PROTECTION OF THE CONSUMER IN CANADA

Por el doctor Ludwik Kos-Rabczewicz Zubkowski

I. INTRODUCTION

In consequence of the federal character of Canada the consumer law and the measures on the protection of the consumer are included in several statutes (laws) of the Parliament of Canada (federal laws) and of ten provincial legislative assemblies (provincial laws) to which are added ordinances in two territories. Generally speaking the criminal law and criminal procedure is within the powers of the Parliament of Canada while property and civil rights, the administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction, and including procedures in civil matters in those courts is within the powers of provincial legislative assemblies. Provincial courts apply both federal and provincial laws. However, there is a Federal Court which has jurisdiction in certain matters (partly concurrent with provincial courts). Within the powers of the Parliament of Canada are, inter alia, bills of exchange and promissory notes, banking, bankruptcy and insolvency, patents of invention and discovery and copyrights. In addition to the criminal law which is a federal matter the provinces may provide for imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province. In consequence there is no uniform definition of consumer, one has to consult the corresponding federal or provincial law which is applicable in the matter. In the literature the "Canadian Consumer Law" by Alan A. Parker refers to "an individual or family unit who are the purchasers of goods and services for their own personal use".

1 Provinces: Alberta, British Columbia, New Brunswick, Newfoundland, Nova Scotia, Manitoba, Ontario, Prince Edward Island, Quebec and Saskatchewan as well as the Northwest Territories and the Yukon Territory.
2 Arts. 92, 93, 101 British North America Act, 1867, 30 & 31 Victoria, c. 3.
II. FEDERAL JURISDICTION

Following the recommendations of the Economic Council the federal government established in 1967 the Department of Consumer and Corporation Affairs. Its primary concern is the proper functioning of the marketplace i.e. of the buying and selling activities concerning goods and services. Its role is to encourage and develop a competitive market system which is fair to all. The responsibilities of the federal ministry relate to such matters as product safety, textile labelling, consumer complaints, consumer information, misleading advertising, combines investigation, bankruptcy, federal corporation laws, patents, copyrights, trade marks, industrial designs, weights and measures and electricity and gas inspections and inspection of meat, fish and agricultural products at the retail level for quality and grade standards.

While certain other federal government departments are also concerned with specific parts of the market system, Consumer and Corporate Affairs deals with the total marketplace and all those who meet there to exchange information and to do business together. The ministry works to protect buyers against deception or misrepresentation and against hidden hazards in the goods they buy, to ensure that products meet set standards, to ensure that there is adequate labelling of consumer products and to assist in answering legitimate complaints.

Within the ministry the Bureau of Consumer Affairs develops legislation to ensure that correct measures and standards are applied to products sold in Canada, does research into marketplace problems encountered by consumers, and carries out an extensive information programme. The purpose of this programme is threefold: to keep consumers informed of their rights and responsibilities, to call attention to new consumer legislation, and to provide shopping advice through the publication of booklets and fact sheets as well as film and slide presentations. The services are offered at the regional and district offices and consumer help offices.

The Bureau of Competition Policy administers the Combines Investigation Act, aimed at maintaining a competitive market system. The Act gives the Director of Investigation and Research wide powers to conduct inquiries when he has reason to believe there may have been a violation of the Act, with respect to agreements, mergers, monopolies, price discrimination, promotional allowances, misleading representation as to price, false and misleading advertising or retail price maintenance. The director may refer the results of his inquiries directly to the Attorney General, with a recommendation that charges be laid, or refer them to the

5 Consumer and Corporate Affairs Canada, "Who we are and what we do", 1977, 1 & 2.
Restrictive Trade Practices Commission for consideration and public report. 6

The Department of Consumer and Corporate Affairs administers the following laws:

- Bankruptcy Act;
- Boards of Trade Act;
- Canada Agricultural Products Standards Act;
- Canada Business Corporations Act;
- Canada Cooperative Association Act;
- Canada Corporations Act;
- Canada Dairy Products Act;
- Combines Investigation Act;
- Consumer Packaging and Labelling Act;
- Copyright Act;
- Department of Consumer and Corporate Affairs Act;
- Electricity Inspection Act;
- Farmers’ Creditors Arrangement Act;
- Fish Inspection Act;
- Food and Drugs Act;
- Gas Inspection Act;
- Hazardous Products Act;
- Industrial Design Act;
- Maple Products Industry Act;
- National Trade Mark and True Labelling Act;
- Patent Act;
- Precious Metals Marking Act;
- Public Officers Act
- Shipping Conferences Exemption Act;
- Textile Labelling Act;
- Timber Marking Act;
- Trade Marks Act;
- Trade Unions Act;
- Weights and Measures Act;
- Winding-Up Act;

In addition, a number of other acts impose on this department certain responsibilities.

