

A close-up photograph of several coins, likely Canadian, featuring a maple leaf design. The coins are arranged in a stack, with the top one being gold and the others silver. The text "FINE GOLD" and "FINE SILVER" is visible on the coins. The background is a dark red gradient.

Canada: Consumer Protection Law Overview

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Canada: Consumer Protection Law Overview

Overview

The federal and provincial governments share responsibility for consumer protection in Canada. In general, federal laws focus on ensuring consumers a safe, fair and competitive marketplace. In addition to addressing the anti-competitive effects of mergers and other business practices, federal laws govern consumer product safety, packaging and labelling, and deceptive marketing practices. The federal government also exercises oversight of consumer transactions in certain federally regulated sectors such as financial institutions and wireless services.

Provincial and territorial laws focus on the terms on which businesses transact with consumers. The provinces also regulate and require licenses of a variety of businesses that deal with consumers, particularly where consumer credit is involved.

Most provinces have legislation specifically providing protection to consumers transacting and contracting online, and the federal government and some provinces have enacted legislation to govern the private sector's use and disclosure of personal information.

Federal Consumer Protection Laws

Regulation of Products Sold in Canada

Safety

The principal federal legislation governing consumer products in Canada is the *Canada Consumer Product Safety Act*. Its purpose is to protect the public by addressing and preventing dangers to human health or safety that could be posed by consumer products in Canada. The CCPSA applies to manufacturers, importers, advertisers and sellers of any product that could reasonably be expected to be obtained by an individual for non-commercial purposes - including children's toys, household products, sporting goods, and their components, accessories and packaging.

All participants in the supply of consumer products have three key responsibilities under the CCPSA. First, their products must meet regulatory requirements and cannot pose a threat to health or safety, have been recalled, or be packaged, labelled or advertised in a way that is misleading about their safety. Second, they must comply with record keeping requirements that apply throughout the supply chain. Third, they must report incidents involving a consumer product that could or did result in death, serious adverse health effects, or serious injury (including defects and improper labelling or instructions), and recalls by other governments or public bodies.

The CCPSA gives Health Canada the power to order tests and remedial measures, including recalls, and a broad authority to conduct inspections of places where regulated activities (such as manufacture, import and sale) take place. The penalties for non-compliance with the CCPSA can in some cases be severe, including substantial fines and imprisonment. Administrative monetary penalties may be imposed for contravention of a recall or testing order.

Products such as cosmetics, food, drugs, medical devices, pest control products, fertilizers, plants and seeds, firearms, ammunition and motor vehicles are not subject to the CCPSA but are instead governed by other federal legislation such as the *Food and Drugs Act* or the *Criminal Code*.

Labelling and Packaging

Two main federal statutes govern the labelling and packaging of consumer products. The *Consumer Packaging and Labelling Act* applies to the packaging, labelling, sale, importation and advertising of prepackaged food and non-food products; the *Textile Labelling Act* applies to consumer textile articles sold, imported or advertised in Canada. These statutes and their related regulations set out requirements for the content, form and manner of application of labels on consumer products and textiles (including, subject to limited exceptions, that information be shown in both English and French). (Additional French-language label requirements may be applicable in Quebec, as discussed below).

Deceptive Marketing and Price-Fixing

In addition to its application to corporate mergers, the federal *Competition Act* contains a number of civil and criminal provisions intended to prevent anti-competitive trade practices, including deceptive marketing practices. Under the *Competition Act*, civil penalties may be imposed for deceptive marketing practices, which include representations to the public that are false or misleading in a material respect, performance claims that are not based on adequate or proper tests, guaranties or warranties that are materially misleading or unlikely to be carried out, and false representations regarding the ordinary selling price of a product.

Civil penalties may also be imposed for bait and switch selling, sales above advertised price, and promotional contests that do not meet conditions regarding disclosure and distribution of prizes. Criminal penalties may be imposed for false and misleading representations and for double ticketing, deceptive telemarketing and pyramid selling. The *Competition Act* also prohibits the sending of notices that give the general impression the recipient has won or will win a prize while asking the recipient to pay money or incur a cost, unless certain conditions, including that the recipient actually wins a prize, are satisfied. Administrative monetary penalties under the *Competition Act* can be substantial, and penalties for criminal offences can include both fines and imprisonment.

Federally-regulated sectors

Federally-regulated financial institutions, including banks, insurance companies, trust and loan companies are subject to consumer provisions in their governing statutes that address such matters as disclosure of cost of borrowing charges and complaint procedures.

