



**CONSUMER PROTECTION AND
ELECTRONIC COMMERCE**

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TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD).....	2
AUSTRALIA	4
A. Policy Framework for Consumer Protection in Electronic Commerce.....	4
B. Government Initiatives	6
CANADA.....	7
A. Canadian Framework – Consumer Protection for Electronic Commerce.....	7
B. Provincial Action.....	10
1. Manitoba.....	10
2. Alberta.....	11
3. Ontario.....	12
CREDIT CARD CHARGEBACKS	13
A. Overview	13
B. Chargeback Policies and Procedures.....	14
C. United States.....	15
D. Australia	16
E. United Kingdom	18
F. European Union	19
CONCLUSION.....	20



CANADA

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CONSUMER PROTECTION AND ELECTRONIC COMMERCE

INTRODUCTION

Electronic commerce has the potential to offer consumers a number of benefits, including convenience, more choice, more product information, and lower costs. By extending access to a range of goods and services normally only available in urban areas, it can also provide important benefits to those who live in rural, remote and regional areas.

In Canada, electronic commerce is becoming more common, and the number of Canadians using the Internet continues to increase. The latest statistics released by Industry Canada's Electronic Commerce Branch in August 2000 reveal that, in 1999, 49% of Canadians had accessed the Internet and 25% of Canadian Internet users had made a purchase via the Internet. Statistics Canada data show that Canadian electronic commerce for 1999 totalled \$4.4 billion.⁽¹⁾

One of the principal reasons consumers purchase online is to gain access to goods and services that are not physically close to them. Provincial and national boundaries, therefore, become irrelevant as consumers seek to acquire the goods and services they need in an online environment.

How consumers protect themselves and how governments adapt their consumer protection policies and laws to electronic commerce present a number of challenges. Traditionally, provincial governments have tailored their consumer protection laws to transactions where both the seller and the buyer are located within the same province. This approach, however, may not be effective for transactions involving parties from more than one province or more than one country.

(1) Industry Canada, Canadian Internet Commerce Statistics Summary Sheet, 22 August 2000.

As the number of interprovincial and cross-border international transactions increase, it will be important for Canadian provinces to coordinate their approaches to consumer protection and for Canada to coordinate its efforts with other countries.

This paper will outline efforts by the Organisation for Economic Co-operation and Development (OECD), and in Australia and Canada, to develop frameworks for consumer protection in electronic commerce. In addition, the paper will deal with one specific measure – the “credit card chargeback” – that appears to be gaining acceptance as a viable consumer protection measure in an electronic commerce environment.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

In April 1998, the OECD Committee on Consumer Policy began to develop a set of general guidelines to protect consumers participating in electronic commerce. The following year, in December 1999, the OECD released its *Guidelines for Consumer Protection in the Context of Electronic Commerce*. The Guidelines: reflect existing legal protection available to consumers in more traditional forms of commerce; encourage private-sector initiatives that include participation by consumer representatives; and emphasize the need for cooperation among governments, businesses and consumers.

The Guidelines enumerate the following eight principles to guide business-to-consumer electronic commerce.

- ***Transparent and effective protection:*** Consumer protection should be transparent and effective, and be equal to the level of protection afforded consumers who engage in other forms of commerce.
- ***Fair business, advertising and marketing practices:*** Businesses should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.
- ***Information about the business, the goods or services and the transaction:*** Businesses engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about: the business’ identity; the goods or services offered; and the terms, conditions and costs associated with a transaction.

- ***Clear process for the confirmation of sales:*** To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to: identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction.
- ***Secure payment mechanisms:*** Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.
- ***Dispute resolution and redress:***
 - applicable law and jurisdiction – Because electronic commerce poses challenges to the existing jurisdictional framework, governments should consider whether the existing framework for applicable law and jurisdiction needs to be modified, or applied differently, to ensure effective and transparent consumer protection in the context of the continued growth of electronic commerce;
 - alternative dispute resolution and redress – Consumers should have access to fair, timely and affordable alternative dispute resolution mechanisms.
- ***Privacy:*** Business-to-consumer electronic commerce should be conducted in accordance with the recognized privacy principles set out in the OECD *Guidelines Governing the Protection of Privacy and Transborder Flow of Personal Data* (1980), and taking into account the OECD Ministerial Declaration on the Protection of Privacy on Global Networks (1998), to provide appropriate and effective protection for consumers.
- ***Education and awareness:*** Governments, business and consumer representatives should work together to: educate consumers about electronic commerce; foster informed decision-making by consumers participating in electronic commerce; and increase business and consumer awareness of the consumer protection framework that applies to their online activities.⁽²⁾

