

THE TRUTH BEHIND THE OBLIGATION TO TAKE BACK RETURNED ITEMS:

return policies or take-back times for in-store purchases

Final Report of the Project
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Office of Consumer Affairs



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The masculine is used generically in this report.

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Union des consommateurs, *Strength through Networking*

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

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

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

UC acts mainly at the national level, by representing the interests of consumers before political, regulatory or legal authorities or in public forums. Its priority issues, in terms of research, action and advocacy, include the following: household finances and money management, energy, issues related to telephone services, radio broadcasting, cable television and the Internet, public health, food and biotechnologies, financial products and services, business practices, and social and fiscal policy.

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

Introduction

Many consumers believe that all merchants are obliged to take back merchandise returned within a reasonable period, even if the merchandise is not defective. But this is not the case. Some Canadian laws do grant consumers periods of reflection or cancellation for certain types of consumer contracts, notably for door-to-door sales. Those measures constitute exceptions to the binding nature of contracts and are motivated by lawmakers' recognition that consumers must, in certain cases, be granted additional protection due to the nature of the sale.

Retailers' exchange, return and refund policies are internal policies, which may vary enormously from one retailer to another: no exchanges, no returns, credit only; restocking fees; unconditional returns within 30 days... Everything is permitted, including conditions whereby some returns are authorized and others systematically refused.

Do Canadian retailers generally offer generous return conditions? Can we detect various informal standards established to guide consumers? Is there a difference between the policies of independent retailers and retail chains? How and when is a consumer informed of those policies? Does the information then provided to him meet legal disclosure obligations? Are limitations imposed on the right of return legal or unfair, when such a right is granted? Given that a large majority of purchases made in Canada are still made in-store, should there be a general legal right to a period of reflection, such as that adopted by some retailers? Or should regulations be adopted that simply require prior disclosure of those policies, as in some foreign jurisdictions and as in several laws regarding distance transactions?

The purpose of this report is to identify the various exchange, return and refund policies, their means of disclosure and their implementation. We will identify the pros and cons of those policies for consumers, and will analyse the regulatory framework established in foreign jurisdictions.

The report's first chapter will review the literature to draw a portrait of the issue of retailers' exchange, return and refund policies for in-store purchases.

We will review the sectors where lawmakers have intervened directly in return policies and will examine the stated justifications for such legislation.

In the second chapter, we will examine the laws of five Canadian provinces (Quebec, Ontario, Alberta, Manitoba and Nova Scotia) and of certain foreign jurisdictions (European Union, United States and Australia) to identify and compare their various legal obligations regarding the right of in-store exchange, return and refund.

The other chapters will report the findings of our surveys of provincial consumer protection agencies and merchant associations, and of our field survey of a hundred stores in Canada.

1. Portrait of the Situation

E-commerce (electronic commerce, online commerce) is more and more popular. It's often discussed in the media, cautions are multiplying, new shopping and purchasing methods are being developed, lawmakers are adapting their legislation, etc. And yet, Canadian consumers continue to make in-store purchases in most cases. While online purchasing policies are more and more publicized, the assumption appears to be that the various in-store purchasing policies are well known and standardized to the point where there is no need to examine or worry about consumers' degree of knowledge.

However, with regard to in-store return policies, a myth seems to persist: that of an automatic right of return. Confronted with the reality, consumers could well be surprised at the exchange, return and refund policies (hereinafter "ERR policies") applied by merchants.

1.1 Canadians' Purchasing Habits

Statistics Canada reports that in 2012, only 45% of Canadian companies had a website and only 11% had sold goods or services online, given that the Internet was still mainly a tool enabling consumers to obtain product and price information. Nevertheless, in recent years most Canadian provincial legislatures have imposed certain clear rules for returns and refunds, as well as rules for merchants to disclose information on their return policies.

A study conducted in 2013 by RetailMeNot.ca points out the following:

[...] Canadians prefer the in-store experience to shopping online.

The study (...) found that 22 per cent of people living in Canada never buy anything online, compared with 6 per cent in Germany and Britton, and 4 per cent in China. The US falls in the middle with about 12 per cent shying away from shopping online¹.

Indeed, regarding e-commerce, the following is observed:

Canada is ranked as 2nd in Internet penetration among its G7 counterparts. But Canadians spend less online than citizens in other countries. The value of e-commerce in Canada was \$22.3 billion in 2013².

¹ LINDZON, Jared. *New Study Suggests Canadians Don't Like to Shop Online*, August 21, 2013. [Online] <http://www.betakit.com/new-study-suggests-canadians-dont-like-to-shop-online/> (page consulted on 23 June 2014).

² GOVERNMENT OF CANADA. *Chairman Jean-Pierre Blais speech on how the CRTC is improving the security and safety of Canadians given at the Economic Club of Canada*. Canada News Centre, Ottawa, latest modification: June 26, 2014. [Online] http://news.gc.ca/web/article-en.do?nid=862609&_ga=1.215839191.1396779207.1441333572 (page consulted on September 23, 2014).

The majority of Canadians thus continue to purchase in-store. But recent years have seen a multiplication of e-commerce regulations, to guarantee that this type of purchase will be accompanied by rights of cancellation and return, or that merchants will be required to provide explicit information. In fact, many of those e-commerce regulations appear stricter and to better protect online than in-store consumers. And yet, it seems important to ensure that a consumer's chosen purchasing method does not entail an unjustified reduction of his protections and a market distortion.

The importance of addressing the issue is reinforced by consumers' poor knowledge of their legal protections regarding this type of policies.

Industry Canada's Office of Consumer Affairs reveals on its website a popular belief that merchants are generally required by law to offer a right of return. On Industry Canada's website, in the *Common consumer questions* section, we read the following:

Don't count on always being able to return a product you've bought, whether it's from a store or the Internet. There is no law that says all sellers must take back an item. It may not matter that you don't like it, decided you can't afford it or found it cheaper somewhere else.

Every seller has a different return policy. Find out what the seller's policy is before you buy. The return policy is often stated on the back of the receipt and/or posted near the cash register; if not, get it in writing on the receipt. Note that these policies may change during promotions and for items that are on sale or are deemed to be "party wear."

[...]

Your province or territory may have legislation that gives you the right to return specific products or cancel specific contracts. Contact your provincial or territorial consumer affairs office for more information³.

Several provincial government agencies that regulate in matters of consumer protection confirmed to us that this belief is widespread, and that they receive – some of them each day – many calls and complaints in this regard⁴.

It also appears that consumers often confuse defective product return policies and some merchants' offer of an unconditional take-back period⁵.

³ **OFFICE OF CONSUMER AFFAIRS.** *Common consumer questions*, Industry Canada Ottawa, latest modification: November 2, 2012 [Online] <http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02478.html> (page consulted on October 16, 2013).

⁴ Details will be discussed in Chapter 3 of our report.

⁵ **CONSUMER PROTECTION BC.** *What's Your Refund Policy?*, Victoria, British Columbia, December 12, 2011. (See consumer comments) [Online] http://www.consumerprotectionbc.ca/blog/item/80-whats_your_refund_policy (page consulted on October 16, 2013).

A new practice is ever more widespread and popular, with the growing use of mobile Internet: “in-store browsing,” which consists of going to view goods directly in stores, but then purchasing on the Internet:

For nearly 20 years, brick-and-mortar retail stores have faced a threat from the growth of ecommerce. But even when someone enters a store, a retailer remains anxious. In 2010, retail analysts and media outlets in the US began to talk about the electronics chain Best Buy becoming a “showroom for Amazon.” From this, the term “showrooming” was born — i.e. consumers using a retailer as a showroom to view products in-person before buying them from an online retailer. Concerns about showrooming were further inflamed by the rise of web-enabled mobile devices. In December 2010, the Wall Street Journal published a story entitled, “Phone-wielding Shoppers Strike Fear Into Retailers,” which discussed the potential threat that industry players and experts saw once price-comparison shopping could be done in the palm of one’s hand. At that time, smartphones weren’t very common. But by early 2012, the US adoption rate of smartphones went past the 50% mark, and similar adoption rates were occurring in Canada and the UK. With this growth, a perceived threat from the mobile web was in the forefront of retail business discussions.

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A survey conducted by the Columbia Business School in September 2013 among a sample of 3,000 consumers in Canada, the United States and the United Kingdom⁷ revealed that 21% of those consumers (but only 18% in Canada) are mobile consumers (i.e., using their mobile devices in-store to make purchasing decisions). The report notes that its findings are consistent with those of other recent surveys of American and/or British consumers, to the effect that mobile shopping is done by 25 to 45% of consumers, and by 50 to 60% of smartphone owners.

The survey reports that 13% of mobile consumers decide to browse in-store because they find that the best ERR policies are online. This factor is of course less important than some others (e.g.: better price, free and home deliveries, out-of-stock stores, etc.), but is still significant.

⁶ **QUINT, Matthew and David ROGERS.** *Showrooming and the Rise of the Mobile-assisted Shopper*, Columbia Business School, New York, United States, September 2013, 36 pages, pp. 13 and 16. Available online on Aimia’s website. [Online]

http://www8.gsb.columbia.edu/rfiles/global%20brands/Showrooming_Rise_Mobile_Assisted_Shopper_Columbia-Aimia_Sept2013.pdf (document consulted on October 16, 2014).

⁷ *Ibid.* The study points out that only 6% of mobile consumers are “opportunists” – consumers already planning to purchase online and always opting for the best price – and that 30% are “conservative” – consumers wanting to purchase in-store and using their smartphone solely to obtain more information.

The same survey notes that 23% of respondents who prefer to purchase in-store (the “conservatives,” who use their mobile phone to obtain more information) expect a better ERR policy in-store than online (v. 15% of mobile consumers as a whole).

Retailers may also be able to retain more business by stressing the traditional virtues of a “personal” in-store shopping experience. M-Shoppers cite better return policies and great customer service as reasons that they have forgone showrooming in the past (15% and 17% indicating). Although these were less cited than other advantages of buying in-store (like convenience), this may simply indicate that many retailers are not delivering on expectations of excellent customer service⁸.

1.2 In-store ERR Policies and Reported Problems

As mentioned above, consumers generally seem poorly informed about ERR policies, because many believe that Canadian laws confer an unconditional right of return even in the case of non-defective goods.

Canadians are not alone in imagining such things: we observe manifestations of identical beliefs in France, for example – one forum offers a comical example of the confusion of participants on the subject⁹.

Some chains stand out by offering consumers, in practice, a right of cancellation, so that returns are accepted without question. For example, Walmart displays its return policies on its website:

If I buy something from Walmart, can I return it?

Yes, (with just a few exceptions). We know that sometimes you buy something that doesn't work out the way you had hoped, and for that reason we did our best to make a return policy that is helpful for you.

Almost anything you buy from Walmart Canada stores may be returned within 90 days from when you bought the item¹⁰.

Following that general policy statement, the text mentions certain exceptions (regarding duration, which may be limited to 14 days or extend to one year, or regarding the inapplicability of certain goods) or conditions (some products must be returned in their original packaging, and the packaging of others must not have been opened). While those return policies are equivalent to a guarantee of satisfaction, the policy also includes in passing certain provisions that belong to guarantees of durability (for children's clothing).

⁸ *Ibid.*

⁹ DROIT-FINANCES.NET forum, *Retour sous 7 jours : remboursement ou avoir?*, Paris, France, latest answer on January 26, 2010. [Online] <http://droit-finances.commentcamarche.net/forum/affich-3939160-retour-sous-7-jours-remboursement-ou-avoir> (document consulted on October 23, 2014).

¹⁰ WALMART.CA, *Return Policy*, the company's transactional website, Mississauga, Canada, no date. [Online] <http://www.walmart.ca/en/help/returns/return-policy> (document consulted on November 12, 2014).

Costco, under the heading *Returns, Refunds, Replacements* on its website, also announces a very broad policy:

We guarantee your satisfaction on every product we sell and will refund your purchase price, with the following exceptions:

Electronics: Costco will accept returns within 90 days from the date of purchase for televisions, projectors, computers, cameras, camcorders, iPod®/MP3 players and cellular phones and other products identified by Costco from time to time. [...] ¹¹

It should be noted that the 90-day period mentioned by Costco for certain products appears to be a time limit that only applies to certain products – no time limit is indicated for other products. The policy's English version is more elaborate than the French, and specifies notably that goods may be returned even without proof of purchase ¹².

Do those exceptional policies adopted by ubiquitous retailers give consumers the impression that the right of unconditional return is the rule among all retailers?

One of the sub-themes often addressed in ERR policies pertains to a fee – often called a “restocking fee” – charged by merchants during returns they authorize for in-store purchases. Like numerous other conditions, as we will see, that fee – whose justification is sometimes doubtful ¹³ – and its amount are often disclosed only at the moment when a good is returned ¹⁴.

As confirmed, for instance, by the information website of the Consumer Affairs Office, in many cases a retailer's return policy is written on the back of the cash receipt, which of course is handed to the consumer only once the transaction is completed. While useful to an extent, this practice is obviously problematic if the receipt discloses this term of the contract for the first time.

In the account of our field survey, we will discuss the other problems that consumers are likely to face regarding those policies and their disclosure.

¹¹ **COSTCO.CA**, *Returns, Refunds, Replacements – Costco's Risk-Free 100% Satisfaction Guarantee*, Ottawa, Canada, no date. [Online]

https://customerservice.costco.ca/system/templates/selfservice/costco_en_ca#!/portal/200500000001000/article/20050000003849/Costcos-Risk-Free-100-Satisfaction-Guarantee (document consulted on November 13, 2014).

¹² **COSTCO.CA**, *Returns, Refunds, Replacements – No Receipt Return*, Ottawa, Canada, no date. [Online] https://customerservice.costco.ca/system/templates/selfservice/costco_en_ca#!/portal/200500000001000/article/20050000002971/No-Receipt-Return (document consulted on November 13, 2014).

¹³ A consumer told us he had purchased in-store an item that was out of stock at the time of the purchase. After he decided to cancel his purchase before the item was delivered, the “restocking fee” left him perplexed, since the item had never left its inventory storage.

¹⁴ **ROSEMAN, Ellen**, *Should stores charge a restocking fee?*, Blog: Straight talk in personal finance and consumer issues on your side, Toronto, Canada, January 30, 2010. [Online] <http://blog.ellenroseman.com/?p=651> (page consulted on January 30, 2015).

1.3 Take-back and Cancellation: Overview of Canadian Legislation

Canada's provinces don't generally regulate ERR policies specifically for in-store purchases.

Merchants' return policies can be as generous (unconditional right of return) as they can be restrictive. They vary from one store to another, and may even be so open-ended as to vary depending on the clerk serving us.

As we will see in further detail, ERR policies may be displayed clearly, summarily, or not at all. They may be exhaustive or only general. They may be disclosed only after the sale.

Provincial consumer protection laws contain almost nothing directly about return policies – neither about their content nor their disclosure to consumers.

While provincial laws don't regulate ERR policies for in-store purchases, they do impose, for certain types of contracts, extreme return policies, such as a cancellation period or a period of reflection during which a consumer can change his mind.

In certain types of transactions, merchants are at times required to accept without question the consumer's sale cancellation within a period of reflection whose duration is set by law, and in that case to take back the merchandise. For other specific transactions, provincial legislatures require merchants to disclose the existence and content of their ERR policies, if any, before conclusion of the contract.

What are those areas in which legislatures have seen fit to intervene, and what reasons led them to do so? In the following pages, we will examine a few of those regulations.

1.3.1 Door-to-door Sales (or Direct Sales, or Canvassing)

Most Canadian provinces have adopted similar provisions regarding the consumer's unilateral right of reflection and cancellation in the context of door-to-door sales (or direct sales, or canvassing).

The period of reflection given the consumer is unconditional. He doesn't have to give the merchant any reason, and the merchant generally has no way to refuse cancellation of the contract so long as the consumer gives him his notice of cancellation within the period and according to the procedure prescribed by law.

- **“Contracts entered into by itinerant merchants”** – Quebec law¹⁵ gives the consumer an unconditional right of cancellation within ten days following conclusion of the contract (sec. 59 CPA). That period may be extended in certain cases (should the merchant fail to give the consumer information, for example about that right of cancellation). The consumer must simply send the merchant a written notice to that effect (sec. 61b) CPA), and return the merchandise purchased. The contract is then terminated *pleno jure* (sec. 62 CPA).

¹⁵ *Consumer Protection Act*, CQLR c P-40.1. [Online] <http://www.canlii.org/en/qc/laws/stat/cqlr-c-p-40.1/100554/cqlr-c-p-40.1.html> (page consulted on January 31, 2015).

- **“Direct sellers”** – Ontario, Alberta and Nova Scotia laws also give the consumer a ten-day period of reflection, but from the date when the copy of the contract is received, or for a longer period in certain circumstances (Ontario: sec. 43 CPA 2002¹⁶; Alberta: sec. 26 ss., *Fair Trading Act*¹⁷; Nova Scotia, sec. 21(1), *Direct Sellers’ Regulation Act*¹⁸).
- **“Direct sellers”** – Manitoba law provides an identical period of reflection, but from the date when the consumer receives the notice of his right of cancellation (sec. 62(1) CPA-MA¹⁹).