The objective of the program on funding of consumer groups is to foster the development of the consumer movement by making funds available to organizations whose activities promote the general interest and welfare of Canadian consumers. The following list summarizes the distribution of funds for 1980-81.

**Contributions Program 1890-81**

**National - Regional**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Consumers' Association of Canada</td>
<td>$280,200</td>
</tr>
<tr>
<td>Public Interest Advocacy Centre</td>
<td>6,800</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$287,000</strong></td>
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**Consumers' Association of Canada, Regulatory Industries Program**

<table>
<thead>
<tr>
<th>Organization</th>
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<tbody>
<tr>
<td>Automobile Protection Association</td>
<td>46,000</td>
</tr>
<tr>
<td>Fédération des associations coopératives d'économie familiale</td>
<td>35,000</td>
</tr>
<tr>
<td>Groupe de recherches en consommation Faculté de droit, Université de Montréal</td>
<td>25,000</td>
</tr>
<tr>
<td>Canadian Toy Testing Council</td>
<td>10,000</td>
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<tr>
<td>Transport 2000</td>
<td>10,000</td>
</tr>
<tr>
<td>Allergy Information Association</td>
<td>2,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$753,200</strong></td>
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**Local**

**Pacific**

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<tr>
<th>Organization</th>
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<tbody>
<tr>
<td>Consumers' Association of Canada, Whitehorse Branch</td>
<td>$ 6,000</td>
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<tr>
<td>East Kootenay Consumer Services Society</td>
<td>5,000</td>
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<tr>
<td>The Native Courtworker and Counselling Association of British Columbia</td>
<td>2,000</td>
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<tr>
<td>Nelson Community Services Society</td>
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<tr>
<td>Matsqui Abbotsford Community Services, Abbotsford</td>
<td>1,500</td>
</tr>
<tr>
<td>Vernon Social Planning Council</td>
<td>1,500</td>
</tr>
<tr>
<td>South Okanagan Civil Liberties Society</td>
<td>1,500</td>
</tr>
<tr>
<td>Mission Community Services Society</td>
<td>1,000</td>
</tr>
<tr>
<td>Chilliwack Community Services Society</td>
<td>1,000</td>
</tr>
<tr>
<td>Consumers' Association of Canada, British Columbia</td>
<td>1,000</td>
</tr>
<tr>
<td>Community Learning Centre Society of Port St. John</td>
<td>1,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$23,500</strong></td>
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**Prairie**

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<th>Organization</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Consumers' Association of Canada, Yellowknife</td>
<td>$13,000</td>
</tr>
<tr>
<td>Family Money Management Counselling Service, University of Saskatchewan, Saskatoon</td>
<td>12,000</td>
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</table>
Welfare Rights Centre, Regina 10,900
Consumer's Association of Canada, Manitoba 9,000
Consumers' Association of Canada, Brandon 6,000
Consumers' Association of Canada, Calgary 5,800
Total $ 56,700

Ontario
Peterborough Information Centre $ 9,000
Oshawa Community Information Centre 8,500
Information Oxford, Woodstock 5,700
Community Information Centre Haldimand-Norfolk, Simcoe 5,000
Contact Telephone Information and Referral Centre, Midland 5,000
Information London 5,800
Timmins Credit Counselling Service 4,000
New Sudbury Community Service Centre 4,000
Elliot Lake Women's Group 3,500
Information Niagara, Niagara Falls 3,000
North End Information Service, Hamilton 3,000
Total $ 55,500

Québec
Association des consommateurs du Québec, Inc. $ 5,000
Association des consommateurs du Québec, Inc.
Québec Métropolitain 5,000
Association des consommateurs du Québec, Inc.
Valleyfield 3,000
Regroupement des assistés sociaux des Iles, Inc. 3,000
Groupe de recherches en animation et planification économique, Notre-Dame-des-Laurentides 3,000
Association des consommateurs du Québec, Inc. La Tuque 2,000
Total $ 21,000

Atlantic
Catholic Family Services Bureau,
Protestant Family Service Bureau,
Credit Counselling Services,
Charlottetown, P.E.I. $ 14,000
Port Cities Counselling, Halifax, Nova Scotia 13,000
Centre de communication et d’information mobile,
Bathurst, New Brunswick 12,000
Oromocto Information Service Centre Inc. 3,500
Total $41,500
Total Local $199,200
Total Contributions $952,500

III. Provincial Jurisdiction

It is impossible to describe here the details of the protection of the consumer in all Canadian provinces. Therefore it is proposed to mention here main subjects of consumer protection. They may be covered by provincial Consumer protection laws or by special laws e.g. Sale of Goods Acts, Landlord and Tenants Acts, Pyramid Sales Acts etc.

