrat dans le cas d'un déménagement interprovincial.

Un consommateur sur cinq ne connaît pas les conséquences d'un défaut de paiement sur son dossier de crédit.

Les répondants disent avoir au moins une bonne compréhension de ce qu'est le crédit à la consommation mais éprouvent de la difficulté à répondre dans le cadre de situations hypothétiques.

Plus de 40 % des consommateurs ne savent pas qu'elles sont les règles qui s'appliquent dans le cas des recours collectifs.

Les consommateurs croient que ce sont les commerçants qui dictent les règles dans le cas des cartes cadeaux.

Les consommateurs ont tendances à comprendre les applications des lois en fonction de leur filtre provincial. Cependant, la connaissance des consommateurs canadiens est plutôt limitée en générale.
Selon les résultats, les consommateurs ont de la difficulté à partager les responsabilités provinciales et fédérales.

[335] Nous entendons par transfert hypothétique un mécanisme qui permet, pour un individu, d'utiliser dans un nouveau contexte des connaissances construites antérieurement.

Les habitudes d’achat

Les questions 1 à 7 servaient à identifier la région des répondants et portaient sur la fréquence et le type d’achat dans d’autres provinces soit en personne ou par internet.

Ainsi, un peu plus d’un répondant sur deux (50,4 %) a déclaré avoir fait un achat à l’extérieur de sa province au cours de la dernière année et un peu plus de 84 % (84,4 %) ont répondu avoir fait un achat par internet.

Il est possible de diviser en deux groupes les consommateurs qui ont fait des achats en personne. On retrouve un premier groupe qu’il est possible d’identifier comme des acheteurs ponctuels, c’est-à-dire ceux qui ont acheté une seule fois. Ces derniers se composent de 12 % des répondants. Nous qualifions le deuxième groupe comme étant des acheteurs « d’habitudes » [336] soit celui qui a acheté plus d’une fois à l’extérieur de leur province au cours de la dernière année[337]. Voici le tableau résumé de la fréquence d’achat :

Une fois	12 %
De 2 à 5 fois	49 %
De 6 à 9 fois	17 %
10 fois et plus	21 %

Ce sont surtout les habitants des Maritimes et des Prairies qui achètent le plus souvent dans les autres provinces alors que les résidents du Québec le font moins souvent ($\chi^2 p<.001$)[338]. Outre la région, les autres variables qui sont statistiquement significatives sont les consommateurs dans la tranche d’âge 18-34 ans, les consommateurs qui possèdent un diplôme universitaire et ceux qui déclarent un revenu de plus de 100 000 $. Ces différents groupes sont donc plus susceptibles de faire un achat dans une autre province.[339]

---

[336] Ceci ne signifie pas que les consommateurs ont fait plusieurs voyages, mais bien qu’ils ont acheté à plus d’une occasion. Ceci aurait pu se faire lors d’un même déplacement.

[337] Il est possible qu’un consommateur ait fait plus d’un achat lors d’un même déplacement.

[338] Nous avons effectué des Khi deux (χ^2) et des t de Student pour affirmer les différences statistiquement significatives. Ainsi, lorsque nous affirmons qu’il existe une différence, cette dernière est basée sur le résultat du calcul. Le p représente la probabilité, en %, de commettre une erreur en affirmant qu’il existe une différence qui ne serait pas due au hasard.

[339] Ceci peut s’expliquer par des déplacements plus fréquents. Il n’a pas été demandé s’il s’agissait de déplacement spécifique pour faire des achats.

Le type de biens

Au chapitre des biens, ce sont surtout les vêtements qui font l'objet d'achats à l'extérieur de la province de résidence (60 %) suivi par les livres, la musique et les jeux vidéo (33 %), les produits d'hygiène et de beauté (33 %) et les appareils électroniques (29 %). Le type de bien peut avoir une influence sur l'application des garanties prolongées par exemple.

Le tableau qui suit résume les biens selon les provinces. Seules les régions où il existe une différence statistiquement significative apparaissent dans le tableau 2. Ceci implique que pour les autres régions, il n'y a pas un type de bien en particulier qui se démarque. Voici, dans l'ordre, les types de biens qui sont achetés par les consommateurs lorsqu'ils se retrouvent dans une autre province.

Tableau 1[340]

Principaux types de biens achetés en personne dans une autre province

Vêtement et accessoire de mode	61,9 %
Livre, musique, jeu vidéo	33,1 %
Produit d'hygiène et de beauté	33,2 %
Appareil électronique	28,7 %
Produits alimentaires / épiceries	11,4 %
Appareil électroménager	10,2 %
Auto	3,0 %

Tableau 2

Type de biens en fonction de la région

	Maritime	Ontario	Colombie-Britannique
Vêtements	✓		
Appareil électronique		✓	✓
Appareil électroménager			✓

Note : Différence statistiquement significative entre les biens et les régions.

Le tableau 2 indique des différences statistiquement significatives au niveau des types d'achats selon certaines provinces. Ainsi les consommateurs des Maritimes achètent proportionnellement plus de vêtements que les consommateurs des autres provinces. Les consommateurs ontariens et de la Colombie-Britannique, pour leur part, achètent proportionnellement plus souvent des appareils électroniques dans d'autres provinces que les autres canadiens. Les Britanno-Colombiens achètent également proportionnellement plus souvent des appareils électroménagers à l'extérieur de leur province. À l'opposée, les Québécois achètent moins souvent des vêtements, des livres et des appareils électroménagers à l'extérieur de leur province. On remarque donc qu'il existe des différences au niveau des produits selon les régions et que nous ne pouvons considérer la consommation interprovinciale comme homogène.

---

340 Ces résultats indiquent qu'il y a souvent plus d'un type de biens qui sont achetés.

Des différences au niveau du sexe et de l’âge

On observe également des différences statistiquement significatives entre les produits et le sexe des consommateurs. Les femmes préfèrent l’achat de vêtements et de produits de beauté alors que les hommes achètent plus souvent des produits électroniques.
Enfin, l’âge représente une troisième variable d’importance. Les consommateurs âgés entre 18 et 34 ans sont en effet plus susceptibles de faire des achats dans une autre province.

Les achats sur internet

Une majorité des répondants (82 %) ont déclaré avoir fait des achats sur internet. Ce sont surtout les consommateurs ontariens (86,9 %) et de la Colombie-Britannique (88,7 %) qui ont utilisés le plus souvent internet pour leurs achats. Ces pourcentages sont statistiquement significatifs. Les Québécois (70,8 %) ont, statistiquement, moins utilisé internet pour faire des achats alors que les consommateurs des Maritimes (84,2 %) et des Prairies (83 %) se retrouvent près de la moyenne nationale.

Une différence au niveau de la fréquence

On observe des différences importantes au niveau de la fréquence d’achat internet selon la province, l’âge et le revenu. Les Québécois et les consommateurs de 55 ans et plus, lorsqu’ils achètent via internet, le font entre 1 à 5 fois annuellement. À l’opposé, les consommateurs plus jeunes, les 18 à 34 ans, utilisent internet de façon plus régulière avec une moyenne de 12 fois par année. Les plus grands utilisateurs ont également un revenu plus élevé ($100 000 et plus) ainsi qu’une éducation universitaire.

Il existe un clivage important au niveau de l’âge puisque les groupes 18-34 ans et 35-54 ans sont statistiquement plus enclins à utiliser internet alors que les 55 ans plus sont moins portés à y faire des achats. Notons également que les consommateurs ayant un niveau de scolarité universitaire et ceux qui ont déclaré un revenu supérieur à 80 000 $[341] sont également plus susceptibles de faire des achats internet.

[341] Pour les achats en personne, la catégorie est de 100 000 $, mais pour les achats internet, elle est de plus de 80 000 $; comme nous le verrons dans quelques lignes, les utilisateurs les plus fréquents sont les 100 000 $ et plus.

Achat internet et situation géographique de l’entreprise

Au total, 61 % des répondants ont affirmé avoir fait, au cours de la dernière année, un achat via Internet d’un ou des biens dans une autre province canadienne.

Tableau 3
« Au cours de la dernière année, avez-vous acheté, via Internet, des biens dans une autre province canadienne? »
(Base ceux qui ont fait un achat)

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Oui, j'en ai acheté	61,0 %	82,4 %	35,3 %	49,8 %	70,4 %	67,4 %
Je ne crois pas en avoir acheté, mais c'est possible	23,4 %	11,4 %	28,1 %	35,9 %	18,5 %	23,0 %
Non, je n'en ai pas acheté	15,6 %	6,2 %	36,6 %	14,3 %	11,1 %	9,7 %

Comme on peut le remarquer à la lecture de ce tableau, ce sont surtout les consommateurs des Maritimes qui affirment avoir acheté un bien via internet dans une autre province. Par ailleurs, les Ontariens (35,9 %) et les consommateurs de la province du Québec (28,1 %) sont les plus nombreux à ne pas être certains de la situation géographique de l’entreprise ou ils ont acheté un bien.

Toutefois, il faut souligner qu’un peu moins d’un consommateur sur quatre (23,4 %) n’était pas certain que son achat avait été fait dans une autre province. On remarque donc une certaine variation entre les régions.

Compte tenu de cette variation, nous avons de nouveau examiné les résultats en fonction des provinces qui possèdent des lois qui protègent les consommateurs qui achètent via internet d’un fournisseur situé dans une autre province. On retrouve les résultats au tableau 4.

Tableau 4
« Au cours de la dernière année, avez-vous acheté, via Internet, des biens dans une autre province canadienne? »
(Base ceux qui ont fait un achat)
(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick et Alberta[342])

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick	Alberta
Oui, j'en ai acheté	61,0 %	72,4 %	35,3 %	69,6 %	73,0 %	69,3 %
Je ne crois pas en avoir acheté, mais c'est possible	23,4 %	17,4 %	28,1 %	17,9 %	20,2 %	19,4 %
Non, je n'en ai pas acheté	15,6 %	10,2 %	36,6 %	12,5 %	6,8 %	11,3 %

On remarque des résultats plus élevés, à l'exception du Québec, que la moyenne nationale dans les trois provinces qui ont un cadre légal différent. Nous pouvons nous interroger si la connaissance des lois, ou encore les connaissances de ces dernières influencent ces résultats. Il faut garder à l'esprit cette information pour mieux apprécier les résultats aux différentes questions qui portent sur les garanties légales (voir les tableaux 28 et 29).

Importance du la situation géographique de l'entreprise lors d'un achat internet

Nous avons demandé si les consommateurs, qui ont fait un achat internet au cours de la dernière année, regardent toujours, souvent, rarement ou jamais dans quel province ou pays est située l'entreprise. Pour l'ensemble des répondants, seulement 37,5 % ont répondu qu'ils regardaient toujours l'endroit où est effectivement située l'entreprise lors d'un achat internet. Ce chiffre grimpe toutefois à 69,5 % lorsqu'on combine les réponses toujours et parfois. On ne note pas de différence entre les grandes régions. De plus, on n'observe pas de différence significative pour les quatre provinces mentionnées ci-bas, comme en témoigne le tableau 6. Donc, pour la majorité des consommateurs, cette information est importante.

[342] Dans ce tableau, on ne trouve que les provinces dont les résultats sont statistiquement différents de ceux de l'ensemble du Canada.

Tableau 5
« Lorsque vous faites des achats sur Internet, regardez-vous dans quelle province / pays est située l'entreprise? »

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Oui, toujours	37,5 %	38,1 %	40,4 %	35,5 %	37,7 %	35,9 %
Oui, parfois	32,0 %	32,8 %	29,8 %	33,0 %	30,9 %	33,4 %
TOTAL OUI	**69,5 %**	**70,9 %**	**70,2 %**	**68,5 %**	**68,6 %**	**69,3 %**
Rarement	16,7 %	15,4 %	16,1 %	17,9 %	18,2 %	15,8 %
Non, jamais	13,8 %	13,7 %	13,7 %	13,6 %	13,2 %	14,9 %

Tableau 6
« Lorsque vous faites des achats sur Internet, regardez-vous dans quelle province / pays est située l'entreprise? »
(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick et Alberta[343])

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick	Alberta
Oui, toujours	37,5 %	30,4 %	40,4 %	41,1 %	27,0 %	39,8 %
Oui, parfois	32,0 %	28,4 %	29,8 %	26,8 %	36,5 %	32,8 %
TOTAL OUI	**69,5 %**	**68,8 %**	**70,2 %**	**67,9 %**	**63,5 %**	**72,6 %**
Rarement	16,7 %	24,5 %	16,1 %	14,3 %	17,6 %	17,7 %
Non, jamais	13,8 %	16,7 %	13,7 %	17,8 %	18,9 %	9,7 %

Tel que mentionné précédemment, on ne note pas de différence entre les régions[344]. Cette information demeure toutefois importante pour les consommateurs puisque près de 70 % (69,5 %) disent regarder l'endroit.