It should be pointed out that door-to-door sales have been the object of a harmonization agreement between the Canadian provinces and territories, in effect since 2001²⁰. Among the agreement’s measures is, in the first section, the consumer’s absolute right to cancel a direct sales contract within 10 days following the date when he receives a copy of the written contract or, if the laws in effect in his province or territory of residence don’t require a written contract, within 10 days after the day when he receives from the seller a notice of his right of cancellation.

1.3.2 Credit Agreements (Quebec)

Quebec law also confers a right of cancellation to consumers entering into a contract for the loan of money or a contract involving credit.

- **“Contracts for the loan of money and contracts involving credit”**: *Contracts for the loan of money and contracts involving credit may be cancelled without cost or penalty, at the discretion of the consumer, within two days following that on which each of the parties is in possession of a duplicate of the contract (sec. 73 CPA). The contract is dissolved pleno jure from the return of the goods or of the net capital or from the sending of the notice to the merchant or his representative (sec. 76 CPA).*

This is thus a public policy provision (sec. 261 CPA), so the consumer cannot derogate from it. Case law is clear on this provision: the consumer may avail himself of this right of cancellation at his sole discretion, without having to justify that decision or give any reason (*Boutin v. Fortier Auto*, 2010 QCCQ 7787 (CanLII), para. 10).

¹⁶ *Consumer Protection Act*, SO 2002, c 30. [Online] <http://www.canlii.org/en/on/laws/stat/so-2002-c-30-sch-a/108405/so-2002-c-30-sch-a.html> (page consulted on January 30, 2015).

¹⁷ *Fair Trading Act*, RSA 2000, c. F-2. [Online] <http://canlii.ca/t/522q8> (page consulted on January 30, 2015).

¹⁸ *Direct Sellers’ Regulation Act*, R.S.N.S. 1989, c. 129. [Online] <https://www.canlii.org/en/ns/laws/stat/rsns-1989-c-129/latest/rsns-1989-c-129.html> (page consulted on January 30, 2015).

¹⁹ *Consumer Protection Act*, C.P.L.M. c. C200. [Online] <http://canlii.ca/t/69bbc> (page consulted on January 30, 2015).

²⁰ **CMC**, *Direct Sellers Harmonization*, 2001. The document is available in English (rtf format) on the CMC website. [Online] http://www.ic.gc.ca/eic/site/cmc-cmc.nsf/eng/h_fe00157.html. As these lines were being written, the hyperlink to that agreement, in the CMC website’s French version, led to an other document (i.e., *le Modèle d’harmonisation des règles régissant les contrats de vente par Internet*).

1.3.3 Distance Contracts

As we have seen, provincial laws don't regulate the content of ERR policies. But most require merchants, in a specific case, to inform the consumer, before conclusion of the contract, about the existence and content of those policies:

- **Quebec: “distance contracts”** – In Quebec, the merchant is required to disclose, when they exist, his policies of cancellation, termination, return, exchange and refund, prominently and in a comprehensible manner, and to bring them expressly to the consumer's attention, before conclusion of the distance contract. Should the merchant fail to adequately disclose the information prescribed by the Act, the consumer may cancel the contract within seven days after receiving a copy of it (sec. 54.4 and fol. CPA).
- **Ontario: “Internet agreements,” “remote agreements”** – In Ontario, the consumer has the right to cancel an Internet agreement or other distance agreement within seven days after receiving a copy of the contract, if the merchant has not disclosed his ERR policy to him before conclusion of the contract (sec. 40 a) and 47 CPA 2002 and sec. 31(11) and 37(11) of Ontario Regulation 17/05²¹).
- **Manitoba: “Internet agreements”** – If a seller fails to provide prescribed information to a buyer in writing before entering into a retail sale or retail hire-purchase agreement with the buyer, the buyer may cancel the agreement (sec. 129(1) CPA-MA²² and sec. 3(1)n) of the *Internet Agreements Regulation*²³).
- **Alberta and Nova Scotia: “Internet sales contracts”** – The consumer may cancel his Internet sales contract within seven days after receipt of a copy of it if the merchant has not disclosed his ERR policy to him before conclusion of the contract. (Alberta: sec. 6(1)a)i) and 4(1)a)xii) of the *Internet Sales Contract Regulation*²⁴; Nova Scotia: sec. 6(1)a)i) and 3(l) of the *Internet Sales Contract Regulations*²⁵).

An *Internet Sales Contract Harmonization Template*²⁶ was established in 2001 by the signatories of the *Internal Trade Agreement*. This is the basis of legislative measures adopted in Canadian provinces. This agreement requires, notably, the merchant to give the consumer a written copy of the contract (sec. 4), and to disclose to the consumer, before conclusion of the contract, a set of information, including the merchant's policy of cancellation, return, exchange and refund, if applicable (sec. 3(1)a)xii). It should also be noted that the harmonization template

²¹ *Ontario Regulation 17/05, General*. [Online] <http://www.canlii.org/en/on/laws/regu/o-reg-17-05/110800/o-reg-17-05.html> (page consulted on January 30, 2015).

²² *Ibid.*

²³ *Internet Agreements Regulation*, Manitoba Regulation 176/2000. [Online] <http://www.canlii.org/en/mb/laws/regu/man-reg-176-2000/67010/man-reg-176-2000.html> (page consulted on June 25, 2014).

²⁴ *Internet Sales Contract Regulation*, Alta Reg 81/2001. [Online] <http://canlii.ca/t/529c2> (page consulted on January 30, 2015).

²⁵ *Internet Sales Contract Regulations*, NS Reg 91/2002. [Online] <http://canlii.ca/t/jmpc> (page consulted on January 30, 2015).

²⁶ **CMC**, *Internet Sales Contract Harmonization Template*, Consumer Measures Committee, OFFICE OF CONSUMER AFFAIRS, Industry Canada, Ottawa, Canada, May 2001. [Online] http://cmcweb.ca/eic/site/cmc-cmc.nsf/eng/h_fe00157.html. As these lines were being written, the link to the Harmonization Template in the CMC website's French version led to a version dated April 2001. The document in its final version of May 29, 2001 is available from the link that should lead to the direct sellers harmonization page.

provides a right of cancellation in favour of the consumer, of which he may avail himself within seven days after receipt of a copy of the contract if the merchant has omitted to disclose the mandatory information (sec. 5(1)a)). The consumer also has other rights of cancellation: if the merchant does not give him a copy of the contract within 30 days following its conclusion, for example (sec. 5(1)b)).

1.3.4 Timeshare Agreements

The Ontario and Alberta legislatures have also conferred a unilateral right of cancellation to consumers entering into a timeshare agreement:

- **Timeshare agreements** – The consumer has an absolute right to cancel, without any reason, any timeshare agreement, within ten days following receipt of the contract. That period may be extended by up to one year if, for example, the contract did not comply with the law or if the right of cancellation was not communicated adequately (sec. 28 CPA 2002²⁷; sec. 37 FTA²⁸).

1.4 Justification for the Interventions – Lawmakers' Comments

What reasons led the legislatures of the provinces mentioned above to confer to consumers a right of cancellation for certain types of transactions, and to do so uniformly for door-to-door sales (or itinerant sales, or direct sales, or canvassing)?

And what induced lawmakers to include so uniformly the disclosure of ERR policies, before a transaction is concluded, among information whose omission likely allows consumers to cancel a distance and/or Internet contract?

As we will see, Canadian laws that create exceptions to the binding nature of contracts by granting consumers periods of reflection or withdrawal for certain consumer contracts, notably regarding to door-to-door sales, result from lawmakers' recognition that consumers need additional protection in some cases.

1.4.1 Door-to-door Sales / Direct Sales / Canvassing

If lawmakers have intervened to give consumers a right of cancellation, i.e., the right to cancel a contract after a period of reflection, in the case of door-to-door sales, it's because those sales lend themselves to high-pressure tactics.

²⁷ *Consumer Protection Act*, SO 2002, c 30. [Online] <http://www.canlii.org/en/on/laws/stat/so-2002-c-30-sch-a/108405/so-2002-c-30-sch-a.html>, (page consulted on January 30, 2015).

²⁸ *Fair Trading Act*, RSA 2000, c. F-2. [Online] <http://canlii.ca/t/522q8> (page consulted on January 30, 2015).

This is what Me Allard of the Office de la protection du consommateur pointed out in 2006 during parliamentary debates on amendments to the *Consumer Protection Act*:

Actuellement, il y a un certain nombre de situations qui permettent un droit de rétractation sans aucun motif. La vente itinérante, on l'a mentionné, je pense, dans les discussions, il y a une pression qui est exercée et qui est dans certains cas inappropriée et qui vous amène à signer un contrat sans trop y réfléchir. Donc, ce délai-là, je pense, est justifié²⁹.

Without affecting the nature or general scope of that right of reflection and cancellation, each province has determined more precisely in legislation the transactions in which consumers could avail themselves of that right. Basically the transactions covered are those concluded elsewhere than at the merchant's place of business. Door-to-door sales are covered by all provinces. Some provinces don't consider it a direct sale if the contract concluded at home was solicited by the consumer; others deem that in some cases, such as home renovation, the contract concluded at home is an itinerant sales contract even if the consumer himself solicited the merchant; others exclude public marketplaces and exhibitions; others consider it a direct sale if it was solicited at the consumer's home, irrespective of where the contract was signed; etc.

In Quebec, the right of cancellation is absolute: if the seller installed the object of the sale before the period expired (for example, a heat pump, or roofing, or paving), he will still be obliged not only to take back the merchandise, but also to restore the premises. Ontario law provides the same obligation, except that if the consumer solicited the seller to enter into the contract, the seller has the right to be compensated.

Some provinces have set a minimum amount for transactions covered by the right of reflection and cancellation (in Ontario and Manitoba, that threshold is set at \$50).

Despite those differences, the right of cancellation, for its part, is now set at ten days in all the provinces we studied. Alberta, which provided a period of cancellation of only four days, increased it to ten days in 1996.

The changes include increasing the length of time a buyer can cancel a direct-sale contract from four to 10 days. Many direct-sales consumers are seniors, who often need extra time to consider their options and for consultation with family and friends. Another change would also specify the information that must be included in sales contracts, including the buyer's cancellation rights³⁰.

²⁹ **QUÉBEC NATIONAL ASSEMBLY**, Étude détaillée du projet de loi n° 48 - Loi modifiant la Loi sur la protection du consommateur et la Loi sur le recouvrement de certaines créances, 37th legislature, 2nd session, (March 14, 2006 to February 21, 2007), Vol. 39 No. 35, Québec City, December 5, 2006. [Online] <http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/ci-37-2/journal-debats/CI-061205.html> (page consulted on July 3, 2014).

³⁰ **LEGISLATIVE ASSEMBLY OF ALBERTA**. *Bill 20* (session 23-4), Edmonton, March 5, 1996, 26 pages. See p. 21. [Online] http://www.assembly.ab.ca/isys/LADDAR_files/docs/hansards/han/legislature_23/session_4/19960305_1330_01_han.pdf (document consulted on April 2, 2015).

1.4.2 Distance Contracts / Internet Contracts

During a recent round of amendments to the *Consumer Protection Act*, Quebec lawmakers considered the relevance of granting a consumer concluding a distance contract a period of reflection similar to that for contracts concluded at home. But they considered that would risk distorting the market, while the risk of high pressure in door-to-door sales is not present in distance contracts. This is what the parliamentary debates reveal:

M. Allard (André): Lorsque vous transigez à distance, il était difficile pour nous de trouver un motif qui permettrait de justifier un droit de rétractation total dans la mesure où toutes les autres conditions de la formation du contrat à distance étaient respectées. C'est-à-dire que, dès lors qu'on a l'ensemble des informations qui permettent aux consommateurs d'avoir des renseignements qu'ils pourraient obtenir s'ils étaient dans l'établissement du commerçant, en considérant qu'il y a absence de pression, en considérant également que les transactions à distance ne sont pas susceptibles d'entraîner des obligations extraordinaires, là, si vous voulez, là, ou particulières pour le consommateur, on s'est dit: La seule raison qui pourrait justifier un droit de rétractation sans motif, c'est lorsqu'on reçoit le bien puis: Ce n'est pas tout à fait ça finalement que je voulais avoir puis, bon, j'ai fait le mauvais choix, bon, etc. Mais ça aurait permis au consommateur d'obtenir un droit qu'il n'aurait pas par ailleurs. [...]

Maintenant, la question, c'est plutôt de savoir: dans un contexte où, par exemple, le principe de la stabilité contractuelle est fondamental, il faut s'assurer que, lorsqu'on y fait échec ou lorsqu'on veut y trouver des exceptions, en fait que les situations justifient, hein, de faire échec à ce principe fondamental de la stabilité des contrats. Il s'agit de tracer la ligne au bon endroit, lorsqu'on décide les modalités d'un régime comme celui-là. Une personne qui achète, par exemple, des rideaux en ligne pourrait vérifier l'existence des politiques d'échange avant pour s'assurer que, compte tenu du fait que je ne peux pas avoir la... Bon.

Vous savez, je veux dire, à notre avis l'examen de chacune des situations potentielles ne justifiait pas ce choix, qui est très important, de faire échec au principe de la stabilité des contrats. Déjà, les droits de résolution qui sont prévus là ébranlent.

[...] si un tel droit était conféré aux consommateurs, j'irais voir en magasin le produit, mais je l'achèterais en ligne. Parce que, si la politique d'échange n'existe pas dans l'établissement, je vais aller l'acheter en ligne. Parce que je ne suis pas trop sûr, je vais l'acheter, je vais le mettre là, je vais le regarder: Ah, il n'est pas bon, alors que, si je l'avais acheté dans l'établissement, le commerçant n'ayant pas l'obligation, lorsqu'il transige face à face, d'avoir une politique d'échange ou de droit de rétractation, je vais aller en ligne.

[...] si nous devons accorder aux consommateurs, au Québec, un droit de rétractation, ce qui serait légitime, là, de le faire, il faudrait comprendre qu'on serait les seuls, au Canada, à avoir un tel droit de rétractation. Et l'objectif de l'Accord sur le commerce intérieur évidemment est d'harmoniser la législation, et ça été fait dans ce contexte-là³¹.

Indeed, no provincial law grants a unilateral and unconditional right of cancellation in the case of distance or Internet contracts. As some mentioned during the debates held in Quebec, distance purchases are more precarious: the consumer doesn't see the actual good during his purchase – he must rely on its graphical presentation, its description, and the seller's representations. On that basis, the lawmakers opted for a right of cancellation in the case, notably, of divergences between the characteristics of the good as presented before the purchase and in the contract.

³¹ *Op., cit.*, note 29, QUÉBEC NATIONAL ASSEMBLY, Étude détaillée du projet de loi n° 48.

Accordingly, the consumer may cancel his contract and be refunded when the merchant has failed to disclose certain essential characteristics to him before concluding the contract and in writing. Among the characteristics deemed crucial by the lawmakers are the merchant's ERR policies. Thus, although the law doesn't grant the consumer a universal right of reflection, he may at least choose in full knowledge to purchase from a merchant who gives him this type of option.

M. Marcoux: Alors, dans le fond, cet article-là, c'est de permettre au consommateur d'obtenir, avant la conclusion du contrat à distance, là, les renseignements concernant le bien ou les services qui sont offerts en vente, le prix demandé, puis d'autres frais afférents qui peuvent être exigés, puis également les politiques d'échange et d'annulation. [...]

Mme Côté (Maryse): ...tous les commerçants n'acceptent pas nécessairement des échanges, des retours, etc. Certains le font. Et, particulièrement dans un contrat à distance, c'est important pour un consommateur de savoir à l'avance si le commerçant offre de tels... [...]

Mme Côté (Maryse): Comme dans l'achat de vêtements, si on achète un vêtement à distance, quand on n'a pas eu l'opportunité de l'essayer, on est intéressé de savoir, avant de le commander, si, dans l'éventualité où ça ne conviendrait pas, on pourrait le retourner au commerçant, si le commerçant volontairement accepte les retours. [...]

M. Allard (André): [...] effectivement qu'il n'y a rien de tel que de voir le produit. Mais il n'y a souvent aussi rien de tel que de voir le produit dans l'espace qu'il occupera chez vous. Et là, même si on l'a vu dans un magasin, on peut l'amener là. Et puis qu'est-ce que vous allez faire? Vous allez vous assurer que l'entreprise a une politique d'échange si ça ne fonctionne pas. Et, vous avez raison, les entreprises, pour attirer la clientèle, vont dire: On a des politiques d'échange très généreuses. En fait, encore une fois, l'idée, c'est de mettre, à peu près sur le même pied, les consommateurs qui transigent en personne et ceux qui transigent à distance³².

This choice made by the provincial legislatures we studied is thus justified by the importance for the consumer, in this particular context of distance contracts, to know whether the merchant is offering him a possibility of exchange, return or refund that can reassure him about a purchase that may be blind to a certain extent; indeed, this type of purchase generally implies a certain ignorance of the exact details of the merchandise (exact colour, etc.), given the lack of visual, tactile, etc. contact.

