

Executive Summary

This study uses the European Commission document, “Ten Basic Principles of Consumer Protection”,¹ a principal source of consumer rights and protections in the European Community, and attempts to compare the content and effect of those provisions with parallel provisions existing in Canadian federal and provincial jurisdictions. The process of study and comparison shows that there are key differences in the policy approaches and levels of guarantees that EU and Canadian jurisdictions provide their constituents. In particular, this study will review the efforts by Canadian and European authorities to avoid or correct market anomalies or market failure whenever industry suppliers and producers fail to deliver on price or quality standards, or otherwise engage in unfair marketplace practices toward consumers.

Europe has been very active in drafting and introducing progressive consumer protection policies, through directives and council resolutions adopted at the European Commission level. These directives and resolutions are transposed, implemented and very often surpassed in comprehensiveness by laws enacted by national intra-European authorities. Many of the directives and resolutions have been made in furtherance of the goal of creating an efficient internal European market. To that end, consumer policy is seen as pivotal in the ultimate success of the economy of the region.

In Canada, on the other hand, while the confederation has constituted an integrated market since its creation, the role of, and the importance placed upon consumer protection policy has not been as consistent as the European model over the last several decades. In fact, it is arguable that government policy emphasis on consumer protection has gradually decreased in Canada over the last twenty years, after important progress was made during the sixties and seventies in promoting consumer affairs. This diminishing interest in the protection of consumers probably finds its best expression in the fact that the former national consumer authority, the Department of Consumer and Corporate Affairs, was dismantled in the early 1990s and its remnants shuffled in with a department unabashedly designed to advance the interests of the private industrial economic sector. In the result, today, Canada’s primary consumer protection authority at the Federal level is the Office of Consumer Affairs, a minuscule part of Industry Canada, a government department primarily directed to the promotion of supplier interests and the advancement of issues such as increasing economic activity in specific sectors. Because of the relatively small clout of consumer affairs within Industry Canada, there is little balancing of consumer and supplier interests.

Consumer affairs in the European Community’s system of governance on the other hand, are treated separately from industry issues. Each group of stakeholders has different assigned portfolios, presided over by different commissioners.

¹ European Union, “*Consumer Protection in the European Union - Ten Basic Principles*”, Directorate General for Health and Consumer Protection 2005, online:
<http://ec.europa.eu/consumers/cons_info/10principles/en.pdf>.

The disengagement of Canadian authorities from protection of the economic and marketplace rights of consumers at the federal level in Canada manifests itself in a number of practical ways. One significant example of the same is the lack of government support for a food policy that includes disclosure of genetically engineered ingredients in consumer foods. Despite the fact that public surveys have consistently shown that 90% of Canadians want clear labelling of genetically modified organisms (GMOs) in their food, no requirement for the same has been implemented to date. In contrast to Canada, similar surveys that show 90% of Europeans demanding GMO labelling find expression in EU requirements for GMO labelling of foods. In this debate, in Canada, the government would appear to be more responsive to the fears of the regulated industry than its citizens; in Europe, the interests of the consumer would appear to hold precedence.

Food approaches are not an outlier for the purpose of comparison. Other areas where significant gaps can be shown between the European and Canadian protection frameworks are the contrasting approaches of each jurisdiction to "plain vanilla" marketplace protections provided such as transparent price indication, and cooling off periods for consumer transactions concluded on online environments. Once again, the Canadian regime is considerably less robust.

One significant area where the level of consumer protection has appears to have deteriorated significantly in Canada in comparison to comparable European jurisdictions is the local telephone market. Both jurisdictions have moved to open up such markets to competition. In Canada, in particular, there has been a relentless effort, cheer led by the corporate incumbents to deregulate the services provided by large previously monopoly operators of telephony services, including those that are considered essential. In the result, the large incumbent providers of telephony, internet, and television services have tended to be either the old local monopoly telephone provider or the old cable television provider. In Europe, while the liberalization of markets has generally followed the same itinerary, more care has been taken to impose regulation upon the dominant providers, particularly in terms of interconnection and access so that unregulated duopolistic pricing and service is not the order of the day.