À la question du niveau d'importance qu'accordent les répondants sur le fait de connaître dans quelle province ou pays est située l'entreprise (**Question 8 : Sur une échelle de 1 à 8, 1 n'étant pas du tout important et 8 étant très important, est-ce important pour vous d'avoir cette information? (BASE: ONT FAIT UN ACHAT SUR INTERNET AU COURS DE LA DERNIÈRE ANNÉE ET REGARDENT AU MOINS RAREMENT DANS QUELLE PROVINCE OU PAYS EST SITUÉE L'ENTREPRISE)**, un peu plus du quart (25,5 %) des répondants estiment qu'il est très important, réponse de 8 sur l'échelle, d'avoir cette information. Nous avons noté une disparité régionale à cette question comme en témoigne le tableau 7.

[343] Dans ce tableau, on ne trouve que les provinces dont les résultats sont statistiquement différents de ceux de l'ensemble du Canada.

[344] Il est vrai que les Néobrunswickois répondent un peu plus souvent « non jamais », mais cette différence n'est pas statistiquement significative.

Tableau 7
Importance de connaître ou est située l'entreprise
Réponses consolidées 1 et 2 (pas du tout et peu important); 7 et 8 plutôt et très important

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Pas du tout important (réponse 1 sur l'échelle)	3,2 %	2,7 %	2,8 %	3,6 %	2,7 %	3,9 %
Plutôt peu important (réponse 2 sur l'échelle)	3,5 %	2,6 %	2,8 %	4,6 %	3,7 %	3,9 %
TOTAL PEU IMPORTANT	**6,7 %**	**5,2 %**	**5,6 %**	**8,2 %**	**6,4 %**	**7,8 %**
Plutôt important (réponse 7 sur l'échelle)	12,2 %	9,0 %	16,7 %	7,2 %	14,6 %	13,6 %
Très important (réponse 8 sur l'échelle)	25,5 %	30,8 %	30,2 %	24,3 %	23,4 %	18,8 %
TOTAL IMPORTANT	**37,7 %**	**39,8 %**	**46,9 %**	**31,5 %**	**38,0 %**	**32,4 %**

L'importance est beaucoup plus marquée au Québec (total important de 46,9 %) et un peu moins en Ontario (31,5 %) et en Colombie-Britannique (32,4 %). À la question « Pourquoi est-ce important? », les Québécois indiquent la raison de ce choix.

Tableau 8
Raisons pour lesquelles il est important de connaître la province ou le pays où est située l'entreprise
(Base ceux qui ont répondus 3 ou plus sur l'échelle)[345]

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Je veux acheter des biens d'une entreprise située au Canada	32,5 %	37,1 %	26,8 %	33,6 %	32,6 %	32,4 %
Je veux acheter des biens d'une entreprise située dans ma province	9,4 %	3,9 %	19,7 %	9,7 %	5,8 %	7,7 %
Je préfère acheter des biens dans certains pays plutôt que dans d'autres	11,5 %	11,3 %	15,6 %	8,9 %	11,6 %	9,9 %
Je veux connaître cette information au cas où il y aurait un problème avec mon achat	46,6 %	47,6 %	37,9 %	47,7 %	50,0 %	50,0 %

On remarquera que les consommateurs québécois indiquent d'une manière assez importante qu'ils veulent acheter un bien d'une entreprise qui se situe dans leur province (19,7 %). Pour près du tiers des consommateurs canadiens (32,5 %), la référence est plutôt nationale (Je veux acheter des biens d'une entreprise située au Canada). Toutefois, presque un consommateur sur deux (46,5 %) trouve important de connaître la province ou le pays où est située l'entreprise au cas où il y aurait un problème avec son achat. Les consommateurs sont donc soucieux des problèmes potentiels liés à leur achat. La question suivante portait sur le pourquoi il est important de connaître la province ou le pays où est situé l'entreprise.

[345] Nous sommes conscients que les bases des tableaux 6 et 7 sont différentes. Toutefois nous croyons pertinente l'information qui s'y trouve puisque le tableau 7 regroupe plus de 92 % de tous les répondants.

Tableau 9[346]

Raisons pourquoi il est important de connaître la province ou le pays où est située l'entreprise (Manitoba, Québec, Saskatchewan, Nouveau-Brunswick[347])

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Je veux acheter des biens d'une entreprise située au Canada	32,5 %	23,7 %	26,9 %	42,9 %	40,3 %
Je veux acheter des biens d'une entreprise située dans ma province	9,4 %	6,6 %	19,7 %	7,1 %	1,8 %
Je préfère acheter des biens dans certains pays plutôt que dans d'autres	11,5 %	13,1 %	15,6 %	2,4 %	14,0 %
Je veux connaître cette information au cas où il y aurait un problème avec mon achat	46,6 %	56,6 %	37,8 %	47,6 %	43,9 %

La lecture du tableau 9 est intéressante puisqu'elle démontre une préoccupation différente des consommateurs du Québec et de ceux des trois autres provinces. Les Québécois mettent en effet l'emphase sur l'achat dans leur province alors que les consommateurs des trois autres provinces portent leur attention sur des problèmes potentiels.

Il était donc pertinent d'interroger les consommateurs sur l'importance de la situation géographique de l'entreprise dans le processus de décision d'achat.

[346] Les résultats pour le tableau 9 sont sur une base de 100 % des répondants. C'est ce qui explique les petites différences au niveau des pourcentages pour le Québec. La différence des résultats est marginale pour les autres provinces. Nous avons laissé le total qui apparaît dans le tableau 7 pour fin de comparaison.

[347] Dans ce tableau, on ne trouve que les provinces dont les résultats sont statistiquement différents de ceux de l'ensemble du Canada. Ces provinces ont un régime statutaire différent des autres provinces en matière de garantie légale.

Tableau 10
« L'endroit où est située l'entreprise influence-t-il votre décision d'achat? »
(BASE: ONT FAIT UN ACHAT SUR INTERNET AU COURS DE LA DERNIÈRE ANNÉE ET ONT REGARDÉ AU MOINS RAREMENT DANS QUELLE PROVINCE OU PAYS EST SITUÉE L'ENTREPRISE)

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Oui, toujours	16,6 %	14,0 %	19,8 %	18,7 %	15,2 %	15,3 %
Oui, parfois	61,6 %	61,7 %	60,7 %	56,6 %	64,8 %	64,0 %
TOTAL OUI	**78,2 %**	**75,7 %**	**80,5 %**	**75,3 %**	**80,0 %**	**79,3 %**
Rarement	17,6 %	19,5 %	13,9 %	20,4 %	16,6 %	17,5 %
Non, jamais	4,3 %	4,8 %	5,6 %	4,3 %	3,4 %	3,2 %
TOTAL NON	**21,8 %**	**23,3 %**	**19,5 %**	**24,7 %**	**20,0 %**	**20,8 %**

Les résultats démontrent que les consommateurs se disent influencés par l'endroit où est située l'entreprise. Ainsi, c'est un peu moins des quatre cinquièmes (78,2 %) des consommateurs qui affirment que l'endroit où se trouve l'entreprise influence leur décision d'achat. On ne remarque pas de différence significative entre les régions.

On peut poser l'hypothèse que l'achat dans d'autres pays peut influencer ce résultat.

Résumé des achats par internet

- 78 % des répondants estiment que l'endroit où est située l'entreprise influence leur décision d'achat.
- La principale raison (47 %) invoquée pour regarder où se trouve le fournisseur concerne des problèmes potentiels (Je veux connaître cette information au cas où il y aurait un problème avec mon achat).
- Les répondants ont fait en moyenne 6 achats par internet l'année dernière.
- Les consommateurs du Québec (moyenne de 5 achats) utilisent un peu moins internet pour leurs achats que ceux des autres régions.
- Les acheteurs internet sont plus scolarisés, plus jeunes et ont des revenus plus élevés.

Lecture des conditions d'achats

Comme le démontrent les résultats du tableau 11, un pourcentage important (66,9 %) des répondants dit lire toujours ou souvent les conditions et modalités de l'entente (*terms of agreement*) avant de donner leur accord à une transaction.

Tableau 11
Lecture des termes et conditions
« Avant de donner votre accord aux conditions et modalités de l'entente (*terms of agreement*), est-ce que vous les lisez? »
(BASE: ONT FAIT UN ACHAT SUR INTERNET AU COURS DE LA DERNIÈRE ANNÉE)

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Oui, toujours	30,9 %	31,7 %	24,3 %	35,5 %	30,9 %	32,1 %
Oui, parfois	36,0 %	39,6 %	29,4 %	37,7 %	37,9 %	35,4 %
TOTAL OUI	**66,9 %**	**71,3 %**	**53,7 %**	**73,2 %**	**68,8 %**	**67,5 %**
Rarement	28,0 %	25,2 %	35,6 %	23,6 %	27,6 %	27,9 %
Non, jamais	4,8 %	2,9 %	10,6 %	3,1 %	2,6 %	4,7 %
TOTAL NON	**32,8 %**	**28,1 %**	**46,2 %**	**26,7 %**	**30,2 %**	**32,6 %**

Note : Les totaux ne donnent pas 100 % puisque quelques répondants (0,3 %) ne comprenaient pas la signification de « conditions et de modalités de l'entente »[348].

On constate que ce sont les consommateurs québécois, avec 53,7 %, qui, le moins souvent, disent lire ces conditions d'achats. On remarque que cette différence entre le Québec et les autres régions se confirme même lorsqu'on analyse le comportement en fonction des provinces du Manitoba, de la Saskatchewan et du Nouveau-Brunswick (voir le tableau 12). Une lecture plus attentive des résultats[349] indique que ceux qui lisent le plus souvent les conditions et modalités sont les femmes, les consommateurs âgés de 55 ans et plus et ceux qui ont une scolarité collégiale ou inférieure. Ceux qui les lisent le moins souvent sont les hommes, les consommateurs âgés de 18 à 35 ans et ceux qui possèdent une scolarité de niveau universitaire.

La question ne demandait pas si les consommateurs faisaient une lecture complète des conditions et modalités de l'entente. C'est ce qui peut expliquer des résultats un peu plus importants qu'attendu.

Il est important de noter que les réponses obtenues vont à l'encontre de ce que les observateurs estiment vrai. Nous ne pouvons écarter la possibilité que certains répondants aient répondu à cette question de façon à se montrer sous un jour positif. C'est ce que nous appelons une réponse de convenance.

[348] L'expression anglaise « *terms of agreement* » était également mentionnée.

[349] À partir des tableaux croisés.

Tableau 12

« Avant de donner votre accord aux conditions et modalités de l'entente (*terms of agreement*), est-ce que vous les lisez? »

(BASE: ONT FAIT UN ACHAT SUR INTERNET AU COURS DE LA DERNIÈRE ANNÉE)

(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick et Alberta[350])

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick	Alberta
Oui, toujours	30,9 %	28,6 %	24,3 %	30,4 %	30,1 %	32,8 %
Oui, parfois	36,0 %	35,7 %	29,4 %	32,1 %	41,1 %	41,5 %
TOTAL OUI	**66,9 %**	**64,3 %**	**53,7 %**	**62,5 %**	**71,2 %**	**74,3 %**
Rarement	28,0 %	33,7 %	35,6 %	35,7 %	27,4 %	22,4 %
Non, jamais	4,8 %	2,0 %	10,6 %	1,8 %	1,4 %	3,3 %
TOTAL NON	**32,8 %**	**35,7 %**	**46,2 %**	**37,5 %**	**28,8 %**	**25,7 %**

On remarque ici que les consommateurs de l'Alberta et du Nouveau-Brunswick sont les plus nombreux à dire qu'ils lisent les termes. Ce tableau confirme la différence avec les consommateurs du Québec qui disent lire moins cette information

On retrouve, en examinant le tableau 13, deux raisons principales pour expliquer pourquoi les consommateurs ne lisent pas les conditions et modalités[351]. La première, mentionnée par plus de six répondants sur dix (61,5 %) est qu'ils doivent, de toute façon, donner leur accord pour acheter le bien. Les Québécois, encore une fois, font bande à part puisque seulement 44,5 % mentionnent cette raison. La deuxième raison invoquée pour ne pas lire les conditions et modalités est qu'ils trouvent le texte trop long (68,8 %). Ce sont surtout les Québécois qui donnent cette réponse.
Le tableau qui suit donne un aperçu des différentes raisons pour ne pas lire les conditions et modalités.

