

# **Consumer Redress, Chargebacks and Merchant Responses in Distant Transactions**

**July 2017**



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## Copyright

This study evaluates consumer redress, chargebacks and merchant responses in distant transactions in Canada. It includes the results of a survey of 2,000 consumers about their experiences in distant transactions, their knowledge and understanding of protections provided by certain payment methods, including chargebacks. The study also evaluates the information presented to consumers by credit card networks and issuers, and federal and provincial government consumer protection offices. It examines merchant perspectives and responses, and the difficulties in managing “friendly fraud” in certain distant transactions.

*Keywords: chargebacks, distant transactions, provincial consumer protection.*

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## Foreword

The spark for this project was provided by a November 2015 address by Michael Jenkin at a Consumers Council of Canada conference “In Touch with e-Consumer Protection.” Jenkin is the former Director General of the Office of Consumer Affairs and chaired the OECD Committee on Consumer Policy throughout the development of the OECD’s *Consumer Policy Toolkit*. In his address, Jenkin noted consumer protection in e-commerce relied on inconsistent rules based on payment choice.

“Right now, it’s a mess. You use a debit card, you use a credit card, never mind the new platforms, what in fact you are covered for or not, as a consumer ... all hinges on the platform or the technology used,” he said. “We have to consider technology neutral rules about what it is you are covered for and what it is you are liable for as a consumer when you are using these payment mechanisms.”<sup>1</sup> He said there were core rules – “if you don’t get what you ordered, if it’s not what you ordered, if what you ordered doesn’t work” – where basic protections could be implemented more rigorously “regardless of what your payment mechanism is.”

In a followup interview, Jenkin said the payment industry does not want this basic “chargeback” protection – which has become an almost automatic methodology – adopted in legislation. “I find their arguments a bit odd. This is something to incent consumers to use a payment method, but they don’t broadcast it much in plans.”<sup>2</sup> Jenkin said debit redress rules were more constrained, and with more alternative payment choices: “It’s impossible for a consumer to understand all the rules and options.”

The differences in protection by payment method and merchant responses to disputes in distant transactions form the focus of this report. The three scenarios Jenkin described – something I ordered never arrived, it arrived but doesn’t work, and I ordered a red one but got a blue one – are used throughout this report as an informal litmus test of protection.

## Acknowledgements

The Consumers Council of Canada greatly appreciates all participants who responded to requests for consultations to assist with this research. This includes provincial government representatives, industry executives who provided insight and other research, representatives from other interested parties, and the Environics research team. Research methodologist Dr. Derek Ireland provided valuable assistance.

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# I

## Executive Summary

*It is as if carmakers were required to include seatbelts, but did not explain their purpose or provide any instructions to car passengers.*

### Background

Canadians are less reliant on stores and becoming more reliant on electronic commerce. “Shopping” now involves a few clicks or taps on a computer, smartphone or other devices to purchase goods and services. There are more choices of merchants, and more choices of how to pay for purchases.

There are also more challenges for consumer protection. When you purchase something online, you expect it to arrive on time and matching the description. When it doesn’t, and the seller is uncooperative or unresponsive, a buyer’s protection rights can depend on a number of factors: how they paid, their province of residence and its consumer protection rules, the policies of payment card issuers, networks and online marketplaces, payment industry codes of conduct, and the merchant’s rules disclosure.

When the buyer is in Lethbridge and the seller in Luxembourg, resolution of disputes can be complex. One consumer protection is the chargeback, a commitment by some payment networks to allow consumers to recover costs in certain circumstances.

### Methodology

This research focused on the experiences and attitudes of Canadian consumers who have had disputes over distant transactions. This included their experiences with and understanding of chargebacks and other forms of recourse, as well as merchant responses to their actions taken. To gather this information, 2,000 Canadians participated in an online survey conducted in March 2017 by Environics Research on behalf of Consumers Council of Canada.

The preparation of the survey questions required research into published academic papers and statistics as well as an online review of the consumer-facing information. The literature review included historical and international developments. Relevant provincial consumer protection laws were reviewed. Interviews with federal and provincial

government protection officials and representatives of credit and debit card networks, banks, chargeback management firms and other industry participants provided additional perspectives.

The final report reflects input from all those sources.

### **Summary Conclusions**

Consumers are not well informed about the protections available to them in payment card transactions. A significant portion of them – about one quarter – profess no knowledge of credit card chargeback protections, while fewer than one-third are strongly aware of chargebacks. In the aggregate, consumers show little understanding of the type of disputes that chargebacks are designed to address.

The consumers' lack of understanding reflects the disclosure choices of card issuers. With few exceptions, card issuers do not disclose this protection to consumers in agreements or promotional materials. No law compels this. Newer entrants such as PayPal and Amazon provide more information about consumer protections and how disputes are resolved.

It requires a bewildering confluence of events for the financial services industry to design a sophisticated mechanism to protect consumers in distant transactions, and then choose systematically not to inform consumers of this protection. It is as if carmakers were required to install seatbelts, but did not explain their purpose or provide instructions to car passengers.

Meanwhile, nearly half (45 percent) of consumers have experienced a dispute in a distant transaction in the past 24 months. The majority are resolved satisfactorily with the merchant alone, but 29 percent of consumers have sought a reimbursement from a payment intermediary in the past two years. About 14 percent of consumers reported that a dispute they had thought to be resolved was not resolved because of subsequent action from the merchant or a third-party debt collection service.

### **Recommendations**

The report concludes by making a number of recommendations to improve consumer protection in distant transactions. Not surprisingly, issuer disclosure is a key recommendation. Consumers are better protected if they are aware of measures intended to protect them. Industry participants and lawmakers should make this happen.

Improvements to provincial consumer protection legislation would reduce the number of discrepancies among provinces and provide more effective protection with emerging payment technologies. It could also reduce the number of discrepancies among payment choices; current laws specifically target credit card issuers, while making no reference to alternatives.

Lawmakers need to consider the input of all parties in any public policy debate regarding updated consumer protection laws for federally regulated financial services companies. It is

essential that consumers' views are represented by consumers, not industry participants claiming to speak for consumers' best interests.



## II

### Introduction

When a consumer in Lethbridge buys from a seller in Luxembourg and something goes wrong, which laws apply and how can they be enforced?

#### **The Importance of This Research to Consumers**

The rise of e-commerce changes the nature of consumer protection. Traditional consumer protection involved a proximity between buyer and seller. A merchant and consumer were in the same jurisdiction; laws established who had what rights and responsibilities. Fines, seizures, restitution and bailiffs closing stores were all consequences for non-compliant merchants.

In the wired shopping world, it is more challenging to provide effective consumer protection. When a consumer in Lethbridge buys from a seller in Luxembourg and something goes wrong, which laws apply and how can they be enforced? Governments have “laws” but in practice protection for a consumer involved in a distant transaction has become the domain of payment networks. E-Bay, PayPal, Amazon, and, most notably, credit card networks have rules and procedures to adjudicate disputes and attempt to provide some equitable treatment when a problem arises.

Increased payment choices mean consumers experience and must learn their rights and responsibilities within many diverse dispute resolution schemes.

This project involves the study of consumer attitudes and merchant responses when there are disputes in e-commerce or distant transactions. It examines the various protections provided, how consumers are informed of these protections and includes a consumer survey to evaluate their attitudes and behaviours relative to the protections on offer.

An important policy development occurred while this project was being researched. The federal government first attempted, then withdrew for further consideration, a proposal that would establish federal supremacy for consumer protection laws governing federally regulated financial institutions (banks). If reintroduced, such a law could supersede current provincial consumer protection laws that govern transactions and attempt to provide recourse through credit card issuers for consumers in certain types of disputes in distant

transactions.

Such a law would involve considerable public policy debate. This research is designed to offer the perspective of Canadian consumers on many of these very issues. To make a meaningful contribution to that discussion and provide consumers the representation they deserve and expect, consumer groups need to have an improved knowledge base, and the capacity to develop it independently.

### **Our Research Questions**

The focus of this research is to answer these questions:

1. What protections are currently available to consumers who engage in distant transactions, and how do those protections differ by payment choice?
2. How well do consumers understand these protections?
3. How much are these protections used, and how effective are they in providing satisfaction with dispute resolution?

The research also examines merchant responses to consumer protection mechanisms.

Answering these questions involves analyzing many related issues. These would include the changing nature of shopping habits and payment choices, the different sources of protection – provincial laws, industry codes of conduct, credit card and payment intermediary rules and merchant policies, the level of disclosure of these protections by the different policies, and the behaviour of consumers and merchants when disputes arise.

The research used a combination of literature review, participant interviews and a survey of consumers to address these questions. These methodologies are described in Section III. Section IV discusses some background and history. Section V evaluates the rules from credit card networks, other payment intermediaries, governments, industries and merchants. Section VI examines what the consumer sees. Section VII examines the issue from the merchants' perspective, including friendly fraud. Section VIII reviews some other considerations. Section IX includes the survey results. Sections X and XI include the report's conclusions and recommendations respectively<sup>3</sup>. A glossary of terms is also included.

### III

## Methodological Summary

An online survey of 2,000 Canadians helps anchor this report's conclusions, based also on a literature review and stakeholder interviews

### Literature Review

A literature review evaluated information presented to consumers. This included an online review of agreements with credit and debit card issuers, other payment intermediaries and online marketplaces, as well as web site information presented to consumers. Sales material at bank retail outlets was also reviewed.

Each provincial government was asked to identify the relevant legislation that offered protection to consumers engaging in distant transactions. The legislation was reviewed, as were the web sites of provincial and federal government operations charged with consumer protection.

The sites of numerous industry associations, credit card networks, acquirers, chargeback management firms, dispute resolution firms and others were reviewed for relevant statistics, reports and disclosures. Other relevant reports were found using a variety of means, including through interviews with industry participants, searches of publicly accessible research databases and citations in other research reports.

Though the research is focused on the Canadian market, some international perspectives and legislative examples were also gathered.

### Interviews

Interviews were completed with more than 20 different organizations. This includes representatives of two of the leading credit card networks as well as Interac, PayPal, Amazon, Canadian Bankers Association (CBA) and some issuers, Canadian Federation of Independent Business, Payments Canada, Financial Consumer Agency of Canada, a number of chargeback management firms, and Canada's two authorized independent dispute resolution organizations. Telephone and e-mail interviews were completed, as well, with a number of provincial government consumer protection representatives. Researchers also interviewed recently retired executives with extensive experience in this segment of the

industry.

Interviews were requested with many other participants who either declined or elected not to respond. This includes one major credit card network, acquirers in general as well as most of Canada's largest banks. Some bank input was gathered by researchers through various means, but, in general, banks referred researchers to the CBA.

Some organizations participated only with the understanding that information provided would not be specifically attributed to them or their firm.

Many of the organizations cited above – particularly those directly involved in debit and credit cards – were welcoming and helpful in an initial interview and pledged to offer additional assistance, but did not respond to subsequent requests for interviews about the subject matter of this research.

### **Consumer Survey**

Consumer experiences and attitudes were collected through an online survey of 2,000 Canadian adults in March 2017. The survey was conducted through the facilities of Environics. In order to qualify for the survey, respondents had to be 18 years of age or older, and reside in Canada. The survey was available in both languages (see Appendix A).

Survey questions were informed by the findings of the literature review and interviews. The survey was created by the researchers, incorporating suggested revisions from other Consumers Council of Canada participants, the project's research methodologist and Environics.

The survey asked consumers about the approaches used to resolve disputes with merchants in distant transactions, the resolution to those disputes and their satisfaction with outcomes. Consumers were also asked about their understanding of protections available in distant transactions, including provincial consumer protection law and chargebacks offered through some payment choices.

### **Limitations**

The use of online web panels to gather information from consumers has limitations. Also, as subsets of the panel are considered, the reliability of the results decreases as the sample size decreases. Consumers may express theoretical behaviours inconsistent with actual behaviours.

With some of the online literature review, researchers evaluated how easy it was to find certain information based on specific web browsers and the use of certain computers. Consumers who use different tools – in particular, handheld smartphones and other devices – may have found some information easier or more difficult to find and read. Researchers are not fluent in French, and so conducted searches in English. French-language consumers may have a different experience.

Greater industry participant responsiveness would have provided additional details about

the motivations of issuers' and network disclosure choices. But the core of the research was consumer attitudes and experiences, which were ascertained through the consumer survey and the factual evaluations of agreements, web sites and brochures. Industry participants may have also provided more statistics, but, again, it is easy to conclude that issuers, acquirers and networks do not find the benefits of such disclosure to exceed the risks.