The Canadian Radio-television and Telecommunications Commission has issued a *Wireless Code of Conduct* applicable to all wireless services and service providers. The *Code* requires plain language wireless service contracts that make it easy for consumers to understand their rights and obligations under the contract (including pricing, cancellation, extension, disconnection and other key contract terms). Certain provinces, including Ontario and Quebec, have enacted their own legislation (in some cases as part of a general consumer protection statute) directed at wireless service agreements, which may provide consumers in these provinces additional rights. The CRTC has established Unsolicited Telecommunications Rules, which must be followed by telemarketers and those who hire them. These rules include a “National Do Not Call List,” rules related to the conduct of telemarketing, and Automatic Dialing-Announcing Device Rules.

Provincial Consumer Protection Laws

Consumer Transactions – Agreements and Practices

The consumer protection statutes in most Canadian provinces – including Alberta, British Columbia, Ontario and Quebec – set out requirements for specific types of consumer agreements, and prohibit a range of “unfair” practices in any consumer transaction.

Although the categories and terminology differ slightly among these provinces, in general the consumer protection statutes apply to remote agreements, internet agreements, time share agreements, “direct” (itinerant sales) agreements, credit agreements, contracts for the supply of services at a distance (such as cell phone contracts), leases for the supply of goods and in some cases future performance agreements. These agreements are subject to specific content and disclosure requirements and, in certain cases, cancellation rights and a “cooling off” period. Credit agreements and leases are also subject to detailed cost of credit disclosure requirements.

The consumer protection statutes also prohibit “unfair” business practices in any consumer transaction. Unfair business practices include misleading and unconscionable representations (where a seller takes advantage of consumer who cannot protect his or her own interests, subjects a consumer to undue pressure, or knows that a transaction is excessively one-sided or adverse to the consumer, for example). Where a person has engaged in an unfair business practice, the consumer has rights of rescission and recovery; it is also an offence to engage in an unfair

practice, which can lead to compliance orders, monetary penalties and imprisonment for the offender.

All provinces have legislation dealing with gift cards (generally prohibiting expiry dates, although exceptions apply for certain types of cards), and most deal with unsolicited goods or negative option billing (consumers typically are not obliged to pay for unsolicited goods or services). Provincial legislation generally implies minimum warranties into consumer sales (regarding matters such as title and quality), and in certain provinces – notably Ontario and Quebec – pre-dispute mandatory arbitration clauses are not enforceable in a consumer contract.

Ontario and Quebec have recently introduced legislation which will eliminate expiry dates on reward points programs based only on the passage of time. According to guidance from the Ontario consumer protection agency, consumer agreements under which rewards points are provided may still provide for expiry due to reasons other than the passage of time alone – for example, rewards points can expire after a period of time if there is also a second reason, such as inactivity (failure to earn or redeem points) in a consumer’s account, during that period. The Ontario legislation has been passed but is not yet in force. It is expected to be proclaimed sometime in 2017 after consultation with consumers and businesses, and be applicable to points that were to expire on or after October 1, 2016. Quebec’s bill was presented to the National Assembly in May 2017 and may be adopted as early as December 2017.

Regulated Businesses

As noted above, all of the provinces regulate or license certain businesses that deal with consumers. Although there is variation from province to province, with limited exceptions the provinces regulate and license businesses that deal with consumer credit and debt, such as credit reporting agencies and collection agencies. Some, but not all, provinces also regulate payday lenders. Other businesses that are subject to provincial regulation and licensing requirements in all or several provinces include motor vehicle dealers, real estate agents, direct sellers, and travel agencies.

French Language and Advertising to Children in Quebec

Quebec’s *Charter of the French Language* (the “Charter”) establishes French as the everyday language of commerce and business in Quebec. In addition, the Quebec *Consumer Protection Act* requires consumer contracts to be drawn up in French, although the contract may be drawn up in another language if the parties expressly agree. The Charter has a similar provision applying to all standard form contracts. Inscriptions (labels and documents supplied with) on a product or its wrapping must have a French version which is just as prominent as a version in another language. Special rules apply to the sale of non-French versions of certain products, including software, toys and games.

The Quebec *Consumer Protection Act* generally prohibits commercial advertising directed at persons under thirteen years of age, except in certain circumstances (advertisements in children's magazines, announcing a children's show or programme, or on a store window, display, container, wrapping or label). Advertising that falls *prima facie* within these exceptions must meet certain further conditions in order to be legal in Quebec.