[350] Dans ce tableau, on ne trouve que les provinces dont les résultats sont statistiquement différents de ceux de l'ensemble du Canada.

[351] Les répondants pouvaient répondre à plus d'un choix c'est ce qui explique des totaux qui excèdent 100 %.

Tableau 13
Raisons pour ne pas lire les conditions et modalités (*terms of agreement*)
(Base de ceux qui ont répondus rarement et/ou jamais)

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Ça ne donne rien de les lire; de toute façon, je dois donner mon accord pour acheter le bien	61,5 %	67,6 %	44,5 %	66,0 %	66,0 %	72,0 %
Pour sauver du temps; le texte est trop long	60,0 %	55,5 %	68,8 %	63,8 %	53,8 %	54,3 %
Je ne comprends pas ce qui est écrit	13,4 %	14,1 %	9,6 %	16,0 %	16,1 %	13,6 %
Il n'y a pas de raison particulière	5,1 %	5,2 %	5,2 %	4,3 %	6,6 %	4,2 %

En rapport avec les raisons de non-lecture, soulignons que les consommateurs âgés de 18 à 35 ans dans une proportion de 70 %, donc plus que l'ensemble des répondants, disent ne pas lire les conditions et modalités à la fois pour sauver du temps et parce que le texte est trop long.

Les problèmes liés aux achats

Très peu de consommateurs (7,5 %) ont déclarés avoir eu des problèmes à la suite d'un achat à l'extérieur de leur province[352]. Ce sont surtout les 18-34 ans qui ont statistiquement eu plus de problèmes. Ceci doit être examiné en fonction du type de biens achetés, notamment les produits électroniques. Les problèmes déclarés concernent surtout la défectuosité du produit (45 %) et, dans une moins grande mesure, les délais de livraison (8 %) et des frais supplémentaires (6 %). Ces deux derniers points ont été soulevés par les consommateurs de 55 ans et plus. Nous n'avons pas trouvé de différence régionale.

La connaissance des lois

Un peu plus de 40 % des consommateurs (42 %) ont répondu que la loi de la province où ils ont acheté un bien en personne s'applique. La proportion diminue à 33 % lorsque l'achat est fait par internet. Une référence aux lois fédérales est plus importante pour les achats internet notamment pour les Québécois.

Tableau 14
«Selon vous, lorsque vous achetez, en personne (et sur internet), un bien provenant d'une autre province, quelles lois s'appliquent? »

Réponse	Achat en personne[353]	Achat sur internet
Celles de ma province	9 %	12 %
Celles de la province où j'ai acheté mon bien	42 %	33 %
Les deux puisqu'il s'agit des mêmes lois	6 %	5 %
Les deux, même si ce sont des lois différentes	8 %	11 %
Les lois fédérales	6 %	10 %
Je ne sais pas	29 %	29 %

Premièrement, on remarque que dans les deux situations, achat en personne et achat par internet, 29 % des répondants disent ignorer quelles lois s'appliquent (je ne sais pas). Par ailleurs, on observe que, majoritairement, les répondants indiquent que ce sont les lois de la province où ils achètent leur bien qui s'applique lorsque l'achat est fait en personne (42 %). Cependant, ce pourcentage diminue à 33 % lorsque l'achat est fait par le biais d'internet. On observe donc un écart important entre les deux modes d'achats.

Même si la majorité des consommateurs (41,9 %) disent que c'est la loi de la province ou l'achat a été fait qui s'applique, une partie importante des Québécois affirment que ce sont les lois de leur province qui prévalent. En effet, à la lecture du tableau 15, 15,5 % des Québécois croient que les lois de leur province s'appliquent même si l'achat est fait ailleurs que chez eux. Cela vaut à la fois pour les achats en personne ou par internet. On ne note pas de différence notable pour les autres régions. Toutefois, moins du tiers des répondants (29,4 %) nous ont dit qu'il ne savait pas.

[352] Réponse à la question : Que vous ayez achetée en ligne ou en personne, avez-vous déjà eu un ou des problèmes après avoir acheté un bien dans une autre province?

[353] Rappel les pourcentages ont été arrondis pour ce tableau.

C’est donc encore une fois au Québec ou la différence est statistiquement significative.[354] C’est également au Québec que l’on retrouve un pourcentage plus élevé de répondants qui croient que ce sont des lois fédérales qui s’appliquent (10,4 %).

Concernant les deux modes d’achat, on ne remarque pas de grandes différences au niveau des résultats (tableau 15 à 18).

Il existe donc une différence de perception selon les provinces. Nous pouvons émettre l’hypothèse que l’habitude comportementale des consommateurs explique cette différence.

[354] En fait les χ^2 sont significatifs pour toutes les variables contrôles. Concernant les provinces et la scolarité nous avons obtenu des $p < .001$.

Voici les différents tableaux sur le sujet :

Tableau 15

« Selon vous, lorsque vous achetez, en personne, un bien provenant d'une autre province, quelles lois s'appliquent? »

Réponse	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Celles de ma province	9,0 %	5,7 %	15,5 %	8,1 %	7,1 %	7,4 %
Celles de la province où j'ai acheté mon bien	41,9 %	40,0 %	42,5 %	39,0 %	44,7 %	42,9 %
Les deux puisqu'il s'agit des mêmes lois	6,2 %	6,6 %	3,4 %	7,2 %	7,6 %	7,1 %
Les deux, même si ce sont des lois différentes	7,4 %	6,8 %	5,1 %	8,9 %	7,1 %	9,6 %
Les lois fédérales	6,1 %	4,0 %	10,4 %	6,2 %	4,9 %	4,2 %
Je ne sais pas	29,4 %	37,0 %	23,1 %	30,7 %	28,7 %	28,9 %

Tableau 16

« Selon vous, lorsque vous achetez, en personne, un bien provenant d'une autre province, quelles lois s'appliquent? »

(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick[355])

Réponse	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Celles de ma province	9,0 %	9,4 %	15,5 %	4,1 %	2,1 %
Celles de la province où j'ai acheté mon bien	41,9 %	38,5 %	42,5 %	48,6 %	43,8 %
Les deux puisqu'il s'agit des mêmes lois	6,2 %	8,5 %	3,4 %	4,1 %	6,2 %
Les deux, même si ce sont des lois différentes	7,4 %	7,7 %	5,1 %	6,6 %	5,2 %
Les lois fédérales	6,1 %	4,3 %	10,4 %	4,1 %	3,1 %
Je ne sais pas	29,4 %	31,6 %	23,1 %	32,5 %	39,6 %

[355] Dans ce tableau, on ne trouve que les provinces dont les résultats sont statistiquement différents de ceux de l'ensemble du Canada.

Tableau 17

« Selon vous, lorsque vous achetez, sur Internet, un bien provenant d'une autre province, quelles lois s'appliquent? »

Réponse	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Celles de ma province	12,5 %	11,0 %	15,8 %	11,6 %	10,5 %	12,7 %
Celles de la province où j'ai acheté mon bien	32,7 %	29,8 %	34,5 %	29,8 %	34,5 %	34,3 %
Les deux puisqu'il s'agit des mêmes lois	5,1 %	4,2 %	2,9 %	7,4 %	6,4 %	5,1 %
Les deux, même si ce sont des lois différentes	10,5 %	11,2 %	5,8 %	11,6 %	11,2 %	13,5 %
Les lois fédérales	10,0 %	7,4 %	14,1 %	9,6 %	10,5 %	7,6 %
Je ne sais pas	23,3 %	36,4 %	26,9 %	30,0 %	27,0 %	26,7 %

Tableau 18

« Selon vous, lorsque vous achetez, sur Internet, un bien provenant d'une autre province, quelles lois s'appliquent? »

(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick et Alberta)

Réponse	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick	Alberta
Celles de ma province	12,5 %	10,3 %	15,8 %	9,5 %	10,4 %	11,0 %
Celles de la province où j'ai acheté mon bien	32,7 %	32,5 %	34,5 %	37,8 %	30,2 %	34,2 %
Les deux puisqu'il s'agit des mêmes lois	5,1 %	6,8 %	2,9 %	4,1 %	5,2 %	6,8 %
Les deux, même si ce sont des lois différentes	10,5 %	12,0 %	5,8 %	8,1 %	8,3 %	11,9 %
Les lois fédérales	10,0 %	7,7 %	14,1 %	8,1 %	5,2 %	12,8 %
Je ne sais pas	23,3 %	30,8 %	26,9 %	32,4 %	40,6 %	23,3 %

Le crédit à la consommation

Les consommateurs ont été interrogés sur leur évaluation du crédit à la consommation. On retrouve dans la question la définition du terme. On comprend donc que le terme « crédit à la consommation » désigne tout financement lié à l'achat ou à la location d'un bien par un commerçant et non le crédit octroyé directement par une institution financière, telle que les cartes de crédit, les hypothèques, les prêts personnels et les marges de crédit.

Les Québécois ont une évaluation plutôt positive de leur compréhension du crédit à la consommation. En effet, ils estiment, dans une proportion de 56,8 %, avoir une très bonne ou une bonne compréhension alors que l'ensemble des consommateurs canadiens se situe, pour sa part, à 44,7 %. On peut expliquer cette différence par les réponses dans la catégorie « J'ai une compréhension moyenne des règles en matière de crédit à la consommation ». Les consommateurs extérieurs au Québec sont plus nombreux que les Québécois à avoir répondu « J'ai une compréhension moyenne des règles en matière de crédit à la consommation ». Les Québécois, pour leur part, s'estiment plus connaisseurs avec une plus grande proportion qui répond dans la catégorie « J'ai une assez bonne compréhension ».

Tableau 19

« Dans cette section, nous utilisons le terme « crédit à la consommation » pour désigner tout financement lié à l'achat ou à la location d'un bien par un commerçant et non le crédit octroyé directement par une institution financière, telle que les cartes de crédit, les hypothèques, les prêts personnels et les marges de crédit. Parmi les affirmations suivantes, laquelle vous définit le mieux? »

Réponse	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
J'ai une très bonne compréhension des règles en matière de crédit à la consommation	15,3 %	11,8 %	15,8 %	19,7 %	13,7 %	15,4 %
J'ai une assez bonne compréhension des règles en matière de crédit à la consommation	29,4 %	27,0 %	41,0 %	21,5 %	28,6 %	26,5 %
J'ai une compréhension moyenne des règles en matière de crédit à la consommation	36,9 %	39,5 %	27,2 %	41,0 %	39,0 %	40,0 %
J'ai une faible compréhension des règles en matière de crédit à la consommation	9,7 %	12,6 %	10,7 %	9,4 %	11,7 %	9,3 %
Ma compréhension des règles en matière de crédit à la consommation est nulle	7,7 %	9,2 %	5,3 %	8,4 %	7,0 %	8,8 %

Le tableau 20 offre, quant à lui, un éclairage par rapport à la position des Québécois et des consommateurs des autres provinces à savoir si les règles encadrant les informations à fournir aux consommateurs sont les mêmes dans toutes les provinces. On remarque ainsi que les Québécois sont ceux qui affirment le plus (67,8 %) que les règles encadrant ces règles sont différentes entre les provinces. Même lorsqu'on examine le tableau 21, qui porte sur les provinces, les résultats sont sans équivoque. Les différences sont frappantes notamment entre le Québec (67,8 %) et la Saskatchewan (39,2 %). Il existe donc une disparité importante au niveau de la connaissance des règles entre les régions et les provinces. Il est également important de souligner qu'un nombre important de consommateurs ont déclaré ne pas savoir si les règles sont les mêmes entre les provinces. Il devient assez évident que les consommateurs ignorent quelles règles encadrant les informations à fournir au consommateur en matière de crédit à la consommation sont harmonisées. On remarque surtout que, dans les autres régions, les consommateurs ne peuvent se prononcer (ne sait pas). Un répondant sur deux de la Saskatchewan (50 %) et du Nouveau-Brunswick (49 %) ne se prononce pas (ne sait pas).