Among the subjects covered by most of the provincial Sale of Goods Acts are: ingredients which make up the contract; subject matter of the contract, stipulations as to conditions and warranty of fitness of the product, performance of the contract and rights in breach of contract. Thus sale of good is covered by the Civil Code in the province of Quebec, the only Canadian jurisdiction which does not apply common law. The province of Quebec adopted in July 1971 the law on protection of the consumer (Loi de la protection du consommateur) which created an Office of Protection of the consumer (Office de la protection du consommateur). This law was replaced by the new law of December 22, 1978, the majority of its provisions entered into force on April 30, 1980. The ministry of consumers, cooperatives and financial institutions has the responsibility to protect the consumer (Ministère des consommateurs, des coopératives et des institutions financières). Other provincial laws in Quebec aim also at the protection of consumers: Law facilitating the access to justice (Loi favorisant l’accès à la justice), Law on collective actions (Loi sur le recours collectif), Law on certain debts (Loi sur la perception de certaines créances). Thus the general principle of freedom to

8 A. Parker, op. cit., p. 39.
9 Laws of Quebec 1971, c. 74.
10 L. Q. 1978, c. 9.
12 L.Q. 1971, c. 86.
14 L.Q. 1979, c. 70.
contract has been limited partially in the interest of the consumer. The underlying cause is the technical and economic weakness of the consumer who contracts with sellers specialized in their fields of activities.

Thus the provisions tending to protect the consumer are scattered in various laws. They modify the general rules applicable both in common law provinces and in the civil law province of Quebec only insofar as it is considered necessary for the purposes of such protection.

Consumer law recognizes that the consumer is in a weaker position than the seller because the latter has the information and experience related to the goods he is selling. The consumer law tries to re-establish the equality of the parties, the seller and the purchaser. It protects the consumer against exploitation. Thus consumer law extends the concept of defects in consent to contract. It takes into consideration the publicity, lack of information, pressure by the salesman, explanations given verbally by the salesman and differing from the written contract, etc.14

Consumer law does not prohibit the use of printed contract forms. However, it prohibits certain clauses which grant the seller excessive advantages, e.g. non liability of the seller for damages called by his fault or that of his agents (art. 10), the right of the seller to determine arbitrarily a fact (art. 11), the duty of the purchaser to pay costs non established as to their sum (art. 12), the duty of the purchaser, in case of non compliance with his contractual duties except interest (art. 13). In case of doubt or ambiguity the contract has to be constructed in favour of the consumer (art. 17).

There is a general principle that the seller has to supply information to the purchaser. In cases of certain contracts a model provided by law has be followed (e.g. in case of credit contracts (annexes 3, 4, 5, 7). Generally a written contracts has to be signed by the parties. The contract can be enforced only from the moment when each of the parties received a duplicate of the same (art. 33).

The Quebec consumer protection law takes under consideration that some contracts are signed under pressure and therefore it allows the purchaser to "cool off" during a certain period of time during which the purchaser may unilaterally withdraw his consent.16

Notwithstanding the provisions of the contract the deafaulting consumer may apply to the court in order to obtain modifications to the contract or to return the purchased goods.17

While in civil law the written contract is presumed to represent the will of the parties consumer law states that representations made either in writing or verbally by the merchant or his representative and concerning

14 E.g. art. 9, Quebec Law.
15 E.g. sale by an ambulant salesman (art. 59), credit contract (art. 72).
16 (Arts, 107 and 110).
the description of goods or services as well as statements by the merchant or manufacturer in the publicity as to warranties are part of the contract;\(^{18}\) the consumer is allowed to submit testimonial evidence on this subject even contradicting the terms of the written contract.\(^{19}\) Clauses in the consumer contract which would tend to eliminate the publicity representations not included in the contract are to be considered as non existent.