The Guidelines are likely to be an important tool in assisting businesses, governments and consumer organizations to develop programs that protect consumers in an online environment. Since their release, the countries involved in their development have met to discuss how to promote consumer education and ways to encourage countries to implement the Guidelines.

(2) Organisation for Economic Co-operation and Development, *Guidelines for Consumer Protection in the Context of Electronic Commerce*, December 1999.
http://www.oecd.org/dsti/sti/it/consumer/prod/CPGuidelines_final.pdf

AUSTRALIA

A. Policy Framework for Consumer Protection in Electronic Commerce

In January 1999, the Australian federal government released the document entitled *A Strategic Framework for the Information Economy*, in which it set out its strategy for the information economy.⁽³⁾ The government's policy approach to consumer protection gives preference to industry self-regulation over government intervention. The Australian government cites a number of advantages to self-regulation, including its ability to:

- provide flexibility in promoting “best practice” in industry rather than minimal compliance with legal requirements;
- foster industry innovation;
- be designed for the specific requirements of an industry;
- result in lower compliance costs on business;
- provide quick, low-cost dispute resolution procedures that are favoured by both consumers and business; and
- be combined with other forms of regulation, allowing for a mix of regulatory approaches.⁽⁴⁾

Industry, consumers and government working together would develop effective self-regulation.

The government then released its policy framework for consumer protection in electronic commerce in October 1999.⁽⁵⁾ The Australian government's objective for consumer protection in electronic commerce is to “build a world class consumer protection environment for electronic commerce in Australia.”⁽⁶⁾ The Policy Framework outlines the following five principles to assist Australia in achieving its objectives:

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- (3) Australia, *A Strategic Framework for the Information Economy – Identifying Priorities for Action*, National Office for the Information Economy, December 1998.
<http://www.noie.gov.au/nationalstrategy/index.html>
- (4) Australia, Minister for Financial Services & Regulation, *A Policy Framework for Consumer Protection in Electronic Commerce*, October 1999.
<http://www.ecommerce.treasury.gov.au/documents/cpiec.pdf>
- (5) *Ibid.*
- (6) *Ibid.*, p. 5.

- functional equivalence and technology neutrality;
- promoting the interests of consumers;
- promoting the interests of Australian business;
- dual roles of industry and government; and
- international cooperation.⁽⁷⁾

The Framework's vision of the roles of industry and government is of particular interest. Industry is to be the leader in providing consumer protection through self-regulation. Government's role, on the other hand, is to: guide and support industry in adopting self-regulatory schemes; monitor their effectiveness; educate consumers; and undertake international negotiations to ensure effective global protection.

The Policy Framework identifies a number of important issues that must be addressed to provide a safe and efficient online environment for consumers, including:

- *information*: Access to adequate information is essential for consumers to make informed decisions in an online environment. Businesses should present information to consumers in a clear, conspicuous, accurate and easily accessible manner. In particular, consumers must be able to know the identity and location of a business, as well as the details of the terms and conditions of a purchase contract (including delivery arrangements, warranties, returns and refunds).⁽⁸⁾
- *payment*: The success of electronic commerce is to a large extent dependent on the availability of secure, internationally recognized online payment mechanisms.⁽⁹⁾
- *redress*: The cross-border nature of electronic commerce means that access to redress for consumers is often very limited. Thus, access to effective, speedy and inexpensive forms of redress is essential for consumers engaging in electronic commerce.⁽¹⁰⁾

(7) *Ibid.*, pp. 5-6.

(8) *Ibid.*, p. 7.