Tableau 20
« Selon vous, les règles encadrant les informations à fournir au consommateur en matière de crédit à la consommation sont les mêmes dans toutes les provinces? »

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Oui, elles sont les mêmes	10,0 %	8,8 %	5,3 %	13,6 %	13,9 %	9,3 %
Non, elles sont semblables, mais il y a des différences entre les provinces	34,6 %	30,8 %	40,8 %	34,3 %	33,5 %	32,3 %
Non, elles sont différentes d'une province à l'autre	16,7 %	10,7 %	27,0 %	14,1 %	12,7 %	16,9 %
TOTAL NON	**51,3 %**	**41,5 %**	**67,8 %**	**48,4 %**	**46,2**	**49,2 %**
Je ne sais pas	38,7 %	49,7 %	26,9 %	38,0 %	39,9 %	41,5 %

Tableau 21
« Selon vous, les règles encadrant les informations à fournir au consommateur en matière de crédit à la consommation sont les mêmes dans toutes les provinces? »
(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick)

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Oui, elles sont les mêmes	10,0 %	17,9 %	5,3 %	10,8 %	7,3 %
Non, elles sont semblables, mais il y a des différences entre les provinces	34,6 %	29,1 %	40,8 %	27,0 %	26,0 %
Non, elles sont différentes d'une province à l'autre	16,7 %	13,7 %	27,0 %	12,2 %	17,7 %
TOTAL NON	**51,3 %**	**42,8 %**	**67,8 %**	**39,2 %**	**43,7 %**
Je ne sais pas	38,7 %	39,3 %	26,9 %	50,0 %	49,0 %

On retrouvera dans le tableau résumé qui suit les différences entre les régions pour l'ensemble de ces questions.

Tableau Résumé 1
Crédit à la consommation
Différences statistiques[356] entre les provinces selon les perceptions de certaines situations

	Les provinces qui disent oui	Les provinces qui disent non
« Selon vous, les règles encadrant les informations à fournir au consommateur en matière de crédit à la consommation sont les mêmes dans toutes les provinces? »	Ontario, Prairie	Québec
« Supposons qu'un consommateur ne paie pas son compte et que le marchand décide d'utiliser les services d'une agence de recouvrement. Selon vous, est-ce que les règles régissant la conduite de ces agences sont les mêmes à travers le Canada? »	Ontario	Colombie-Britannique

Il est assez clair à la lecture du tableau résumé 1 que les Ontariens croient statistiquement plus que ce sont les mêmes règles qui s'appliquent partout au Canada.[357]

Les Canadiens croient que les mêmes règles devraient s'appliquer partout au Canada. Ainsi à la question « Sur une échelle de 1 à 8, 1 n'étant pas du tout important et 8 étant très important, pensez-vous qu'il est important que les règles encadrant la divulgation d'informations en matières de crédit à la consommation soient les mêmes dans toutes les provinces», la grande majorité indiquent qu'il est en effet important d'avoir les mêmes règles. La moyenne obtenue est de 6,42 sur 8 (score de 80,25%). On retrouve même 38% des répondants qui affirment qu'il est très important que ce soient les mêmes règles dans toutes les provinces. Nous avons effectué une ANOVA[358] à un indicateur afin de vérifier s'il existe une différence de moyenne entre les provinces. Nous avons obtenu un résultat non significatif, $F(9, 2033)$ 0,902 p = ,518.

Le graphique qui suit montre la répartition des réponses pour l'ensemble des répondants.[359]

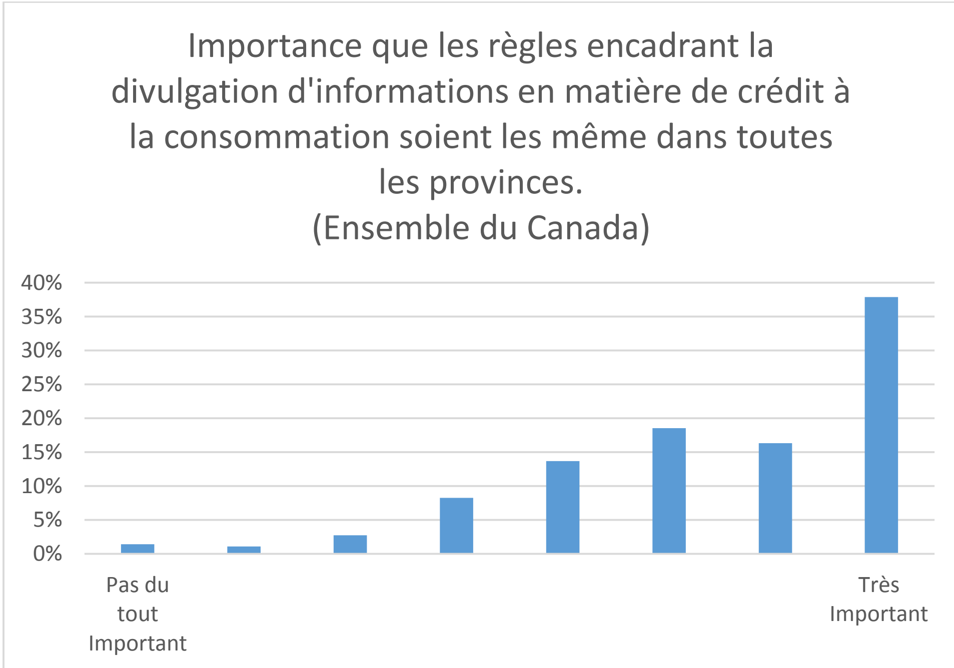
[356] Une différence statistique ne signifie pas que la majorité a répondu oui ou non, mais bien qu'il existe une différence statistique pour ces réponses. Ainsi, il y a statistiquement plus de Québécois qui ont répondu non pour la première situation que dans les autres régions. En ce sens, les Québécois, pour cette situation, sont statistiquement différents.

[357] Il ne faut pas uniquement se fier aux résultats bruts mais bien aux calculs (tests) de la différence entre les moyennes. Ceci ne veut pas dire que la majorité des Ontariens croient que ce sont les mêmes règles mais bien que la différence entre les Ontariens et le reste des consommateurs canadiens qui disent que ce sont les mêmes règles est statistiquement supérieure.

[358] L'Analyse de Variance (ANOVA) sert essentiellement à valider s'il existe une différence statistique entre les moyennes. Ici, un résultat non significatif indique qu'il n'y a pas de différence au niveau des moyennes entre les différentes provinces et que nous pouvons conclure que toutes les provinces indiquent de façon similaire qu'Il est important d'avoir les mêmes règles.

[359] Nous avons observé sensiblement les mêmes résultats pour les autres questions du type 1 à 8 sauf pour la question 30 qui porte sur les téléphones cellulaires. Nous aurons l'occasion d'y revenir dans la section sur les cellulaires.

Graphique 1



Défaut de paiement et dossier de crédit

On observe encore une fois, avec les tableaux 22 et 23, une différence entre le Québec et, cette fois, l’Ontario, lorsqu’il y a, à la suite d’une entente de crédit avec un marchand d’une autre province, un défaut de paiement. Ce sont en effet les Ontariens (12,1 %) qui estiment le plus souvent que cela n'affectera pas leur dossier de crédit alors que les Québécois (85,2 %), au contraire, pensent que cela aura un effet négatif. Par ailleurs, un consommateur sur cinq (20,4 %) des Maritimes a déclaré ne pas savoir.

De plus, on observe, encore une fois, une différence entre le Québec et les trois provinces (Manitoba, Québec, Saskatchewan et Nouveau-Brunswick) (voir tableau 23). Pour ce tableau, c’est au Manitoba que l’on dénote le plus de consommateurs qui ne peuvent répondent (22,2 % disent ne pas savoir). On se retrouve donc avec un spectre assez large sur cette question, certains affirmant que cela pourrait avoir un impact négatif (Québec), une autre province, l’Ontario, qui se différentie avec un plus fort pourcentage que le reste du pays qui ne croit pas que cela aura un impact et, enfin, une région, les Maritimes et une province, le Manitoba, qui ne savent pas. Malgré ces différences, la grande majorité des répondants (75 %) estiment que cela aura un impact négatif sur leur dossier de crédit.

À la lecture de ce tableau, on remarque que les consommateurs québécois ont une perception différente des autres consommateurs canadiens notamment en ce qui concerne leurs droits. Dans un même registre, les consommateurs des Maritimes et de Colombie-Britannique (et dans une certaine mesure les consommateurs des Prairies) se retrouvent à l’opposé de la perception des Québécois.

Il faut lire ces résultats en fonction de la connaissance estimée par les répondants. D’une manière globale, 45 % des répondants disent avoir une très bonne ou une bonne connaissance des règles du crédit à la consommation, 37 % affirment avoir une connaissance moyenne et 18 % avoir une connaissance faible ou nulle. Ce sont surtout les Québécois et les Ontariens qui estiment avoir une très bonne ou une bonne connaissance.

Tableau 22

« Si vous achetez un bien dans une autre province, concluez une entente de crédit avec le marchand et êtes incapable de faire régulièrement vos paiements, cela affectera-t-il votre dossier de crédit? »

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Cela n'affectera pas mon dossier de crédit	7,7 %	8,8 %	4,4 %	12,1 %	6,8 %	7,1 %
Cela affectera mon dossier de crédit	75,0 %	70,8 %	85,2 %	67,1 %	74,9 %	74,5 %
Je ne sais pas	17,3 %	20,4 %	10,4 %	20,8 %	18,2 %	18,4 %

Tableau 23

« Si vous achetez un bien dans une autre province, concluez une entente de crédit avec le marchand et êtes incapable de faire régulièrement vos paiements, cela affectera-t-il votre dossier de crédit? » (Manitoba, Québec, Saskatchewan, Nouveau-Brunswick[360])

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Cela n'affectera pas mon dossier de crédit	7,7 %	7,6 %	4,4 %	5,4 %	8,3 %
Cela affectera mon dossier de crédit	75,0 %	70,2 %	85,2 %	79,7 %	79,2 %
Je ne sais pas	17,3 %	22,2 %	10,4 %	14,9 %	12,5 %

[360] Dans ce tableau, on trouve certaines provinces dont les résultats sont statistiquement différents de ceux de l'ensemble du Canada.

Les agences de recouvrements

Les consommateurs canadiens ne savent pas si les règles régissant la conduite des agences de recouvrements sont les mêmes partout au Canada. C'est ce qui ressort des résultats à la question hypothétique « Supposons qu'un consommateur ne paie pas son compte et que le marchand décide d'utiliser les services d'une agence de recouvrement. Selon vous, est-ce que les règles régissant la conduite de ces agences sont les mêmes à travers le Canada? ».
En fait, près de la moitié des répondants (49,5 %) ont répondu ne pas savoir. On retrouve des réponses similaires dans toutes les régions. Même si on observe quelques petites variations on retrouve presque autant de consommateurs qui disent oui (26,3 %) que non (24,2 %). On observe toutefois, au tableau 25, une légère différence au Manitoba (18,8 %) et en Saskatchewan (16,2 %) ou un peu moins de répondants ont indiqué que, non, les règles étaient les mêmes à travers le Canada. C'est également en Saskatchewan que l'on retrouve le plus fort pourcentage (58,1 %) qui ne sait pas.

Tableau 24
Supposons qu'un consommateur ne paie pas son compte et que le marchand décide d'utiliser les services d'une agence de recouvrementSelon vous, est-ce que les règles régissant la conduite de ces agences sont les mêmes à travers le Canada?

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Oui	26,3 %	24,5 %	25,7 %	31,1 %	28,5 %	22,1 %
Non	24,2 %	19,9 %	26,0 %	23,4 %	22,5 %	28,7 %
Ne sais pas	49,5 %	55,6 %	48,3 %	45,5 %	49,0 %	49,3 %

Tableau 25
Supposons qu'un consommateur ne paie pas son compte et que le marchand décide d'utiliser les services d'une agence de recouvrement. Selon vous, est-ce que les règles régissant la conduite de ces agences sont les mêmes à travers le Canada?