1.4.3 Extended Warranties (QC)

In 2010, The Quebec legislature decided to regulate extended warranties, because of many complaints that the latter only aimed at getting the consumer to pay more for warranties that he already had by law or that were included in the manufacturer's warranty.

The original Bill (Bill 60) required the merchant offering an extended warranty to advise the consumer of the existence and scope of the legal and the manufacturer's warranties. The merchants replied that clerks were not able to know or explain the content of legal warranties to consumers, so the lawmakers prescribed a form that presented the essence of those warranties and that merchants would be obliged to give consumers when offering them an extended warranty.

³² *Ibid.*

The merchants also protested that manufacturers' warranties were extremely variable and detailed on a document that in most cases was inside a sealed box; it was thus practically impossible for the merchant to inform the consumer correctly on the content of that warranty.

In response to that objection, the lawmakers proposed a perfectly adequate solution. Since knowledge of the content of the manufacturer's warranty is essential for making an informed choice of whether or not to acquire the extended warranty, and since the seller is not able, in practice, to inform the consumer correctly on that manufacturer's warranty, the consumer acquiring an extended warranty would have a ten-day period of reflection after his purchase. This would allow him to take cognizance of the manufacturer's warranty, and would give him the right, if he so intended, to cancel the extended warranty without reason or penalty within that period.

The Justice Minister at the time, Ms. Weill, justified that solution as follows:

Le Président (M. Bernier): O.K. Donc ça, d'accord. Donc là, vous le donnez en information et, tout à l'heure... [...] on demandera de réouvrir l'article 5 puis on introduira cette modification. [...]

Mme Weil: ... ça permettrait au consommateur, envers qui le commerçant était tenu de divulguer le contenu d'une garantie prévue à l'article 37 et 38... qu'il pourrait résoudre à sa discrétion le contrat dans les 10 jours qui suivent sa conclusion. Donc, si la personne... On va parler de cette personne, comment est-ce que ce consommateur peut savoir s'il a besoin de cette garantie supplémentaire? [...]

Mme Weil: Par rapport à la garantie du fabricant. C'est-à-dire s'il ne connaît pas ? c'est un peu, là, votre question, hein? ? l'étendue de la garantie du fabricant, comment faire ce choix d'acheter cette garantie supplémentaire? Alors, si on pense à la réalité de la situation, c'est que la personne va être là, on va lui dire: Voici la garantie légale, puis il va lui expliquer un peu c'est quoi, une garantie légale. Mais il y a aussi l'existence d'une garantie du fabricant, mais je ne peux pas vous dire ce que c'est parce que chaque fabricant a des garanties différentes. Alors, le consommateur peut rentrer chez lui, s'informer en allant... Bien, premièrement, dans la boîte, ce qu'il aura acheté, le produit qu'il aura acheté, la garantie est bien dans la boîte, c'est-à-dire le contenu de la garantie, et il pourrait décider, s'il a décidé d'acheter la garantie supplémentaire, résilier cette garantie dans les 10 jours. Je pense, quant à moi ? et puis on va la regarder tantôt ? ça vient répondre à cette préoccupation. J'imagine même qu'à terme, éventuellement, ça va être plus dans l'intérêt du commerçant de bien connaître toutes les garanties s'il veut vendre sa garantie supplémentaire. Parce que la réalité, c'est que beaucoup de gens ne vont peut-être pas acheter la garantie supplémentaire, sachant qu'il y a ces deux autres garanties et surtout si on ne peut pas lui répondre quant au contenu de la garantie du fabricant. [...]

Mais, sachant qu'il peut résilier de toute façon, il se dit: Bon, bien, je suis là, je vais acheter la garantie supplémentaire, mais je sais très bien que je peux défaire cette garantie ou l'achat, ce contrat, dans les 10 jours qui suivent. Ça me donnerait le temps d'aller voir ce qu'il y a dans l'autre garantie³³.

Unfortunately, during the feverish times when the Bill was adopted, section 5 was never "reopened" to bring that amendment, and the consumer protection measure was simply forgotten. The debate remains instructive: the consumer's impossibility or difficulty to make an

³³ QUÉBEC NATIONAL ASSEMBLY, *Journal des débats de la Commission des relations avec les citoyens*, Vol. 41 N° 12, Québec City, November 10, 2009. [Online] <http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/crc-39-1/journal-debats/CRC-091110.html> (page consulted on April 18, 2015).

informed choice at the time of purchase, in the absence of essential information, would adequately justify granting the consumer a right of reflection and cancellation.

1.4.4 Timeshare Agreements

As we have seen, some provinces have provided an automatic right of reflection and cancellation for another type of contract: timeshare agreements. Those contracts mainly give the consumer the right to use property, within the province or beyond, according to the participants' arrangement for periodical and successive enjoyment of the property.

The reasons for the lawmakers' intervention are the same as those allowing consumers to cancel contracts concluded at home: the prevalence of high-pressure sales tactics. Another reason is the complexity of timeshare agreements. The parliamentary debates held in 2002 in Ontario about Bill 180 refer to this:

Hon Mr Hudak: Consumers would also have greater protections in certain sectors where high-pressure sales tactics occur. This bill proposes that the 10-day cooling-off period that currently exists for door-to-door sales be extended to timeshares, fitness clubs and talent agencies³⁴.

and:

Mr Mike Colle (Eglinton-Lawrence): Some of the areas it covers are areas of very chronic, constant consumer complaints. I will start with this whole area of time-sharing. This is quite a unique area of real estate, whereby people, in essence, don't buy a piece of land or don't buy the condo; they buy part of a structure for their own personal use for a certain number of days a year.

As you know, traditionally these have been rocked with problems. There are so many other conditions in terms of when they can use it, who pays for cleanup, who pays to use it at prime times and so forth. I'm glad that at least there is in this bill a 10-day cooling off period. The one thing I guess it doesn't cover is the poor visitors. If you go off-shore, whether it's Florida or whatever, you get accosted by people trying to sell you these time-share provisions. They ask you out to lunch and so forth. [...]

I am happy to see the 10-day cooling-off period, because sometimes these can be much more complicated than they appear to be for the ordinary person who is signing such a contract for the first time³⁵.

During the adoption of the right to cancel this type of contracts in Alberta, the lawmakers also pointed out the abuses observed in those types of sales:

Mrs. Abdurahman: [...] I'm sure I'm not the only Member of this Legislative Assembly who has had to deal with the unfortunate contractual arrangements that have resulted from many time-share propositions that have been put to people in Alberta. I had the unfortunate responsibility as an MLA to deal with a concern where two elderly Albertans somehow had gotten talked into a time-share, who in their mid-70s had signed a 60-year lease and through that . . . [interjection]

³⁴ *Consumer Protection Statute Law Amendment Act, 2002*, Toronto, September 26, 2002. [Online] http://www.ontla.on.ca/web/house-proceedings/house_detail.do?Date=2002-09-26&Parl=37&Sess=3&locale=fr#P390_116153 (page consulted on April 1, 2015).

³⁵ *Consumer Protection Statute Law Amendment Act, 2002*, Toronto, October 31, 2002. [Online] http://www.ontla.on.ca/web/house-proceedings/house_detail.do?Date=2002-10-31&Parl=37&Sess=3&locale=fr#P790_205909 (page consulted on April 1, 2015).

Yeah, the member's laughing. It isn't funny. I think it's tragic that we don't have a marketplace that actually makes available the information to prevent people getting bunged like this elderly couple were³⁶.

[...] why should we allow somebody to be sold a time-share in Mexico because they get caught up in high-pressure sales techniques at a travel trade fair where the focus of the trade fair is to sell people products that they won't need, can't need, and will never need³⁷.

The bizarre stories of the various sales tactics used for this type of product are so widespread that it is surprising that all provinces have not yet deemed it appropriate to give additional protections to consumers victimized by those sales tactics. It should be noted that as early as 1994, a European Union Directive required its Member States to regulate this type of sales³⁸.

1.4.5 Credit Agreements

As for the period of cancellation granted to Quebec consumers in credit agreements, Me Allard of the Office de la protection du consommateur explained its existence during parliamentary debates in 2006 regarding amendments to be made to the Consumer Protection Act, given the substantial obligations that may be borne by consumers under this type of contract:

M. Allard (André): [...] Dans le contrat de crédit, le délai de deux jours a été accordé parce qu'il s'agit là d'une situation qui entraîne des obligations importantes pour un consommateur. C'est probablement dans les contrats de crédit où on trouve les obligations les plus onéreuses pour les consommateurs³⁹.

³⁶ *Op., cit.*, note 30, **LEGISLATIVE ASSEMBLY OF ALBERTA**, *Bill 20*. See p. 398.

³⁷ *Ibid.*, p. 401.

³⁸ **EUROPA**, *DIRECTIVE 94/47/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis*, Europa, Brussels, Belgium, no date. [Online] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0047:EN:HTML> (page consulted on April 2, 2015).

³⁹ *Op., cit.*, note 29, **QUÉBEC NATIONAL ASSEMBLY**, Étude détaillée du projet de loi n° 48.

2. General Protections Offered to Canadian Consumers by Provincial Consumer Protection Laws

As we have seen, merchants' return policies can be as generous (unconditional right of return) as they can be restrictive. ERR policies are chosen and applied at companies' sole discretion; merchants determine the policies according to their company's popularity, the competition, the type of treatment they want to give their clientele, etc.

Still, not everything is permitted to merchants. Consumer protection laws apply to ERR policies as well as other commercial activities, and those laws' provisions of general application can, ideally, ensure that abuses are prevented or, if not, that redresses are available.

We will briefly discuss the possible interactions between ERR policies and legal warranties.

We will also examine the situation in the European Union, and then in the United States and Australia, to determine how Canadian regulations compare.

2.1 Provincial Consumer Protection Laws in Canada

Provisions of general application regulate the ERR practices of companies as well as their other commercial practices.

For example: while no law requires merchants to display their ERR policies, the merchant doing so still has to strictly meet the exchange, return and refund conditions he has communicated to the consumer.

Accordingly, according to several provisions of general application (as opposed to provisions that would specifically cover ERR policies) included in provincial consumer protection laws, consumers benefit from some protection regarding ERR policies: protection against unfair practices and concealed charges, and protections offered by legal warranties. By using available recourses in case of violation of those general provisions, consumers can, if necessary, seek redress.

For example, a consumer who would want the legal system to impose compliance with the provisions of general application found in Quebec's *Consumer Protection Act* could ask the court to do any of the following: order the merchant to meet his obligation; authorize the consumer to have the obligation executed by a third party at the merchant's expense; reduce the consumer's obligations; or even order the cancellation or rescission of the contract. (sec. 272 CPA-QC). Likewise in the common law provinces, where consumers victimized by unfair practices may require cancellation of the contract. In addition, consumer protection laws generally give governmental consumer protection agencies (GCPAs) the power to initiate criminal proceedings when finding infractions to the laws under their responsibility (e.g.: sec. 277 and fol. CPA-QC; sec. 116 and fol. CPA-Ont.).

However, it must be emphasized that initiating proceedings under consumer protection laws is not easy for consumers. Long delays, misunderstanding of the laws, complex legal process, investments in time and energy, and low economic incentives: those are a few of the barriers against access to justice confronting consumers who want to have their rights respected.

As we will see, among the problems facing consumers regarding ERR policies are inadequate disclosure of policies and an unbalance of power between the parties to the contract, given that taking back merchandise depends often on the merchant's goodwill.

2.1.1 Prohibition against Charging Fees not Disclosed in the Contract

Quebec law prohibits charging fees to consumers unless the contract mentions their exact amount (sec. 12 CPA). Does that prohibition suffice to regulate adequately the practices of merchants who accept returns but charge restocking fees?

Like many other provisions, this one aims at ensuring that the consumer has all the necessary information for making an informed choice and for concluding or not a contract with a given merchant. If a merchant advises the consumer that he will accept the return of merchandise for an exchange, credit or refund, he cannot charge any fees, whether he says they are for restocking, administration or other reasons, if he has not disclosed those fees as being part of his policy. Thus, a merchant cannot try to stand out from the competition by announcing generous return policies and disclosing fees only when the consumer tries to benefit from that policy.

What about a merchant who has not mentioned the right of return? Could he, when a consumer tries to return merchandise, accept that return on condition that a fee is paid? Admittedly, such a situation would fall in a grey area. Given that the right of return itself is not part of the contract – as proof, specific provisions have been adopted to give consumers that right and thus integrate it to certain types of transactions –, it could be argued that the consumer's return of merchandise would constitute a distinct transaction, likely to be the object of negotiations or conditions that the parties would be free to accept or refuse. If the return is not considered part of the contract, it can easily be argued that the contract thus did not have to provide those conditions. That would of course be detrimental to the consumer. Therefore, it seems important to ensure that return policies be disclosed to the consumer before conclusion of the contract.

2.1.2 Interpretation of Consumer Contracts

The consumer must at least be able to understand the parameters of the consumer contract he is entering into. But often, consumer contracts are very ambiguous.

In Quebec as in the other Canadian provinces, the consumer contract, in case of doubt or ambiguity, must be interpreted in favour of the consumer (e.g.: sec. 17, CPA-QC/ sec. 1432 CCQ, sec. 11 *Consumer Protection Act, 2002* - Ont).

Disclosures of in-store return policies are often incomplete, with a summary appearing, for example, on the back of a cash receipt, with at times a reference to a website where the

consumer can find a more complete statement of policy. This is fertile ground for varied interpretations.

The existence of this type of provision is due both to the encouragement to write clear contracts and to the fact that consumer contracts are adhesion contracts, and thus written by merchants without their provisions being subject to any negotiation; the consumer must agree to them in full. For those reasons, it seems logical that lawmakers have decided to guarantee that, if the writer of a provision the other party could not negotiate is not clear, the lack of clarity automatically plays to the writer's disadvantage.

2.1.3 False, Misleading or Unfair Representations: Prohibited Practices

Good faith should be the rule in contracts. To ensure respect of this principle, Canadian lawmakers have specified in their consumer protection laws that "No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer." (sec. 219 CPA-QC). Under Quebec law, representation includes an affirmation, a behaviour or an omission (sec. 216).

The common law provinces have taken a similar approach. In Ontario, for example, the *Consumer Protection Act, 2002* prohibits false, misleading or deceptive representations (statement, declaration, offer, request or proposal), and qualifies them as unfair practices (sec. 14(1), 15(1), 17(1) CPA-Ont).

As we will see, the merchant may disclose his ERR policy during the transaction or even afterward. In addition, at times within the same business, what is disclosed to the consumer about the ERR policy varies according to whether the consumer's interlocutor is the cashier, clerk, salesperson, manager or owner. This can lead to contradictory statements by merchants and their representatives. In any case, the merchant is bound by those representations, whether made by a salesperson, clerk or any other representative.

If a merchant makes false representations about his ERR policy or its scope, he is engaging in a prohibited practice under provincial consumer protection laws, and is subject to various redresses under the law.

2.1.4 Prohibition against Omitting an Important Fact

In Quebec as well as the common law provinces, consumer protection laws prohibit merchants from omitting important facts (e.g.: sec. 228 CPA-QC). Ontario law specifies that "the following are included as false, misleading or deceptive representations: [...] exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive." (sec. 14(2) 14).

Whether the practice is called prohibited or unfair, the prohibition applies to all contract provisions and all the circumstances surrounding its conclusion, notably the merchant's representations, with regard to any fact he omits to tell the consumer.

Accordingly, if the merchant states that he has an ERR policy, he may not, in his representations about that policy, omit conditions, exclusions or fees, for example, that the consumer is surprised to discover when wanting to benefit from that policy.

It should be noted that Quebec law assumes that a consumer victimized by a prohibited practice would not have made the transaction or paid such a high price, had he been aware of such practice (253 CPA).

2.1.5 Legal Warranty Plans

Occasionally a consumer wants to return an item not because he has changed his mind or the item doesn't fit his size or suit his décor, for example, but because the item is defective, unusable, or doesn't meet his expectations or correspond to the description that was made of it. In such cases, can the consumer return the item to the merchant?

Legal warranty plans give Canadian consumers substantial protection. Although the plans are not faultless⁴⁰, Canadian consumers benefit, both in the civil law province of Quebec and in the common law provinces, from a set of guarantees that apply automatically when goods are purchased⁴¹. Although warranty regulations vary from one province to another since they have not been harmonized across Canada, their protections are similar across the country.

Sellers are required to guarantee to buyers that they will benefit from quiet enjoyment of the good and that the latter is free and clear of all third party claims except those that have been brought to the buyer's knowledge (e.g.: Qc: sec. 1723 CCQ/ sec. 36 CPA. Ont: sec. 13(1) *Sale of Goods Act*, RSO 1990, c S.1. Alb: sec. 14, *Sale of Goods Act*, RSA 2000, c S-2). Quebec law also provides that the goods delivered to the consumer must conform to the description made of them in the contract and in the statements or advertisements regarding them made by the merchant or the manufacturer (sec. 40 and 41 CPA).