(9) *Ibid.*, p. 8.

(10) *Ibid.*, p. 9.

- *jurisdiction*: An international consensus on the issue of jurisdiction and consumer transactions, which takes into account the unequal bargaining power that generally exists in these situations, is needed.⁽¹¹⁾
- *privacy*: Maintaining the privacy of personal information is important for increasing consumer confidence in electronic commerce.⁽¹²⁾

B. Government Initiatives

The Australian government has been actively involved with industry and consumer groups in developing a best practice model to provide guidance to industry and consumers on the elements of an effective self-regulatory framework for electronic commerce. These efforts culminated in the release of a model in May 2000. Entitled *Building Consumer Sovereignty in Electronic Commerce: A Best Practice Model for Business*, the Best Practice Model recognizes that the unique characteristics of electronic commerce require businesses to adopt practices when dealing with consumers that may differ from practices in business-to-business transactions or in the offline environment.

The Best Practice Model has been developed for businesses based in Australia that deal with both Australian and overseas business-to-consumer electronic commerce and seeks to guide businesses on:

- fair business practices;
- advertising and marketing;
- disclosure of a business' identity and location;
- disclosure of a contract's terms and conditions;
- the implementation of mechanisms for concluding contracts;
- the establishment of fair and effective procedures for handling complaints and resolving disputes;
- the adoption of privacy principles;

(11) *Ibid.*, p. 11.

(12) *Ibid.*, pp. 6, 12.

- the use and disclosure of information about payment, security and authentication mechanisms; and
- the processes and policies necessary to administer a code based on the Best Practice Model.⁽¹³⁾

The Australian government has also developed a Best Practice Model kit that allows businesses to test their websites against the Best Practice Model.

CANADA

A. Canadian Framework – Consumer Protection for Electronic Commerce

In 1999, Canada's Working Group on Electronic Commerce and Consumers (composed of representatives from government, consumer groups and business) finalized *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework* (the Framework),⁽¹⁴⁾ which is guided by the following concepts:

- *equivalent protection*: consumers should not be afforded any less protection than in other forms of commerce;
- *harmonization*: Canadian governments should strive to harmonize consumer protection laws; and
- *international consistency*: the Canadian consumer protection framework as a whole should be consistent with consumer protection principles established by bodies such as the OECD.

The Framework sets out the following eight principles:

- Consumers should be provided with clear and sufficient information to make an informed choice about whether and how to make a purchase.
- “Vendors” should take reasonable steps to ensure that the consumer’s agreement to contract is fully informed and intentional.
- Vendors and “intermediaries” should respect the privacy principles set out in the Canadian Standards Association (CSA) International’s Model Code for the Protection of Personal Information.

(13) This document is available at <http://www.ecommerce.treasury.gov.au/html/ecommerce.htm>

(14) Working Group on Electronic Commerce and Consumers, *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework*. <http://strategis.ic.gc.ca/pics/ca/principlese.pdf>

- Vendors and intermediaries should take reasonable steps to ensure that “transactions” in which they are involved are secure. Consumers should act prudently when undertaking transactions.
- Consumers should have access to fair, timely, effective and affordable means for resolving problems with any transaction.
- Consumers should be protected from unreasonable liability for payments in transactions.
- Vendors should not transmit commercial e-mail without the consent of consumers, or unless a vendor has an existing relationship with a consumer.
- Government, business and consumer groups should promote consumer awareness about the safe use of electronic commerce.⁽¹⁵⁾

The Framework further elaborates on each of these principles. For instance, in the first principle, the scope of the Information Provision includes information provided by merchants about their identity and location, product or service descriptions, the level of privacy protection, information on security mechanisms to protect the integrity and confidentiality of information, complaint procedures, disclosure of the full terms and conditions of sales contracts as well as information on how contracts are formed and on the products and services being sold.

The Framework’s second principle, which deals with contract formation, requires vendors to take reasonable steps to ensure that consumers are aware of their rights and obligations under a proposed contract before they agree to the contract or provide payment information. This would include a multi-step confirmation process that requires consumers to, specifically and separately, confirm: their interest in buying; the full price; terms and conditions; details of the order; method of payment; and their agreement to purchase.