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Oui	26,3 %	27,4 %	25,7 %	25,7 %	28,1 %
Non	24,2 %	18,8 %	26,0 %	16,2 %	21,9 %
Ne sais pas	49,5 %	53,8 %	48,3 %	58,1 %	50,0 %

<u>La garantie légale</u>

Ce sont encore les Québécois qui se considèrent les plus protégés lorsqu'ils achètent un bien dans une autre province, et ce, même si ce bien brise quelques mois après la garantie du fabricant. Ce sont même plus de 40 % des répondants québécois (40,5 %) qui se disent en fait protégés par la loi de la province ou ils ont fait leur achat. Ce pourcentage est vraiment différent des réponses des autres parties du pays comme en fait foi les résultats du tableau 26.
De plus, si on examine le tableau 27, on remarque que les consommateurs du Manitoba et du Nouveau-Brunswick sont ceux qui se disent non protégé à plus de 50 % (54,2 % pour le Manitoba et 55,3 % pour le Nouveau-Brunswick). Pour l'ensemble des régions, on retrouve approximativement un consommateur sur quatre (24,8 %) qui ne sait pas s'il dispose d'une protection.
Les résultats sont encore plus intéressants lorsqu'interrogés sur un achat dans leur province et lorsque le bien brise un mois après la fin de la garantie du fabricant puisque les consommateurs estiment qu'ils sont moins bien protégés. En effet, si 40,4 % des répondants estiment qu'ils n'ont pas de protection lorsqu'ils achètent dans une autre province, ce chiffre grimpe à 56,7 % lorsque l'achat est fait dans leur province. Les résidents du Manitoba (63,2 %), de la Saskatchewan (68,9 %) et du Nouveau-Brunswick (69,8 %) estiment, de façon assez importante, qu'ils ne sont pas protégés. Il existe vraiment une différence marquée entre le Québec et ces trois provinces.
Aussi, les Québécois sont à contrecourant des autres consommateurs canadiens. En effet, 59,2 % des consommateurs québécois disent être protégés alors que ce total est de 34,7 % pour l'ensemble des Canadiens. Le sentiment de protection des Québécois est similaire. Les Québécois ne voient donc aucune différence au niveau du lieu d'achat.
Deux éléments sont à retenir de ces résultats. Premièrement, une majorité des répondants croit qu'une fois la garantie du fabricant échue, il n'y a plus rien à faire et, deuxièmement, une bonne proportion des répondants ignore (ne sait pas) ce qui se passe. Pour ce dernier point, c'est près de 25 % des consommateurs qui ne savent pas s'ils bénéficient ou non d'une protection lorsque l'achat est fait à l'extérieur de leur province. Ce pourcentage baisse à un peu plus de 15 % lorsque l'achat est fait dans leur province.

Tableau 26

« Un consommateur se rend dans une autre province et y achète un bien. Ce dernier brise quelques mois après la garantie du fabricant. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection? »

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Non, il n'est pas protégé	40,4 %	50,4 %	16,8 %	42,0 %	47,8 %	49,8 %
Oui, il est protégé par la loi (ou le droit) de sa province	8,6 %	4,6 %	8,7 %	11,8 %	9,8 %	8,3 %
Oui, il est protégé par la loi (ou le droit) de la province où il a fait son achat	19,5 %	11,0 %	40,5 %	16,3 %	13,7 %	12,0 %
Oui, il est protégé par deux lois provinciales, celle de sa province et celle où il a fait son achat	6.6 %	5,4 %	10,0 %	6,4 %	4,4 %	6,1 %
TOTAL OUI	**34,7 %**	**21,0 %**	**59,2 %**	**34,5 %**	**27,9 %**	**26,4 %**
Je ne sais pas	24,8 %	28,6 %	24,1 %	23,5 %	24,3 %	23,8 %

Tableau 27

« Un consommateur se rend dans une autre province et y achète un bien. Ce dernier brise quelques mois après la garantie du fabricant. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection? »

(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick)

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Non, il n'est pas protégé	40,4 %	54,2 %	16,8 %	45,9 %	55,3 %
Oui, il est protégé par la loi (ou le droit) de sa province	8,6 %	8,3 %	8,7 %	5,4 %	3,1 %
Oui, il est protégé par la loi (ou le droit) de la province où il a fait son achat	19,5 %	6,9 %	40,5 %	16,2 %	8,3 %
Oui, il est protégé par deux lois provinciales, celle de sa province et celle où il a fait son achat	6.6 %	6,3 %	10,0 %	1,4 %	8,3 %
TOTAL OUI	**34,7 %**	**21,5 %**	**59,2 %**	**23,0 %**	**19,7 %**
Je ne sais pas	24,8 %	24,3 %	24,1 %	31,1 %	25,0 %

Tableau 28

« Un consommateur achète un bien dans sa province de résidence. Ce dernier brise dès la fin de la garantie du fabricant. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection? »

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Non, il n'est pas protégé	56,7 %	63,7 %	32,8 %	57,6 %	64,7 %	69,3 %
Oui, il est protégé par la loi (ou le droit) de sa province	28,0 %	14,4 %	60,2 %	25,1 %	17,1 %	16,7 %
Je ne sais pas	15,3 %	21,9 %	7,0 %	17,3 %	18,2 %	14,0 %

Tableau 29

« Un consommateur achète un bien dans sa province de résidence. Ce dernier brise dès la fin de la garantie du fabricant. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection? »

(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick)

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Non, il n'est pas protégé	56,7 %	63,2 %	32,8 %	68,9 %	69,8 %
Oui, il est protégé par la loi (ou le droit) de sa province	28,0 %	17,1 %	60,2 %	14,9 %	13,5 %
Je ne sais pas	15,3 %	19,7 %	7,0 %	16,2 %	16,7 %

Garantie légale et achat internet

Les résultats précédents portaient sur un achat en personne dans une autre province. Mais qu'en est-il d'un achat par internet? Encore une fois, les Québécois répondent différemment des autres Canadiens. Alors que 48,3 % des Québécois disent ne pas être protégé, ce sont près de six Canadiens sur dix (57,2 %) qui affirment la même chose. Ce résultat est presque similaire à celui que l'on retrouve pour les achats par internet dans leur province. Le tableau 31 démontre qu'une plus grande proportion des consommateurs de la Saskatchewan (62,2 %) et du Nouveau-Brunswick (68,8 %) se dit non protégé. C'est donc au Québec, avec 29,3 % et en Ontario, avec 24,2 %, que les consommateurs sont plus nombreux à estimer profiter d'une certaine protection légale.
Toutefois, les consommateurs perçoivent que les lois qui les protègent sont différentes selon que l'achat est fait en personne ou par le biais d'internet. On retrouve encore un peu plus de vingt pourcent (20 %) des répondants qui ne savent pas.

Tableau 30
« Un consommateur va sur le site internet d'un magasin situé dans une autre province et achète un bien. Ce dernier cesse de fonctionner alors que la garantie du fabricant est échue. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection? »

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Non, il n'est pas protégé	57,2 %	62,1 %	48,3 %	53,6 %	57,4 %	66,2 %
Oui, il est protégé par la loi (ou le droit) de sa province	7,1 %	3,9 %	7,0 %	11,3 %	6,6 %	6,9 %
Oui, il est protégé par la loi (ou le droit) de la province où il a fait son achat	10,0 %	6,1 %	17,7 %	10,4 %	8,1 %	6,4 %
Oui, il est même protégé par les lois (ou le droit) de deux provinces, la sienne et celle où il a fait son achat	3.6 %	4,4 %	4,6 %	2,5 %	3,6 %	2,5 %
TOTAL OUI	**20,7 %**	**14,4 %**	**29,3 %**	**24,2 %**	**18,3 %**	**15,8 %**
Je ne sais pas	22,1 %	23,5 %	22,3 %	22,3 %	24,3 %	18,1 %

Tableau 31

« Un consommateur va sur le site internet d'un magasin situé dans une autre province et achète un bien. Ce dernier cesse de fonctionner alors que la garantie du fabricant est échue. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection? »

(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick)

	Total Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Non, il n'est pas protégé	57,2 %	52,1 %	48,3 %	62,2 %	68,8 %
Oui, il est protégé par la loi (ou le droit) de sa province	7,1 %	6,0 %	7,0 %	5,4 %	5,2 %
Oui, il est protégé par la loi (ou le droit) de la province où il a fait son achat	10,0 %	8,5 %	17,7 %	8,1 %	4,2 %
Oui, il est même protégé par les lois (ou le droit) de deux provinces, la sienne et celle où il a fait son achat	3.6 %	4,3 %	4,6 %	1,4 %	1,0 %
TOTAL OUI	**20,7 %**	**18,8 %**	**29,3 %**	**14,9 %**	**10,4 %**
Je ne sais pas	22,1 %	23,0 %	22,3 %	23,0 %	20,8 %

Tableau résumé 2

Différence statistique selon les provinces. Questions portant sur les garanties.

	Les provinces qui disent oui	Les provinces qui disent non
Un consommateur se rend dans une autre province et y achète un bien. Ce dernier brise quelques mois après la garantie du fabricant. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection?	Québec	Maritime, Prairie, Colombie-Britannique
Un consommateur achète un bien dans sa province de résidence. Ce dernier brise dès la fin de la garantie du fabricant. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection?	Québec	Maritime, Prairie, Colombie-Britannique
Un consommateur va sur le site internet d'un magasin situé dans une autre province et achète un bien. Ce dernier cesse de fonctionner alors que la garantie du fabricant est échue. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection?	Québec, Ontario	Maritime, Colombie-Britannique

Les recours collectifs

Nous avons voulu savoir s'il existait des différences régionales concernant la compréhension des règles régissant les recours collectifs. Les recours collectifs débordent souvent les frontières provinciales. Cependant, dans certaines provinces, il existe une disposition dans la loi qui vise directement les clauses contractuelles visant l'interdiction aux recours aux tribunaux. Par ces lois, l'interdiction contractuelle entre un commerçant et un consommateur est illégale ou fortement réduite, le cas échéant. Il est donc particulièrement intéressant d'évaluer les connaissances des consommateurs de ces provinces puisqu'il est possible que la connaissance de ces dispositions légales puisse avoir un effet sur leur participation ou non à un recours[361].

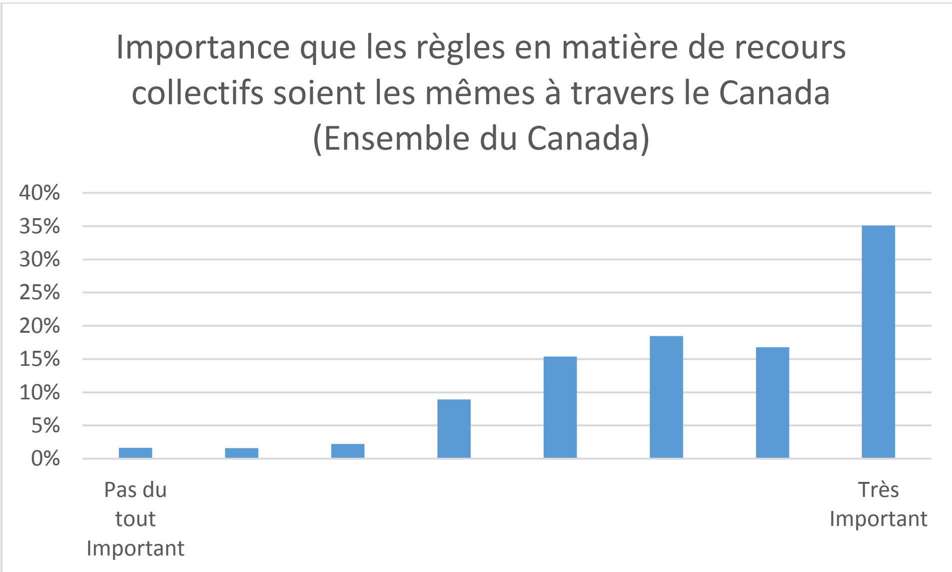
Ce qu'il faut surtout retenir des tableaux 32 et 33, est que plus de deux personnes sur cinq (41,5 %) ne sait pas si les règles sont les mêmes dans chacune des provinces. Très peu de répondants croient qu'il s'agit des mêmes règles (7,9 %), mais la majorité croit que les règles sont semblables, malgré quelques différences entre les provinces (31,4 %). Nous n'avons pas trouvé de différence statistique entre les régions. Toutefois, on remarquera, au tableau 33, que les Saskatchewanais se prononcent beaucoup moins sur le sujet avec 52,7 % de ne sais pas. La différence est particulièrement intéressante lorsqu'on compare le Québec avec la Saskatchewan, notamment en ce qui concerne les résultats combinés qui indiquent que les règles sont différentes. Ce résultat s'explique par le nombre d'indécis en Saskatchewan (52,7 %).

Encore une fois, les Canadiens croient que les mêmes règles devraient s'appliquer partout au Canada. Ainsi à la question : « Sur une échelle de 1 à 8, 1 n'étant pas du tout important et 8 étant très important, pensez-vous qu'il est important que les règles en matière de recours collectif soient les mêmes dans toutes les provinces? », la grande majorité indiquent qu'il est important d'avoir les mêmes règles. La moyenne obtenue est de 6,33 sur 8 (score de 79,1%). On retrouve 35% des répondants qui affirment qu'il est très important que ce soient les mêmes règles dans toutes les provinces. Une nouvelle fois nous avons effectué une ANOVA afin de vérifier s'il existe une différence de moyenne entre les provinces. Nous avons obtenu un résultat non significatif, $F(9, 2033)$ 1,676 $p = ,089$.

[361] Voir le rapport principal pour les détails.