It is arguable that Canada's aggressive deregulation of telecommunications services, accomplished with the political interference of the current government has stifled rather than enhanced the likelihood of genuine competition in the markets accessed by ordinary consumers. At the same time, previous consumer protections for issues such as quality of service have fallen by the wayside.² The European Union has been more stringent in ensuring that genuine competition exists before loosening the obligations of

² In Telecom Decision 2006-15 (*Local Forbearance* decision), the Commission determined that the retail Q of S regime, including the retail RAP, would not apply to exchanges where forbearance from the regulation of retail local exchange services was granted. See: Canadian Radio-television and Telecommunications Commission CRTC, *Telecom Decision CRTC 2006-15, Forbearance from the Regulation of Retail Local Exchange Markets*, 6 April 2006, online: Canadian Radio-television and Telecommunications Commission CRTC <<http://www.crtc.gc.ca/eng/archive/2006/dt2006-15.htm>>.

the dominant carrier and has been quick to act where supposedly competitive markets have not produced consumer friendly results.³

The position of the global consumer of airline transportation is generally considered to have been worsened in the area of quality of service over the last two decades. However, this is also an area where striking differences in approach exist between the EU and Canada. There is no general legislation in Canada equivalent to that of the European Union's rules providing compensation and other rights to airline passengers in the case of denied boarding, cancellation and flight delays. This difference, in the current context of negotiations between the EU and Canada to have an "Open Sky" agreement between the two jurisdictions (meaning Canada and the 27 member countries of the European Union as a bloc) may have a substantial impact on the competitiveness of Canadian airlines in relation to their European counterparts. The latter are generally mandated by EU law to guarantee levels of service to consumers that any mandatory standards provided by Canadian law and regulation.

There are also differences between Canada and the EU in the determination of product liability protection for online transactions and sale of products. Blanket liability exclusion clauses are of widespread use in 'click-wrap' contracts used by global providers of products and services that are distributed online (software programs in the majority of cases). Due to EU intervention, many of these contracts must actually include clauses advising European consumers that despite the exclusion of liability clause introduced by the supplier, its operation may be annulled if its inclusion is prohibited by national and local laws.

Consumer and short-term credit is also subject to different regulatory treatment in Canadian and the European markets. The largest European economies -Germany, France, Italy, Belgium, Finland, set limits on the interest charged on consumer and short-term lending that varies from 7% to 20% annual percentage rate (APR). While Canada only has limits for federally incorporated lending institutions (at 60% APR-, far exceeding most European levels), short-term "payday" lenders are allowed by some provincial authorities to charge consumers abusive interest rates that can work to over 1000% APR in some cases.

There appears to be some evidence that the EU approach has had some insulating effect on the effects of credit abuse on the national economy. In Europe, the United Kingdom and Spain are the only two major countries that do not apply caps or set ceilings to the credit consumers can be charged for short-term, contingent credit. At the same time, possibly because the household lending sector was less protected in these

³ The 2007 EU *Roaming Regulation*, introduced "Euro tariff" caps for calls made and received while travelling in the EU. As a result, Euro tariff roaming consumers saved on average 70% compared to 2005, before the EU acted. The rules have since been extended. See: European Union, *Regulation (EC) No. 544/2009 of the European Parliament and of the Council amending regulation (EC) No. 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services*, 18 June 2009, online: Eur-Lex <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0012:0023:EN:PDF>>.

two jurisdictions against abusive lending, the two economies have been the hardest hit in the European Community in the current economic global recession.

The report's authors are not of the view that the differences elaborated herein are simply the natural result of democratic jurisdictions crafting consumer protection regimes to fit the particular features of their economy and political culture. Rather, it would appear that relative comprehensiveness of the European consumer protection reflects a policy priority to level the playing field between supplier and consumer, and to place consumer wellbeing as the key objective in the commercial transaction. The Canadian equivalent usually appears to be the result of policy makers being more engaged with the maintenance of supplier interests.

It is not possible in the context of this report to empirically determine the net effect on consumer welfare of the approach of each regime to the issues touched upon by the "Ten Principles" document. There have been judgments made by the authors that reflect the conviction that areas dealt with by the EU document reflect a necessary response to potentially serious market failure. As a consequence, the recommendations contained in the report, have been made with a view to advancing more effective remedies for consumers in Canada.