The merchant must also guarantee to the consumer that the goods are fit for the purposes for which goods of that kind are ordinarily used (e.g.: QC: sec. 37 CPA/ Ont: sec. 5, *Sale of Goods Act*/ British Columbia: sec. 18, *Sale of Goods Act*, RSBC 1996, c 410), for a reasonable duration (QC: sec. 38 CPA).

Unfortunately, although the legal warranty is an important consumer protection measure, three discussion groups held among Montreal and Ontario consumers in 2012 by Union des consommateurs reveal that this regulatory framework is largely unknown⁴². The fact that consumers are not aware of the existence or scope of those rights conferred to them by the legal warranty, and that it is thus rarely invoked by consumers who have a problem with the good covered by the warranty, contributes enormously to the ineffectiveness of this protection measure.

⁴⁰ **Me Marcel BOUCHER and Me Yannick LABELLE**, *Adequacy of Legal Warranty Plans in Canada*, Union des consommateurs, Montreal, June 2012, 194 pages. [Online] http://uniondesconsommateurs.ca/docu/protec_conso/Garanties-Legales-en.pdf

⁴¹ In the common law provinces, legal warranties offered to consumers during consumer transactions are generally subject to the provinces' Sale of Goods Acts, except in a few provinces, where specific statutory laws have been adopted. In Quebec, both the Consumer Protection Act and the Civil Code of Québec contain legal warranty provisions.

⁴² *Op. cit.*, note 40, **BOUCHER, M. and Y. LABELLE**, *Adequacy of Legal Warranty Plans in Canada*.

How does the legal warranty apply to merchants' return policies?

Unfortunately, the answer to that question is not so simple. First it should be recalled that, with a few exceptions⁴³, implementation of the legal warranty in the case of a defective good or one that stops functioning adequately before the end of a reasonable period does not entail automatically a right of exchange or refund. The merchant could indeed meet his warranty obligations by repairing the good. This is obviously not the case if the good does not conform to its description or does not serve its intended use.

And yet, there is a lot of confusion, in the minds both of consumers and merchants, between ERR policies and consumers' rights under the legal warranty⁴⁴. Nevertheless, if an item breaks prematurely, the merchant must take back or replace (or repair) the item not according to the merchant's ERR policy, whatever it is, but according to his obligations under legal warranty plans.

Accordingly, we can state without fear of error that an ERR policy that would display (or according to which the merchant would state) "Final sale" or "No returns, exchanges or refunds" cannot free the merchant of his obligations under the legal warranty, which is of public order. Nothing prevents a merchant from including in his ERR policy his procedures for returns under the legal warranty; but although ERR policies are not regulated, those procedures may never exclude or limit consumers' rights under legal warranties.

⁴³ New Brunswick and Saskatchewan give consumers the right to refuse a good if the merchant violates a warranty subject to the law and does not remedy the violation. NB: *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, sec. 16(1) ; SK: *Consumer Protection Act*, S.S. 1996, c. 30.1, sec. 57(1)b).

⁴⁴ In an informal survey of consumer rights groups, we asked them if they could report problems with merchants' ERR policies. All the answers we received pertained not to ERR policies, but to warranty problems.

3. Examination of Foreign Legislation

3.1 European Union

In the European Union, as in Canada, there is no universal right to a post-purchase period of reflection:

Tout achat dans l'Union européenne est en principe ferme et définitif, c'est-à-dire que vous ne pouvez pas renoncer à votre commande à moins de payer les frais d'annulation prévus dans les conditions générales de vente du professionnel. Exemple : vous vous rendez chez un cuisiniste en Allemagne, vous signez un bon de commande, vous ne bénéficiez en principe d'aucun délai de rétractation⁴⁵.

However, some Directives provide an unconditional right of withdrawal for certain types of contracts or consumer sectors. Because they originate from Directives, those rights must of course be transposed in the national legislation of all Member States.

For distance and off-premises contracts (itinerant sales, door-to-door sales, canvassing), the 2011 Directive has maintained the unconditional right of withdrawal, and extended the period from 7 to 14 days from purchase or delivery⁴⁶. The period may be extended to 1 year if the merchant omits to inform the consumer adequately about that right of withdrawal.

Directive 2008/48/EC of 23 April 2008 provides a period of unconditional withdrawal for a consumer who concludes a consumer credit contract, when the loan is between 200 and 75,000 euros and is refundable for over one month⁴⁷.

Directive 2008/122/EC of 14 January 2009 also grants consumers an unconditional right of withdrawal within 14 days, regarding timeshare contracts (a right broadened by this Directive to "long-term holiday product, resale and exchange contracts")⁴⁸.

The European Directives thus do not appear to specifically address the issue of exchange, return and refund policies for in-store purchases.

⁴⁵ **EUROPEA CONSUMER CENTRE FRANCE**. *Droit de rétractation*, Kehl, Germany, no date. [Online] <http://www.europe-consommateurs.eu/fr/vos-droits/consommer-dans-l-ue/achats-en-europe/quels-sont-vos-droits/droit-de-retractation/> (page consulted on July 30, 2014).

⁴⁶ **EUROPA**, *Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council*, November 22 2011. Available online on the EUR-Lex website. [Online] <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0083&from=EN> (page consulted on July 29, 2014).

⁴⁷ **EUROPA**, *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC*, art. 14. Available online on the EUR-lex website. [Online] <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0048&from=FR> (page consulted on July 30, 2014).

⁴⁸ **EUROPA**, *Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts*, art. 6. [Online] <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0122> (page consulted on July 30, 2014).

3.2 United States

Numerous American States have examined the issue of in-store ERR policies, particularly in terms of precontractual disclosure – which thus excludes disclosure made only on the cash receipt. We reviewed the rules adopted by some of those States.

In New York City, the legislature decided to require a display of refund policies, as well as the correct way to communicate those policies to consumers. The law gives consumers a right of automatic refund if the merchant fails to display his policies adequately:

1. *Every retail mercantile establishment shall conspicuously post, in the following manner, its refund policy as to all goods, wares or merchandise offered to the public for sale:*
 - (a) *on a sign attached to the item itself; or*
 - (b) *on a sign affixed to each cash register or point of sale; or*
 - (c) *on a sign so situated as to be clearly visible to the buyer from the cash register; or*
 - (d) *on a sign posted at each store entrance used by the public*

2. *The sign [...] shall state whether or not it is the policy of such establishment to give refunds and, if so, under what conditions, including but not limited to whether a refund will be given:*
 - (a) *on merchandise which had been advertised as "sale" merchandise or marked "as is;"*
 - (b) *on merchandise for which no proof of purchase exists;*
 - (c) *at any time or not beyond a point in time specified; or*
 - (d) *in cash, or as credit or store credit only.*

3. **Enforcement.** *Any retail mercantile establishment which violates any provision of this section shall be liable, for a period of up to twenty days from the date of purchase, to the buyer for a cash refund or a credit, at the buyer's option, provided that the merchandise has not been used or damaged by the buyer.*

[...] ⁴⁹.

In the State of Massachusetts, merchants are also expressly required to display their ERR policies conspicuously and comprehensibly... and to act accordingly:

A merchant cannot misrepresent the store's policy or fail to honor it. Generally, clear and conspicuous disclosure means that the merchant must display a written return policy that the buyer can see and understand before the purchase is made. As long as the product is not defective, a merchant can choose any return policy, provided the merchant discloses this policy to the buyer before the purchase. Stating the policy on the receipt would not satisfy this disclosure requirement, because it is not provided until after the sale ⁵⁰.

The Massachusetts lawmakers take care to mention that return policies cannot limit the right to return a defective product.

⁴⁹ *General Business Code*, N.Y. GBS. LAW § 218-a: NY Code - Section 218-A: Disclosure of refund policies. [Online] <http://codes.lp.findlaw.com/nycode/GBS/12-B/218-a> (page consulted on April 3, 2015).

⁵⁰ **OFFICE OF CONSUMER AFFAIRS & BUSINESS REGULATION (OCABR)**. *A Massachusetts Consumers Guide to Shopping Rights*, Massachusetts, United States, 2015. (940 CMR 3.13(4)) [Online] <http://www.mass.gov/ocabr/consumer-rights-and-resources/consumer-protection/shopping/shopping-rights/shopping-rights.html> (page consulted on April 3, 2015).

In California, the common practice of retailers is to offer consumers a right of reflection and return, against refund or credit, within a reasonable period. The law thus requires merchants to display their policies when they differ from those common policies expected by consumers. Those common practices, as defined by law, are full refund or credit, or exchange, with proof of purchase, within seven days following a purchase.

Most retail sellers allow a customer to return purchased merchandise within a reasonable time for full refund or credit, or for equal exchange. In fact, these refund policies are so common that customers have come to expect them when retail sellers do not post notice to the contrary.

However, some retail sellers do not post their return policy, but impose conditions on accepting returned merchandise or do not accept returns at all. Too frequently, customers who thought that they could return merchandise have been surprised to discover that the seller won't accept returns or has a limited return policy (e.g., packages must be unopened or a restocking fee must be paid).

Recognizing this, the legislature has enacted a law (Civil Code section 1723) which requires retail sellers to post their refund policy, if the policy does not meet certain common expectations⁵¹.

The California legislature requires, in such cases, a visible display “*at each cash register and sales counter, at each public entrance, on tags attached to each item sold under that policy, or on the retail seller's order forms, if any*” that indicates “*the store's policy, including, but not limited to, whether cash refund, store credit, or exchanges will be given for the full amount of the purchase price; the applicable time period; the types of merchandise which are covered by the policy; and any other conditions which govern the refund, credit, or exchange of merchandise⁵².*”

The law gives consumers a 30-day right of return in case the merchant does not meet his obligations. But it does provide exceptions:

(b) This section does not apply to food, plants, flowers, perishable goods, goods marked "as is," "no returns accepted," "all sales final," or with similar language, goods used or damaged after purchase, customized goods received as ordered, goods not returned with their original package, and goods which cannot be resold due to health considerations⁵³.

⁵¹ CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS. *Display of return policy by retail sellers: Legal Guide S-6*, California, United States, June 2012. [Online] http://www.dca.ca.gov/publications/legal_guides/s-6.shtml (page consulted on July 18, 2014).

⁵² *California Civil Code*, sec. 1723. [Online] http://www.leginfo.ca.gov/html/civ_table_of_contents.html (page consulted on April 6, 2015).

⁵³ *Ibid.*

3.3 Australia

Australian lawmakers do not appear to have adopted specific provisions giving consumers particular rights for returns of goods purchased in-store.

However, a merchant may not display policies of the “No Refunds” type, because that would risk leading consumers to believe, incorrectly, that the rights conferred by the legal warranty don’t apply. The law also provides that any merchant representation that limits or appears to limit consumer rights is prohibited.

Suppliers must be very careful about what they say to consumers and in the wording of any signs, advertisements or any other documents.

Signs that state ‘no refunds’ are unlawful, because they imply it is not possible to get a refund under any circumstance – even when there is a major problem with the goods.

For the same reason, the following signs are also unlawful:

- ‘No refund on sale items’
- ‘Exchange or credit note only for return of sale items’.

However, signs that state ‘No refunds will be given if you have simply changed your mind’ are acceptable⁵⁴.

Australia does not impose a universal return policy. Nor is there in Australia, as opposed to a few American States, any obligation to display an in-store ERR policy. However, when a merchant chooses to do so, he must comply with it:

A supplier does not have to give a refund when a consumer simply changes their mind [sic] about the goods or services.

But a supplier can have a store policy to offer a refund, replacement or credit note when this happens. If so, they must abide by this policy⁵⁵.

⁵⁴ COMMONWEALTH OF AUSTRALIA, *Consumer guarantees - A guide for businesses and legal practitioners*, Australia, 2010, 40 pages. See p. 10. Available on the website of the Australian Competition and Consumer Commission [Online] <https://www.accc.gov.au/system/files/Consumer%20Guarantees%20a%20guide%20for%20businesses%20and%20I%20egal%20practitioners.pdf> (document consulted on July 29, 2014).

⁵⁵ *Ibid*, see p. 22.

3.4 Comparison between the Situations in Canada and Abroad

As we have seen in the preceding chapter, Europe, Australia, and the United States don't impose specific ERR policies on merchants. On the other hand, in most cases, if a merchant displays his policy, he must then comply with it, with penalties if he does not.

Some American States have examined the issue and have required merchants, in certain circumstances, to display their ERR policies, to ensure that consumers are aware of their rights before making an in-store purchase.

Table 1
Comparison between Canada, the EU, Australia and the United States:
Laws on ERR policies for in-store purchases

 CANADA	<ul style="list-style-type: none">• No regulation of ERR policies;• No regulation of policy display;• ERR rights for certain contracts.
 EUROPEAN UNION	<ul style="list-style-type: none">• No regulation of ERR policies;• No regulation of policy display;• ERR rights for certain contracts.
 AUSTRALIA	<ul style="list-style-type: none">• No regulation of ERR policies;• Regulation of policy display (prohibition of "No Returns" notices).
 UNITED STATES	<ul style="list-style-type: none">• No regulation of ERR policies;• In several States, provisions for mandatory display of policies;• California assumes a standardized inclusive ERR right.

4. Survey of Provincial Government Consumer Protection Agencies (GCPAs)

As part of our research, we used a questionnaire to survey provincial government consumer protection agencies (GCPAs).

Our questionnaire was submitted to eight GCPAs that agreed to participate in our survey: those of Alberta (AL), Saskatchewan (SK), Manitoba (MA), Ontario (ON), Quebec (QC), New Brunswick (NB), Newfoundland and Labrador (NL), and Prince Edward Island (PEI).

As for British Columbia (BC) and Nova Scotia (NS) GCPAs, they declined our invitation to answer the questionnaire, but still e-mailed us some information.

The Canadian territorial agencies did not answer our request for participation.

The questionnaire aimed, among other things, at verifying whether there existed complaints and/or information requests from consumers regarding ERR policies for in-store purchases, the number and types of those complaints, the types of information given to consumers contacting the GCPAs on the subject, etc. We also asked the GCPAs whether they thought it relevant or necessary to regulate in-store ERR policies and, if so, what regulations might be considered.

4.1 Methodology

We approached the GCPAs in early July 2014 by sending them a letter of invitation explaining the object of our research and asking them to confirm their participation and give us contact information on the person who would be responsible for answering our questionnaire. In September and November 2014, we sent follow-up e-mail and left messages in the voice mailboxes of the agencies that had not answered us. As mentioned above, the territories did not answer our request, and two of the provincial GCPAs refused to fill our questionnaire but still e-mailed us some information.

The questionnaire contained an important note emphasizing that our research and thus the questions pertained solely to merchants' in-store ERR policies, as opposed to other types of purchases, such as distance purchases.

The questionnaire was sent to the eight participants in early October 2014. The answers were received between late October and late November 2014.

Table 2
List of GCPA respondents

Province	GCPA respondents
Alberta	Service Alberta
Saskatchewan	Financial and Consumer Affairs Authority
Newfoundland and Labrador	Consumer Affairs Division, Service NL, Gov. of NL
Prince Edward Island	Consumer Services Section – Consumer, Labour & Financial Services
Manitoba	Consumers' Bureau – Government of Manitoba
New Brunswick	Financial and Consumer Services Commission (FCNB)
Ontario	Ministry of Government and Consumer Services
Quebec	Office de la protection du consommateur
British Columbia	Consumer Protection BC
Nova Scotia	Consumer and Business Policy, Service Nova Scotia and Municipal Relations

At the end of this chapter, we will discuss the information provided by the GCPAs that only gave us some information.

4.2 Survey and Analysis

4.2.1 Specific Regulation of ERR Policies in a Respondent's Province

Our first questions pertained to specific ERR regulations that may have been adopted in a respondent's province. All the provinces confirmed not having specifically regulated in that regard.

4.2.2 Number and Types Complaints and Information Requests Received

We asked the GCPAs if they had received information requests (IRs) or complaints from consumers about merchants' ERR policies in the last five years. The following table details the answers we received. The number of requests and complaints per province is highly variable and is quite substantial in some cases:

Table 3
Consumer complaints and information requests
about in-store ERR policies (in 5 years)

Province	Complaints	Information Requests (IRs)
AL	None	13,636
SK	Unknown number	Estimated at more than 50
NL	In 2013-14, of 138 recorded complaints, around 14 concerned in-store purchases	In 2013-14, 5 written requests and 25 calls (on a total of 151 written requests and more than 1,000 phone calls)
PEI	No	No
MA	None	Do not keep statistics on that – have received many IRs by phone
NB ⁵⁶	3-5 per month	1 per month
ON ⁵⁷	1040 complaints	4,070
QC ⁵⁸	86 (for one year only)	9,474 (for one year only)

4.2.3 Types of Consumers' Frequently Asked Questions (FAQ)

To enable the GCPAs to indicate the types of questions most often asked by consumers, we had provided, in our questionnaire, a list of six questions that seemed most likely to us, while asking respondents to add, if applicable, other examples of questions asked of them. The following table shows how frequently the subjects we proposed were mentioned.

⁵⁶ The NB GCPA points out that those numbers don't include requests about return policies applicable to auto vehicles; requests about the existence of a period of reflection in that sector generate from 5 to 10 calls per month.