In a report of this length, there may be factual errors. Many, many details of specific rules and procedures were difficult to locate and may have been summarized or expressed incorrectly. In some respects, this mimics actual consumer experiences. Many industry rules are difficult to locate and can be misinterpreted easily. The research team has considerable consumer protection and related law and economics experience, but no member has formal legal training. Accordingly, interpretation of contract language is based on how a layman might read it.

## IV

### Background

Offering your products on the Internet means your market is theoretically ‘everyone on the planet with a computer, a mailing address and a payment mechanism.’

#### Distant Transactions

In theory, e-commerce should work to everyone’s advantage. Consumers have a world of merchants from which to choose, not just those they can reasonably walk, or drive to. Merchants have a world of consumers to serve, less bound by geography. Offering your products on the Internet means your market is theoretically ‘everyone on the planet with a computer, a mailing address and a payment mechanism.’

When transactions are completed by computer or smartphone instead of conventional retail, consumers save on time and the expense of shopping. Merchants save on stores and staff. (There are shipping costs to consider.)

The geographic separation of buyer and seller has a number of implications for consumer redress.

1. Dispute resolution is more complex because returns are more difficult and costly.
2. Fraud risks are higher for both buyers and sellers. In-store fraud protection has improved because CHIP technology makes authentic payment cards more difficult to create. Online fraud is easier when all you have to know is the card numbers and perhaps some other customer information. Distant transactions are higher risk transactions for merchants.
3. Distant transactions are also higher risk transactions for consumers. One thing that connects a buyer and a seller in an Internet transaction is the payment technology. It is a pragmatic reality that a card network or PayPal, which has connected a buyer in Lethbridge with a seller in Luxembourg, may be better positioned to provide consumer protection than the Alberta government or RCMP or a tersely-worded customer feedback response.

The number of payment alternatives is growing. PayPal is less than 20 years old. ApplePay

has been in Canada less than two. There are many more developments coming, including some (Bitcoin and other cryptocurrencies) that are specifically designed to operate outside government regulation.

This report uses the phrase “distant transactions” to describe those transactions in which the buyer and seller are not in the same room. Theoretically, this includes telephone or mail transactions as well. The payment card industry uses the terms “card present” and “card not present” to distinguish between transactions.

### **Payment Choices**

Consumers have many payment alternatives when completing a distant transaction, but only a few practical ones. Here are some of the less feasible and less popular payment choices consumers could make.

*Cash* – Mailed envelopes go astray, leaving buyers without any protection. It’s hard to imagine anyone mailing cash today, though it probably happens.

*Cheques* – It was once common for consumers to accompany a mail order with a cheque. Cheques are much less common today and rarely used in distant transactions. Consumers have some protection in that they can “stop payment” on a cheque, contacting their bank before the cheque has been deposited and cleared by the recipient. That facility placed risks with merchants, should they ship goods in advance of received cheques clearing and settling.

*Money orders and bank drafts* – These were considered more secure for merchants because it is not possible for a purchaser to stop payment. The funds are guaranteed and cannot be stale dated. Amounts are withdrawn from a consumer’s account when the draft is taken. About the only way a consumer can have those funds restored is if they sign a document with the bank that the draft has been lost, stolen or destroyed. Even in those scenarios, if the draft surfaces and is deposited by the recipient, the bank will recover the funds from the purchaser. Bank drafts and money orders offer no real cost recovery for purchasers.

Electronic transfers contain many attractive features for consumers, but protection in the case of a distant transaction is not one. Interac e-transfer transactions cannot be reversed once a recipient has deposited the funds. Merchants are unlikely to ship items until the funds are received.

The remaining payment choices for consumers in distant transactions – credit cards, debit cards and PayPal – are more common and the focus of this study.

### **Facts and Figures**

Payments Canada estimates that e-commerce transactions accounted for about \$114 billion in Canada, about 10 percent of all the POS payment transaction value in 2015 (Payments Canada 2016). It defines e-commerce payments as completed transactions

through merchant provided online store fronts and software applications, via computers, tablets or mobile devices, and notes that “this payment channel has become increasingly popular in the past few years.” (Payments Canada 2016). About two-thirds of the value is commercial transactions (\$75 billion).

The report notes that credit cards accounted for 92 percent of volume and 96 percent of the value of e-commerce in Canada. Interac online debits and e-wallet funds (PayPal, prepaid app store cards and virtual cards) provide most of the balance of the transaction values.

Credit is the overwhelming payment choice of Canadian e-commerce consumers in a 2016 study by TSYS. Almost 60 percent of consumers identified it as the preferred choice, followed by PayPal (20), other (11) and debit (5). Consumer evaluations of the safety of online choices was closer, but again credit rated above PayPal.

Table 1

### Credit Preferred Overall, Dominates Online

Favoured payment choices of Canadian consumers and safety assessment

| Category      | Overall % | Online % | Safest Online % |
|---------------|-----------|----------|-----------------|
| Credit        | 47        | 59       | 47              |
| Debit         | 33        | 5        | 5               |
| Cash          | 15        | 0        |                 |
| Other         | 2         | 11       | 5               |
| No preference | 2         | 5        | 9               |
| PayPal        | 1         | 20       | 33              |
| Total         | 100       | 100      | 100             |

Source: TSYS 2016 Canadian Consumer Payment Choice

### A Brief History of Chargebacks

The U.S. *Fair Credit Billing Act* (1974) provided consumers with protection against a number of “billing errors” in credit accounts.

Among the list of billing errors that are denoted under the Act are:

- Charges made in the wrong amount
- Charges that appear on the bill, but were not actually processed by the consumer.



Also referred to as unauthorized charges (U.S. federal laws limit consumer responsibility for unauthorized charges to \$50)

- Charges for goods that were not delivered as specified at the time of purchase
- Charges for goods that are not received by the consumer
- Calculation errors
- Credit card or charge card statements mailed to the incorrect address (creditor must receive the consumer's change of address, in formal writing, at least 20 days prior to the end of the billing period)
- Charges that the consumer wishes to clarify or requests proof for
- Failure to properly reflect charges or payments to credit or charge accounts<sup>4</sup>

Similar protections were given to debit card consumers in the *Electronic Fund Transfer Act*.

The *Fair Credit Billing Act* requires "creditors" in a credit transaction (merchants) to remove certain errors from accounts under certain circumstances, and, in the cases when a cardholder is unable to get this refund from the merchant, allows the cardholder to contact the issuer of the credit card to do so.

This is the root of current chargeback rules. Even with significant changes in technology in 40-plus years, the basics remain that card-issuing banks can reverse transactions made against a cardholder, so that consumers can have confidence that errors on statements and charges for defective or non-delivered items can be reversed. (There are cost and geographic restrictions.)

This risk of a reversal of funds deters merchants from selling unsuitable goods, and improves customer satisfaction. It is also a temporary measure, and does not preclude legal recourse by either consumers or merchants.

It is unclear from the research exactly how the U.S. chargeback requirements became unofficial international standards. It is likely that one major force is that credit card companies prefer or demand a certain amount of harmony among regulations to streamline operations. Shaping its rules to the U.S. legislation and implementing them internationally would facilitate that.

"We are a global brand. Our rules tend to be global rules," one network representative told researchers. "Credit card companies don't change these rules very often," noted another. "Rules are very hard to change in these industries. They have essentially been the same for more than 25 years. Changing the rules is hard to do."

Australian researcher Robin Edwards, in his 2005 report *Exclusion of Cardholder Chargeback Rights*, noted that his nation's rules mirrored U.S. rules. "Cardholder chargeback rights have entered Australia through the back door via credit card scheme operating rules that reflect American legislation. These valuable cardholder rights are now legally

recognized by [Australian laws]" (Edwards 2005).

Since lawmakers first addressed the issue, technology and market choices have changed. Criminal activity, such as the use of fake credit cards, has required improved security for transactions. Merchants once verified card ownership by matching a signature on a receipt to the signature on the back of the credit card, or checked a list of problematic card numbers attached to each cash register.

Recent security improvements to card purchases include the introduction of CVV numbers on cards and EMV CHIP and PIN protections. The three-digit CVV numbers printed on the back of cards means that knowing a credit card number alone or having a credit card "imprint" is no longer sufficient to make many purchases. The CHIP and PIN technology makes counterfeit cards more difficult, and if the PIN is only known by the cardholder, a stolen card cannot be used at an in-store terminal. This authentication makes it difficult for consumers to claim the card was used fraudulently and limits merchant liability if disputed. Of course enterprising criminals can steal PIN information, and the CHIP technology is not used for distant transactions.

Research showed a number of chargeback-related issues that currently affect consumer protection, including:

- Many consumers believe that they are protected if their PIN card is stolen. However, many issuers – and Canada's zero liability policy – require consumers to reasonably protect their PIN. If a consumer is cavalier with PIN information, they may not be protected if the card is stolen and used. Related to that, increased card protections have moved fraud away from stealing cards or card numbers towards account takeovers, where thieves take over a consumer's identity and account information and order new authentic cards.
- Commerce is increasingly moving online. Protections in-store are generally stronger than those in distant transactions.
- Canada was one of the first nations to adopt EMV technology. The United States was slower to adopt it. A number of articles and reports have observed that in nations with EMV – Canada, United Kingdom, France – the EMV succeeded in dramatically reducing in-store fraud. However, criminals are adaptable, and have increasingly moved online. "The rest of the world has moved to chip cards, and in many countries fraud shifted to channels with relatively weak security. Fraud increased dramatically in CNP transactions ... where cardholder authentication is weak because the payment card is not physically presented to the merchant.... It is likely the United States will have a similar experience." (Hayashi 2015)
- That movement led U.S. issuers to promote zero liability to make it safe for consumers to shop online, noted one industry participant. "There's no risk, no hassle. If there's any reason whatsoever, call that number on the back of the card and

the issuing banks will take care of it. Consumers started calling. And consumers are 'disconnected' to call merchants altogether. They would get more pushback from merchants."<sup>5</sup>

- There is sentiment from merchants that consumer use of chargebacks has grown more sophisticated, and gone beyond its use as a protection against stolen identity, billing mistakes or merchants that go out of business. There are many references to chargebacks changing from shield to sword, with consumers defrauding merchants, enlisting issuer clout to bypass dispute resolution discussions with merchants, or using chargebacks to cover buyer's remorse.
- There is also an issue with credit card chargebacks usurping other consumer protection. A recent Ontario consultation on travel protection laws in Ontario recorded an observation that credit card chargebacks "created redundancies"<sup>6</sup> with travel legislation. Others noted: "Consumers are generally unaware of the availability of these protections or their limitations."

## V

### The Rules

There may be some slight procedural and deadline differences, but there did not appear to be any major class of dispute for which one network allows a chargeback while the other does not.

#### Introduction

This section evaluates the “rules” that shape consumer recourse in distant transactions. Payment card networks have rules that issuers, acquirers and merchants must follow. Some of those rules extend protections to consumers. There are rules from other payment intermediaries such as Interac and PayPal. Online marketplaces (Amazon) require participants to obey its rules. Provincial governments also have laws to protect consumers. Industry participants adhere to voluntary codes of conduct which include measures to protect consumers. Merchant policies also have a role in determining consumer protection.

#### The Payment Intermediary Rules

##### *Credit Card Networks*

Payment card network rules cover the different circumstances in which a consumer may be entitled to cost recovery. The best articulation of those rules come in materials prepared by the networks for the issuers, acquirers and merchants that use their networks. The Visa and MasterCard materials are publicly available, but not designed for the general public.

The network guidebooks are written for merchants, to help them respond to chargebacks. Chargebacks are initiated by card issuers, and may be contested by acquirers and merchants. The network guidebooks detail specific codes to sort the chargebacks into different scenarios. The list of codes is an articulation of the scenarios under which consumers may be entitled cost recovery. The existence of a code does not guarantee the consumer will recover costs; it is merely a sorting tool so that merchants can better understand the procedures and types of information they should provide to contest charges.

The guidebooks are not intended for consumers. The guidebooks contain little about

principles that guide their development. They are procedural and not easy for a consumer to digest. Neither guidebook makes distinctions between card types – credit, debit, gift, prepaid, etc. MasterCard Maestro cards operate differently, but those cards have very limited market penetration in Canada.