Consumer law establishes the liability of the manufacturer although the latter is not a party to the contract concluded between the merchant and the consumer.\(^{20}\) It recognizes also the right of action not only by the first purchaser but also of the subsequent purchaser.\(^{21}\)

The consumer law considers the contract of sale together with the contract of credit, when the purchaser is paying the price in installments, even when the creditor is a different person and not the seller. Thus exception which could be opposed against the seller can also be opposed by the purchaser-consumer against the creditor, notwithstanding any clause of the contract.\(^{22}\)

Under consumer law the court has vast powers in order to supervise the execution of the contract\(^{23}\) and to apply sanctions to enforce the measure of protection.\(^{24}\)

IV. CONSUMER CONTRACTS

Consumer contract is concluded between a consumer and a merchant within the course of his trade and having a suit object goods or services.\(^{25}\) There are certain exceptions as to the type of services, e.g. sale of electricity or gas by a public enterprise, insurance, annuities,\(^{26}\) sale, lease or construction of an immovable.\(^{27}\) The consumer is defined as a natural person, except a merchant who buys goods or services for his business.\(^{28}\)

Thus a company or partnership is not a consumer (for the purpose of a special protection by law). The goods or services, in order to be covered by such special protection, must be acquired for personal or family purposes.

The consumer protection law is a law of public order i.e. it cannot be

\(^{18}\) Arts. 41, 42, 43 Quebec Law.

\(^{19}\) Arts. 263.

\(^{20}\) Arts. 37, 38.

\(^{21}\) Arts. 53, 54.

\(^{22}\) Arts. 102, 103, 116, 117.

\(^{23}\) Arts. 107-110, 142-145.

\(^{24}\) Arts. 288, 316.

\(^{25}\) Quebec art. 2.

\(^{26}\) Art. 5.

\(^{27}\) Art. 6(b)

\(^{28}\) Art. 1(e).
eliminated by consent of the parties.\textsuperscript{50} Clauses in a contract violating the law on protection of consumers are null but the contract remains valid.

Also the parties are not free to submit their contract to another law than that of Canada or of Quebec (federal or provincial).\textsuperscript{50}

In cases of contracts concluded between the parties who are not in the same place the consumer protection law declares that such a contract is considered concluded at the address of the consumer.\textsuperscript{51}

V. Remedies

The consumer may proceed by way of civil law action according to consumer protection law and request the reimbursement of money paid to the seller, to free himself from his obligation resulting from the contract and request the payment of damages he suffered. This is possible when the contract provides for excessive advantages in favour of the seller, also in cases of contracts of credit he may withdraw from the contract. When the seller induced in error the consumer the legal presumption of liability facilities consumer’s recourse.\textsuperscript{52} Civil law provisions on prescription (statute of limitations) and on evidence are modified in favour of the consumer.

If the contract provides for excessive advantages for the seller, to a great degree, there is an unrebutable presumption (juris et de jure) that the seller exploited the consumer.\textsuperscript{52}

When the consumer is submitted to conditions exceeding normal conditions in an average contract the seller must inform the consumer about this situation, otherwise it will be considered that there is a defect in the consent of the consumer. The court has a discretionary power either to declare the nullity of the contract from its commencement or to reduce the obligations of the consumer.

All contracts which must be in writing are submitted to strict rules as to their formation and their form.\textsuperscript{54} However, the seller may rebut the presumption of damages caused to the consumer by defects of form by the evidence that in fact there were no such damages. If the irregularity relates to the cost of credit in a contract the consumer may request a declaration that the contract is void and the reimbursement of costs already paid.\textsuperscript{55}

\textsuperscript{50} Art. 261.
\textsuperscript{50} Art. 19.
\textsuperscript{51} Art. 21.
\textsuperscript{52} Art. 253 Quebec law on protection of consumers.
\textsuperscript{53} Art. 8.
\textsuperscript{54} Art. 23.
\textsuperscript{55} Art. 271(2).
Consumer law provides various means to enforce the legal obligations of the seller. The default of the seller as to his obligations may enable a reduction of the contractual obligations of the consumer, the frustration of the contract or an annulment of the same.\textsuperscript{36}

The failure to execute the seller's obligations creates his obligation to pay damages caused by this failure. Furthermore the consumer may claim exemplary damages. While the rights of the consumers are prescribed within three years in case of manifestly unjust or irregular contracts, in other cases within one year and even three months (the latter in cases of defects of automobiles, motorcycles and reparations of the same as well as of domestic appliances, arts. 159, 164, 176, 181 and 186) they can be opposed even later in defence against an action by the seller as well as for the purpose of a cross-demand.

While in civil law the terms of a writing cannot be contradicted by testimonial evidence consumer law allows such evidence when the consumer wants to prove that law was not complied with or to exercise a right according to law.\textsuperscript{37}

The notices to be given by the seller are generally formal i.e. the law describes their obligatory contents. When such a notices is irregular it is deemed not to be given.

\textsuperscript{36} Art. 272.
\textsuperscript{37} Art. 263.