⁵⁷ The ON AGPC specifies: "**Assumptions** : 1) Date Range: January 1, 2008 to December 31, 2013 ; 2) We do not have a keyword to specifically track ERR for "in-store" purchases. The keyword we used until the end of December 2013 was "refunds and exchanges" which is very broad and covers more than "in-store" policies. For this reason, the data provided above is illustrative only and no conclusions should be drawn. It should also be noted that, in 2013, the Ministry of Government and Consumer Services began a review and modification of the Consumer Affairs Tracking System (CATS), the data classification system used to record consumer inquiries and complaints. The keyword "refunds and exchanges" is no longer part of this new classification scheme." (our underlined)

⁵⁸ The Office de la protection du consommateur reports that the modifications to their information system enable them to generate statistics on this subject only for the period of October 1, 2013 to September 30, 2014.

Table 4
Consumers' frequently asked questions
about in-store ERR policies

Province	AL	SK	NL	PEI ⁵⁹	MA	NB	ON	QC	Total
Existence of a universal unconditional right of return	✓	✓		✓	✓	✓	✓	✓	7
Scope of legal protections	✓	✓	✓		✓	✓	✓		6
Other seller/merchant obligations (e.g.: information, signs)	✓			✓	✓	✓	✓		6
Recourses	✓	✓			✓	✓	✓		5
Uniformity of merchants' policies	✓				✓		✓		3
Others (examples)	✓	✓							2
Other consumer rights					✓				1

The ON GCPA adds the following questions, which it was also asked:

- Obligation to announce ERR policy limitations – time limits, restrictions (exchange or credit rather than refund);
- Obligation to disclose applicable fees (restocking or administration fees);
- Obligation to disclose conditions of application (defect or incorrect size, as opposed to “changed my mind”);
- Obligation for chains and franchises to have consistent policies;
- Obligations of accuracy in advertisements.

As we can see, the most frequently asked questions consumers ask GCPAs pertain to the mythical unconditional right of return. This seems by far consumers' main concern – as proof, it is the only reason mentioned by the Quebec GCPA, which reports the highest number of consumer questions.

The other frequently asked questions pertain to related questions: legal protections regarding ERR policies and merchants' obligations regarding those policies. The Ontario GCPA mentions those two lines of questioning.

As for the other questions mentioned by AL and SK, the GCPAs of those provinces specify that they pertain to defective goods, store credits (with or without an expiry date), restocking fees (AL), etc. and, more specifically, the merchant's right to offer only credit when an item is returned (SK).

⁵⁹ Although PEI told us it had received no complaint or request for information on the subject in the last 5 years, it reported consumers' frequently asked questions.

4.2.4 Most Frequent Types of Complaints

The following table shows that consumers most often report complaints about the scope of their legal protections, and about the lack of standardization among merchants' policies. As we have emphasized in preceding chapters, the latter fact contributes to consumer confusion. The problem caused by those differences is probably worsened by the lack of information on merchants' specific policies; this shortcoming is the third most important subject of complaints. The fact that consumers also complain about undisclosed conditions or limitations stems of course from the same lack of information.

In our list of common ERR complaints, we had voluntarily inserted the suggestion about defective goods being taken back; as mentioned above, we think the obligation to take back a defective good is based on the law, and not on merchants' ERR policies. Given that merchants can confuse the right of withdrawal and that of returning a defective good, or invoke their ERR policies to refuse any returns, we assumed that consumers submitting their complaints to the GCPAs were likely to mention the application of the policy whereby a merchant reportedly refused to take back an item.

Table 5
Types of complaints most often reported by consumers
about in-store ERR policies

Province	AL	SK	NL	PEI ⁶⁰	MA	NB	ON	QC	Total
Scope of legal protections	✓		✓		✓	✓	✓		5
Merchant's failure to display/communicate his ERR policy	✓	✓				✓	✓		4
Merchant's refusal to take back an item for a reason not disclosed previously	✓						✓	✓	3
Failure of the seller/merchant to comply with his ERR policy	✓						✓		2
Merchant's imposition of unrealistic or unfair conditions/limitations	✓						✓		2

The NB GCPA adds that consumers have the impression that the unconditional right of return should apply to all businesses. It adds that consumers are not always content to be entitled only to a credit when returning an item⁶¹.

⁶⁰ Although PEI told us it had received no complaint or request for information on the subject in the last 5 years, it reported consumers' frequently asked questions.

⁶¹ "Consumers feel that there should be an option to return at all stores without a reason being provided. Consumers also are not always satisfied with store credit for their return."

The ON GCPA also gave us supplementary information on the complaints it had received:

Consumers allege they are not being clearly told what the refund exchange policy is before they purchase an item and that the policy is not disclosed on the actual receipt nor posted visibly within the business premises. On occasion, consumers also complain about being charged a re-stocking or administrative fee when returning an item. Another scenario described by consumers relates to the refusal of stores to provide a refund for "defective goods", relying on an "all sales final" policy or providing a replacement item or an "in-store credit" only. Consumers may not want a replacement of the product, especially in cases where the item has been already replaced before or where there is nothing in the store that they like. They are also not happy with an "in-store" credit that may expire within a period of time. Consumers also complained that they have purchased items in a store believing them to be new, only to discover later that they were refurbished. In these cases, consumers prefer to be issued a refund. In some cases, consumers have alleged that they were forced to use the full value of the credit note on the next purchase. If the next purchase was valued less than the credit note, the consumer lost the balance of the credit.

Those answers point to a major problem related mainly to the ERR policy information received by the consumer before purchasing in-store; the policies are highly varied and are often undisclosed until the item is returned.

4.2.5 Types of Information Provided to Consumers Contacting GCPAs

In the questionnaire sent to the GCPAs, the question discussed in this section is:

What types of information, recommendations or advice do you give consumers who contact you about ERR policies for in-store purchases, and what procedures do you indicate to consumers?

The GCPAS reported that they inform consumers that the law does not provide an ERR policy, so that it's up to each merchant to establish his own policy as he sees fit. The majority of GCPAs thus advise a consumer contacting them to make sure of the store's ERR policy before he purchases and, if possible, to have it in writing.

For example, the AL GCPA points out that if the ERR policy doesn't appear on a sign or the receipt, consumers should ask the seller to detail it on the bill. The GCPAs also tell consumers to contact them when a merchant refuses to honour his policy, and that a verification can then be made to determine whether the merchant has engaged in a prohibited practice.

The SK GCPA also advises consumers to obtain information on the store's ERR policy before making a purchase.

The answer given by the NL GCPA is similar:

I generally refer consumers to the www.consumerhandbook.ca website and then inform consumers no legal obligation exists for businesses to accept returned items unless they are defective, but retailers and other businesses generally agree that offering refunds or exchanges is a critical part of developing and maintaining good customer relations.

I suggest consumers ask about the seller's refund or exchange policy before you buy. If consumers are having problems with an exchange or refund or feel as if the seller is not upholding their policy, I suggest they put their inquiry in writing to my office for help.

The GCPAs of PEI and MA emphasize the importance of obtaining information on applicable conditions and restrictions (exchange only? Time limit?).

Like the NL GCPA, the NB one focuses on the importance given by the merchant to customer satisfaction and suggests that consumers play this card:

In cases, where the consumer is dissatisfied with a store policy, we suggest that they escalate to management, and make a written request regarding their complaint and their requested solution, as some stores are willing to go outside their ERR policies in an effort to retain customers or improve satisfaction.

The ON GCPA reports more specifically its recommendations to consumers:

We advise consumers of the following: (this is info from our website)

Before you buy, find out if the store has a return or exchange policy. Here are some questions consumers can ask before making a purchase:

- do you offer full or partial refunds, exchanges or store credit?*
- what do I need to bring as proof of purchase – the receipt, sales tags, original packaging etc.?*
- are there any extra fees to return an item, like restocking fees etc.?*
- are there rules about returning seasonal items after a certain period of time?*
- can personal items, such as jewellery or lingerie, be returned?*
- can an item be returned if it's been opened or used?*

We recommend getting the store's policy in writing if you think you may have to return an item.

Broad General Protections:

The Ontario Consumer Protection Act, 2002 (CPA) contains broad consumer protections that prohibit businesses from misrepresenting products or services or from engaging in unfair practices. Where a person has engaged in an unfair practice, the consumer may rescind the agreement within one year after entering into the contract. Consumers who do not receive contracted services or goods are typically advised to write to the company asking for a resolution within a reasonable timeframe. Should a business fail to remedy the situation to the satisfaction of the consumer and if there has been a contravention of our consumer protection statute, consumers may be encouraged to file a complaint with the ministry. The ministry may attempt to mediate a resolution with the supplier. If mediation is not successful, progressive compliance action may be undertaken, as appropriate to the circumstance. Depending on the issue, consumers may also be advised to seek a remedy through the court system.

The answer given by the QC GCPA is slightly different:

L'établissement et les modalités d'application d'une politique d'échange et de remboursement à l'égard des biens non-défectueux relève entièrement du commerçant avec qui les consommateurs sont invités à résoudre à l'amiable, un éventuel différend à cet sujet. La CPA ne prévoit aucune obligation à cet égard hormis l'exigence de respecter la dite politique dans la mesure où celle-ci est communiquée aux consommateurs.

4.2.6 Measures to Raise the Awareness of Consumers and Merchants

We asked the GCPAs if they had taken measures to raise the awareness of consumers (rights and recourses) and of merchants (obligations) regarding ERR policies.

To make reading easier, the answers we received to those questions are presented first in the following tables.

Table 6
Consumer awareness-raising measures taken by GCPAs (Q. 10)

Prov.	Yes	No	Examples
AL		X	
SK	✓		
NL	✓		Website, phone line and link to the Canadian Consumer Handbook ⁶²
PEI		X	
MA	✓		"Consumer Alerts prior to Holiday shopping season, Refund and Exchange Reminder tab on our website."
NB	✓		Brochures, site Internet, et éducation des consommateurs lors de leurs conversations ou dans des présentations publiques qu'ils offrent
ON	✓		<p>"Attendance at various public education events across the province to raise awareness of the consumer protection program. Discussions focused on refunds and exchanges policies, including the disclosure requirements, cancellation rights and other protections offered under the CPA.</p> <p>As part of the complaint handling protocol, education is provided during the mediation process to both consumers and businesses. This helps bring about compliance with the disclosure requirements and raise awareness of the CPA legislative requirements.</p> <p>Information about the refunds and exchanges policies is available on the Ministry of Government and Consumer Services website: https://www.ontario.ca/consumers/returns-exchanges-and-warranties</p>

⁶² CONSUMER MEASURES COMMITTEE. *Canadian Consumer Handbook*, Industry Canada, Office of Consumer Affairs, Ottawa, no date. [Online] <http://www.consumerhandbook.ca/en/> (document consulted on July 29, 2014).

The Truth behind the Obligation to Take back Returned Items

Prov.	Yes	No	Examples
			<p>The Ministry of Government and Consumer Services has produced brochures on Home, Phone and Online Shopping: https://www.sse.gov.on.ca/mcs/Documents/brochures/mcs_home_phone_shopping_en.pdf</p> <p>Consumer Protection Ontario, an awareness program from the Ontario Ministry of Government and Consumer Services, has published "A Newcomer's Introduction to Consumer Protection". This guide contains information that newcomers to Ontario need to know when buying goods and services, and gives many examples of questions you can ask to help you become a smart consumer. The guide is available at this link http://www.settlement.org/sys/library_detail.asp?k=PROTECT_RIGHTS&doc_id=1005202"</p>
QC	✓		<p>"La section pour les consommateurs de notre site Web opc.gouv.qc.ca contient une rubrique Échanges et remboursements : http://www.opc.gouv.qc.ca/consommateur/sujet/echange/remboursement/</p> <p>Nous faisons aussi état des droits et recours des consommateurs en matière d'échanges et de remboursements dans toutes les sections pertinentes de notre site Web :</p> <p>Meubles (http://www.opc.gouv.qc.ca/consommateur/bien-service/bien-consommation/meuble/annulation/)</p> <p>Électroménagers (http://www.opc.gouv.qc.ca/consommateur/bien-service/bien-consommation/electromenager/annulation/)</p> <p>Appareils électroniques (http://www.opc.gouv.qc.ca/consommateur/bien-service/bien-consommation/electronique/annulation/), etc.</p> <p>Avant et après la période des fêtes, nous rappelons chaque année les droits et recours des consommateurs en matière d'échanges et de remboursements dans notre site Web et dans nos comptes sur Facebook et Twitter. Notre porte-parole profite du temps des fêtes pour aborder le thème des échanges et des remboursements dans des chroniques diffusées à la radio.</p> <p>Enfin, nous préparons actuellement des activités portant sur le thème Échanges et remboursements pour notre Zone enseignants : http://www.opc.gouv.qc.ca/a-propos/zone-enseignants/accueil/. Ces activités seront destinées aux élèves du secondaire."</p>

The AL and PEI GCPAs have not taken any measure to raise the awareness of consumers regarding their rights and recourses in relation to merchants' ERR policies. Strangely, those provinces report the second-largest (13,636) and the smallest (0) number of consumer requests for information on the subject (see table 3).

As for the GCPAs that detail their undertakings in this regard, we note that the preferred medium is the Internet. Most of the GCPAs mention that they mainly use their website to raise consumer awareness on this subject (NL, MA, NB, ON and QC). The QC AGCP also mentions using Twitter and Facebook around the winter holidays, as does the MA GCPA. The QC GCPA is also the only one to use radio announcements, whereas NB and ON use brochures and public presentations.

As for the SK GCPA, it reports having taken measures, but gives no details about those initiatives.

Table 7
Merchant awareness-raising measures taken by GCPAs (Q. 11)

Prov.	Yes	No	Examples
AL		X	
SK		X	
NL	✓		"Every registered complaint requires the first-hand knowledge of the merchant involved, as per the complaints essay at www.consumerhandbook.ca "
PEI		X	
MA		X	
NB		X	
ON	✓		"Consumer Protection Ontario, an awareness program from the Ontario Ministry of Government and Consumer Services, has produced the "Business Guide to Consumer Protection" which provides businesses with general information on the Consumer Protection Act. The guide refers to the topic of refunds and exchanges on page 10 and it is available at this link: http://www.sse.gov.on.ca/mcs/en/Pages/business_guide.aspx ."
QC	✓		"Dans la section pour les commerçants de notre site Web, nous informons les commerçants sur leurs obligations en matière d'échanges et de remboursements, et ce, dans les différents secteurs de commerce : Meubles : http://www.opc.gouv.qc.ca/commerçant/secteur/bien-consommation/meuble/echange-remboursement/ Ordinateurs et tablettes : http://www.opc.gouv.qc.ca/commerçant/secteur/bien-consommation/ordinateur-tablette/echange/ Vêtements et chaussures : http://www.opc.gouv.qc.ca/commerçant/secteur/bien-consommation/vetement-chaussure/echange-remboursement/ , etc. Nous publierons sous peu une section Échanges et remboursements destinée aux commerçants."

The above table clearly shows that fewer provinces have taken measures to raise merchants' awareness of their ERR policy responsibilities than those having taken initiatives addressed to consumers, and that the measures addressed to merchants are less diversified.

ON's intervention is limited to a short passage in a general guide on good practices, but it does mention: "The Ontario marketplace is full of companies that offer refunds and exchanges, and consumers have come to expect these options⁶³." This vaguely recalls California's display obligation, and confirms that the belief in the myth of a right of return is very prevalent.

In QC, the website is the sole medium for initiatives addressed to merchants, and is used essentially with the same approach as for initiatives addressed to consumers.

⁶³ CONSUMER PROTECTION OF ONTARIO, *Business guide to consumer protection*, Ministry Of Government And Consumer Services, Ottawa, 2014, 28 pages. See p. 10. [Online] http://www.sse.gov.on.ca/mcs/en/Pages/business_guide.aspx (document consulted on July 29, 2014).

4.2.7 Legal Actions and Other Measures Undertaken by GCPAs

We asked the GCPAs if redress had been sought against merchants or if other types of actions had been taken (e.g. studies, investigations, administrative measures and sanctions, permit suspensions, formal notices, injunctions, etc.).

Seven out of eight respondents admitted that they had not in the last five years sought redress or taken any other type of action regarding ERR policies. The QC GCPA did not answer the question.

This absence of measures is certainly because Canadian provinces have not legislated specific provisions for in-store ERR policies. However, the general provisions of consumer protection rights apply to those policies as to other merchant practices: prohibited practices, false representations, etc., so the total absence of any measure may seem surprising.

4.2.8 Appropriateness or Necessity of Regulating ERR Policies

To conclude our questionnaire, we asked respondents if they thought it might be appropriate or necessary to regulate ERR policies for in-store purchases.

Half of respondents (AL, SK, PEI and MA) admitted not finding such regulations appropriate or necessary.

The NB GCPA states that such regulations would benefit consumers, but that they weren't a current priority. It also considers that consumers would benefit more if such regulations of ERR policies were harmonized across Canada.

In Ontario, the GCPA "cannot speculate on whether a legislative response is or not appropriate or speak to content of such."