The Framework’s third principle calls upon vendors to protect the privacy of personal information provided by purchasers by adhering to the ten privacy principles contained in the CSA Model Code for the Protection of Personal Information. These principles are:

- **Accountability:** An organization is responsible for personal information under its control and should designate an individual or individuals who are accountable for the organization’s compliance with the following principles.

(15) *Ibid.*, p. 3.

- **Identifying Purposes:** The purposes for which personal information is collected should be identified by the organization at or before the time the information is collected.
- **Consent:** The knowledge and consent of the individual are required for the collection, use or disclosure of personal information, except when inappropriate.
- **Limiting Collection:** The collection of personal information should be limited to that which is necessary for the purposes identified by the organization. In addition, information should be collected by fair and lawful means.
- **Limiting Use, Disclosure and Retention:** Except with the consent of the individual or as required by law, personal information should be used or disclosed only for the purposes for which it was collected. Furthermore, personal information should be retained only until those purposes have been met.
- **Accuracy:** Personal information should be accurate, complete and up-to-date.
- **Safeguards:** Personal information should be protected by security safeguards appropriate to the sensitivity of the information.
- **Openness:** An organization should make readily available to individuals specific information about its policies and practices relating to the management of personal information.
- **Individual Access:** Upon request, an individual should be informed of the existence, use and disclosure of his or her personal information and should be given access to that information. An individual should be able to challenge the accuracy and completeness of the information and have it amended as appropriate.
- **Challenging Compliance:** An individual should be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.⁽¹⁶⁾

The Framework's fourth principle requires vendors and intermediaries to safeguard payment and personal information that is exchanged and/or stored as a result of a transaction.

The Framework's fifth and sixth principles – redress and liability – cover situations where problems arise in connection with online purchases. Principle 5 calls upon vendors to establish efficient and effective complaint-handling procedures and for governments, businesses and consumer groups to work together to develop appropriate standards for dispute

(16) *Ibid.*, pp. 6-7.

resolution mechanisms. In the event of cross-border disputes, governments should cooperate in the development of clear rules relating to the applicable law and forum and the mutual enforcement of judgements.⁽¹⁷⁾

Among other things, Principle 6 covers unauthorized or inadvertent sales transactions. The Framework provides that consumers should not be liable for amounts billed to them for unauthorized transactions and should be given a reasonable time in which to cancel a transaction that was inadvertent. Furthermore, it invokes credit card issuers to make “reasonable efforts to help consumers resolve complaints with vendors in the event of non-delivery or unauthorized transactions.”⁽¹⁸⁾

The Framework’s seventh principle requires vendors to avoid using unsolicited commercial e-mail. The Framework’s eighth principle stresses the importance and necessity of consumer information and education.

B. Provincial Action

1. Manitoba

Manitoba has introduced specific measures designed to protect consumers in an online environment. *The Electronic Commerce and Information Act* (Bill 31)⁽¹⁹⁾ – which was tabled in the Legislative Assembly on 5 June 2000 and received Royal Assent on 17 August 2000 – contains a set of rules that give legal recognition to electronic documents, signatures and communications. The Act also includes amendments to the *Manitoba Evidence Act* and the *Consumer Protection Act*.

Part 6 of the Act gives consumers certain cancellation rights in relation to retail purchases⁽²⁰⁾ over the Internet. It also requires a credit card issuer to reverse a credit card charge

(17) *Ibid.*, p. 7.

(18) *Ibid.*

(19) Bill 31, The Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act, 1st Session, 37th Legislature, Manitoba, 49 Elizabeth II, 2000.
<http://www.gov.mb.ca/chc/statpub/free/pdf/b31-1s00.pdf>

(20) Bill 31 also would provide a cancellation right in relation to hire-purchase agreements made over the Internet. Part 6 is expected to be proclaimed into force in 2001.

for an Internet purchase if the vendor fails to provide a refund after a consumer has exercised such a cancellation right.