MasterCard and Visa take different approaches to their guidebooks. (Researchers lacked the merchant code ID required to obtain an American Express guidebook.) MasterCard's Chargeback Guide<sup>7</sup> is more than 400 pages, and references 16 other documents. Visa's Chargeback Management Guidelines for Visa Merchants<sup>8</sup> is 94 pages, less technical and more friendly. (There is a 900+ page document on all rules.) Visa's guide contains more "tips" for merchants – specific acts to reduce future recurrences.

That said, there is broad agreement over the content. There may be some slight procedural differences, and deadline differences, but there did not appear to be any major class of dispute for which one network allows a chargeback while the other does not.

Both networks identify four broad categories of chargebacks and they are almost word-for-word identical.

#### MasterCard lists:

- Authorization
- Cardholder disputes
- Fraud
- Point of Interaction Errors

#### Visa lists:

- Customer disputes
- Fraud
- Processing Errors
- Authorization Issues

Two areas pertain to processing and permission errors. Authorization-based chargebacks include scenarios such as expired cards and incorrect account numbers. Point of Interaction or processing errors include incorrect amounts, credits processed as sales and duplicate processing of transactions.

Both networks have numerous codes for categories of fraud, including merchants who fraudulently process transactions, the unauthorized use of a consumer's card, cardholders disputing transactions on their statement that they do not recall, and merchants not properly documenting mail, telephone or Internet orders.

The most relevant portions of the guidelines are the fourth category, codes relating to cardholder/customer disputes.

A single code covers a variety of goods-not-delivered and services-not-performed situations. This includes merchants:

- Billing cardholders before sending products;
- Failing to meet promised delivery dates;
- Not making products available for pickup;
- Failing to disclose their refund policy and not accepting a return or cancellation.

The timing rules around non-delivery are particularly complicated. Generally, chargebacks must be issued within 120 days of the transaction, but not within 30 days. Rules exclude chargeback claims for items delayed in customs or when delivery is refused.

Another code covers scenarios in which merchandise is not as described or damaged/defective on arrival. This includes counterfeit products and merchants not accepting returns. For this code, consumers are required to prove they attempted to resolve the dispute with the merchant or return the merchandise. “An example of a valid attempt to return may be to request that the merchant retrieve the goods at the merchant’s own expense.” (Visa guide, 36) MasterCard’s language is: “The cardholder returned the goods or informed the merchant the goods were available for pickup” (MasterCard guide, 55). Claims of counterfeit merchandise require verification from a “neutral bona fide expert,” (Visa guide, 36).

The cancellation of recurring transactions is also covered. Chargebacks are allowed when recurring transactions are processed after the customer requested termination, the charge exceeds a predetermined amount or the merchant failed to notify the cardholder of the upcoming charge. MasterCard’s guide includes that “the cardholder was not aware that the cardholder was agreeing to a recurring transaction” (MasterCard guide, 67).

Rules around “no show hotel” claims and vacation timeshares are particularly detailed.

Both networks consider situations in which there has been a violation of their rules or regulations and no chargeback code will remedy the violation as “compliance” issues rather than chargebacks. Both guidebooks describe the process to resolve them.

The Visa merchants guide has some advice on how merchants can reduce the impact of chargebacks.

This includes some basic rules about disclosure of return, refund and cancellation policies.

“Clear disclosure of these policies can help you avoid misunderstandings and potential cardholder disputes. Visa will support your policies, provided they are clearly disclosed to cardholders. For face-to-face or eCommerce environment, the cardholder must receive the disclosure at the time of purchase.” (Visa guide, 7)

Visa’s advice to merchants in distant transactions includes use of its proprietary AVS that verifies a cardholder’s billing address before completing a transaction (to verify it is the same as the delivery address), use of Card Verification Value 2, the three-digit codes on the

back of cards that provide additional verification that the actual card, and not just the card number, is in the possession of the person placing the order, and Verified by Visa, which provides merchants with cardholder authentication on e-commerce transactions.

There is a lengthy section on “Compelling Evidence and Merchant Representment Rights” in the Visa guide that details, code by code, what kinds of evidence merchants can prepare and provide to the acquirer to dispute chargebacks.

While the MasterCard guide is more technical and unsuitable for consumer use, a helpful series of case examinations (MasterCard guide, 239-248) provide realistic guidance, describe the information expected from card issuers, acquirers and merchants and show how MasterCard evaluates these disputes.

American Express merchant information (*Merchant Operating Manual*) is not available to consumers. Its *Merchant Reference Guide – Canada* is accessible and discusses its chargeback policies and procedures. It notes the two most common chargeback sources are: “Cardmember dissatisfaction with some aspect of the purchase (e.g., a failure to receive the merchandise, duplicate billing of the same charge, incorrect billing amount, no knowledge of the charge), or fraudulent transactions,” (Amex Guide)

Merchants have 20 days to respond with all supporting documentation. “American Express reviews the response and makes a determination to resolve the disputed charge.” Merchants may request a chargeback reversal (appeal) if the chargeback was applied in error, or if the merchant can prove that a credit was already issued to the cardmember for the disputed charge before the chargeback. “Merchants must not resubmit a disputed charge after it has been resolved in favour of the Cardmember. We will chargeback all such disputed charges that are resubmitted.” (Amex Guide)

### *Interac*

Chargebacks do not exist for Interac. There is a commitment that consumers “will not be liable for losses resulting from circumstances beyond your control.” (Interac web site)

As with the major credit card networks, the best Interac articulation of “rules” was found in its merchant-facing information, the *Interac Online Merchant Guide* (February 2013). It is 35 pages long and designed to “provide merchants with an end-to-end guide on how to offer Interac Online to their customers.” In a section covering benefits to merchants, it notes there are no chargebacks as long as merchants fulfill their commitments. Dispute resolution information is contained in an appendix that also discusses refunds and liability.

Here is how the information about “Customer Service and Dispute Resolution” is presented:

“It is common to have disputes and customer service issues, but it is important to have a common understanding beforehand, regarding which party will assume responsibility in certain situations. Outlined below is a table with common dispute scenarios grouped into areas/types and the party generally liable for the corresponding scenarios.”

Table 2

**Interac Dispute Resolution Table**

Dispute areas and responsible parties

| <b>Dispute area / type</b>  | <b>Responsible Party</b> |
|---|--------------------------|
| Shipment, faulty goods, refunds, merchant website   | Merchant                 |
| Payment, account debited, online banking, account takeovers, customer fraud, financial institution fraud or negligence, financial institution systems or processing error, unauthorized transactions posted to the customer's account | Financial Institution    |
| Merchant fraud or negligence, acquirer fraud or negligence, merchant systems or processing error, acquirer systems or processing error, merchant registration, merchant complaints  | Acquirer                 |

*Source: Interac Online Merchant Guide Table 8.11*

No scenario makes the consumer responsible. More information is likely presented to merchants in agreements. In the guidelines for merchants, Interac again notes that because Interac Online requires the customer's financial institution to authenticate the customer and authorize payment from their own bank account, liability rests with financial institutions as long as merchants fulfill the customer's order. Should a fraudster obtain a customer's online banking credentials "the merchant does not normally have to return the money if the goods have been shipped."

On its web site, Interac trumpets the dramatic fraud reduction over the past few years. Use of Interac in online transactions involves a detour from the merchant site to the banking site of the cardholder, to verify banking information before returning to the merchant site. This detour aggravates some merchants, but appears to reduce fraudulent use. Interac also notes that consumers do not have to provide any financial information or card details to merchants.<sup>9</sup>

Interac representatives interviewed also referenced the protections offered by its unique position in Payments Canada. Unlike debit transactions through credit card networks, Interac online transactions settle differently. Interac uses rule E2 for its online transactions which is a different flow from E1, which is used for PIN-based Point of Service terminals. Sections 12 through 31 of Rule E2 identify the procedures and protections of online transactions.<sup>10</sup> Rule E2 also notes: "none of the procedures outlined preclude a party to an On-Line Payment Item from exercising its rights and seeking recourse outside of the rules."

Interac representatives noted that its online service "is not a huge product for us". They also noted that issuers limit transaction size, which has the effect of deterring fraud. "You can't buy a TV, but you can buy a coffee."



This would appear to offer consumers some measure of protection against fraud, but does not address instances of merchant disputes. In particular, it is unclear how some disputes (I ordered a red one, got a blue one) would be adjudicated. In principle, it would appear consumers are made whole (“circumstances beyond your control”), yet rules about evidence merchants must supply, shipping costs, what happens when merchants refuse to accept returns and time limits are not as transparent.

### *PayPal*

PayPal’s web site and “User Agreement” provide a great deal of information on the protections available to both buyers and sellers. Basic information about both is easy to find on the web site and both link to the same user agreement.

Purchase protection is illustrated as “you got charged for something you didn’t buy, you bought a book but got a DVD, the item was described as new but you got something that was used, you purchased 3 items but only got 2, the item was damaged during shipping, the item is missing major parts (that the seller didn’t disclose), the item never arrived and you purchased an authentic brand but got a knockoff instead. Let us know right away and we’ll help you resolve it,” (PayPal web site). It also lists some items not eligible for purchase protection, such as real estate, custom-made items or cash, gift cards or prepaid cards.

The user agreement makes two definitions – Item Not Received and Significantly Not as Described (SNAD) – to describe buyer protection. The contract language mirrors the web site language as above, and includes examples of things that are *not* “SNAD” issues – minor scratches in items listed as used, buyer’s remorse, items properly described but not matching expectations. Buyers can be covered for the full purchase price of the item and original shipping costs, but PayPal will not reimburse for return shipping costs incurred to return a “not-as-described” item to the seller. The agreement notes that PayPal may find in favour of the seller for Items Not Received claims if the seller presents evidence goods were delivered, even if buyers did not receive the goods.<sup>11</sup>

The User Agreement and web site both refer to the dispute resolution service. Both note that buyers have other avenues, including payment card chargebacks, and chargeback rights may be broader than PayPal’s protections, because they “may cover unsatisfactory items even if they do not qualify as SNAD, and may cover intangible items.” The agreement notes that buyers may not pursue both chargeback and PayPal protection simultaneously. “If you have an open dispute or claim with PayPal, and also file a Chargeback with your credit card company, PayPal will close your dispute or claim, and you will have to rely solely on your Chargeback rights.” (PayPal user agreement, section 13.7) In the agreement, PayPal notes buyers should contact sellers in accordance with the Seller’s return policy, and also advises sellers to have a published return policy (section 4.9).

The PayPal dispute resolution centre provides a step-by-step tutorial on the deadlines and process.

There is no information in the resolution centre about what kinds of information may be sought by PayPal, nor how it weighs the evidence. The user agreement notes buyers and sellers may be asked to provide “receipts, third party evaluations, police reports or anything else that PayPal specifies. PayPal retains full discretion to make a final decision in favour of the buyer or the Seller based on any criteria PayPal deems appropriate ... each party must comply with PayPal’s decision.” It also notes that PayPal will generally require buyers to pay for return shipping, and require sellers to accept items back with a refund of the purchase price plus original shipping costs.

As noted, both the web site and the user agreement also describe the protections for sellers, so that in the event of a dispute or claim, buyers can easily see what protections exist for sellers. PayPal’s seller protection can cover chargeback costs as long as the transaction meets certain requirements.

If claim rates are too high, a seller’s account could be suspended.

Sellers can appeal claims found in favour of buyers if returned items are not in the same condition as when shipped, or empty boxes or incorrect items are returned to sellers. Sellers may be asked to provide supporting documentation or file a police report.

### *Marketplace Rules*

The online marketplaces also embed protections to buyers and sellers in their agreements. Amazon and e-Bay post information about their policies and protections online. Each also relies on the power of peer reviews – public “ratings” of buyers and sellers – to provide informal feedback.

Amazon offers the “A-to-z Guarantee Program” for “situations where a customer never received a product or received a product that is materially different from what was ordered and expected.” Customers are instructed to first contact the seller, but if the seller fails to resolve the problem, a claim can be filed. Upon receipt of the claim, sellers are informed and information is requested about the order and fulfillment. “Amazon will then determine how the claim will be settled, which may include reimbursement of the order to the customer at the seller’s expense.”