In Quebec, the GCPA admitted not being able to answer this question for the moment, since the organization is currently studying the issue:

En effet, au cours du mois de November 2013, l'Office a entrepris une large consultation auprès de plus de 150 personnes/regroupements œuvrant dans le domaine de la consommation. Cette consultation visait une panoplie de modifications législatives ayant pour objectif la modernisation des lois sous la responsabilité de l'Office. L'une d'entre elles concernait les politiques de retour des commerçants. Certains consommateurs avaient dans le passé formulé le souhait que le commerçant soit obligé de dévoiler sa politique de retour lors de la conclusion du contrat de consommation ou avant. L'Office a donc inclus cette suggestion dans sa consultation. Nous étudions les résultats de cette consultation et suggérerons, le cas échéant, des modifications législatives pouvant mener à l'inclusion d'une telle obligation.

The Newfoundland and Labrador GCPA did not answer this question.

4.2.9 Other Comments

In the section on additional comments, the AL respondent pointed out that merchants must comply with the *Fair Trading Act*, and that not complying their ERR policy, for example, would constitute a prohibited practice.

The QC GCPA made a similar comment: “*Malgré qu’il n’y a pas d’encadrement des politiques RER par la CPA, le commerçant qui se dote d’une telle politique doit la respecter. À défaut, il pourrait contrevenir à l’article 219 CPA [qui interdit les représentations fausses ou trompeuses].*”

The SK GCPA suggests that, were it appropriate to regulate in-store ERR policies, the focus should be first on merchants’ obligation to display those policies.

4.3 Comments of Other GCPAs

As mentioned above, the GCPAs of two provinces did not answer our questionnaire, but still gave us some information regarding the subject of our research.

The BC GCPA told us that ERR policies are not part of its mandate, since the law doesn’t regulate them. But it informed us that it recommends that consumers obtain information on those policies before making purchases, in order to make informed choices, and adds that its website also provides information on the subject.

The NS GCPA reported that the province has no regulations for in-store ERR policies, so that it does not receive a significant number of complaints on the subject.

5. Pan-Canadian Survey of Retail Businesses

Merchants' ERR policies are internal policies that vary from one retailer to another: no returns; exchanges or credit only; restocking fees (15% or more of the item's price); unconditional returns within 30 days; everything is allowed, including conditions under which such returns will be authorized, etc.

5.1 Methodology

We conducted a survey of 20 retailers in each of five provincial capitals. We visited large and small stores, i.e., chains and independents, respectively. To do so, we recruited four pollsters in July 2014, in Ontario, Alberta, Manitoba and Nova Scotia. In Quebec, we conducted the survey ourselves.

We targeted a hundred retailers, equally allocated among chains and independents, in five common consumer sectors: furniture, clothing, electronics, sporting equipment, and hardware/household items, to draw a diversified and representative portrait of policies likely to be encountered by consumers. The pollsters were to verify in-store, while observing the premises and questioning clerks in the types of retailers chosen, in order to document the policies themselves and the information practices, i.e.: the moment when a consumer is informed about the policies, and the means taken to inform him.

We had prepared a form to be used by all the pollsters⁶⁴ and we gave the pollsters a training session, to ensure that their visits would follow the same protocol in each province⁶⁵. Each pollster was to verify first whether the stores visited displayed an ERR policy and, if so, to detail its content, including limitations and exceptions. If no policy was displayed, the pollster was to question the clerk about the policy's content, including limitations and exceptions, and to ask when and how consumers were informed on the existence and content of that policy.

After that first overview of the general policy, the pollster was to question the clerk further, about whether specific exceptions or conditions were added to the policy first displayed or disclosed. The pollsters were to obtain a copy of the policy, and ask the clerk what was, generally, consumers' reaction to it.

The in-store visits took place between September 2014 and February 2015. Following receipt of the forms completed by the pollsters, we examined the forms and produced a summary document of the findings. That document, along with a related questionnaire, would be sent to certain merchant associations.

Of the 100 stores visited, five refused to answer our questions (three in NS, one in QC and one in MA). In those cases, we were able to find out only about the policies displayed, if any (one of the NS stores that refused to answer us displayed no policy).

⁶⁴ The form, which had been sent to the investigators for their recruitment, is reproduced in Annex 1.

⁶⁵ The Manitoba investigator had to be replaced, so his replacement received personalized training before beginning his survey.

What findings do we have from that survey? Is it possible to draw a uniform general portrait of ERR policies in Canada? Do we observe marked differences between the policies of chains and independents? Are consumers generally informed before the purchase about the existence and content of a merchant's ERR policy, including conditions and exceptions? Do certain limits or conditions imposed on the right of return seem unfair?

Because we did not make purchases or return attempts during our survey, one of the questions we cannot answer pertains to the merchants' compliance with the policies announced.

5.2 Findings of the field Survey

5.2.1 Existence and Content of Exchange, Return and Refund (ERR) Policies

a) Existence of policies

All the retailers visited have an ERR policy⁶⁶. Only a tiny fraction of them had no defined policy – discretion being the norm among two retailers – or had the policy of never agreeing to retake the item sold (two retailers). That absence of policy or that hard line is found mainly among independent furniture retailers.

b) Right of exchange, return, refund, credit

Almost all the retailers visited accept, under certain circumstances and conditions, that consumers can return an item, whether for an exchange, refund or credit in the store.

Three times out of four, the policies provide exchanges as well as credits or refunds. One time out of four, the merchant offers only exchange or credit, and refunds are not an option under the policy. Quebec has the highest proportion (over 40%) of policies where refusing refunds is the rule.

Those different policies may of course be subject to exceptions or conditions, whose scope and means of disclosure vary according to the merchants.

On average, almost three-quarters of the merchants offer policies allowing exchanges, refunds and credit (subject to the policy's conditions or exceptions). This type of inclusive policy is found slightly more frequently in chains as in independents, in some provinces (ON, AL) – in Quebec, however, this difference is very marked: only two independents offer inclusive policies, as opposed to nine chains.

⁶⁶ Given that the policies' contents are at the merchant's sole discretion, we include the policies for refusing any return, exchange, refund or credit. Because we cannot know whether it had an ERR policy or not, we are omitting here the Nova Scotia business that did not display any policy and refused to answer our questions.

Those inclusive policies are the norm in the NS stores visited (18 out of 20 retailers), whereas barely half of Quebec retailers agree to refund returned items.

Table 8
Survey: Scope of ERR policies
I = independent retailers; C = chains

Province	ON				NS				AL				QC				MA			
Type of store	I		C		I		C		I		C		I		C		I		C	
Clothing	A	L	A	A	A	A	A	A	L	L	L	A	L	N	A	A	A	L	A	L
Furniture	A	X	L	L	A	L	A	N	A	X	A	L	A	L	A	L	A	A	A	L
Electronics	A	A	A	A	A	A	A	A	A	A	A	A	A	L	A	A	A	A	A	A
Sporting equipment	A	L	A	A	A	A	A	A	A	A	A	A	L	L	A	A	A	A	A	A
Hardware/ household items	A	L	A	A	A	A	A	A	A	L	A	A	L	L	A	A	A	L	A	A
TOTAL	5	1	4	4	5	4	5	4	4	2	4	4	2	0	5	4	5	3	5	3
	14				18				14				11				16			
	73																			

A = Inclusive policy (exchange, refund or credit)

L = Limitative policy (no refunds)

X = Non-return policy

N = Those who did not answer the question

c) Flexibility⁶⁷

Depending on the types of retailers or products, policies may vary in scope or flexibility. Several retailers, mainly independents, indicate that they may be flexible regarding ERR policies and apply a certain discretion, whether for required periods (which they may extend), or for conditions to be met, or for accepting the return of goods not allowed to be returned under the policy⁶⁸.

The flexibility claimed varies according to the provinces and/or the types of retailers. Of the merchants displaying their policy, 38% (in equal proportion among chains and independents) say they can demonstrate flexibility. Among those that don't display their policy, the proportion is lower (30%), and is twice as high among independents.

The proportion of respondents who claim flexibility is lower in ON (with no distinction between independents and chains, regarding sporting and electronics stores), in QC (the chains are less flexible than the independents, except independent furniture stores and some sporting, clothing and hardware independents, whose policy application is rigid) and in MA, where the chain respondents reported no flexibility in any sector of activity.

⁶⁷ We did not ask a specific question on this subject, but during our analysis of the forms completed by the investigators, we noticed that many respondents mentioned this characteristic of their policy or of its application. This does not imply inflexibility on the part of businesses that did not mention the characteristic.

⁶⁸ When a investigator wanted to ask questions about the policy displayed in an Alberta electronics store, the clerk ripped out the displayed policy, threw it in the wastebasket and said that returns are at the store's sole discretion.

d) Restocking fees

Of all the stores we visited, fifteen⁶⁹ provide restocking fees in their ERR policy: five in Quebec, five in Manitoba, three in Alberta and two in Ontario (none in NS). Nine of the 15 are independent retailers.

Furniture and electronics retailers are more inclined to adopt that practice, whereas no clothing store displays or reports charging those fees. It is curious that all the furniture stores visited in QC, as well as three out of four electronics stores in MA, adopt that practice. No store among those visited in NS revealed using that practice.

Occasionally, the ERR policy mentions the existence of this type of fee without mentioning the amount. Of the 15 retailers studied that charge consumers restocking fees, eight don't display their in-store ERR policy, that information being written on the receipt (on the front or back – the information occasionally drowned in an ocean of information on other subjects), at times elsewhere (on the bill or a dedicated document), and at times nowhere (in two QC stores).

Of the seven retailers that charge restocking fees and display their ERR policies, four⁷⁰ don't include on the sign any mention of that condition, which is disclosed, in three of those cases, only on the bills or receipts. In the fourth case, that condition does not appear on the bill either, although the ERR policy is reproduced on it.

In sum, of the 15 stores that charge consumers restocking fees during an ERR, only two clearly indicate them in the displayed policy.

⁶⁹ AL: two in furniture (an independent retailer and a chain) and an independent electronics retailer. MA: two electronics independent retailers and one chain, a sporting goods independent retailer, and a hardware/household items chain. ON: a furniture chain and an independent electronics retailer. QC: four furniture retailers (two independents and two chains) and an electronics independent retailer.

⁷⁰ AL: one furniture independent and one chain (mention on the bill). MA: a sporting goods independent retailer (no mention) and a hardware/household items chain (mention on the back of the receipt).

5.2.2 In-store Display

Less than half (42 %) of the stores visited display their ERR policies in-store. But the proportion is higher among chains (50%) than independents (34%). The displayed policies are not always exhaustive.

Table 9
Survey: Display of ERR policies
I = independent retailers; C = chains

Province		ON				NS				AL				QC				MA			
Type of store		I		C		I		C		I		C		I		C		I		C	
Clothing		✓				✓	✓			✓	✓	✓		✓		✓		✓		✓	✓
Furniture		✓		✓	✓	✓				✓		✓									
Electronics				✓			✓	✓		✓		✓		✓		✓	✓	✓		✓	
Sporting equipment		✓		✓			✓	✓								✓		✓		✓	✓
Hardware/ household items				✓			✓					✓	✓	✓				✓		✓	
TOTAL	A	3	0	4	1	2	1	3	2	3	1	4	1	3	0	3	1	4	0	4	2
	A	8				8				9				7				10			
	X	12				12				11				13				10			
	A	42																			
	X	58																			

Legend: A = Policy displayed
 X = Policy not displayed

5.2.3 Non-display

What types of stores don't display their policy⁷¹, according to the data of our study? Curiously, that varies according to the provinces. So there is no general rule. Of the retailers visited, some sectors of activity, depending on the provinces, never display their ERR policy:

- ON: clothing chains;
- ON and NS: independent electronics and hardware stores;
- NS: independent sporting goods stores and clothing and furniture chains;
- AL: all sporting goods stores, both chains and independents, as well as independent hardware stores;
- MA and QC: all furniture stores;
- QC: independent sporting goods stores, hardware and household item chains.

⁷¹ It should be noted that this includes stores that accept ERR, but also those that accept no returns, which also constitutes a policy.

5.2.4 Visibility – Legibility

As for retailers that display their policy, the sign is generally visible and legible (around 75% of cases), with slightly higher proportions among chains than independents in some provinces (ON, MA).

The pollsters reported that the other policies displayed were difficult to see, if not specifically looked for, and that some of them (around 25%) were difficult to read due to excess information and/or characters that were too small.

5.2.5 Exhaustiveness

Further examination of policies displayed or declared by the merchants led us to observe that things are not always simple.

We asked the merchants if certain conditions or exceptions could be added to the policies displayed or declared. An AL hardware retailer assured us that the displayed policy was exhaustive, but we observed that the one reproduced on the cash receipt mentioned exceptions omitted on the sign.

In three other cases, the questions asked by the pollster led the merchant who assured us that the policy displayed on the sign was exhaustive to reveal exceptions to the policy that the sign omitted (in both sporting goods chains and in one clothing chain in MA). One of those signs that the merchant assured was exhaustive, in an AL electronics store, indicated itself that the list of exceptions listed there was not exhaustive.

We also noted that supposedly exhaustive signs occasionally direct consumers to the website for more policy details.

Some signs are obviously incomplete voluntarily: it's impossible to have a policy described in all its details when the merchant has total discretion over the application of a flexible basic policy.

a) How consumers are informed about what does not appear on the sign

In around half the times, merchants recognizing that the sign is incomplete told our pollsters that consumers are spontaneously notified at the checkout counter, during the sale, about elements that don't appear on the sign. However, we observed that at times, even in stores where the displayed ERR policy seems complete, the clerks reported notifying the consumer at the checkout counter about missing elements.

b) How consumers are informed when policies are not displayed

Slightly less than half of the stores visited that did not display their ERR policy, i.e., 26/58, both among chains and independents, told us that they notify consumers about the content of that policy at the time of purchase.

Four other retailers admitted that they spontaneously notify consumers only about the policy for goods that are in a final sale, for which no return is possible.

c) Is an ERR possible if the item is broken/defective or incomplete (missing parts, etc.)?

A large majority of the retailers reported accepting returns of goods that were defective, broken, incomplete, etc. Some specified that this type of return was accepted under the warranties. However, there appears to be some confusion between ERR policies and the right of return that consumers can exercise under the warranty.

Some retailers told us they decided themselves if the item was broken due to, for example, negligent use.

In five of the cases studied (two chains – electronics in MA and hardware in ON – and three independent retailers – two furniture retailers in AL and ON respectively and one hardware retailer in MA), the merchants told us they refused to retake broken and/or defective items.

Two independent furniture retailers (ON and AL) clearly stated they accepted no returns, for any reason whatsoever. Again in ON, a hardware/household items chain even refuses to retake defective items, and considers the consumer to be responsible for contacting the manufacturer directly.

In MA, an electronics chain and an independent hardware store told us they did not exchange broken items, and they specified that they always verified an item's condition before the consumer receives it.

d) Return of an item that does not conform to the advertisement, or that is not suitable (size/format)

A large majority of the retailers reported accepting returns of items that do not conform to what was advertised, or whose size, format, etc. are not suitable. According to those retailers' answers, we understand that, despite the existence of an established ERR policy, the decision to retake the item remains often at their discretion, on a case-by-case basis.

e) Conditions and exceptions to retailers' ERR policies

Only one out of four retailers, roughly, reportedly has an ERR policy covering all goods, without exception; in ON, QC and AL, we find those "no exceptions" policies particularly among independents, whereas in NS, the trend is reversed. We detected no retailer in MA with a "no exceptions" policy. As for the other retailers, the number and type of exceptions vary from one retailer to the other (e.g.: no returns for items such as underwear, headphones, etc. or for final-sale items, customized products, etc.).

The same applies of course to return conditions (packaging, proof of purchase, etc.), which vary according to the retailers.

That diversity is obviously because the merchants' policies are neither regulated, nor conspicuous, nor standardized – each retailer being free to adopt the policies that suit it. But this becomes problematic when those exceptions or conditions are not disclosed to the consumer

(the signs observed mentioned some existing exceptions and conditions around half the time), or are disclosed incompletely or after rather than before the sale. Moreover, as we have seen, the policies are not always displayed, and when they are, exceptions to the general policy are not always indicated exhaustively.

5.2.6 Disclosure of Policies

In over half of the cases, merchants indicate their policy on the bill or cash receipt they give customers, with the proportion higher in chains than in independent stores. But the policies written on bills are not always complete.

Our pollsters observed that occasionally the bill or cash receipt (like the signs themselves at times) point to the retailer's website for full details of the ERR policy.

5.2.7 How Do Retailers Think Consumers React to Their ERR Policies?

We asked retailers how consumers usually react to their ERR policies. A large majority (71% of those who answered that question) stated that the reaction is positive and that customers are generally satisfied. One out of five retailers, mainly among those admitting that their policy's application leaves no room for flexibility, reported mixed reactions.

We also perceive a link between less-positive appreciations and negative consumer comments reported by some merchants on the one hand, and the policies' lack of transparency on the other. Consumers may well be unaware of those policies until they return an item, and discover that returning certain goods is not accepted or that retaking an item entails restocking fees.