Section 129 of the *Consumer Protection Act* allows a buyer to cancel a retail sale conducted over the Internet before accepting delivery of the goods or services purchased where the seller fails to provide “prescribed information” to the buyer before the sale is entered into. In addition, a buyer can cancel an Internet purchase agreement where the seller fails to deliver the goods or services purchased within 30 days after the specified delivery date or, if no delivery date is specified, within 30 days after the date of the purchase agreement.

A buyer is required to give notice of cancellation to the seller. Once cancelled, the buyer’s obligations under the agreement will be extinguished and the seller will be required to refund all consideration paid by the buyer within 30 days.

Section 134 of the *Consumer Protection Act* gives a buyer additional recourse against a credit card issuer where the buyer has charged an Internet purchase to a credit card. A buyer can request that a credit card issuer cancel or reverse a credit card charge and the issuer will be required to do so where:

- the buyer has cancelled an agreement because the seller fails to provide certain information before the contract is finalized or fails to deliver the goods or services as required under the Act; or
- the purchase agreement is unenforceable because the seller has failed to provide the buyer with an opportunity to correct a material error when entering into the agreement.

2. Alberta

Alberta’s *Fair Trading Act*⁽²¹⁾ contains a number of provisions to ensure consumer protection for online transactions. Section 42 of the Act, which deals with marketing through electronic media, gives the Minister the power to make regulations:

- respecting the marketing of goods and services through forms of electronic media, such as telephone, television or the Internet;
- specifying the forms of electronic media and the types of marketing to which the regulations apply;

(21) Statutes of Alberta, Chapter F-1.05. This Act came into effect on 1 September 1999.

- regulating and prohibiting specified activities involved in the marketing of goods and services through electronic media; and
- setting out the rights and remedies of consumers who enter into consumer transactions wholly or partly through a form of electronic media.

To date, no regulations have been issued under section 42.

3. Ontario

On 10 August 2000, the Ontario government released – for public consultation – proposals to consolidate its consumer protection legislation and to modernize a number of its consumer protection rules.⁽²²⁾

Many of the proposed changes are designed to accommodate Internet sales and include the following:

- accepting electronic signatures in situations where contracts must be signed;
- prescribing disclosures for electronic contracts and supporting documentation to be given to the customer (e.g., by fax or file download);
- setting out a clear process for achieving agreement to the terms of a contract;
- providing consumers with receipts (printed or in a printable form) as soon as possible after payment has been made; and
- ensuring that purchasers can cancel contracts for non-compliance with disclosure terms or for late delivery. If goods are not delivered within 30 days, or services are not provided within 30 days or the date specified in the contract, the purchaser can cancel the contract and obtain a full refund of any monies paid.⁽²³⁾

However, the Ontario consultation paper makes no mention of proposals to give consumers any rights against credit card issuers with regard to cancelled contracts.

(22) Ontario, Ministry of Consumer and Commercial Relations, *Consumer Protection for the 21st Century*, August 2000. <http://www.ccr.gov.on.ca/pdf/EnConsProt.pdf>

(23) *Ibid.*, p. 9.

CREDIT CARD CHARGEBACKS

A. Overview

Fostering consumer confidence in electronic commerce has been an important focus of the federal government's electronic commerce strategy. Getting consumers to use the Internet, getting those who are online to purchase goods or services, and getting online purchasers to continue to buy over the Internet has been a challenge for industry and for government. Consumers have repeatedly voiced concerns about security and confidentiality as well as how complaints will be handled and what forms of redress will be available should something go wrong.

One redress mechanism that has been receiving an increasing amount of attention is the credit card chargeback. Simply put, a chargeback scheme allows a credit cardholder disputing a transaction with a merchant to challenge the transaction through the card issuer where the goods or services have been paid for with a credit card. The credit card issuer reverses the charge made on the consumer's credit card and charges the cost back to the merchant.