The Participation Agreement Section 5n offers protection to sellers for credit card fraud and for the theft and unauthorized use of a third-party’s card information, provided that other elements of the order (including shipping information) are correct. Sellers bear the other fraud risks. “We reserve the right to seek reimbursement from Seller if we, in our sole discretion, decide to reimburse Buyer under the terms of the Amazon.ca A-to-z Guarantee, provide a refund to Buyer if Seller cannot promptly deliver the goods, discover erroneous or duplicate transactions, or receive a chargeback from Buyer's credit card issuer for the amount of Buyer's purchase from Seller.” (Section 5n)

Yet the agreement includes a separate clause about disputes (section 19) that states:

“Because Amazon.ca is not involved in the actual transaction between Sellers and Buyers and is not the agent of either for any purpose, Amazon.ca will not be involved in resolving any disputes between participants related to or arising out of any transaction. Amazon.ca urges Sellers and Buyers to cooperate with each other to resolve such disputes.”

In a followup call with an Amazon service representative, researchers were told that Amazon will “freeze the accounts” of customers who use chargebacks because “issuers will come back to Amazon, not the third-party vendor.” The representative could not provide any details on how claims are adjudicated, other than if buyers or sellers show frequent problems that is a factor that can rule against them.

E-Bay promotes its Money Back Guarantee as protecting “buyers in case they don’t receive their item, or if the item is not as described in the listing.” An FAQ section notes that it does not cover buyers’ remorse, or items damaged during pick-up or shipping of certain types of items. Nor does it cover duplicate claims through other resolution methods. The site is clear that should buyers choose PayPal Purchase Protection or a card issuer chargeback, they cannot also use the e-Bay service.

If buyers claim non-delivery and e-Bay agrees, the full cost of the item and original shipping are reimbursed via PayPal and the seller is required to reimburse e-Bay for that amount.

For disputes over whether delivered items match descriptions, e-Bay will review the description, photos of the items and other information. E-Bay may ask buyers to return the item to the seller, and refund the cost of the item and original shipping via PayPal, and require the seller to reimburse them.

Sellers are only responsible for return shipping costs if they have stated a free return shipping policy in their listing, or if the item doesn’t match the item description. With the buyer’s consent, e-Bay may give partial refunds to cover the differences between how the item was described and its actual value. Sellers may be asked to reimburse.

E-Bay discloses the deadlines for all these steps on its site. Buyers and sellers can appeal. But without a “payment” component directly with e-Bay, there is no link to any “fraud” protection or descriptions of what happens if a purchase is made fraudulently with a credit card or other identifier.

### *Rule Implementation and the Human Factor*

Implementation of network policy is left to issuers. They are the first point of contact, and make an initial decision on consumer complaints. Numerous efforts to gain card issuer perspectives met limited success. Researcher calls to personal card “help” facilities often led to a few answers and then referrals to others and the Canadian Bankers Association. Researchers interviewed retired executives with experience from issuer and acquirer perspective who provided insight into how card network policies are implemented.

Card networks agreed that the human element cannot be eliminated. “Every issuer and

acquirer is required to follow our chargeback rules exactly as written. Having said that, it is impossible to guarantee that every issuer interprets every rule identically 100 percent of the time, given the human involvement.”<sup>12</sup>

Issuers learn the network rules. There are many manuals. Meetings are held with network representatives, particularly when rules change. Issuers train their staff and start with easier situations to resolve, then move to more complex situations with experience. The same staff handle debit and credit cases, but debit cases are almost always more straightforward to resolve. One of the most common debit scenarios is consumers who forget they added “cashback” at the checkout. They may purchase \$30 of goods, but add \$20 cashback. Later they see \$50 removed from their account, but have a purchase receipt for \$30. It is easy for the retailer to show the customer signature for the cashback. In-store transactions are generally more simple because there is almost always authorization. There is usually just one team per issuer that handles all requests. There are no separate teams for different value disputes. Merchants have strict response deadlines. Non-response to the request almost always lead to claims in favour of the consumer at the expense of the merchant. If enough cases arise where there is any ambiguity in the rules, card networks react with new rules to clarify.

These sources also identified one instance in which government protections have influenced dispute resolution with credit card networks. When airlines go bankrupt, the rules established to protect customers who have purchased future travel rights are also factored in by issuers dealing with chargeback requests.

### *Summary of Key Findings*

Credit card networks make exhaustive disclosure about chargeback rules. But they do so to merchants and presumably to issuers, but not to consumers. Even if consumers are diligent enough to find the “rules”, they are absolutely not presented to facilitate clear understanding.

New participants (PayPal, Amazon, e-Bay) have much more consumer friendly disclosure about their rules, and the rules are disclosed in such a way that buyers and sellers have equal transparency. Peer reviews also provide an element of verification. The basic steps of the rules – buyers should try to resolve first with sellers, then evidence is presented and a ruling made – follow the same shape as credit card chargebacks.

The transparency of Interac’s rules is somewhere in between that for credit cards and the new-participant payment processors. There is more consumer-facing language, but less detail on how certain types of disputes with merchants may be resolved. From examination of the policies, it seems likely that consumers would be protected by Interac policies in the three test scenarios, though there are likely differences in deadlines and possible exceptions around return shipping costs.

## Consumer Protection Laws

### *Global Context and Frameworks*

Traditional consumer protection laws were based on transactions where both the seller and buyer were in the same location, or at least the same province. Enforcement of provincial consumer protection laws could result in fines, the loss of operating licenses, bailiff-led seizures of premises or charges against principals. Many protection measures were based on contract disclosure, things that had to be listed in paper documents endorsed by all parties.

E-commerce buyers and sellers are connected by technology not geography. Online contracts are based on screens, not paper, hyperlinks and “click to agree” endorsement. The old protections were inadequate. As a result, the growth of Internet commerce was accompanied by a growth in legislation that attempted to provide similar protections to consumers. Because jurisdictional issues were involved – it is difficult to get merchants in Belgium to adhere to consumer protection laws in Ontario – efforts focused on harmonization efforts and international initiatives.

In 1996, the United Nations Commission on International Trade Law adopted the *UNICITRAL Model Law on Electronic Commerce*. Those laws were designed to “offer national legislators a set of internationally acceptable rules .... And how a more secure legal environment may be created for what has become known as ‘electronic commerce.’” (UNICITRAL, 16). The OECD council approved its *Guidelines for Consumer Protection in the Context of Electronic Commerce* in 1999. This was a very general guideline to ensure through technology-neutral rules that consumers received protection online similar to that provided in the case of in-store purchases.

The OECD established eight principles to guide business-to-consumer electronic commerce:

1. Transparent and effective protection, equal to the level of protection afforded consumers who used other forms of commerce.
2. Fair business, advertising and marketing practices.
3. Information – businesses should provide accurate, clear and accessible information about what is being offered, the terms, conditions and costs of the transaction.
4. Clear process for the confirmation of sales.
5. Secure payment mechanisms.
6. Dispute resolution and redress.
7. Privacy.
8. Education and awareness.

The section on dispute resolution and redress noted unique challenges to electronic commerce. “Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.” (OECD 1999, 18) It also

noted the powerful possibilities of chargebacks “to enhance consumer confidence and their development and use should be encouraged in the context of electronic commerce.” (OECD, 17)

### *Development of the Canadian Framework*

Canadian provincial legislation on electronic commerce protections originated when global frameworks for consumer protection in e-commerce were considered. In 2000, Manitoba passed legislation to cover some elements of electronic commerce, giving consumers certain cancellation rights and requiring credit card issuers to reverse a charge for an Internet purchase if the vendor failed to provide a refund after a consumer lawfully cancelled the transaction (Smith 2000). Ontario released proposals for public consultation, and Alberta had draft legislation not yet passed (Smith 2000).

The differing provincial initiatives were catalyzed by the Consumer Measures Committee (CMC), composed of representatives of the federal government and each province and territory, under the Agreement on Internal Trade (AIT). To improve efficiency by harmonizing laws, CMC crafted an Internet Sales Contract Harmonization Template, ratified in May 2001 by federal and provincial governments. This template was used by provinces to establish laws to protect consumers in online transactions. From 2001 through 2004, the CMC first arranged ministerial approval then industry input to expand the provisions applicable to Internet sales to other forms of distant sales.

Section 7 covers the notice of cancellation; Section 8 covers the effect of cancellation and Section 9 covers the responsibilities of cancellation on buyers and merchants. In short, the merchant must return the money and the consumer has to return the goods to the supplier unused in the same condition. Section 6 allowed for courts to exempt cancellations if “it would be inequitable for an Internet sales contract to be cancelled”, providing some protection to sellers.

The two notable sections for this research are Section 5 (cancellation rights), and Section 11, which gives the consumer the right to recover costs from the credit card issuer if the Internet contract is paid with credit, properly cancelled and the merchant is not responsive to the consumer seeking recourse.

Under Section 5, the consumer can cancel an Internet sales contract under a number of circumstances. Most notably, consumers can cancel contracts if goods are not delivered or services not begun within 30 days of the delivery date specified in the contract or an amended date agreed to by the consumer. If no delivery or commencement date is specified, a consumer can cancel the contract prior to delivery or commencement, up to 30 days after the contract is entered into. Suppliers have 15 days to reimburse consumers, and consumers have 15 days following legal cancellation or delivery (whichever is later) to return the unused goods to the supplier by any means with proof of delivery. Suppliers must accept returned goods for legally cancelled transactions and pay for reasonable

charges for their return.

Section 11 allows consumers to seek recourse from credit card issuers when a contract has been cancelled under Section 5 and the supplier has not refunded all the considerations within 15 days. There is a list of what information consumers need to inform their issuers, and in Section 11(3) credit card issuers must “(a) acknowledge the consumer’s request within 30 days of receiving it, and (b) if the request meets the requirements of subsection (2), cancel or reverse the credit card charge and any associated interest or other charges within 2 complete billing cycles or 90 days, whichever first occurs.” (CMC 2001)

Adoption of the CMC template followed from 2001, with some deviations in implementation. Some provinces incorporated the language in distinct sections of its consumer protection legislation, while others weaved the template measures into existing segments. Some early adopting provinces used specific references to “Internet”, while others later applied the template to regulate all distant transactions. New Brunswick, Prince Edward Island and all the territories appear not to have implemented the template at all, theoretically relying on existing consumer protection legislation.

Here is a province-by-province summary:

Table 3

**Provincial Law Implementation Dates**

For distant transactions or Internet transactions, or both

| Province                     | Date          | Distant/Internet                                    | Legislation  |
|------------------------------|---------------|---|--|
| British Columbia             | 2004          | Distant   | Part 4 Division 4 of Business Practices and Consumer Protection Act                |
| Alberta                      | 2001          | Internet  | Regulation 81/2001 of Fair Trading Act   |
| Saskatchewan                 | 2002;<br>2006 | Internet (2002)<br>remote<br>transactions<br>(2006) | Sections 3-3 to 3-13 of The Consumer Protection and Business Practices Regulations |
| Manitoba                     | 2001          | Internet  | Part XVI of Consumer Protection Act  |
| Ontario                      | 2005          | Internet and<br>telephone in<br>different sections  | Multiple sections of Consumer Protection Act                                       |
| Quebec                       | 2006          | Distance<br>contracts                               | Section 54 of Consumer Protection Act  |
| New Brunswick                | NA            |   |  |
| Nova Scotia                  | 2003          | Internet  | Section 21 of Consumer Protection Act  |
| Prince Edward Island         | NA            |   |  |
| Newfoundland and<br>Labrador | 2009          | Distant<br>transactions                             | Sections of Consumer Protection and Business Practices Act                         |
| Territories                  | NA            |   |  |

Sources: *Regulating Distance Contracts, Union des consommateurs (2014)*, interviews with provincial consumer protection representatives.

The CMC template was not adopted uniformly. Alberta added a clause that required consumers to assure credit card issuers that they had sought refunds from suppliers first. Union des consommateurs's 2014 report *Regulating Distance Contracts*, provides a clause-by-clause comparison of provincial implementations. There are differences related to cancellation procedures, cost limits (Ontario, Alberta, Saskatchewan and Nova Scotia rules only apply to contracts of \$50 or more), fines for breaches and logical inconsistencies on cancellation rights for delayed delivery (UC 2014, 37). The \$50 exclusion was included in the U.S. law adopted a few years earlier. Other template terminology ("two complete billing periods") also seems to be drawn from U.S. laws.