5.3 Conclusion

It should be emphasized that only half of the retailers display their return policy, and that when they do so, the signs are not always visible or legible. In total, only one-third of the retailers studied display visible and legible policies, with chains having an advantage over independents on that point (40% v. 27%).

In addition, only around half of retailers that don't display their return policy disclose it verbally during a purchase, and a few do so only for final sales, i.e., with no right of return.

Over half of the retailers write their ERR policy on the bill or cash receipt, which they give customers, of course, only once the sale is completed.

6. Comments from Merchant Associations

6.1 Methodology

After our field survey, we prepared a summary document and a questionnaire to consult Canadian merchant associations about their position and that of their members on the issue of ERR policies for in-store purchases.

In July 2014, we solicited several merchant associations for them to answer a questionnaire we would prepare and send them. The response and participation rates were disappointing.

The Retail Council of Canada (RCC) flatly refused to participate in our research project, while telling us it was not able to provide an accurate portrait of its members' ERR policies.

Our invitations to the Ontario Convenience Stores Association and the Retail Merchants Association of Manitoba were unanswered.

The Retail Merchant Association of Canada (Ontario Inc.) (RMA) agreed to participate in our survey. The Canadian Federation of Independent Business (CFIB) agreed to look at the questionnaire, while advising us that it would answer only the questions it could.

The Conseil québécois du commerce au détail (CQCD) told us it would not answer our questionnaire. But in January 2015 it sent us some information related to our research subject, along with a document that it had sent merchants for the 2014-2015 winter holidays, and that contained a reference to ERR policies.

In March 5, 2015, we sent our questionnaire and summary document to the two interested associations.

After receiving the questionnaire, the CFIB finally stated, without further explanation, that it could not participate.

RMA was thus the only merchant association that answered our questionnaire.

6.2 Comments

The purpose of our questionnaire⁷² was to ask merchant associations if their members' policies were somewhat harmonized, if the associations had guidelines for this type of policies, if those policies raised any issues, and if so what solutions were considered by the associations.

RMA answered that it doesn't know its members' ERR policies and gives them no guidelines on the subject. It admitted not having taken any steps to raise merchants' awareness of their obligations and/or consumer rights regarding ERR policies.

⁷² The questionnaire is reproduced in Annex 2.

According to RMA, it is preferable not to harmonize ERR policies and to let merchants choose the policies that suit them. But RMA insists that it is important for merchants to display those policies.

As we have seen, ON provides no obligation to display ERR policies and its GCPA saw no benefit to harmonizing those policies, particularly because of financial constraints such regulations could impose on independent retailers.

RMA states that some ERR policy guidelines would be desirable, but that a legislative framework would not be appropriate because merchants don't need additional regulations.

RMA did not comment on the summary of our findings in the field.

The CQCD reported not having compiled data on its members' ERR data. Regarding the issue of guidelines, the CQCD sent us a copy of an infoletter titled *La frénésie du temps des Fêtes – règles applicables aux détaillants*, sent to its members in late 2012, which includes some points about return policies. The infoletter reminds merchants that they have no obligation to retake, exchange or credit a sold item, and that they are free to adopt ERR policies and determine, if applicable, related conditions and time limits.

The CQCD also tells its members that when ERR policies are disclosed, merchants are required to follow them: "Toute représentation en ce sens, que ce soit dans un message publicitaire, sur une affiche en magasin ou autrement, aura force de loi entre les parties et oblige le commerçant⁷³."

⁷³ **CONSEIL QUÉBÉCOIS DU COMMERCE DE DÉTAIL.** *Tout en détail*, "La frénésie du temps des fêtes – Règles applicables aux détaillants," November 2012.

Conclusion

Canadian consumers can choose to make purchases in person or remotely. Statistics show that despite the advent of distance purchases, particularly on the Internet, in-store purchases are still preferred. But what happens when a consumer regrets his purchase and wants to return the item?

Canadian consumers share a popular belief that consumer protection laws give them an unconditional right of return within a given period. However, this is only a myth, because no Canadian provincial law confers such a general right. Indeed, the GCPAs told us that the most frequently asked questions from consumers contacting them on this subject pertain to their legal protections and the existence of that supposed unconditional right of return.

And yet, that unconditional right of withdrawal does exist in certain areas. In the five provinces we studied – Quebec, Ontario, Manitoba, Alberta and Nova Scotia – the provincial legislatures conferred to consumers, with regard to door-to-door sales, an automatic right of cancellation and return for ten days following the transaction or the delivery of certain mandatory documents. Some provinces have a similar right of withdrawal in other areas: for example, credit agreements or those involving credit, and timeshare agreements. Our study of parliamentary debates that led to the adoption of such regulations demonstrates that the lawmakers acted in those areas mainly because the latter easily involved high-pressure sales tactics and that a period of reflection could help consumers reconsider their purchase more calmly.

Regarding distance contracts, legislatures have also conferred an automatic right of cancellation and return, but related mainly to a merchant's noncompliance with certain precontractual disclosure requirements, given that the consumer cannot see the item before purchasing it. Among the elements whose failure of disclosure before purchase may lead to the consumer's unilateral cancellation, the lawmakers included ERR policies.

In Canada, exchange, return and refund policies are left to the merchant's sole discretion – apart of course from returns motivated for example by a lack of conformity that would lead to application of the legal warranty.

Accordingly, merchants are free to adopt the policies that suit them, but the lawmakers have considered that those policies, whatever their content or scope, are sufficiently important for their nondisclosure to justify cancellation of a distance sale. So it's curious that nothing obliges a merchant to disclose those same policies when an in-store purchase is made. This market distortion is difficult to explain.

Our field survey reveals that only around half of retailers display their ERR policy and its limits and conditions of application. This is the case even when, for example, a merchant accepts returns but charges restocking fees, or when a refund cannot be made because a merchant only agrees to exchanges or credit notes. Displaying those policies is more common among chains than independent retailers, but the latter say they are prepared to apply their policies more flexibly.

As for stores that don't display their ERR policy, around half admit not advising consumers of the existence or scope of those policies before purchases; the policies are most often found on the cash receipt – provided of course after the purchase – or on the retailer's website... Some merchants told us that information on those policies is provided verbally when the consumer himself asks the question. So it's up to the consumer to ask the right questions, and then he will have only his memory as proof of the policy's existence or scope.

Our survey also reveals confusion on the part of some merchants between the consumer's right to return a defective good under the legal warranty on one hand, and the merchant's ERR policy on the other; it's easy to assume that this confusion also prevails among consumers, since the legal warranty's rights and recourses are not very clear.

The ambiguity surrounding ERR policies regarding their scope or their disclosure is not surprising. The provincial consumer protection agencies we questioned admitted that they don't actively raise the awareness of consumers or merchants on this subject – although such information may be found on the agencies' websites. Unfortunately, that doesn't appear sufficient, given the number – two provinces report 5,000 to 13,000 complaints or questions in five years, and another 10,000 a year – and the types of questions that consumers ask the agencies.

Still, the agencies generally estimate it neither necessary nor appropriate to regulate ERR policies for in-store purchases. But the Saskatchewan agency points out that if the policies were regulated, the focus should be on merchants' obligation to display their policy.

Nevertheless, several general provisions contained in consumer protection laws grant certain protections regarding ERR policies: false representations are prohibited in this area as in any other; merchants are bound by the representations they make to consumers about their ERR policy; legal warranties cannot be negated by a policy to refuse any returns; etc. However, given the difficulties of access to justice and consumers' ignorance regarding measures to protect them, implementing those protection measures is challenging when an unlucky consumer faces a recalcitrant merchant.

Our study of foreign legislation led us to observe that several American States regulate the disclosure of ERR policies and provide sanctions for merchants' violations.

It is plausible that requiring merchants to grant consumers a general and unconditional right of return could prove too burdensome for some of them (particularly for independent retailers) and that such a consumer right for all purchases could be detrimental to the principle of the security of transactions. Very generous return policies can also give a merchant a competitive advantage, but this type of policy is more easily adopted by chains than by independent retailers. However, the requirement to inform consumers of their rights and obligations under merchants' ERR policies appears perfectly fair, and would give consumers who purchase in-store a protection equal to the one benefiting those who make distance purchases. The merchant associations themselves recognize the importance of that disclosure, so we can easily assume that such a requirement would not be considered excessive.

Recommendations

- Whereas many consumers believe, wrongly, that the law gives them an unconditional right of return when purchasing directly in-store;
- Whereas that myth is well known to the Office of Consumer Affairs and also confronts provincial consumer protection agencies;
- Whereas merchants' exchange, return and refund policies are not standardized;
- Whereas merchants' exchange, return and refund policies are often not displayed and thus unknown to consumers before a purchase;
- Whereas consumers would benefit by knowing merchants' policies before purchasing and experiencing an unexpected problem during an attempt to return an item:
 1. **Union des consommateurs recommends** that provincial consumer protection organizations increase their efforts to raise consumers' awareness, and that merchant associations and consumer associations also take measures in that regard.

- Whereas consumers benefit by knowing their right of return during in-store purchases;
- Whereas a high proportion of consumers appear to believe in an absolute right regarding in-store purchases;
- Whereas a high proportion of the retailers visited during our survey report having an ERR policy;
- Whereas over half of the retailers studied during our field survey do not display that policy;
- Whereas many stores disclose their ERR policy only after a purchase;
- Whereas Canadian legislation includes the ERR policies of online merchants in the list of elements that must be disclosed before conclusion of a contract;
- Whereas the lawmakers considered those policies sufficiently important to make their nondisclosure or non-complying disclosure a reason for cancelling an online contract;
- Whereas that difference in treatment of ERR disclosure requirements according to the method of purchase creates an unjustified market distortion;
- Whereas some legislatures impose a policy of unconditional right of return on merchants who do not display an ERR policy with its limitations or conditions;
 2. **Union des consommateurs recommends** that provincial legislatures require merchants to display in-store an exhaustive ERR policy;
 3. **Union des consommateurs recommends** that provincial legislatures assess the appropriateness of imposing standard templates for the in-store display, disclosure and content of ERR policies before purchases are made;
 4. **Union des consommateurs recommends** that provincial legislatures create the assumption of an unconditional right of return against any retailer that does not display an ERR policy.

- Whereas in-store signs stating that no returns will be accepted are likely to mislead consumers into believing they have less rights than in reality, and that a merchant might, on the basis of those signs, refuse to take back a defective item;
- Whereas Australia strictly prohibits this type of signs and that the Ontario consumer protection agency explicitly raises this issue;

5. **Union des consommateurs recommends** that provincial legislatures prohibit merchants from displaying return policies declaring “No Returns, Refunds or Exchanges” or “Final Sale” or any statement likely to mislead consumers into believing that legal warranties may not apply.

- Whereas a merchant’s ERR policy could, if not disclosed before a consumer’s attempt to return an item, be considered a separate act from the sales contract;
- Whereas such a situation would create distortions between merchants disclosing their policies and those who do not;
- Whereas qualifying an ERR policy as a separate act from the sales contract would likely deprive consumers of certain protections provided by consumer protection laws;
- Whereas, notably, fees could be charged to a consumer as a condition for the merchant to retake an item;
- Whereas the imposition or amount of “restocking fees” opens the door to arbitrariness and abuses;
- Whereas merchants who charge restocking fees often fail to display that condition or to mention it before purchase;

6. **Union des consommateurs recommends** that provincial legislatures provide in consumer protection laws that ERR policies constitute terms of the original contract;

7. **Union des consommateurs recommends** that provincial legislatures provide a framework in consumer protection laws for the imposition and, if applicable, acceptable amount of restocking fees;

8. **Union des consommateurs recommends** that provincial legislatures require merchants who, when an item is returned, charge restocking fees to display an ERR policy mentioning those fees conspicuously.

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ANNEX 1 The Field Survey

a) The French guide

Certains détaillants ont adopté des politiques de retour d'échange et de remboursement (RER) très souples, qui offrent une grande protection aux consommateurs, allant jusqu'à leur offrir une garantie de satisfaction, tandis que d'autres détaillants ont des politiques très rigides, qui ne donnent pas aux consommateurs la possibilité de se faire rembourser dans la plupart des cas, même s'ils le permettent parfois en ligne.

BUT DE L'ENQUETE:

Beaucoup de gens croient à tort que la loi oblige les commerçants à reprendre un bien que rapporte le consommateur.

Notre enquête vise à examiner les politiques RER afin de documenter les différentes approches des commerçants.

Guide pour la collecte de l'information

Tâche : les enquêteurs visiteront 20 détaillants par province (chacun dans sa province désignée), afin de documenter les politiques RER, ainsi que le moment où le consommateur en est informé.

L'étude se fera dans 20 commerces différents :

- 4 magasins d'ameublement ;
- 4 magasins de vêtements ;
- 4 magasins de produits électroniques ;
- 4 magasins d'équipement sportif ;
- 4 magasins de type quincaillerie/articles de maison.

Un formulaire sera fourni aux agents de terrain, afin qu'ils puissent collecter l'information

Fin prévue de l'enquête terrain : 30 septembre 2014

Note :

1. Outils qui pourraient vous être utiles : enregistreuse et appareil photo.
2. Lors de vos interactions avec les commerçants: Indiquez, au besoin, qu'il s'agit d'une recherche en consommation financée par le Bureau de la consommation d'Industrie Canada.
3. Nous avons besoin de 20 formulaires complétés pour chaque enquêteur. Indiquez dans le formulaire les commerces qui refusent de répondre.
4. Nous procéderons à une courte formation des enquêteurs avant le début des visites chez les commerçants.

b) The English guide

Some retailers have very flexible policies for return, exchange and refund (RER), offering a higher level of protection to the consumers, and sometimes going as far as offering them a guarantee of satisfaction, whereas other retailers policies are very rigid and do not usually give the consumers the possibility of being refunded, even if they sometimes allow it on-line.

PURPOSE OF THE STUDY:

A lot of people wrongly believe that the law forces the storekeepers to take back the goods returned by the consumer.

Our survey will examine and document retailers' RER policies in order to see the different approaches used in Canada.

Guide for the collection of information

Task: the investigators will visit 20 retailers by province (each in its appointed province), in order to document the RER policies, as well as the moment when the consumer is informed about those policies.

The study will take place in 20 different stores:

- 4 furniture stores ;
- 4 clothing stores ;
- 4 electronic products stores ;
- 4 sports equipment stores;
- 4 household items stores.

A form to be filled will be supplied to the agents for that purpose.

Deadline set for the survey: September 30th, 2014

Note :

1. Tools which could be useful: tape recorder and camera
2. When interacting with the seller: Indicate, if necessary, that the research is financed by Industry Canada's Office of Consumer Affairs.
3. We need 20 completed questionnaires from each investigator. Indicate in the form the businesses that refuse to answer.
4. We will give the investigators a short formation before they start visiting businesses.

c) **The French questionnaire**

Formulaire no. _____

Nom de l'enquêteur : _____

Nom du commerce/magasin _____

Adresse (rue, ville, province) : _____

Date : _____

QUESTIONS :

Les politiques « retour, échange et remboursement » (RER) sont-elles **affichées** ?

OUI

- PRENDRE UNE PHOTO (OU TRANSCRIRE LE TEXTE).

1. L'affiche est-elle facilement visible et lisible?

Réponse (oui ou non) : _____

Où est-elle située?

2. Que retrouve-t-on sur l'affiche ?

On retrouve uniquement des mentions du type « Aucun échange, ni remboursement » ?

OU

Retour: _____

Remboursement: _____

Échange: _____

Crédit _____

Poser les questions suivantes, si l'affiche ne donne pas déjà la réponse :

- a. Si le bien qu'on achète est brisé, défectueux, incomplet (pièces manquantes, etc.), y'a-t-il une possibilité de RER ?

Réponse (oui ou non) : _____

- b. Si le bien n'est pas conforme à ce qui était annoncé (différent du bien en étalage ou de la description du vendeur, etc.)

Réponse (oui ou non) : _____

- c. Si la taille, le format, etc. ne conviennent pas ?

Réponse (oui ou non) : _____

- d. Y-a-t-il d'autres exceptions? (Politiques différentes pour certains biens, « ventes finales », etc.)

Réponse (oui ou non) : _____

e. Y'a-t-il d'autres politiques RER qui ne sont pas affichées ?

f. Comment le consommateur est-il normalement avisé des éléments qui ne sont pas affichés?

g. Les politiques sont-elles reproduites, par exemple, sur la facture ou le coupon de caisse ? (*obtenir copie, si possible – noter l'impossibilité, le cas échéant*)

h. Quelle est généralement la réaction des consommateurs à vos politiques RER ?

NON

ALORS, DEMANDER :

1. Quelles sont les politiques RER du détaillant ?

Politique: « Aucun échange, ni remboursement » ? _____

OU

Retour: _____

Remboursement: _____

Échange: _____

Crédit _____

2. Si le bien qu'on achète est brisé, défectueux, incomplet (pièces manquantes, etc.), y'a-t-il une possibilité de RER ?

Réponse (oui ou non) : _____

3. Si le bien n'est pas conforme à ce qui était annoncé (différent du bien en étalage ou de la description du vendeur, etc.)