For consumers using the Internet, chargebacks are seen to provide a number of advantages:

- consumers have a means of disputing a transaction when an order has not been delivered or the wrong item has been delivered;
- chargebacks can be particularly useful when purchases are made across provincial or international boundaries because the consumer would deal with the credit card issuer – usually a domestic company – rather than the merchant that may be based in another country;
- the availability of chargebacks might allay some of the consumer concerns about purchasing online; and
- card issuers offering chargeback services may have a competitive advantage over those that do not, and consumers will be motivated to use credit cards as the preferred method of payment for online purchases.

B. Chargeback Policies and Procedures

Credit card companies, such as Visa and Mastercard, operate chargeback systems where a consumer is credited and a merchant is debited in situations where the consumer can establish to the satisfaction of the credit card issuer that: the goods or services purchased were defective or not as described; the amount charged did not match the agreed purchase price; or the charge was entered erroneously. In a 1999 paper, the Public Interest Advocacy Centre noted that there does not appear to be a particular Code of Practice relating to chargebacks to which credit card companies adhere, but rather internal regulations that apply to international and domestic transactions.⁽²⁴⁾

In a 1999 letter to the U.S. Federal Trade Commission, the Senior Vice President and Assistant General Counsel of Visa International Service Association described the rules and procedures developed by Visa and its members to handle disputes arising out of international transactions.⁽²⁵⁾

The letter notes that the primary means of handling any dispute in the Visa payment system is through the “chargeback” mechanism, which is incorporated in the Visa Operating Regulations. These regulations permit chargebacks in cases where a cardholder does not receive purchased services or goods, where delivered goods are not as described, or where the delivered goods are defective. Chargebacks are contractual rights and obligations between the financial institutions that issue VISA cards and the financial institutions that sign merchants to accept VISA cards. They do not give direct rights to consumers, and card issuers are not obligated to use chargebacks.

Visa’s chargeback rules do not track consumer protection laws around the world, although some chargeback rights correspond with statutory rights granted to consumers in particular countries, such as the rights granted under U.S. federal law to dispute certain credit card transactions.

(24) Public Interest Advocacy Centre, *Comparative Review of Laws and Voluntary Codes relating to certain aspects of Consumer Protection in Electronic Commerce*, Report Commissioned by Office of Consumer Affairs, Industry Canada, November 1999, p. 8. <http://www.piac.ca/newpage21.htm>

(25) Letter from Senior Vice President and Assistant General Counsel, Visa International Service Association to U.S. Federal Trade Commission, 25 March 1999. <http://www.ftc.gov/bcp/icpw/comments/visa.htm>

The letter points out that the key advantage of chargeback rights in international transactions is that they provide a consistent and standard level of protection on behalf of consumers in situations where the merchant is beyond the reach of local law.

C. United States

In the United States, the federal *Fair Credit Billing Act (FCBA)* as well as a number of state laws regulate chargebacks. Under the *FCBA*, a credit card issuer is required to investigate complaints from cardholders about billing errors that are notified to the issuer within 60 days following the date of the first statement on which the charge appears. Billing errors include:

- unauthorized charges;
- charges that list the wrong date or amount;
- charges for goods or services the consumer did not accept or were not delivered as agreed;
- failure to post payments and other credits, such as returns;
- mathematical errors in the bill;
- not mailing or delivering bills to the consumer's current address (provided a change of address was given at least 20 days before the end of the billing period); and
- charges for which consumers request an explanation or written proof of purchase.⁽²⁶⁾

The credit card issuer must acknowledge receipt of the cardholder's notice within 30 days of receipt and resolve the dispute within two billing cycles but not more than 90 days. In this situation, the card issuer stands in the shoes of the merchant and will credit the purchaser's account.

The *FCBA* limits a credit cardholder's liability to US\$50 and payment of the disputed amount may be withheld if the cardholder takes the appropriate steps to notify the card issuer of a billing error.

(26) 15 U.S.C. section 1666. 12 CFR, Regulation Z, section 226.13.