For this study, the most relevant sections deal with cost recovery from the merchant or the credit card issuer. All eight provinces that passed laws included CMC template language



enabling consumers to ask the credit card issuer for reimbursement, should the consumer properly cancel the contract and not receive cost recovery from the merchant. The UC report identified two unique elements of the Ontario and Quebec implementation. Ontario's law provides regulation-making authority to extend chargeback abilities to include other payment methods, but has not made any regulations doing so, while Quebec's law also allows for some extensions of protections through subsequent regulation.<sup>13</sup> Both provinces stipulate a time limit of 60 days after the end of the period in which the merchant is required to make a refund.<sup>14</sup>

Seven provinces followed CMC template language on credit card issuer obligations very closely. However, Section 99(5) of Ontario's Consumer Protection Act is unique. It reads:

**Obligations of credit card issuer**

- (5) The credit card issuer,
- (a) shall, within the prescribed period, acknowledge the consumer's request; and
  - (b) if the request meets the requirements of subsection (4), shall, within the prescribed period,
    - (i) cancel or reverse the credit card charge and any associated interest or other charges,
    - or
    - (ii) after having conducted an investigation, send a written notice to the consumer explaining the reasons why the credit card issuer is of the opinion that the consumer is not entitled to cancel the consumer agreement or to demand a refund under this Act. 2004, c. 19, s. 7 (40).

Sections (5)(a) and (5)(b)(I) are consistent with the template and other provincial rules. Section (5) (b) (ii) allows the credit card issuer to decline the chargeback request after it conducts an investigation. No similar language appears in any other provincial implementation.

In followup interviews – both telephone and e-mail – Ontario government representatives said the additional clause was supported by CMC guidance in a February 2002 Stakeholder Consultation Document which indicated: “The charge-back, whether voluntary or required legally, is not an obligation to reverse charges. Rather it is an obligation to review disputed charges and to reverse the charge only where the charge is not substantiated.”

This is not the only element in which Ontario is unique. Provincial officials hold the view that Ontario's rules only apply to Ontario issuers, not federally chartered institutions.

“To the Ministry's knowledge all credit cards issued in Ontario are now issued by banks, either directly or by issuing branded cards for retailers and credit unions. The province does not have jurisdiction over credit card charge reversal when the issuer is a bank. Banks' lending practices are governed by the federal Bank Act rather than provincial law.”<sup>15</sup>

Officials noted that Hansard when the laws were debated noted that legislation may not apply to banks. “The application of provincial consumer protection law to bank credit card issuers depends on the specific facts of each individual case. No general statement

regarding the applicability of provincial law to all activities of a credit card issuer, including issuers who are banks, can [be] made.”<sup>16</sup>

Representatives of other provinces did not share this opinion. “We have never encountered an issue with regards to cancellation under the legislation, whether the issuer is a federally regulated bank or not. If it were to come down to it, as the matter is one of general application, we would likely view our legislation as applicable,” wrote one province’s representative. “Yes [our province] does capture credit card chargebacks by federal financial institutions, as these institutions are not exempted under the (Act),” wrote another. “[Our province] continues to take the position that the provisions mentioned above apply equally to federally regulated financial institutions as well as provincially regulated financial institutions,” wrote a third.

Two provinces referred to the Supreme Court of Canada’s decision in *Marcotte v. Banque de Montreal*, 2014 SCC 55. That case, and the issue of the applicability of provincial consumer protection laws on federal banks is discussed in Appendix E.

Provincial representatives also noted that in the “item received but damaged”, and the “ordered a red one, got a blue one” scenarios, provincial “Sale of Goods Acts” may apply. These Acts address warranties and methods for claiming redress from merchants, but none include provisions to compel credit card issuer assistance. Private civil litigation was also often identified as another protection available to consumers.

**The Relevance of Provincial Laws** – The contrast between Ontario’s position and those of other provinces underscores a potential limitation to consumer protection. To what extent does the provincial legislation influence the behaviour of the federally chartered issuers?

No other province expressed views similar to Ontario’s views. All stressed that the federal issuers were subject to the consumer protection measures.

One point made by provincial government representatives as well as industry dispute resolution officials is that federally chartered banks will often agree with elements of provincial consumer protection laws, while still maintaining that they are doing so because the laws align with industry codes of conduct, or for the benefit of good customer relations.

“To the extent that we hear about the banks in relation to credit card operations (usually filtered through consumers), they seem to reference their own dispute policies,” wrote one provincial representative. “It’s possible that they sometimes in their discretion acceded to consumer’s requests once we have permitted the complainant to cite our opinion about applicability of the Act.”

“We’ve seen good co-operation to this point, and the responses from the credit card companies have been that they will comply with the legislation. That said, it’s been years since we had to discuss the issues with them,” wrote another provincial representative.

Once consumers exhaust the dispute resolution services at a bank, they can appeal to

OBSI (Ombudsman for Banking Services and Investments) or ADR Chambers, the two approved external dispute resolution firms.

“Our mandate is limited because we have no jurisdiction over Visa or Mastercard. One other difficulty is we don’t have any relationship with the merchant. It’s difficult when we come to talk to the banks, because they’re federally regulated. It’s always a challenging environment,” said one dispute resolution firm representative<sup>17</sup>. “In some cases, we see consumers who specifically followed the legislation and they went to the financial institution and asked for reimbursement and the financial institution said ‘no’, because it was outside the time frame. In those cases, where we went back to the issuer and said ‘there is protection in the [Act] and we believe you should follow it’, they note that it’s provincial legislation with a federally regulated firm. But always as a goodwill gesture, they resolve the complaint.”

Canadian Bankers Association representatives noted the provincial consumer protection legislation applies to merchants, the entities governed by provincial legislation that sell goods or services, and there was no federal legislation that applied specifically to payments. “The current framework is really a patchwork comprised mainly of rules set by the credit card companies and Interac, codes of conduct/voluntary commitments and provincial consumer protection legislation.”<sup>18</sup>

**Bilateral Consumer Protection** – A number of provinces referenced a 2014 Supreme Court ruling on *Marcotte v Bank of Montreal* as evidence that federally chartered banks were subject to provincial consumer protection laws.

The ruling indicated that provincial consumer protection laws can be applied to federally chartered banks in certain instances where there is no conflict between provincial and federal protection. See Appendix E for greater detail.

The federal government attempted to legislate the supremacy of federal legislation over consumer protection in the banking industry in the fall of 2016. Its Bill C-29, a bill to implement the measures from the federal budget, included proposed amendments to the Bank Act. Included was a measure to make federal consumer protections “paramount to any provision of a law or regulation of a province that relates to the protection of consumers or to business practices with respect to consumers.”<sup>19</sup>

This portion of the Bill was criticized by several Quebec ministers and Senators who noted that existing provincial regulations were stronger than those proposed. This section of the Bill was dropped, and the Financial Consumer Agency of Canada was tasked to evaluate federal protections that would at least match those available provincially, with a standalone bill to follow. This is also detailed in Appendix E.

The relationship between provincial consumer protection law and federally regulated issuers is unclear and unstable. Future public policy debate needs to include an evaluation of the protections afforded consumers across all provinces and under any proposed laws.

## Summary

Provincial laws related to chargebacks are not in harmony. Two provinces have not adopted the specific protections developed through the CMC. Ontario has a distinct view on the effectiveness of its laws on federally regulated institutions; apparent protections that involve contacting the credit card issuer may be illusory. The provincial laws also focus exclusively on credit card protection when there are now multiple alternative payment methods in use and the system of payments and dispute resolution is being ‘disrupted’ by new fintech entrants to the system of retail payments, both in Canada and globally. The federal government has indicated a desire to take responsibility for all consumer protection-related elements of federally-regulated financial institutions.

## The Industry Codes of Conduct

Industry participants were asked to identify the relevant codes of conduct that apply to disputed distant transactions. The *Canadian Code of Practice for Consumer Debit Card Services*, *Canadian Code of Practice for Consumer Protection in Electronic Commerce*, *Code of Conduct for the Credit and Debit Card Industry in Canada* and *Zero Liability Policy* were all named. Here are summaries of the protections offered by these codes. Additional details are in Appendix G.

### *Canadian Code of Practice for Consumer Debit Card Services*

Developed in 1992 and revised multiple times since, the code “outlines industry practices and consumer and industry responsibilities, which will help to protect consumers in their use of debit card services in Canada.” It does not cover transactions that take place or transfer funds outside Canada.

Section 5 of the code indicates that cardholders are not liable for losses resulting from circumstances beyond their control, but specifies only fraud-related examples such as lost cards or unauthorized use. Section 6.3 of the code says: “In the event of a problem with merchandise or retail service that is paid for through a debit card transaction, a cardholder should resolve the problem with the retailer concerned.” An interpretation in the appendix to the code, however, indicates that cardholders are not liable for losses relating to transactions “that are caused by the fraudulent or negligent conduct of any of the following:” and includes “merchants who are linked to the electronic fund transfer system, or their agents or employees.”

This code is referenced by Interac materials.

### *Canadian Code of Practice for Consumer Protection in Electronic Commerce*

The Code was published in January 2004 after endorsement by federal and provincial ministers, but its development traces back multiple years. An original principles

document<sup>20</sup> from 1999 first set out three principles:

- 1) Equivalent protections – consumers in electronic commerce should receive no less protections than in other forms of commerce
- 2) Harmonization – this led to the Internet Sales Contract Harmonization template
- 3) International Consistence – linking Canadian rules to those established by international bodies like OECD.

The principles established in this code shape many current industry practices, including rules to disclose their cancellation return and exchange policies (sections 1.3 e, and 1.5 d), the option to cancel orders if delivery is delayed (section 3.2). Section 3.4 requires vendors to not hold consumers liable if

- a) the transaction was not authorized by the consumer;
- b) the good or service delivered was materially different from that described by the vendor;
- c) the vendor failed to provide material information about the good or service;
- d) the good or service was not delivered in the time specified, or under the conditions stated in the original offer; or
- e) there was no adequate opportunity for the consumer to cancel an inadvertent transaction when the consumer acted reasonably.

Under these circumstances, vendors shall refund any payments consumers make, including, when applicable, any reasonable charges consumers pay directly to return the good in question to the vendor, in good order and within a reasonable time.

Point d) seems to cover “non-delivery” and the “item received but damaged” scenarios, and b) would cover the “ordered a red one, got a blue one”. Note that vendors are required to pay delivery charges for goods returned under these scenarios.

Section 6 on Complaint Handling requires vendors to provide consumers with “access to fair, timely and effective means to resolve problems with any transaction”.

Interestingly, in the initial principles from 1999, there was a rule stating “credit card issuers should make reasonable efforts to help consumers resolve complaints with vendors in the event of non-delivery or unauthorized transactions.” Those provisions were in the Harmonized Sales Contract template but not in this code.

### Zero Liability Policy

The major payment card networks in Canada – American Express, MasterCard, Visa and Interac – provide protection to cardholders under public commitments commonly known as “Zero Liability Policy”. (American Express uses “Fraud Protection Guarantee”.) If someone uses a payment card to make unauthorized transactions, consumers can be reimbursed. All warn that customers must make “reasonable effort” to protect their card information, including their PIN.

The commitments are monitored by the Financial Consumer Agency of Canada (FCAC). The protections are relevant to fraudulent use. None of the participants interviewed thought the Zero Liability Policy was relevant to the three scenarios (item not received, etc.) or in disputes with merchants.

### **Merchant Rules and Policies**

Merchant policies on accepting returns also affect consumers' ability to find recourse in distant transactions.

Consumers have the expectation goods purchased from a retailer can be returned for refund, credit or exchange. This may be generally true in practice, but not in law.

In its 2015 study of Canadian return policies, Union des consommateurs noted that apart from certain specific exceptions, consumers do not have a legal right to return purchases. "Retailers exchange, return and refund 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" (UC 2015).

Provincial laws protect against goods that do not match descriptions, are not of "merchantable quality" or transactions involving false or misleading claims. But for the simple "I've changed my mind" or "I don't need this", merchant policies prevail.

For the credit card networks, disclosure of a merchant's return policy prior to the completion of an online sale is an integral part of determining the outcome of many chargeback disputes. For an in-store purchase, consumers are quite willing to return an item for a refund, credit or exchange. But in distant transactions, the extra work of repackaging and re-sending an unwanted item is frequently cited as a leading cause of chargebacks. Consumers who experience "buyers remorse" wish to return a purchased item. If the merchant only accepts refunds for 14 days, or the consumers would rather not deal with the repackaging and re-sending, consumers may instead claim the item was never received or damaged in shipping. This allows them to recover costs and possibly enjoy the merchandise. Merchants note this is essentially fraud or theft.

The importance of clear disclosure of a merchant's return policy is underscored by credit card network materials. "Customers need to know your policy before they complete a sale" (Visa merchant guide).