Réponse (oui ou non) : _____

4. Si la taille, le format, etc. ne conviennent pas ?

Réponse (oui ou non) : _____

5. Y-a-t-il d'autres exceptions? (Politiques différentes pour certains biens, « ventes finales », etc.)

Réponse (oui ou non) : _____

6. Quand et comment le consommateur est-il normalement avisé de ces politiques?

7. Les politiques sont-elles reproduites, par exemple, sur la facture ou le coupon de caisse ? (*obtenir copie, si possible – noter l'impossibilité, le cas échéant*)

8. Quelle est généralement la réaction des consommateurs à vos politiques RER ?

*

d) **The English questionnaire**

Form no. _____

Name of the investigator: _____

Name of the store: _____

Address (street, city, and province): _____

Date: _____

QUESTIONS :

Does the retailer **displays on a placard** his policies of «return, exchange and reimbursement» (RER)?

YES - TAKE A PHOTO (OR TRANSCRIBE THE TEXT).

1. Is the placard easy to see and to read?

Answer (yes or no): _____

Where is it situated?

2. What exactly is displayed on the placard?

We only find the type of mention « No exchange, nor reimbursement »?

OR

Return: _____

Reimbursement: _____

Exchange: _____

Credit _____

Ask the following questions, if the placard does not already indicate their answers:

- a. If the item is broken, defective, incomplete (missing parts, etc.), is there a possibility of RER?

Answer (yes or no) : _____

- b. If the item is not in compliance with what was announced (different from the one displayed in the store or from the seller's description, etc.)?

Answer (yes or no) : _____

- c. If the size, the format, etc. does not suit?

Answer (yes or no) : _____

- d. Are there any other exceptions? (Different policies for certain items, « final sale », etc.)

Answer (yes or no) : _____

- e. Are there any other RER policies which are not displayed?

- f. In what manner is the consumer normally informed about policies which are not posted (displayed)?

- g. Are the policies reproduced, for example, on the invoice or the cash register coupon? (*Obtain a copy, if possible - or note the impossibility of getting it*)

- h. What is in general the consumer's reaction to your RER policies?

NO

THEN ASK THE FOLLOWING QUESTIONS :

1. What are the store's RER policies?

Policy: « No exchange, no reimbursement » ? _____

OR

Return: _____

Reimbursement: _____

Exchange: _____

Credit _____

2. If the item is broken, defective, incomplete (missing parts, etc.), is there a possibility of RER?

Answer (yes or no) : _____

3. If the item is not in compliance with what was announced (different from the one displayed in the store or from the seller's description, etc.)

Answer (yes or no) : _____

4. If the size, the format, etc. does not suit?

Answer (yes or no) : _____

5. Are there any other exceptions? (Different policies for certain items, « final sale », etc.)

Answer (yes or no) : _____

6. In what manner is the consumer normally informed about those policies?

7. Are the policies reproduced, for example, on the invoice or the cash register coupon?
(Obtain a copy, if possible - or note the impossibility of getting it)

8. What is in general the consumer's reaction to your RER policies?

ANNEX 2 Questionnaire Intended for Agencies

a) The French questionnaire



LE MYTHE DE L'OBLIGATION DE REPENDRE UN BIEN RETOURNÉ : POLITIQUE DE RETOUR OU DÉLAI DE RÉTRACTATION POUR LES ACHATS EN MAGASIN¹

QUESTIONNAIRE DESTINÉ AUX AGENCES GOUVERNEMENTALES
CHARGÉES DE LA PROTECTION DES CONSOMMATEURS

6 octobre 2014

Présentation de l'organisme

Union des consommateurs (UC) est un organisme à but non lucratif du Québec. Il regroupe plusieurs Associations coopératives d'économie familiale (ACEF) et l'Association des consommateurs pour la qualité dans la construction (ACQC). UC a pour mission la représentation et la défense des droits des consommateurs, en prenant en compte de façon particulière les intérêts des ménages à revenu modeste. Ses interventions s'articulent autour des valeurs chères à ses membres : la solidarité, l'équité et la justice sociale, ainsi que l'amélioration des conditions de vie des consommateurs aux plans économique, social, politique et environnemental.

L'organisme, qui a développé une expertise pointue dans certains secteurs d'intervention (budget familial et l'endettement, énergie, communications, santé, produits et services financiers, pratiques commerciales, agro-alimentation, politiques sociales et fiscales, etc.), représente les intérêts des consommateurs auprès de diverses instances politiques, réglementaires ou judiciaires et sur la place publique.

Présentation du projet

Notre projet de recherche porte sur les politiques de retour, d'échange et de remboursement (politiques RER) au Canada, lors des achats effectués en magasin. Notre recherche vise à déceler s'il existe certaines normes formelles ou non en la matière, qui permettraient au consommateur de s'y retrouver aisément, ainsi qu'à analyser le cadre réglementaire canadien existant. Nous tenterons aussi d'identifier, le cas échéant, les meilleures pratiques à l'étranger dans ce domaine.

¹ Un projet financé par le Bureau de la consommation (Industrie Canada)

La force d'un réseau

Nos membres associatifs

ACEF ABITIBI-TÉMISCAMINGUE
ACEF AMIANTE-BEAUCE-ETCHEMINS
ACEF DE L'EST DE MONTRÉAL

ACEF DE L'ÎLE-JÉSUS
ACEF DE LAMAUDIÈRE
ACEF DU NORD DE MONTRÉAL
ACEF ESTRIE

ACEF GRAND-PORTAGE
ACEF MONTRÉGIE-EST
ACEF RIVE-SUD DE QUÉBEC
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Pour mener à bien cette recherche, nous procéderons à une étude comparative du cadre réglementaire canadien et des réglementations de ces politiques en Europe, en Australie et aux États-Unis. L'identification des politiques existantes dans les magasins canadiens découlera d'une enquête auprès de 100 commerçants de différentes provinces.

Dans le cadre de notre recherche, nous tenterons également de connaître le type de plaintes que reçoivent les agences gouvernementales chargées de la protection des consommateurs, les problématiques identifiées et les solutions possibles que ces dernières envisageraient, etc. Pour ce faire, nous sollicitons les organismes gouvernementaux chargés de l'application des lois de protection des consommateurs afin de répondre au questionnaire que vous trouverez ci-bas.

NOTE IMPORTANTE

Notre recherche porte uniquement sur les politiques RER applicables par les commerçants lors des achats que les consommateurs effectuent directement en magasin (et exclut ainsi les obligations qui découlent des dispositions particulières applicables aux achats faits à distance – par Internet, téléphone, poste, télécopieur, etc.) L'étude porte sur l'application générale des politiques RER; la question de l'application de ces politiques aux retours demandés par les consommateurs dans le cadre de l'application des garanties légales (retour de biens défectueux) ne sera abordée qu'accessoirement.

Ioana Delapeta

Analyste en pratiques commerciales
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LE MYTHE DE L'OBLIGATION DE REPRENDRE UN BIEN RETOURNÉ : POLITIQUES DE RETOUR OU DÉLAI DE RÉTRACTATION POUR LES ACHATS EN MAGASIN

QUESTIONNAIRE DESTINÉ AUX AGENCES GOUVERNEMENTALES
CHARGÉES DE LA PROTECTION DES CONSOMMATEURS

IDENTIFICATION DE VOTRE AGENCE :

Nom de l'organisme :

Adresse :

Ville :

Province :

Code postal :

Personne ressource :

Fonction :

No. de téléphone :

Courriel :

1. Existe-t-il un encadrement dans votre province en ce qui concerne les politiques de retour, d'échange et de remboursement (RER) lors des achats effectués en magasin par les consommateurs?

Oui (passez à la question 2)

Non (passez à la question 3)

2. Si oui en 1, veuillez en citer la source (les articles de lois) et nous fournir un bref résumé du contenu.

3. Au cours des cinq (5) dernières années avez-vous reçu des plaintes ou des demandes d'information de consommateurs concernant les politiques RER pour les achats effectués en magasin?

Oui (passez à la question 4)

Non (passez à la question 5)

4. Si oui en 3, veuillez indiquer le nombre de plaintes et/ou de demandes d'information reçues.

Nb de plaintes :

Nb de demandes d'information :

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5. Veuillez cocher le type de questions le plus souvent posées par les consommateurs relativement aux politiques RER applicables aux achats en magasin :

- Portée des protections offertes par la loi
- Existence d'un droit généralisé de retour sans motif
- Uniformité des politiques des commerçants
- Autres obligations du vendeur/commerçant (ex : information, affichage)
- Autres droits des consommateurs
- Recours
- Autres (exemples :)

6. Si vous disposez d'exemples plus précis de demandes d'information de la part des consommateurs, veuillez les indiquer ici :

7. Veuillez cocher le type de plaintes le plus souvent rapportées par les consommateurs relativement aux politiques RER applicables aux achats en magasin :

- Portée des protections offertes par la loi
- Défaut du commerçant d'afficher ou de communiquer clairement sa politique RER
- Défaut du vendeur/commerçant de respecter sa politique RER
- Refus par le commerçant de reprendre un bien pour un motif non dévoilé au préalable
- Imposition par le commerçant de conditions ou de limitations irréalistes ou abusives
- Manque d'uniformisation des politiques entre commerçants
- Refus de reprendre un bien défectueux
- Autres (exemples :)

8. Si vous disposez d'exemples plus précis de plaintes de la part des consommateurs, veuillez les indiquer ici :

9. Quels types d'information, de recommandations ou de conseils donnez-vous aux consommateurs qui vous contactent relativement aux politiques RER applicables aux achats en magasin, et la (les) voie(s) à suivre que vous leur indiquez?

10. Avez-vous entrepris des démarches et actions afin de conscientiser les consommateurs quant à leurs droits et recours en lien avec les politiques RER des commerçants (ex. : campagne publicitaire, brochure, dépliant, site Internet, cahier d'information, etc.) ? Si oui, lesquelles?

- Oui
 - Non
- Lesquelles?

11. Avez-vous entrepris des démarches afin de conscientiser les commerçants au sujet des obligations qui leur incombent et/ou des droits dont bénéficient les

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consommateurs en matière de politiques RER? Si oui, veuillez indiquer quelques exemples :

Oui

Non

Exemples :

12. Au cours des cinq dernières années, est-ce que votre agence a entrepris des recours à l'encontre de commerçants en ce qui a trait aux politiques RER applicables aux achats en magasin, ou mis en œuvre d'autres types de mesures (ex. études, enquêtes, mesures et sanctions administratives, suspensions de permis, mises en demeure, injonctions, etc.)? Si oui, pouvez-vous nous indiquer leur nombre, ainsi que leurs résultats (ex. taux de succès, meilleure conformité, etc.)?

Oui, Combien?

Non

Lesquels?

Résultats?

13. Verriez-vous la pertinence et la nécessité d'un encadrement des politiques RER pour les achats effectués en magasin? Le cas échéant, quel serait le contenu idéal d'un tel encadrement?

Oui

Non

Contenu :

14. Autres commentaires :

Veuillez nous faire parvenir vos commentaires au plus tard le **vendredi, 31 octobre 2014**, idéalement par courriel, à l'adresse suivante idelapeta@uniondesconsommateurs.ca .

Pour toute information complémentaire, n'hésitez pas à nous contacter.

Merci de votre collaboration!

UNION DES CONSOMMATEURS

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b) The English questionnaire



THE TRUTH BEHIND
THE OBLIGATION TO TAKE BACK RETURNED ITEMS:
RETURN POLICIES OR COOLING-OFF PERIOD
FOR IN-STORE PURCHASES¹
QUESTIONNAIRE ADDRESSED TO
CONSUMER PROTECTION GOVERNMENT AGENCIES

October 6, 2014

Presentation of the organization

Union des consommateurs (UC) is a non-profit organization based in Quebec. It includes several ACEFs (*Associations coopératives d'économie familiale*) and the ACQC (*Association des consommateurs pour la qualité dans la construction*). UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its activities are based on values cherished by its members: solidarity, equity and social justice, and the improvement of consumers' economic, social, political and environmental living conditions.

The organization, which has developed strong expertise in certain policy sectors (household finances and money management, energy, communications, health, food and biotechnologies, social and fiscal policy, etc.), represents the interests of consumers before political, regulatory or legal authorities or in public forums.

Presentation of the project

Our research project pertains to exchange, return and refund (ERR) policies in Canada, for in-store purchases. Our research aims at determining whether certain standards, formal or informal, exist that are clear to consumers, and at examining Canada's current regulatory framework. We will also try to identify the best practices adopted in other countries.

We will thus conduct a comparative study of the regulatory framework in Canada, Europe, Australia and the United States. The identification of policies prevailing in Canadian stores will be based on a survey of 100 merchants in different provinces.

¹ A project funded by the Office of Consumer Affairs (Industry Canada)

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Nos membres associatifs

ACEF ABITIBI-TÉMISCAMINGUE
ACEF AMIANTE – BEAUCE – ETCHÉMIN
ACEF DE L'EST DE MONTRÉAL

ACEF DE L'ÎLE-JÉSUS
ACEF DE LANAUDIÈRE
ACEF DU NORD DE MONTRÉAL
ACEF ESTRIE

ACEF GRAND-PORTAGE
ACEF MONTRÉGIE-EST
ACEF RIVE-SUD DE QUÉBEC
ACQC

6226, rue Saint-Hubert, Montréal (Québec) Canada H2S 2M2

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Our research will also inquire on the types of complaints received by consumer protection government agencies, the issues involved, possible solutions considered by those agencies, etc. To that end, we ask government organizations responsible for applying consumer protection laws to answer the questionnaire below.

IMPORTANT NOTE

Our research pertains solely to merchants' in-store ERR policies (and thus excludes obligations resulting from specific provisions applicable to distance purchases – on the Internet, by telephone, mail, fax, etc.) The study focuses on the general application of ERR policies; the question of how those policies apply to returns requested by consumers in the context of legal warranties (return of defective goods) will only be addressed tangentially.

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La force d'un réseau

**THE TRUTH BEHIND
THE OBLIGATION TO TAKE BACK RETURNED ITEMS:
RETURN POLICIES OR COOLING-OFF PERIOD
FOR IN-STORE PURCHASES
QUESTIONNAIRE ADDRESSED TO
CONSUMER PROTECTION GOVERNMENT AGENCIES**

IDENTIFICATION OF YOUR AGENCY:

Name of the organization:

Address:

City:

Province:

Postal code:

Resource person:

Position:

Phone No.:

E-mail:

1. Does your province regulate regarding exchange, return and refund (ERR) policies for in-store purchases made by consumers?

- Yes (go to question 2)
 No (go to question 3)

2. If Yes to question 1, please give the source of the regulation (legal provisions) and provide us with a brief summary of its content.

3. In the last five (5) years, have you received complaints or information requests from consumers regarding ERR policies for in-store purchases?

- Yes (go to question 4)
 No (go to question 5)

4. If Yes to question 3, please indicate the number of complaints and/or information requests received.

- Nb of complaints:
 Nb of information requests:

5. Please check the type of questions most often asked by consumers regarding ERR policies for in-store purchases:

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- Scope of legal protections
- Existence of a general right of return without cause
- Standardization of merchants' policies
- Other retailer/merchant obligations (e.g.: information, signs)
- Other consumer rights
- Remedies
- Others (examples:)

6. If you have more specific examples of information requests from consumers, please indicate them here:

7. Please check the type of complaints most often made by consumers regarding ERR policies for in-store purchases:

- Scope of legal protections
- Merchants' failure to display or communicate their ERR policy clearly
- Retailers'/merchants' failure to apply their ERR policy
- Merchants' refusal to retake an item for a reason not disclosed beforehand
- Merchants' imposition of unrealistic or unfair terms or limitations
- Policies not standardized between merchants
- Refusal to retake a defective item
- Others (examples):

8. If you have more specific examples of consumer complaints, please indicate them here:

9. What types of information, recommendations or advice do you give consumers who contact you about ERR policies for in-store purchases, and what procedures do you indicate to consumers?

10. Have you taken steps and actions to raise consumers' awareness of their rights and remedies regarding merchants' ERR policies (e.g.: advertising campaign, brochure, leaflet, website, information booklet, etc.)? If so, which ones?

- Yes
 - No
- Which ones?

11. Have you taken steps to raise merchants' awareness of their obligations and/or of consumer rights in terms of ERR policies? If so, please give a few examples:

- Yes
 - No
- Examples:

12. In the last five years, has your agency taken legal action against merchants with regard to ERR policies for in-store purchases, or taken other types of measures (e.g. studies, investigations, administrative measures and sanctions, licence suspensions, formal notices, injunctions, etc.)? If so, can you indicate their number and outcomes (e.g. success rate, better compliance, etc.)?

Yes – How many?

No

What measures?

Outcomes?

13. Would you consider it relevant and necessary to have regulations regarding ERR policies for in-store purchases? If so, what would be the ideal content of such regulations?

Yes

No

Content:

14. Other comments:

Please send us your comments by **Friday, October 31, 2014** at the latest, ideally by e-mail, at the following address: idelapeta@uniondesconsommateurs.ca.

For further information, don't hesitate to contact us.

Thank you for your cooperation!

UNION DES CONSOMMATEURS

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