The *FCBA* also allows a cardholder to assert any “claims and defences” against a card issuer where the cardholder has attempted to resolve a dispute with a merchant. This would include disputes about the quality of goods and services. When asserting a claim under the “claims and defences” provisions of the *FCBA*, the cardholder has up to one year from the date of the billing statement to notify the issuer. The following additional conditions apply under these circumstances:

- the disputed amount must be more than US\$50;
- the transaction must be with a merchant in the cardholder’s own state or within 100 miles of the cardholder’s home;
- the disputed amount cannot already have been paid; and
- before notifying the card issuer, the cardholder must have made a good faith effort to obtain a refund or credit from the merchant.⁽²⁷⁾

A number of states have enacted chargeback laws. California, Kansas, Maine, Maryland, New Jersey and New York have laws largely similar to the *FCBA*. Oklahoma also has a chargeback regime, but it is not as comprehensive as the federal law.⁽²⁸⁾

D. Australia

In Australia, consumer credit is regulated under a national uniform *Consumer Credit Code* that has been adopted in each State and Territory. The Code applies to all forms of consumer credit contracts entered into since 1 November 1996.

Part 7 of the Code (sections 115-131) deals with “sale contracts” – contracts for the sale of goods and the supply of services – financed by credit. The Code introduces the concept of a “linked credit provider” defined as a credit provider:

- (a) with whom a merchant has a contract, arrangement or understanding relating to the merchant’s supply of goods, the merchant’s business or the provision of credit to purchasers of the merchant’s goods or services for payment for those goods or services;

(27) 15 U.S.C. section 1666i. 12 CFR, Regulation Z, section 226.12.

(28) Public Interest Advocacy Centre (1999), p. 17.

- (b) with whom the merchant has an arrangement to regularly refer persons for obtaining credit;
- (c) whose contract or application forms or offers for credit are, by arrangement with the credit provider, made available to persons by the merchant; or
- (d) with whom the merchant has a contract, arrangement or understanding under which contracts or applications or offers for credit from the credit provider may be signed by persons at the merchant's place of business.⁽²⁹⁾

Subject to certain conditions, the Code makes a merchant and a linked credit provider jointly and severally liable if a purchaser suffers loss or damage as a result of misrepresentations, breach of contract or failure of consideration in relation to goods or services where

- (a) the merchant supplies goods to the linked credit provider and the purchaser contracts with the linked credit provider to finance the purchase; or
- (b) the purchaser contracts with the merchant's linked credit provider for credit to purchase goods or services.⁽³⁰⁾

The Code also introduces the concepts of:

- *a tied loan contract* – a credit contract between a linked credit provider and a purchaser to fund the payment for goods or services supplied by a merchant where the credit provider knows or ought reasonably to know that the purchaser has entered into the contract wholly or partly for the purposes of paying for the goods or services; and
- *a tied continuing credit contract* – a continuing credit contract (such as a credit card) under which a linked credit provider provides credit to people to purchase goods or services supplied by a merchant.⁽³¹⁾

The Code provides that where a tied loan contract or a tied continuing credit contract exists, any representation, warranty or statement (whether orally or in writing) by the merchant to a purchaser in relation to the tied loan contract or the tied continuing credit contract, gives the debtor the same rights against the credit provider as the purchaser would have had if it

(29) Consumer Credit Code, section 117.

(30) *Ibid.*, section 119(1).

(31) *Ibid.*, section 117(2),(3).

had been made by the credit provider.⁽³²⁾ A credit provider suffering damage, under this provision, however, is entitled to a statutory indemnity from the person making the representation, warranty or statement or on whose behalf it was made.

The Code sets out certain defences for linked credit providers. A linked credit provider will not be liable to a purchaser if the credit provider can establish that:

- (a) the consumer approached the credit provider for credit without inducement by the merchant; or
- (b) the proceedings relate to a contract of sale with respect to which a tied loan contract applies, where before becoming a linked credit provider, the credit provider made due inquiry as to the merchant's business reputation, and financial standing and before the credit contract was entered into, the credit provider had no cause to suspect that the merchant was insolvent or that the customer would be entitled to recover for misrepresentation, breach of contract or failure of consideration; or
- (c) for tied continuing credit contracts (such as credit card contracts), having regard to the nature and volume of the business and other circumstances and before becoming aware of the relevant sale contract, the credit provider had no reason to suspect that the customer might be entitled to recover damages from the merchant for misrepresentation, breach of contract or failure of consideration.⁽³³⁾

The amount of a linked credit card provider liability to a consumer is also limited. This liability cannot exceed the sum of:

- the amount of the credit under the tied loan or tied continuing credit contract;
- the amount of interest or damages in the nature of interest awarded against the linked credit provider; and
- the costs awarded against either or both of the linked credit provider or the merchant.