MasterCard's merchant guide includes a sample chargeback scenario in which a (theoretical) cardholder attempts to return merchandise to a merchant who is unwilling to accept the return. The merchant needs to provide documentation authorized by the cardholder at the time of the transaction agreeing to an "all sales were final" notification. "Merchants that are unwilling to accept buyer's remorse returns and cancellations or that want to have special terms including (but not limited to) restocking fees or in-store credits,

must disclose these terms at the time of the sale. The cardholder must be informed of the refund policy prior to completion of the sale at the point of interaction. Failure to disclose a refund policy will result in the merchant's requirement to accept the goods for return and issue a MasterCard credit" (MasterCard merchant's guide, section 5.6.4 Example 4).

Consumer rights and experiences with returns of online purchases was the subject of a 2011 report *Point of No Return* by Canada's Public Interest Advocacy Centre. That report reached similar conclusions about legal protections and merchant policies. "Canadian consumers do not have comprehensive legal protection for a right to return products purchased online." (Lo, 2011)

Three main sources of consumer frustration were the cost of shipping compared to the product price, unresponsive merchants and retailers that did not accept returns. In most cases, shipping costs were deducted from the refunded amount. PIAC found a wide range of retailer policies. Deviations between practices and policies were generally in favour of the consumer, however.

PIAC's recommendations for online businesses included generally allowing consumers to return online purchases, allowing for a return period of at least 14 days from when the consumer gains possession, providing pre-paid return shipping labels with deliveries, and reimbursement of the least expensive original shipping and handling costs. The report also advocated for the adoption of an EU provision that if the consumer's right to return is not stipulated before contract acceptance consumers should have a longer period to return, and consumers should not have to pay undisclosed costs.

## VI

### What the Consumer Sees

From a consumer perspective, the chargeback system seems analogous to a carmaker including seatbelts for passenger safety but never explaining when and how they should be used.

#### Industry Disclosure to Consumers

Measures to protect consumers are more effective if consumers know they exist.

To examine how consumers learn of the protections available to them, researchers evaluated a number of places consumers might obviously turn for more information. Researchers evaluated the information communicated through publicly available credit card agreements, the web sites of card issuers, in-store brochures, government consumer protection information on web sites, as well as the information disclosed by other intermediaries such as PayPal and Amazon.

What are consumers told about the protections available to them in distant transactions? Is there any disclosure of some of the important details about eligibility or deadlines?

It is not the intent of this report to provide any kind of ordinal ranking or “report card” style evaluation of issuer disclosure. However, there are enough differences in issuer disclosure choices that they are difficult to summarize in the aggregate. That noted, summaries will reflect areas where issuer disclosure was similar, while variations will also be noted.

#### *Point of Sales Brochures*

Researchers collected sample credit and debit card promotional materials from all major bank branches in their community, a suburb of Toronto, to gain an informal review. None of the promotional materials mentioned chargeback protections. The single reference found was a sentence in a brochure about RBC Virtual Visa Debit which read “RBC and Visa may be able to assist if you have a dispute with a merchant, such as goods not received.” Similar language was in the brochure’s Frequently Asked Questions. Most other brochures mentioned the Zero Liability Policy, or other similar language to express that consumers were protected against unauthorized use of their credit card information. Some brochures



noted PIN and CHIP technology as additional protection, and some referenced protections provided by extended warranty insurance and purchase insurance available on some cards.

### *Credit Card Agreements*

Researchers viewed and downloaded a representative sample of credit card agreements presented on issuer web sites.<sup>21</sup> With about 200 credit cards available for use in Canada, resource constraints prevented a methodical search. Nonetheless, there was a high similarity of agreements within issuers. Approximately 20 agreements were reviewed to see what was disclosed to consumers about disputes with merchants, problems with statements, chargeback provisions and rules, how to direct complaints and other relevant considerations.

All of the agreements had language about merchant disputes. In most cases, the language directed consumers to resolve disputes with merchants directly. “We are not responsible for any problem you have with a merchant.” (Bank of Montreal MasterCard Agreements). Some agreements indicated an opportunity for assistance. RBC agreements for both Visa and MasterCard state: “In some circumstances, we may be able to provide assistance in resolving disputed transactions.”

CIBC provided more detail in resolving disputes. All CIBC agreements audited include “If you have a dispute with a merchant about a transaction, you must attempt to settle it directly with the merchant before contacting us. Although you may contact us to discuss a dispute, we are not obliged to take any action on the dispute unless we are required to do so by law.” (Section 15.b) And “We are not liable if we are unable or unwilling to assist you with a merchant dispute for any reason. You agree that in cases where we do attempt to assist you with a merchant dispute, we are subject to credit card network rules which place time limits and other restrictions on transaction disputes.” (Section 15 c)

Greater detail about individual issuer agreement language is in Appendix F.

Almost every agreement noted that consumers must notify issuers with problems related to statements within 30 days. (Some had different time limits.) Most included language similar to this (from TD Cash Back Mastercard’s agreement): “If you do not tell us about errors within 30 days of the statement date, we will consider the statement, every item on it and our records to be correct.....that means that you may not make any claim against us after that 30 day period.”

This language could easily lead consumers to believe that they have no course of action after 30 days for any kind of mistake on their statement, including merchant disputes. With some exceptions, consumers who sought guidance from their credit card agreements about their rights would likely *not* conclude that their credit card issuer could be a source of recourse. Most would conclude that recourse was only available from the merchant.

### *Web Site Promotion and Disclosure*

Researchers navigated through issuer sites, noting language around “consumer protection”, “dispute resolution” and “chargeback”. Most issuer web sites have “search” facilities, in which case those terms were all entered, as a typical consumer might. (All browsing was done in English.) Navigational choices vary and web sites can change.

Most sites had information about zero liability and its equivalents. Some referenced services such as “Verified By Visa” and “MasterCard SecureCode Service”. Beyond that, there was more divergence of disclosure than in agreements. Some issuers provide useful information, while others offer little or none. In no cases is this facility “promoted”. It is not mentioned as a “feature” or “benefit” of any card ownership. The fact that a consumer may be protected should a merchant fail to deliver an acceptable product or service seems more beneficial than many of the benefits issuers choose to promote.

A bank-by-bank review is in Appendix F. The greatest amount of disclosure was from Bank of Montreal. A link through a FAQ covers the basics of disputes, chargebacks, and the steps towards resolution. It lists 10 common reasons why a charge may be disputed and provides a number of other helpful details. Some other issuers have limited disclosure. CIBC notes that it will investigate disputes and has some useful information. Other issuers post helpful information, but seem to do it “accidentally”. Researchers found some very helpful information about procedures in guidelines in TD Canada Trust’s “Ask a Question” facility. Individual answers almost always include a “call us” component, but some responses included helpful information about deadlines and requirements. A search on Royal Bank found a very helpful guide on cardholder protection for online and telephone credit card transactions, but researchers could not navigate to this page; it only appeared available through the search function. Another search provided a link to RBC’s site for U.S. customers, which provided considerably greater detail about U.S. procedures, deadlines and allowable transactions. (See Section VIII)

The limited issuer disclosure seems a curious choice with harmful implications for consumers.

### *Credit Card Networks*

Researchers examined the Canadian web sites of MasterCard, Visa and American Express for disclosure about consumer chargeback rules. In a tab about security, Visa discusses the Verified by Visa and Zero Cardholder Liability policies, as well as its E-Promise for Visa cardholders shopping online, by mail or by phone. The language is a pretty clear articulation of chargeback basics. When cardholders have not been able to resolve a dispute with an online, phone order or mail order merchant, “they can contact their Visa card issuer directly to initiate whatever action may be available to the issuer to resolve the credit card charge in question.” It describes a requirement that the cardholder has lawfully cancelled their agreement with the merchant, or the purchased item has not been received or what

was received is different from what was ordered and has been returned to the merchant. The web site further states that if the request is legitimate, “the Visa issuer will act on the cardholder request, investigate the dispute and provide a refund to the cardholder if the claims are validated.” MasterCard’s site has an FAQ that directs consumers to contact their issuer about a range of merchant dispute issues, but does not mention chargeback or the conditions that could lead to cost recovery.

Search facilities on all three sites, however, will lead to the discovery of numerous merchant facing materials, including chargeback guides for merchants. Theoretically these guides are “public” although they are very technical and not designed for consumers. Contents are discussed in Section V.

In interviews with credit card networks representatives and other research, representatives frequently make the point that card networks have no direct relationship with consumers and thus no obligation to inform them of this provision. “These disputes are not about our disputes. Our business is about moving money, facilitating financial transactions. Disputes are about what happens after the sale,” said one card network executive. “We’ve put some rules around that, in many cases for defective goods and ‘not as described.’”<sup>22</sup>

“Since consumers aren’t our customers, we usually leave merchants and card-issuing financial institutions that interact directly with consumers to deal with chargeback issues,” said MasterCard Canadian communications director Lauren Mostowyk as quoted in (Workman 2015).

**Verified by Visa and MasterCard SecureCode:** Most issuers present information about these programs in the context of greater protection for online transactions. Inspection indicates that the protection offered is largely to merchants, and the benefits to consumers are largely indirect. These facilities allow merchants to add a level of cardholder authentication on eCommerce transactions, reducing eCommerce fraud. The cardholder verifies with Visa or MasterCard so that “when you shop at participating online sites, you enter your password in the same way you would enter your PIN at an ABM. This ensures that only you can use your Visa card online.” (Scotiabank web site) Since consumers are (theoretically) protected by chargeback, the true benefit is merchant profitability: “The use of more robust authentication methods at the point of sale improves security and reduces friction, which in turns (sic) bolsters consumer confidence leading to increased profitability for merchants.”<sup>23</sup> The ambiguous use of the word “verified” might lead consumers to believe that the merchant is somehow verified, when in fact, it is the cardholder who is being verified. The legal disclosure on Scotiabank’s web site, for example, notes: “You understand that use of Verified by Visa does not, in any way, indicate that we recommend or endorse any merchant, regardless of whether the merchant participates in Verified by Visa. For example, Verified by Visa does not verify the identity of the merchant or the quality of the

merchant's goods or services.”

It is unlikely that an unscrupulous merchant would subscribe to these services, but, unscrupulous merchants could easily use the logos to fraudulently represent additional security and gain consumer information.

### *Interac and Debit Cards*

The introduction of co-badged debit cards has added significant complexity to the marketplace. Most major banks now offer debit cards that have both Interac and either Visa or MasterCard on their face. These cards provide holders with access to both the major debit networks, Interac at point of sale and ATMs in Canada and either Visa or MasterCard elsewhere. Online in Canada, these cards are accepted only by retailers that accept the debit versions of the common credit cards.

Here are a few excerpts from the BMO Debit Card web site FAQ section.

“Purchases from merchants within Canada are processed through Interac Debit or Interac Flash. However, the MasterCard logo means your BMO Debit Card is accepted anywhere MasterCard is accepted in-store internationally (including the United States) and online with Canadian merchants that accept Debit MasterCard and international merchants that accept MasterCard.”

“At Canadian retailers, look for Debit MasterCard acceptance at the checkout... For international retailers (including the United States), you can use your debit card anywhere MasterCard is accepted.”

“Your new BMO Debit Card uses the MasterCard network for online purchases. Online debit card transactions can only be accepted where Debit MasterCard or MasterCard is accepted. In cases where you may have used Interac Online to make a bill payment, you may be able to register and pay your bill through BMO Online or BMO Mobile Banking.”

The site also notes that the Debit MasterCard is protected “with the same safety and security features we offer on all our BMO MasterCard credit cards.” This clearly signals that Debit MasterCard transactions are entitled to chargeback protections. Yet the posted Agreements, Bank Plans and Fees for Everyday Banking section on Electronic Banking Services Agreement (Section 18) reads “We will not be responsible for the quality of goods or services that you obtained using Electronic Banking Services. You will settle any issues directly with the vendor involved.”

In its June 2014 report *Virtual Debit Cards and Consumer Protection*, Option consommateurs examined this issue in detail. It found virtually no references to card issuer assistance in disputed transactions in any of the banking or debit card agreements examined. It also found few references to other “protections” promoted, such as Visa’s E-Promise, in the agreements examined.

CIBC notes one downside of using debit cards to pay for future commitments such as hotel or car rentals. Payments are immediate, so the funds will be removed from the

account at the time of the reservation.

Interac Online is a comparative payment option for online transactions. It also has restrictions imposed by limited merchant acceptance and transaction size limits. It is also sometimes viewed as less convenient to consumers, since online transactions are redirected during the payment stage to the web site of the buyer's financial institution for verification.