Le graphique qui suit montre la répartition des réponses pour l’ensemble des répondants.[362]

Graphique 2



[362] Nous avons observé sensiblement les mêmes résultats pour les autres questions du type 1 à 8 sauf pour la question 30 qui porte sur les téléphones cellulaires. Nous aurons l’occasion d’y revenir dans la section sur les cellulaires.

Tableau 32
« Croyez-vous que les règles régissant les recours collectifs sont les mêmes dans chacune des provinces? »

	Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Oui, elles sont les mêmes	7,9 %	5,7 %	8,5 %	9,6 %	7,6 %	7,8 %
Non, elles sont semblables, mais il y a des différences entre les provinces	31,4 %	27,8 %	33,0 %	32,6 %	30,5 %	32,6 %
Non, elles sont différentes d'une province à l'autre	19,3 %	19,0 %	22,3 %	19,5 %	18,6 %	16,4 %
Sous-total non	50,7 %	46,8 %	55,3 %	52,1 %	49,1 %	49,0 %
Je ne sais pas	41,5 %	47,5 %	36,2 %	38,4 %	43,3 %	43,1 %

Tableau 33

« Croyez-vous que les règles régissant les recours collectifs sont les mêmes dans chacune des provinces? »

(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick, Alberta[363])[364]

	Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick	Alberta
Oui, elles sont les mêmes	7,9 %	8,5 %	8,5 %	6,7 %	6,2 %	7,3 %
Non, elles sont semblables, mais il y a des différences entre les provinces	31,4 %	29,1 %	33,0 %	28,4 %	30,2 %	32,0 %
Non, elles sont différentes d'une province à l'autre	19,3 %	18,0 %	22,3 %	12,2 %	17,7 %	21,0 %
Sous-total non	50,7 %	47,1 %	55,3 %	40,6 %	47,9 %	53,0 %
Je ne sais pas	41,5 %	44,4 %	36,2 %	52,7 %	45,9 %	39,7 %

Utilisation des arbitres

Tel que mentionné précédemment, il existe des clauses dans certains contrats qui obligent les consommateurs à se tourner vers un arbitre en cas de conflit. Encore une fois la presque majorité des répondants n'ose se prononcer (48,9 %). Toutefois, au Québec, près d'un consommateur sur quatre (24,5 %) a répondu qu'une telle clause était illégale et que, conséquemment, il était possible de faire partie d'un recours collectif et ce nonobstant le contrat.

On remarquera au tableau 35 que c'est au Nouveau-Brunswick que les consommateurs ne peuvent répondre à cette question (63,5 %). (C'est ce qui explique les résultats pour les Maritimes dans le tableau 34). Finalement les consommateurs de la Saskatchewan sont plus nombreux à se sentir liés par leur contrat (43,2 %). Ceci démontre qu'il existe une nette différence nationale au niveau de l'interprétation des règles. Par contre, en répondant la même chose, les consommateurs ont tantôt tort, tantôt raison, puisque les règles varient d'une province à l'autre.

[363] Dans ce tableau, on trouve certaines provinces dont les résultats sont statistiquement différents de ceux de l'ensemble du Canada.

[364] Nous avons rajouté l'Alberta puisque cette province possède un encadrement particulier sur les recours collectifs.

Tableau 34

« Vous aimeriez être membre de ce recours, mais une clause de votre contrat vous oblige à vous tourner vers un arbitre en cas de conflit. Quelle solution s'offre à vous? »

	Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Je peux faire partie du recours collectif. La clause de mon contrat est illégale	14,8 %	7,6 %	24,5 %	15,3 %	10,8 %	14,0 %
Je dois respecter mon contrat et me tourner vers un arbitre	36,3 %	34,7 %	30,3 %	39,7 %	39,5 %	38,5 %
Je ne sais pas	48,9 %	57,7 %	45,2 %	45,0 %	49,7 %	47,5 %

Tableau 35
« Vous aimeriez être membre de ce recours, mais une clause de votre contrat vous oblige à vous tourner vers un arbitre en cas de conflit. Quelle solution s'offre à vous? »
(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick, Alberta)

	Canada	Manitoba	Québec	Nouveau-Brunswick	Saskatchewan	Alberta
Je peux faire partie du recours collectif. La clause de mon contrat est illégale	14,8 %	12,8 %	24,5 %	5,2%	5,4 %	11,4 %
Je dois respecter mon contrat et me tourner vers un arbitre	36,3 %	36,8 %	30,3 %	31,3%	43,2 %	39,7 %
Je ne sais pas	48,9 %	50,4 %	45,2 %	63,5%	51,4 %	48,9 %

Impact d'une clause d'arbitrage

À la question « Croyez-vous que tous les Canadiens peuvent être empêchés d'être membre d'un recours collectif à cause d'une telle clause? », un quart (25,5 %) des consommateurs répondent non puisqu'ils croient que certaines provinces interdisent d'inscrire de telles clauses dans les contrats. Près de 65 % (64,5 %) des répondants ne souhaitent pas se prononcer. Toutefois, même si le pourcentage est plutôt mince, avec 13,3 %, c'est en Ontario que les consommateurs estiment que oui c'est possible d'être membre d'un recours collectif puisque la loi est la même pour tous. Même en Saskatchewan, les répondants ne pouvaient répondre à cette question avec 70,3 % de ne sais pas.[365]

[365] Compte tenu de la nature assez claire des résultats, nous n'avons pas reproduit un tableau mais uniquement interprété les résultats.

Le cas des téléphones cellulaires

Les consommateurs admettent qu'ils ont une compréhension moyenne des règles régissant les téléphones cellulaires (45 %). On remarque encore une fois une différence statistiquement significative entre les provinces (χ^2 p‹.001). Cette différence se trouve notamment entre les répondants de l'Ontario, qui estiment avoir une très bonne compréhension des règles, et ceux du Québec qui, pour leur part, sont plus nombreux à considérer que leur compréhension des règles régissant les téléphones cellulaires est nulle. Pour leur part, les consommateurs de la Colombie-Britannique se considèrent moyennement informés.

Il n'est donc pas étonnant de constater que les Québécois considèrent très important que l'information quant aux différentes règles en matière de téléphones cellulaires doive être plus facilement accessible pour les consommateurs Canadiens, alors que les Ontariens et les consommateurs des Prairies sont plutôt mitigés (réponse de 5 sur une échelle de 1 à 8).

C'est ce que démontre le résultat de l'ANOVA et du Scheffé[366]. En effet, nous avons obtenu un F significatif (F (9, 2033) 6,212 p<,001). Le test de Scheffé indique pour sa part que c'est la moyenne Québécoise qui est statistiquement différente de l'Ontario et des provinces des Prairies.

Cette différence régionale s'observe également lorsqu'interrogé sur la situation hypothétique suivante : « Supposons qu'il y a un an, vous avez acheté un nouveau téléphone cellulaire et signé un contrat avec une compagnie de télécommunication faisant affaire partout au Canada. Vous déménagez dans une autre province. Selon vous, quelles sont les règles régissant votre contrat de cellulaire? » Encore une fois, il existe une différence entre le Québec et l'Ontario. Les Québécois répondent que ce sont les règles fédérales qui s'appliquent puisque c'est le gouvernement fédéral qui a compétence en matière de télécommunication alors que les Ontariens répliquent en affirmant que ce sont les règles de la nouvelle province.
Les Québécois sont constants dans leurs réponses, lorsqu'interrogés sur les règles lors de l'acquisition d'un nouveau cellulaire dans une nouvelle province. Ces derniers maintiennent encore que ce sont les règles fédérales qui s'appliquent. Cependant, ce sont plutôt les consommateurs des Maritimes qui estiment que ce sont les règles de la nouvelle province de résidence qui prévaudront.

[366] Le test de Sceffé est un test assez conservateur qui, lorsque l'ANOVA est significatif, permet d'identifier où se trouve la différence. Dans ce cas précis il s'agit d'identifier si une ou des provinces possèdent une moyenne différente d'une ou d'autres provinces.

Tableau 36
Compréhension des règles régissant les téléphones cellulaires
Réponses à la question : « Parmi les affirmations suivantes, laquelle se rapproche le plus de votre situation? »

	Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
J'ai une très bonne compréhension des règles régissant les téléphones cellulaires	4,4 %	4,2 %	2,4 %	8,9 %	3,7 %	3,2 %
J'ai une bonne compréhension des règles régissant les téléphones cellulaires	14,5 %	12,0 %	13,6 %	15,3 %	16,6 %	15,4 %
J'ai une compréhension moyenne des règles régissant les téléphones cellulaires	44,9 %	46,7 %	36,9 %	46,1 %	46,8 %	49,5 %
J'ai une faible compréhension des règles régissant les téléphones cellulaires	21,5 %	24,0 %	23,8 %	18,5 %	22,0 %	18,4 %
Ma compréhension des règles en régissant les téléphones cellulaires est nulle	14,7 %	13,1 %	23,3 %	11,2 %	10.9 %	13,5 %

Les Canadiens admettent donc qu'ils ont une connaissance moyenne des règles régissant les téléphones cellulaires. La grande majorité des consommateurs (46,3 %) estiment toutefois qu'il est très important que l'information quant aux différentes règles en matière de téléphones cellulaires soit plus facilement accessible pour les consommateurs canadiens. En réponse à la question «Sur une échelle de 1 à 8, 1 n'étant pas important et 8 étant très important, croyez-vous que l'information quant aux différentes règles en matière de téléphones cellulaires devrait être plus facilement accessible pour les consommateurs canadiens? », c'est plus de 80 % (83,5 %) des consommateurs qui donnent une réponse variant de 6 à 8.

Tableau 37
Niveau d'importance sur l'accessibilité de l'information quant aux règles en matière de téléphones cellulaires

	Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Réponse de **6** sur une échelle de 1 (pas du tout important à 8 (très important)	17,4 %	16,7 %	13,9 %	19,5 %	18,3 %	19,4 %
Réponse de **7** sur une échelle de 1 (pas du tout important à 8 (très important)	19,5 %	20,8 %	21,8 %	16,0 %	17,6 %	20,8 %
Réponse de **8** sur une échelle de 1 (pas du tout important à 8 (très important)	46,6 %	46,6 %	57,3 %	41,0 %	41,5 %	42,7 %
Somme des réponses de 6 à 8	83,5 %	84,1 %	93,0 %	76,5 %	77,4 %	82,9 %

Tableau 38
Niveau d'importance sur l'accessibilité de l'information quant aux règles en matière de téléphones cellulaires
(Manitoba, Québec, Saskatchewan, Nouveau-Brunswick)

	Canada	Manitoba	Québec	Saskatchewan	Nouveau-Brunswick
Réponse de **6** sur une échelle de 1 (pas du tout important à 8 (très important)	17,4 %	18,8 %	13,9 %	23,0 %	20,8 %
Réponse de **7** sur une échelle de 1 (pas du tout important à 8 (très important)	19,5 %	14,5 %	21,8 %	18,9 %	14,6 %
Réponse de **8** sur une échelle de 1 (pas du tout important à 8 (très important)	46,6 %	47,0 %	57,3 %	33,8 %	46,9 %
Somme des réponses de 6 à 8	83,5 %	80,3 %	93,0 %	75,7 %	82,3 %

On remarquera, à la lecture des deux tableaux précédents, que les québécois considèrent l'accessibilité comme étant très importante alors que les consommateurs des Prairies sont un peu plus nuancés. Pour ces derniers, c'est trois consommateurs sur quatre (75,7 %) qui trouvent important l'accessibilité aux règles.
Ces résultats prennent leur sens lorsqu'on examine les réponses à la question hypothétique suivante : « Supposons qu'il y a un an, vous avez acheté un nouveau téléphone cellulaire et signé un contrat avec une compagnie de télécommunication faisant affaire partout au Canada. Vous déménagez dans une autre province. Selon vous, quelles sont les règles régissant votre contrat de cellulaire? » (tableau 39). En effet, les consommateurs ont de la difficulté à dire ce qui, à leurs yeux, s'applique.