E. United Kingdom

In the United Kingdom, section 75 of the *Consumer Credit Act 1974* gives a customer a claim against a credit grantor where the customer has a claim against a supplier in

(32) *Ibid.*, section 118.

(33) *Ibid.*, section 119(2).

respect of a misrepresentation or breach of contract. In order for section 75 to apply, the following conditions must be met:

- The cash price of the item being supplied must exceed £100 but not be more than £30,000.
- The credit agreement must be “regulated,” i.e., an agreement where not more than £25,000 of credit is advanced to an individual (this includes sole proprietors, partnerships and unincorporated bodies besides private individuals) and which is not exempt from regulation.
- The credit grantor is in the business of granting credit, and the credit agreement is made in the course of that business.
- The credit is advanced under arrangements between the credit grantor and the supplier. (A credit grantor would not be liable, however, if a customer arranged credit independently of the supplier. Nor would a credit card company be liable if the customer uses his or her credit card to obtain cash to pay for the purchases.)

Subject to any agreement to the contrary with a supplier, under section 75 the credit grantor is entitled to be reimbursed by the supplier for any loss suffered as a result of a claim. This includes all costs reasonably incurred in defending the claim, and the cost of meeting the claim if it is upheld.⁽³⁴⁾

F. European Union

In the European Union, Council Directive 87/102/EEC of 22 December 1986 aims to harmonize the laws, regulations and administrative provisions of the Member States concerning consumer credit.⁽³⁵⁾ Article 11 of the Directive provides that consumers may seek redress against a credit grantor when the following conditions are met:

- the consumer has entered into a credit agreement with a person other than the supplier of the goods or services purchased;

(34) United Kingdom, Office of Fair Trading, *Consumer Credit Act 1974 Section 75 – Equal Liability*, June 2000. <http://www.oft.gov.uk/html/rsearch/reports/oft303.pdf>

(35) European Union, Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member states concerning consumer. Official Journal L42, 12.02.87. http://europa.eu.int/comm/consumers/policy/developments/cons_cred/cons_cred01_en.html

- the credit grantor and the supplier of the goods or services have a pre-existing agreement under which credit is made available exclusively by the former;
- the consumer obtains his or her credit pursuant to that pre-existing agreement;
- the goods or services covered by the credit agreement are not supplied or are not in conformity with the sales contract; and
- the consumer has sought redress against the supplier but has failed to obtain satisfaction.

Member States are required to bring their domestic laws into conformity with the Directive.

CONCLUSION

As electronic commerce becomes more important and consumers conduct larger numbers of transactions online, the need to adapt and to a certain extent rethink consumer protection policy in light of the electronic commerce environment is readily apparent. Governments around the world are engaged in this process as they seek to establish their countries as leaders in electronic commerce. In 1999, Canada, Australia and the OECD established policy frameworks for consumer protection in electronic commerce. Recognizing the cross-border nature of electronic commerce, the Canadian policy framework emphasizes equivalent protection, harmonization of domestic consumer protection laws, and international consistency.

The federal government and a number of provincial governments are in the process of developing, introducing or implementing measures that would facilitate electronic commerce and deal with consumer protection issues.

Although the credit card chargeback has the potential to be an important consumer redress mechanism in an electronic commerce environment, it has received little attention from Canadian governments. To date, only the government of Manitoba has introduced a form of the concept in a law dealing with electronic commerce. The levels of business-to-consumer electronic commerce are increasing, but significant numbers of consumers continue to be wary about shopping online because of concerns about security, confidentiality and redress. This reticence suggests a need to develop effective consumer redress tools to allay some of those concerns. To this end, Canadian governments may wish to examine what other countries have done to develop and establish a regulatory scheme for credit card chargebacks.