The Interac web site makes it clear that chargebacks are not available. The "real time" nature of Interac debit transactions means that buyers authorize access to their bank account and initiate the processing of funds. The Interac web site depicts what it presents as a consumer friendly position concerning this by noting that many merchants perform checks before accepting transactions and refuse to accept suspicious ones. Because sometimes legitimate transactions are blocked: "This practice has the negative effect of preventing valid customers from completing their purchase."

Interac promotes two components of consumer protection, its zero liability policy, and merchant compliance with the *Canadian Code of Practice for Consumer Protection in Electronic Commerce*.

The zero liability policy language informs consumers that they "will not be liable for losses resulting from circumstances beyond your control. This includes losses resulting from technical errors, systems problems or fraud. In such cases, you must make a claim with your financial institution for losses incurred. If the claim is determined to be valid, you will be reimbursed by your financial institution." The wording is somewhat ambiguous when it comes to some of the common credit reimbursements. Non-delivery would seem to be covered as 'beyond your control', but it's unclear from this language whether issuers would be compelled to act on a consumers behalf in a dispute over item quality, for example. The site's FAQs directs consumer to contact their retailer as a response to the question "Who do I call if something goes wrong?" and tells consumers to "check each online retailer's return/refund policy" about returned purchases and refunds.

The Code of Practice is referenced in Interac web site language under the title "additional consumer protection for online purchases." The Code (see Section V), unchanged since 2004, requires vendors to not hold consumers liable for a number of circumstances, including improper authorization, non-delivery, or the good or service delivered was materially different from that described by the vendor. "Under these circumstances, vendors shall refund any payments consumers make, including, when applicable, any reasonable charges consumers pay directly to return the good in question to the vendor, in good order and within a reasonable time." It also requires vendors to give consumers access to "fair, timely and effective means to resolve problems with any transaction," and strongly encourages vendors to refer unresolved complaints to third-party dispute resolution services, "use of which shall be at the consumer's discretion."

Technically, Interac e-Transfer can also be used to complete distant purchases. The web site notes, however, that: "Once a transfer has been deposited, it cannot be cancelled or reversed." For that reason, it should only be used to transfer to known and trusted parties.

### *PayPal*

Nurtured as a payment adjunct to the online auction marketplace e-Bay, PayPal became an independent company and is the largest source of online purchase payments apart from credit cards. Its web site offers clearly expressed explanations of what happens in a dispute, and the types of problems that are covered and not covered by their protection system. Similarly, the information for sellers is also visible, so consumers can also review the guidance provided to merchants. PayPal notes there are three options for consumers, including its own Resolution Centre, as well as payment card chargebacks and bank account reversals. PayPal accounts are linked to credit cards or bank accounts.

There is information about the appeals process, and about what happens to funds during a dispute. More details about how the system works is available in Section V.

Because PayPal accounts are also linked to credit cards or bank accounts, PayPal notes that should consumers choose chargebacks through the credit card, its own dispute resolution system will not apply. Consumers are not entitled to 'double recovery'. It offers some assistance to help sellers dispute chargebacks in accordance with card guidelines. In fact, PayPal's disclosure of chargeback rules and requirements exceeds those of most payment card issuers.

### *Amazon*

Amazon is the largest online marketplace, and has its own dispute resolution system. Amazon's marketplace is more complex, as buyers can access up to two million independent third-party sellers from around the world. Amazon provides and promotes its A-to-z Guarantee program as a measure of customer protection. According to its site, the program is for situations where consumers never received a product or received a materially different product. Customers are directed to first contact the seller, but if the seller does not resolve the problem, the customer can file an A-to-z claim. "When Amazon receives the claim, we send the seller an automated e-mail detailing the claim and requesting basic information from the seller about the order and the fulfillment process. Amazon will then determine how the claim will be settled, which may include reimbursement of the order to the customer, at the seller's expense."

The [Amazon.ca](http://Amazon.ca) web site offers additional details, including a list of conditions that must be in effect before a claim can be made, why claims may be denied, how to appeal denied claims, time frames, and the ability to receive gift cards as resolution for certain claims. Because members of the public can become sellers, consumers can easily see how the rules are communicated to sellers as well.

Section V has additional details on the content and effect of these policies. This section has focused only on how easy it was for consumers to find certain information.

### *Summary of Key Findings*

The willingness of alternatives and relative newcomers such as PayPal and Amazon to promote chargeback facilities stands in contrast to the reluctance of most of the issuers to provide similar disclosure. Credit card issuers offer little or no information in agreements or brochures, little information on web sites (with a few exceptions). Consumers are generally told that they must resolve conflicts with merchants directly, and statement errors older than 30 days are not correctable. Language that suggests “contact us, we may be able to help you” is not equivalent to “you are entitled to cost recovery in the following circumstances....”

Promoted benefits include Zero Liability Policy, which protects against fraudulent card use, not fraudulent merchants, and Verified By Visa, in which it is the cardholder, not the merchant, who is being verified.

Some of the best disclosure of information on issuer web sites comes in odd places. The accidental discovery of the U.S. disclosure was one illuminating example. The disclosure, required by U.S. law (see Section VIII ) was far greater than what is disclosed to Canadian consumers. Some of the details provided in TD Bank’s interactive Q&A section were very helpful – just not disclosed in any prominent manner.

Chargebacks are not typically included in statements of features or benefits of any promoted credit card. With one notable exception, researchers could find no disclosure of what might constitute a chargeback, or statements of any of the basic rules or limitations. It seems issuers are obligated to provide chargebacks, but not obligated to say so. From a consumer perspective, the chargeback system seems analogous to a carmaker including seatbelts for passenger safety but never explaining when and how they should be used. To the extent that consumers are aware of this facility, it appears to be despite card issuer efforts, not because of them. A potential logical inference is that issuers are choosing to provide minimal disclosure because providing more information would not be in their best interests.

## **Other Information Sources**

### *Provincial Consumer Protection Web Sites*

Another place consumers might turn to for assistance in a dispute is their provincial consumer protection office. A review of those sites shows inconsistencies between provinces that reflect the differences in legislation.

Newfoundland and Labrador, New Brunswick and Prince Edward Island offered no particular advice about protection in distant transactions. The latter two provinces have no

specific legislation in this area.

Nova Scotia has some information about consumer purchases that includes a link to information about Internet sales contracts, which refers to provincial law, the presentation of which is not 'consumer friendly'. Also, it links to the regulations, which describe what information has to be sent to the credit card issuer, but does NOT say that the issuer has to provide a refund. That information is in the Act, not the regulations.

Manitoba has a section about shopping safely online, that includes three basic points, but makes no reference to the protection offered by legislation.

Ontario's web site notes that consumers have the right to get out of an online or telephone contract under certain circumstances. It also notes: "If you paid by credit card, let your credit card provider know about your dispute to stop any remaining payments." Consistent with its views on provincial legislation, it does not direct consumers to act to recover costs from card issuers.

The remaining provinces – Alberta, Saskatchewan, British Columbia and Quebec – all have more helpful information about the protections available in distant transactions. In most cases, it describes protections available in legislation. Quebec's site has the most detail, describing some of the time limits and certain transactions which are not eligible for "chargeback" (food purchases, funeral services, lottery tickets).

British Columbia and Saskatchewan both direct consumers to use credit cards in distant transactions, specifically because of the legislated protections if goods are undelivered.

**Consumer Complaints Data** – Researchers asked provincial representatives for statistics about complaints or investigations regarding distant transactions. Inconsistent responses prevent any large-scale conclusions. Some provinces replied they did not track those figures, or could not provide them without a Freedom of Information request. Alberta received 439 inquiries from about 100 consumers between Jan 1, 2016 and early December 2016 and most of those did not result in formal complaints after consumers received relevant information from its contact centre. Three complaints received had been closed, while four others were open investigations.

Quebec reported a total of 1,102 complaints in 2015 and 1,928 in 2016, most frequently related to "mandatory information and the possibility for the consumer to accept, refuse or correct the merchant's offer." The most common complaints related to cosmetics, toiletries and other body care products.

### *Financial Consumer Agency of Canada*

The FCAC has a number of relevant responsibilities; it ensures federally regulated financial entities comply with consumer protection measures, promotes financial education and raises consumers' awareness of their rights and responsibilities. It oversees member adherence to the various codes of conduct and regulates the external dispute resolution firms banks use.



Its web site has information about fraud and what consumers should do if there is an unauthorized transaction on their credit card statement, among other topics. FCAC does advise consumers to contact card issuers if they see unauthorized transactions on their statements, but does not extend this advice to “non-fraudulent” disputes in distant transactions. No references to “chargebacks” or the possible remedies available to consumers were found, likely because commercial transactions are provincial, not federal responsibilities. A search on the term “chargeback” yields a link to the 2000 Smith report.

The site does provide a list of provincial resources for consumers to consult, as well as an overview of the dispute resolution processes at federally chartered institutions.

### *Canadian Consumer Handbook*

Created by the Consumer Measures Committee, a joint committee of federal, provincial and territorial government representatives, the *Canadian Consumer Handbook* (and its online implementation) is designed to serve as a trusted source of consumer information. It has some general information about protections in online transactions, but no mentions about protections offered to consumers through provincial laws or credit card networks. It has a section about debit card fraud, but searches on credit card fraud and chargebacks were empty.

### *Other Sources of Information*

Consumers are not restricted to government and industry information sources. Those have the advantage of being authoritative or official, but consumers with a little technology can find a wealth of information about how they can resolve merchant disputes in distant transactions. But in that wealth of information, there is also some disinformation – individual consumers sharing their own experiences, which may or may not be relevant, published articles from reputable sources with out-of-date information or U.S. rules and outright misleading information.

## VII

### What the Merchant Sees

Researchers easily found dozens of firms that promise to reduce merchant chargeback losses.

#### Information Provided to Merchants

In distant transactions, consumers look for protection against fraudulent merchants, and merchants look for protection against fraudulent consumers. Merchants want real consumers, authentic purchases and authorized payments.

Discussions about disputed transactions often become discussions about fraud, because it is often difficult to distinguish between the two from the merchant's perspective. Someone buys an item, pays for it, and it is shipped but never arrives. Is that a delivery fault, or was there fraudulent card or address information used?

When a merchant is defrauded, they not only lose the revenue of the sale, but also the merchandise itself or the time and work to perform an associated service.

Merchants face multiple costs for chargebacks. Every chargeback has non-recoverable costs, even if the merchant succeeds in disputing the chargeback. Merchants pay a transaction fee on both the purchase and the return of the funds. Further, there is a 1 percent threshold from the card networks.<sup>24</sup> If more than 1 percent of orders are charged back, merchants are put on notice. This can mean higher processing costs and other restrictions. Failure to reduce chargebacks can result in the loss of access to credit card transactions, which can cripple an online merchant. “[Merchants] can win 99 percent of chargebacks, but still be penalized, pay costs and run the risks of being shut down,” noted one chargeback management firm executive.

Fighting chargebacks can draw resources away from key operations.

All these costs create a powerful incentive for merchants to reduce chargebacks. There are many resources available for merchants.

Acquirers and card networks publish detailed guides, how to parse different chargeback “codes” and describe best practices and techniques. There are also third-party chargeback management firms offering a variety of services to reduce merchant chargeback costs.

Appendix D includes U.S.-sourced information about merchant costs of chargebacks.

### *Industry Information*

Card networks offer other supports. Visa's wholly owned subsidiary CyberSource publishes reports to help inform merchants, and a "complete range of fraud management solutions that enable you to identify fraud faster, more accurately and with less manual intervention." (Fraud Benchmark Report, 10) MasterCard's Payment Gateway Services pledges to "reduce the costs of fraud to your business whilst ensuring that genuine customers are not rejected or left frustrated."<sup>25</sup> Accertify is "an American Express Company" that "takes the hassle out of managing chargebacks driving efficient, reduced manual efforts and boosting revenue recovery." (Accertify Sales Sheet).

Acquirers also provide assistance to merchants. Acquirers are responsible for collecting chargeback amounts from merchants, and if merchants refuse or go out of business, that's a loss to acquirers.

Researchers easily found dozens of other firms that promise to reduce merchant chargeback losses. Researchers sought information from more than two dozen firms; many replied and provided promotional materials. Some were interviewed, via e-mail and telephone. The existence of these firms shows there is a business opportunity, and merchants are so vexed by chargebacks that multiple providers can grow.