Tableau 39

« Supposons qu'il y a un an, vous avez acheté un nouveau téléphone cellulaire et signé un contrat avec une compagnie de télécommunication faisant affaire partout au Canada. Vous déménagez dans une autre province. Selon vous, quelles sont les règles régissant votre contrat de cellulaire? »

	Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Les règles de la province où j'ai signé mon contrat	31,9 %	32,8 %	25,7 %	32,6 %	34,7 %	34,8 %
Les règles de la nouvelle province où je vis maintenant	9,8 %	10,8 %	5,3 %	14,3 %	12,2 %	7,4 %
Les règles fédérales puisque c'est le gouvernement fédéral qui a compétence en matière de télécommunication	21,7 %	16,2 %	27,7 %	19,7 %	18,3 %	22,8 %
Les règles fédérales et les règles de la province où j'ai signé mon contrat	12,1 %	11,2 %	12,6 %	10,6 %	14,6 %	11,5 %
Je ne sais pas	25,0 %	29,0 %	28,7 %	22,8 %	20,1 %	23,5 %

Il ressort de ce tableau que, pour toutes les régions, au moins un consommateur sur cinq ne peut répondre à la question. De plus, les autres consommateurs se répartissent selon les propositions. On notera que les Québécois penchent plus sur la proposition des règles fédérales. Nous pouvons toutefois conclure qu'il existe un manque d'information sur le sujet.

Résumé pour les téléphones cellulaires

- 45 % des Canadiens disent qu'ils ont une compréhension moyenne des règles régissant les téléphones cellulaires.
- Plus l'âge augmente moins les consommateurs disent qu'ils comprennent bien les règles qui régissent les téléphones cellulaires.
- Les hommes se donnent une meilleure évaluation que les femmes concernant la compréhension des règles.
- Les consommateurs moins scolarisés se divisent en deux groupes distincts. Soit ils disent connaître très bien les règles, soit ils se considèrent nuls au niveau de la connaissance.
- Ce sont surtout les Québécois et les consommateurs âgés de 55 ans et plus qui trouvent qu'il est très important que l'information quant aux différentes règles en matière de téléphones cellulaires soit plus facilement accessible pour les consommateurs canadiens. Les autres répondants trouvent cela moyennement important.
- Près d'une personne sur trois (32 %) dit que ce sont les règles de la province ou le contrat est signé qui sont en applicables alors qu'une personne sur cinq (21 %) dit que ce sont les lois fédérales qui sont d'usages.
- Les Québécois et les répondants avec un diplôme universitaire croient que ce sont les règles fédérales qui s'appliquent lorsqu'une personne déménage dans une autre province ou lorsqu'elle signe une nouvelle entente. Les Ontariens et les consommateurs de 18 à 34 ans croient plutôt que ce sont les lois de leur province.
- Les Canadiens considèrent d'assez à très important la diffusion des règles concernant la téléphonie cellulaire.
- Les Canadiens ne peuvent répondre aux différents scénarios concernant les règles concernant la téléphonie cellulaire.

Les cartes cadeaux : Important dans les Maritimes

Un peu plus de 50% (51,8 %) des répondants indiquent qu'il est très important que les règles en lien avec les cartes cadeaux soient les même partout au Canada. Globalement, c'est plus de 80 % des consommateurs (81,7 %) qui estiment assez à très important qu'il y ait des règles pancanadiennes. Ce sont les résidents des Maritimes qui sont les plus favorables à cette idée[367]. On remarquera également à la lecture des différents tableaux que les Québécois ont des perceptions légèrement différentes des autres Canadiens.

Tableau 40
« Croyez-vous qu'il est important que les règles en lien avec les cartes cadeaux soient les mêmes partout au Canada? »
(Réponses Assez à Très important)[368]

	Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Réponse de **6** sur une échelle de 1 (pas du tout important à 8 (très important)	13,7 %	11,1 %	11,2 %	18,0 %	14,2 %	14,7 %
Réponse de **7** sur une échelle de 1 (pas du tout important à 8 (très important)	16,2 %	15,7 %	18,7 %	16,1 %	17,3 %	13,0 %
Réponse de **8** sur une échelle de 1 (pas du tout important à 8 (très important)	51,8 %	57,8 %	54,4 %	45,4 %	49,5 %	51,5 %
Somme des réponses de 6 à 8	81,7 %	84,6 %	84,3 %	79,5 %	81,0%	79,2 %

Les répondants croient qu'il est possible, dans une proportion de 76 %, d'utiliser une carte cadeau d'un magasin qui a des succursales au Canada de la même manière dans toutes les provinces (voir tableau 40). On notera que ce sont les consommateurs des Maritimes et de la Colombie-Britannique qui répondent le plus souvent oui. Notons que près de 15 % des répondants ne savent pas si c'est possible.

[367] t p< ,05

[368] Les répondants devaient indiquer un niveau d'importance sur une échelle de 1 à 8 (1 étant pas du tout important et 8 très important). Nous avons encore une fois utilisé les réponses de 6 à 8 puisque ces dernières représentent 81,7 % de l'ensemble de toutes les réponses.

Tableau 41
« Supposons que vous possédez une carte cadeau d'un magasin qui a des succursales partout au Canada. Selon vous, croyez-vous pouvoir l'utiliser de la même manière dans toutes les provinces? »

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Oui	76,3 %	80,1 %	72,3 %	73,6 %	76,1 %	80,2 %
Non	9,2 %	5,4 %	9,7 %	11,6 %	12,4 %	6,6 %
Ne sais pas	14,5 %	14,5 %	18,0 %	14,8 %	11,4 %	13,2 %

Deux raisons sont invoquées pour répondre oui. On retrouvera la distribution régionale de ces raisons au tableau 42. Ceux qui répondent oui réfèrent surtout aux règles des entreprises alors que ceux qui répondent non (tableau 43) font plutôt référence aux règles contractuelles ou gouvernementales.

Tableau 42
Raisons pourquoi ils pensent que oui

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Comme il s'agit d'un magasin ayant des succursales partout au Canada, les règles fédérales s'appliquent	48,0 %	50,1 %	33,3 %	51,7 %	54,8 %	52,3 %
Les règles sont déterminées par le siège social et sont les mêmes dans toutes les succursales	43,0 %	42,5 %	60,7 %	32,2 %	36,2 %	39,4 %

Tableau 43
Raisons pourquoi ils pensent que non

	Total Canada	Maritimes	Québec	Ontario	Prairies	Colombie-Britannique
Tout dépend de ce qu'il y a dans mon contrat	39,6 %	38,3 %	31,6 %	38,4 %	41,9 %	53,1 %
Ce sont les lois provinciales qui s'appliquent et il y a des différences d'une province à l'autre	46,6 %	42,0 %	53,5 %	50,4 %	44,9 %	37,0 %

Conclusion générale

Les consommateurs disent avoir une bonne connaissance des lois et règles en rapport avec la consommation. Toutefois, nous avons constaté que, pour plusieurs scénarios, les répondants étaient incapables de répondre aux questions. Ceci indique qu'il existe un manque au niveau de l'information. Il n'est donc pas étonnant que les répondants aient exprimé un désir d'avoir accès à plus d'informations. Nous avons également remarqué des différences régionales sur plusieurs sujets. En matière de garantie légale, de clauses d'arbitrage et de télécommunication, les Québécois semblent connaître un peu mieux leurs droits que les autres Canadiens. Par contre, dans les autres domaines étudiés, ils les connaissent moins ou sont dans la moyenne. Malgré ce constat, il est important de souligner qu'il existe une grande confusion, pour l'ensemble des régions, quant à la responsabilité de l'application des lois et règlements. En effet, le partage de responsabilité entre les gouvernements provinciaux et le gouvernement fédéral ne semble pas toujours clair pour les répondants.

On retrouvera l'essentiel des particularités des réponses en début de texte sous la rubrique résumé.

Appendix 2 – Rapport de la firme de sondage BIP (données brutes)

PROV

Dans quelle province ou territoire se situe votre résidence principale?

N =		2043	100%
Alberta	01	219	11%
Colombie-Britannique	02	408	20%
Manitoba	03	117	6%
Nouveau-Brunswick	04	96	5%
Nouvelle-Écosse	05	195	10%
Nunavut	06	0	0%
Ontario	07	405	20%
Québec	08	412	20%
Saskatchewan	09	74	4%
Terre-Neuve-et-Labrador	10	90	4%
Territoires du Nord-Ouest	11	0	0%
Yukon	12	0	0%
Île-du-Prince-Édouard	13	27	1%

SECT2

SECTION II L'EXPÉRIENCE DES CONSOMMATEURS

=> +1
if 1

N =	0	100%

Q1

Au cours de la dernière année, avez-vous déjà acheté un bien alors que vous étiez dans une autre province que votre province de résidence?

N =			2043	100%
Oui	1		1059	52%
Non	2	=> Q4	984	48%

Q2

Combien de fois en avez-vous achetés?

N =		1059	100%
Une fois	1	127	12%
Entre 2 et 5 fois	2	524	49%
Entre 6 et 9 fois	3	184	17%
Plus de 10 fois	4	224	21%

Q3

De quels types de bien s'agissait-il? Plus d'un choix possible.

N =		1059	100%
Appareil électronique	01	307	29%
Vêtement et accessoire de mode	02	647	61%
Appareil électroménager	03	109	10%
Auto	04	32	3%
Livre, musique, jeu vidéo	05	353	33%
Produit d'hygiène et de beauté	06	352	33%
Autres - Précisez :	97	39	4%
*Vin, Alcool/boisson et bières	07	71	7%
*Produits alimentaires / épiceries	08	120	11%
*Essence (gaz) / huile à moteur	09	29	3%
*Cadeaux / souvenirs / objets de collection / oeuvre d'art	10	28	3%
*Articles de cuisines / salle de bain (vaisselle, serviettes etc..)	11	8	1%
*Restaurants / repas restaurants	12	13	1%
*Articles de sport	13	14	1%
*Jouets / articles de loisir / articles d'artisanat	14	22	2%
*Bijoux	15	5	0%
*Instrument de musique	16	0	0%
*Équipement de camping / chasse / pêche	17	4	0%
*Cigarettes	18	5	0%
*Hôtel / Hébergement	19	6	1%
*Articles de quincaillerie (outils, pièces, etc..)	20	10	1%
*Articles de jardin / jardinage	21	3	0%
*Meuble (chaise, fauteuil...)	22	5	0%

Q4

Au cours de la dernière année, avez-vous fait des achats sur Internet?

N =			2043	100%
Oui	1		1691	83%
Non	2	=> Q13	352	17%

Q5

Combien d'achat avez-vous fait?

N =		1691	100%
Un seul	1	156	9%
Entre 2 et 5	2	772	46%
Entre 6 et 9	3	321	19%
Plus de 10	4	442	26%

Q6

Au cours de la dernière année, avez-vous acheté, via Internet, des biens dans une autre province canadienne?

N =		1691	100%
Oui, j'en ai acheté	1	1047	62%
Je ne crois pas en avoir acheté, mais c'est possible	2	393	23%
Non, je n'en ai pas acheté	3	251	15%

Q7

Lorsque vous faites des achats sur Internet, regardez-vous dans quelle province / pays est située l'entreprise?

N =		1691	100%
Oui, toujours	1	633	37%
Oui, parfois	2	542	32%
Rarement	3	282	17%

Non, jamais	4	=> Q11	234	14%

Q8

Sur une échelle de 1 à 8, 1 n'étant pas du tout important et 8 étant très important, est-ce important pour vous d'avoir cette information?

N =		1457	100%
1 - Pas du tout important	1	46	3%
2	2	52	4%
3	3	104	7%
4	4	144	10%
5	5	257	18%
6	6	309	21%
7	7	176	12%
8 - Très important	8	369	25%

Q9

Pourquoi est-ce important?

=> +1
if Q8=1,2

N =		1359	100%
Je veux acheter des biens d'une entreprise située au Canada	1	445	33%
Je veux acheter des biens d'une entreprise située dans ma province	2	123	9%
Je préfère acheter des biens dans certains pays plutôt que dans d'autres	3	154	11%
Je veux connaître cette information au cas où il y aurait un problème avec mon achat	4	637	47%

Q10

L'endroit où est située l'entreprise influence-t-elle votre décision d'achat?

N =			1457	100%
Oui, toujours	1		241	17%
Oui, parfois	2		897	62%
Rarement	3		258	18%
Non, jamais	4		61	4%

Q11

Avant de donner votre accord aux conditions et modalités de l'entente (terms of agreement), est-ce que vous les lisez?

N =			1691	100%
Toujours	1	=> Q13	526	31%
Souvent	2	=> Q13	613	36%
Rarement	3		469	28%
Jamais	4		78	5%
Je ne sais pas ce que veut dire « conditions et modalités de l'entente » (*terms of agreement*)	9		5	0%

Q12

Quelle est la raison qui vous porte à les lire rarement ou jamais? Plus d'une réponse possible.

N =		552	100%
Pour sauver du temps; le texte est trop long	1	329	60%
Je ne comprends pas ce qui est écrit	2	75	14%
Ça ne donne rien de les lire; de toute façon, je dois donner mon accord pour acheter le bien	3	344	62%
Je ne sais pas ce que veut dire « conditions et modalités de l'entente » (terms of agreement)	4	6	1%
Il n'y a pas de raison particulière	5	28	5%

Q13

Que vous ayez acheté en ligne ou en personne, avez-vous déjà eu un ou des problèmes après avoir acheté un bien dans une autre province?

N =			2043	100%
Oui	1		152	7%
Non	2	=> Q15	1891	93%

Q14

Quel type de problèmes avez-vous eu?

N =		152	100%
Défectuosité du bien	01	68	45%
Mésentente au sujet du paiement	02	28	18%
Refus d'annulation du contrat	03	13	9%
Garantie non honorée	04	15	10%
Fraude	05	11	7%
Autres - Précisez :	97	15	10%
*Non livré (perdu ou volé)	06	12	8%
*Mauvais produit / ne me convenait pas / ne correspondait pas	07	8	5%
*Frais additionnel	08	9	6%
*Délai de livraison / délai de livraison non respecté	09	12	8%

Q15

Selon vous, lorsque vous achetez, en personne, un bien provenant d'une autre province, quelles lois s'appliquent?

N =		2043	100%
Celles de ma province	1	179	9%
Celles de la province où j'ai acheté le bien	2	855	42%
Les deux, puisqu'il s'agit des mêmes lois	3	130	6%
Le deux, même si ce sont des lois différentes	4	153	7%
Les lois fédérales	5	121	6%
Je ne sais pas	9	605	30%

Q16

Selon vous, lorsque vous achetez, sur Internet, un bien provenant d'une autre province, quelles lois s'appliquent?

N =		2043	100%
Celles de ma province	1	252	12%
Celles de la province où j'ai acheté le bien	2	666	33%
Les deux, puisqu'il s'agit des mêmes lois	3	106	5%
Le deux, même si ce sont des lois différentes	4	218	11%
Les lois fédérales	5	201	10%
Je ne sais pas	9	600	29%

SECT3

SECTION III: CRÉDIT À LA CONSOMMATION

=> +1
if 1

N =	0	100%

Q17

Dans cette section, nous utilisons le terme « crédit à la consommation » pour désigner tout financement lié à l'achat ou à la location d'un bien par un commerçant et non le crédit octroyé directement par une institution financière, tel que les cartes de crédit, les hypothèques, les prêts personnels et les marges de crédit. Parmi les affirmations suivantes, laquelle vous définit le mieux?

N =		2043	100%
J'ai une très bonne compréhension des règles en matière de crédit à la consommation	1	312	15%
J'ai une assez bonne compréhension des règles en matière de crédit à la consommation	2	592	29%
J'ai une compréhension moyenne des règles en matière de crédit à la consommation	3	762	37%
J'ai une faible compréhension des règles en matière de crédit à la consommation	4	219	11%
Ma compréhension des règles en matière de crédit à la consommation est nulle	5	158	8%

Q18

Selon vous, les règles encadrant les informations à fournir au consommateur en matière de crédit à la consommation sont les mêmes dans toutes les provinces?

N =		2043	100%
Oui, elles sont les mêmes	1	208	10%
Non, elles sont semblables, mais il y a des différences entre les provinces	2	702	34%
Non, elles sont différentes d'une province à l'autre	3	333	16%
Je ne sais pas	9	800	39%

Q19

Sur une échelle de 1 à 8, 1 n'étant pas du tout important et 8 étant très important, pensez-vous qu'il est important que les règles encadrant la divulgation d'informations en matières de crédit à la consommation soient les mêmes dans toutes les provinces?

N =		2043	100%
1 - Pas du tout important	1	29	1%
2	2	22	1%
3	3	56	3%
4	4	169	8%
5	5	280	14%
6	6	379	19%
7	7	334	16%
8 - Très important	8	774	38%

Q20

Si vous achetez un bien dans une autre province, concluez une entente de crédit avec le marchand et êtes incapable de faire régulièrement vos paiements, cela affectera-t-il votre dossier de crédit?

N =		2043	100%
Cela n'affectera pas mon dossier de crédit	1	160	8%
Cela affectera mon dossier de crédit	2	1524	75%

Je ne sais pas	9	359	18%

Q21

Supposons qu'un consommateur ne paie pas son compte et que le marchand décide d'utiliser les services d'une agence de recouvrement. Selon vous, est-ce que les règles régissant la conduite de ces agences sont les même à travers le Canada?

N =		2043	100%
Oui	1	539	26%
Non	2	492	24%
Je ne sais pas	9	1012	50%

SECT4

SECTION IV LES GARANTIES LÉGALES

=> +1
if 1

N =		0	100%

Q22

Un consommateur se rend dans une autre province et y achète un bien. Ce dernier brise quelques mois après la garantie du fabricant. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection?

N =		2043	100%
Non, il n'est pas protégé	1	844	41%
Oui, il est protégé par la loi (ou le droit) de sa province	2	177	9%
Oui, il est protégé par la loi (ou le droit) de la province où il a fait son achat	3	383	19%
Oui, il est protégé par deux lois provinciales, celle de sa province et celle où il a fait son achat	4	132	6%
Je ne sais pas	9	507	25%

Q23

Un consommateur achète un bien dans sa province de résidence. Ce dernier brise dès la fin de la garantie du fabricant. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection?

N =		2043	100%
Non, il n'est pas protégé	1	1176	58%
Oui, il est protégé par la loi (ou le droit) de sa province	2	547	27%
Je ne sais pas	9	320	16%

Q24

Un consommateur va sur le site internet d'un magasin situé dans une autre province et achète un bien. Ce dernier cesse de fonctionner alors que la garantie du fabricant est échue. Le consommateur n'a pas acheté de garantie prolongée. Selon vous, le consommateur dispose-t-il d'une protection?

N =		2043	100%
Non, il n'est pas protégé	1	1175	58%
Oui, il est protégé par la loi (ou le droit) de sa province	2	146	7%
Oui, il est protégé par la loi (ou le droit) de la province où il a fait son achat	3	199	10%
Oui, il est même protégé par les lois (ou le droit) de deux provinces, la sienne et celle où il a fait son achat	4	72	4%
Je ne sais pas	9	451	22%

SECT5

SECTION V LES RECOURS COLLECTIFS

=> +1
if 1

N =	0	100%

Q25

Croyez-vous que les règles régissant les recours collectifs sont les mêmes dans chacune des provinces?

N =		2043	100%
Oui, elles sont les mêmes	1	160	8%
Non, elles sont semblables, mais il y a des différences entre les provinces	2	640	31%
Non, elles sont différentes d'une province à l'autre	3	392	19%
Je ne sais pas	9	851	42%

Q26

Sur une échelle de 1 à 8, 1 n'étant pas du tout important et 8 étant très important, pensez-vous qu'il est important que les règles en matière de recours collectif soient les mêmes dans toutes les provinces?

N =		2043	100%
1 - Pas du tout important	1	33	2%
2	2	32	2%
3	3	45	2%
4	4	182	9%
5	5	314	15%
6	6	377	18%
7	7	343	17%
8 - Très important	8	717	35%

Q27

Vous aimeriez être membre de ce recours mais une clause de votre contrat vous oblige à vous tourner vers un arbitre en cas de conflit. Quelle solution s'offre à vous?

N =		2043	100%
Je peux faire partie du recours collectif. La clause de mon contrat est illégale	1	295	14%
Je dois respecter mon contrat et me tourner vers un arbitre	2	747	37%
Je ne sais pas	9	1001	49%

Q28

Croyez-vous que tous les Canadiens peuvent être empêchés d'être membre d'un recours collectif à cause d'une telle clause?

N =		2043	100%
Oui, la loi est la même pour tous	1	208	10%
Non, certaines provinces interdisent d'inscrire de telles clauses dans les contrats.	2	518	25%
Je ne sais pas	9	1317	64%

Q29

Parmi les affirmations suivantes, laquelle se rapproche le plus de votre situation?

N =		2043	100%
J'ai une très bonne compréhension des règles régissant les téléphones cellulaires	1	91	4%
J'ai une bonne compréhension des règles régissant les téléphones cellulaires	2	298	15%
J'ai une compréhension moyenne des règles régissant les téléphones cellulaires	3	924	45%
J'ai une faible compréhension des règles régissant les téléphones cellulaires	4	436	21%
Ma compréhension des règles en régissant les téléphones cellulaires est nulle	5	294	14%

Q30

Sur une échelle de 1 à 8, 1 n'étant pas important et 8 étant très important, croyez-vous que l'information quant aux différentes règles en matière de téléphones cellulaires devrait être plus facilement accessible pour les consommateurs Canadiens?

N =		2043	100%
1 - Pas important	1	21	1%
2	2	13	1%
3	3	23	1%
4	4	102	5%
5	5	194	9%

6	6	358	18%
7	7	396	19%
8 - Très important	8	936	46%

Q31

Supposons qu'il y a un an, vous avez acheté un nouveau téléphone cellulaire et signé un contrat avec une compagnie de télécommunication faisant affaire partout au Canada. Vous déménagez dans une autre province. Selon vous, quelles sont les règles régissant votre contrat de cellulaire?

N =		2043	100%
Les règles de la province où j'ai signé mon contrat	1	656	32%
Les règles de la nouvelle province où je vis maintenant	2	204	10%
Les règles fédérales puisque c'est le gouvernement fédéral qui a compétence en matière de télécommunication	3	428	21%
Les règles fédérales et les règles de la province où j'ai signé mon contrat	4	248	12%
Je ne sais pas	9	507	25%

Q32

Peu de temps après, vous décidez d'acheter un nouveau cellulaire auprès de la même entreprise. Vous signer alors un nouveau contrat. Selon vous, quelles règles régissent votre nouveau contrat de cellulaire?

N =		2043	100%
Les règles de la nouvelle province où je vis maintenant puisque j'y aie signé un nouveau contrat	1	794	39%
Les règles fédérales puisque c'est le gouvernement fédéral qui a compétence en matière de télécommunication	2	405	20%
Les règles fédérales et les règles de la nouvelle province où je vis maintenant	3	355	17%
Je ne sais pas	9	489	24%

Q33

Sur une échelle de 1 à 8, 1 n'étant pas important et 8 étant très important, croyez-vous qu'il est important que les règles en lien avec les cartes cadeaux soient les mêmes partout au Canada?

N =		2043	100%
1 - Pas important	1	21	1%
2	2	24	1%
3	3	31	2%
4	4	92	5%
5	5	207	10%
6	6	282	14%
7	7	330	16%
8 - Très important	8	1056	52%

Q34

Supposons que vous possédez une carte cadeau d'un magasin qui a des succursales partout au Canada. Selon vous, croyez-vous pouvoir l'utiliser de la même manière dans toutes les provinces?

N =		2043	100%
Oui	1	1562	76%
Non	2	187	9%
Je ne sais pas	9	294	14%

Q35

Vous avez répondu « Oui » parce que :

=> +1
if NON Q34=1

N =		1562	100%
Les lois de ma province s'appliquent peu importe où je vais au Canada	01	114	7%
Comme il s'agit d'un magasin ayant des succursales partout au Canada, les règles fédérales s'appliquent	02	759	49%

Les règles sont déterminées par le siège social et sont les mêmes dans toutes les succursales	03	661	42%
Autre raison - Précisez :	97	6	0%
*NSP/NRP	99	2	0%
C'est ce qui devrait être / c'est logique / je crois	96	6	0%
*Le magasin me l'a dit	04	2	0%
*Déjà essayé	05	1	0%
*Me suis informé avant l'achat de la carte cadeau	06	2	0%
*C'est comme de l'argent comptant / c'est la même chose que l'argent	07	9	1%

Q36

Vous avez répondu « Non » ou « Je ne sais pas » parce que :

=> +1
if NON Q34=2,9

N =		481	100%
Tout dépend de ce qu'il y a dans mon contrat	01	192	40%
Ce sont les lois provinciales qui s'appliquent et il y a des différences d'une province à l'autre	02	223	46%
Autre raison - Précisez :	97	22	5%
*Je n'y connais rien / je ne sais pas / aucune idée / pas certain	00	42	9%
*Je n'ai jamais eu de cellulaire	04	2	0%

SEXE

Êtes-vous...

N =		2043	100%
un homme	1	1064	52%
une femme	2	979	48%

AGE

Dans quelle tranche d'âge vous situez-vous ?

N =		2043	100%
De 18 à 24 ans	1	84	4%
De 25 à 34 ans	2	434	21%
De 35 à 44 ans	3	293	14%
De 45 à 54 ans	4	397	19%
De 55 à 64 ans	5	518	25%
65 ans ou plus	6	317	16%