### *What do Chargeback Management Firms Say*

The materials of the many firms motivated to reduce merchant chargeback costs make many similar points. Sales materials and web sites often note:

1. Merchant chargeback costs can be reduced. They all note the costs – commonly \$15 to \$50 per chargeback – and that costs are based on the complaint, not the resolution. They also note the network penalties or termination if chargebacks grow too large.
2. Some of the "unfair" aspects of the situation – how protections for consumers against fraudulent merchants exceed protections for merchants from fraudulent consumers.
3. There is frequent use of "facts and myths" presentations, with "merchants can't win a CNP chargeback" listed as a myth.
4. Many refer to a 2012 Visa study that indicated \$11.8 billion in "friendly fraud" losses to online merchants. Another common statistic is that 86 percent of consumers first contact their card issuer rather than the merchant in a dispute, blindsiding merchants who are denied the opportunity to deal directly with unsatisfied consumers.
5. Many divide chargebacks into three categories: merchant error or negligence (failure to ship promptly, failure to notify customers of delays, billing mistakes, slow

refunds, improper merchandise) actual fraud (the unauthorized use of a consumer's information or identity to purchase items) and "friendly fraud" (a variety of scenarios in which authorized cardholders dispute legitimate charges, denying receipt of items properly delivered, buyer's remorse, not realizing another household member had purchased items.)

Almost every firm warns that chargebacks are best avoided entirely, and notes a list of precautions merchants should take. Materials often include specific references and quotes from card network guides. Common advice includes:

- *Good customer relations* – If delivery is delayed or an item is out of stock, tell consumers. Deal with complaints promptly. Confirmation e-mails with shipping details and tracking information can help.
  - *Train employees well.* Every possible point of consumer contact must understand policies.
  - *Disclose shipping and return policies.* Card networks have specific requirements. Ambiguous or absent disclosure can leave merchants exposed. Making it easy for customers to return products for full credit makes it less likely they will turn to their credit card company for assistance.
  - *Keep receipts and records* – Chargebacks can come months after the transaction and are impossible to dispute without records.
  - *Watch for high-risk transactions* – Large orders from unfamiliar customers. Different billing and delivery addresses. Shipping required to locations where address verification services are not available. Multiple orders within a short period of time is a sign of unauthorized card use. Multiple orders with different cards and a single address, or the same card used to make payments on different accounts, Orders from "free" e-mail addresses. Orders made with various attempts on card numbers or expiry dates are an indicator that someone is "guessing" at correct expiry dates. Only allow a certain number of payment cards to be linked to a single IP address.
  - *Know the card network rules* – Any violation of card network requirements can invalidate the ability to dispute a chargeback.
  - *Clearly list your name in payment details* – If cardholders don't recognize the merchant name on their statement, they are more likely to chargeback.
  - *Accurately describe your products* – Incorrect descriptions or size specifications or colour details make chargebacks difficult to win.
  - *Flight or fight?* – Many firms recommend that there are cases that merchants just cannot win and any effort is wasted. Other firms recommend fighting all charges so acquirers might think twice before acting to close a merchant account.
- Cybersource's 2016 fraud report showed 53 percent of chargebacks are disputed

(unchanged since 2013), and merchants win 41 percent of challenged chargebacks.

Measures commonly proposed to reduce the risks of fraud in distant transactions, or increase the likelihood of winning a chargeback dispute:

1. Card Verification Value – This three-digit number printed on the back of credit cards is unique to each card. Requiring the CVV reduces the risk that the credit card number has been stolen. (It does not help if the physical card has been stolen.)
2. Address Verification Systems – This checks that the billing address provided matches the one on file with the cardholder’s issuer. This check is usually part of a merchant request for authorization on the credit card.
3. Signature-based Delivery – When a consumer claims non-delivery, the onus switches to the merchant to show proof. A signed “proof of delivery” can virtually eliminate the “it never arrived” chargebacks. Signature-based delivery authentication increases merchant costs, and missed daytime deliveries can frustrate consumers. Many delivery companies do “drop and go”, leaving items on front porches or between doors. Criminals may snatch delivered items from doorsteps.
4. Materials from card networks, issuers and acquirers note the “Verified by Visa” and “MasterCard Secure Code” services can also reduce fraud.

### *Friendly Fraud*

Many materials take specific aim at friendly fraud. While there is often tolerance for legitimate fraud that comes from criminal activity, being victimized by customers is not. There is often passionate language around customers who use chargebacks to effectively steal from merchants.

“This involves dishonest people who would like to keep the merchandise without actually paying for it,” notes the web site of a European-based processing firm. “In the offline world, this is known simply as shoplifting or stealing and perpetrators rightfully belong in jail if caught red-handed. However, this pattern of behaviour is tolerated on the Internet, thanks to chargebacks.”<sup>26</sup>

“[Chargebacks] have since evolved into a deadly weapon that consumers use against merchants. Friendly fraud is often called chargeback fraud because consumers use the chargeback process to steal from merchants.”<sup>27</sup>

There are multiple references to consumers using chargebacks because they are too lazy or too late to follow a merchant’s return policies. Many note the ease of the theft; just deny merchandise was received. “It’s easier for them to challenge the merchant and claim they didn’t order or receive the goods” (Cardinal Commerce brochure).

Questionable figures are often used. Many note that 86 percent of customers begin with the issuer, not the merchant. That’s based on research from Verifi, which further elaborates that 28 percent of customers are redirected by the issuer to the merchant to resolve the

dispute.

Another common statistic is that 40 percent of customers who use a chargeback do so again within 60 days, and 50 percent within 90 days. This is commonly attributed to Visa, but researchers were not able to find an original citation. Likewise, there are published references to 71 percent of chargeback costs being “friendly fraud”, but that source material<sup>28</sup> involves many assumptions, and actually says that 71 percent of fraud costs (not chargeback costs) are friendly fraud or chargeback fraud. Friendly fraud ranks third, behind clean fraud and account takeover in Visa’s E-Commerce Merchant’s Guide to Risk Management as the “top fraud attacks that were most impactful ... in terms of frequency of attack and revenue.” Cybersource’s 2016 Fraud Benchmark Report concludes that chargebacks account for “only 28 percent of fraud claims”, down from 43 percent three years prior.

Each chargeback management firm has something to offer beyond this advice and guidelines. Services and software described in sales materials included:

- Fraud check software that provides a mid-transaction investigation that conducts location comparisons, past transaction histories, chargeback histories and other indicators of possible fraud without interrupting the transaction flow. On suspicious orders, banks or merchants can challenge the cardholder and seek different forms of authentication. This authentication can shift the liability on fraudulent transactions.
- Real-time information sharing between merchants and issuers to reduce overall chargebacks. Issuers can provide alerts to notify merchants of pending disputes or when the likelihood of a chargeback is high.
- Customer registries that require customers to enter information beyond a simple card number to further prove authenticity. This could include a merchant database that has unique passwords and codes for clients.
- Chargeback representment “wizards” – services that identify and collect all the supporting documentation to present to acquirers and issuers to dispute chargeback transactions.
- A form of insurance that “guarantees” consumer satisfaction with the product or service. This allows consumers an additional venue to vent frustration and reduce the likelihood of issuer involvement.
- Some vendors referenced acquirer “blacklists” – acquirers aggregating customer information from all their merchants to stop chargebacks at other merchants.
- Some vendors bundled services as “end-to-end” solutions.

Many of these approaches have drawbacks (often cited by competitors). For example, additional verification steps slow the sales process and lead to more “abandoned” sales, where consumers do not complete the online transaction. Overly strict verification criteria can exclude legitimate sales; merchants with no chargebacks are likely missing sales.

Which tools do businesses use? *Cybersource* published its 2017 *Online Fraud Benchmark Report*, based on 466 North American businesses, representing more than 12 percent of the North American eCommerce market. It notes that fraud losses have “stabilized over the past few years” and that businesses “are succeeding in controlling direct fraud loss (chargebacks plus credits issued due to fraud).”

It also provides a list of the “most adopted” fraud detection tools among surveyed merchants.

Table 4

### Most Adopted Fraud Detection Tools

Based on use by merchants in study

| <b>Validation Services</b>                | <b>%</b> |
|---|----------|
| Card Verification Number                  | 88       |
| Address Verification Service              | 82       |
| Postal address validation services        | 60       |
| Geographic indicators/maps                | 54       |
| E-mail verification                       | 54       |
| Phone number verification/reverse lookups | 49       |
|   |          |
| <b>Proprietary Customer History</b>       |          |
| Customer order history                    | 72       |
| In-house black lists                      | 66       |
| in-house positive lists                   | 54       |
|   |          |
| <b>Multi-Merchant Data</b>                |          |
| Shared negative hotlists                  | 27       |
|   |          |
| <b>Purchase Device Tracking</b>           |          |
| Geolocation information                   | 56       |
| Device fingerprinting                     | 36       |

Source: *Cybersource (2017) North America Online Fraud Benchmark Report*

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Participating merchants were also asked which tools they found most effective in preventing fraud losses. Respondents most commonly listed Address Verification Service and Card Verification Value among their top-three methods.

Table 5

**Most Effective Fraud Prevention Tools**

Percent of merchants that selected as one of their three most effective fraud prevention tools

| <b>Tool</b>                      | <b>%</b> |
|----------------------------------|----------|
| Address Verification Service     | 58       |
| Card Verification Number         | 53       |
| Device fingerprinting            | 42       |
| Fraud scoring model              | 40       |
| Payer authentication (3D Secure) | 39       |
| Credit history check             | 28       |
| E-mail verification              | 27       |
| Customer order history           | 26       |
| Negative lists                   | 25       |
| Two factor phone authentication  | 25       |

*Source: Cybersource (2017) North America Online Fraud Benchmark Report*



## VIII

### Other Considerations

“[Because] the level of payment protection can vary depending on the type of payment mechanism used, the recommendation calls on governments and stakeholders to work together to develop minimum levels of consumer protection across payment mechanisms.” (OECD)

#### International

This section summarizes the chargeback protections given to consumers in other nations, as well as how those protections are communicated to consumers.

##### *United Kingdom*

Section 75 of the *Consumer Credit Act* makes credit card providers equally liable with retailers, so that if a consumer has a claim against a supplier, they can contact the credit card company for cost recovery. There are some limitations to this protection. The law specifies credit cards and only protects transactions between 100 and 30,000 pounds. For transactions outside that price range, or paid through different methods such as debit, consumers are instructed to use “chargeback scheme” protection offered by their bank.

The government-funded consumer advice centre Consumer Direct once had a “template letter” for download in these scenarios. Successor group Citizens Advice has a good presentation on its web site that covers most basic consumer chargeback questions<sup>29</sup>.

##### *Australia*

Australia has an ePayments Code, which took effect in 2013, replacing the old EFT Code. New account applications make it clear that there are regulations in place. Opening a new account triggers a mandatory key fact disclosure that includes a link to Australia’s moneysmart web site<sup>30</sup> which has considerable information about a consumer’s chargeback rights. State and national consumer protection sites have simple presentations of chargeback basics<sup>31</sup>.

Bank web sites are relatively similar to Canadian web sites, in that protections against fraud and other electronic threats are promoted, but not chargeback protections. However,

in many of the new card applications, there are specific references to chargeback rights in the agreements, such as this language from NAB card agreements:

“Each credit card scheme (Visa, MasterCard®, American Express) has a dispute resolution process that is contained in the operating rules of the credit card scheme. This process sets out specific circumstances and timeframes in which a member of the scheme (e.g. a bank) can claim a refund in connection with a disputed transaction on a cardholder’s behalf. This is referred to as a ‘chargeback right’. NAB’s ability to investigate any disputed transaction on your account, and subsequently process a chargeback is restricted by the time limits imposed under the operating rules of the applicable credit card scheme.” (NAB Credit Cards, Terms and Conditions).

Yet other agreements have language similar to Canadian language. “Subject to any applicable law, we are not responsible for goods or services supplied to you. If you have a complaint or concern about goods or services purchased with your Card, you must resolve this directly with the Merchant.” (Westpac Credit Card Agreement)

### *United States*

U.S. card issuers are required to provide detailed instructions about consumers rights, and how to exercise those rights. The requirements are part of the *Truth In Lending Act*, Regulation Z, specifically section 226.6 that lists requirements for a statement that outlines the consumer’s rights and creditor’s responsibilities. Those are detailed in 226.12(c) which lists the right of a cardholder to claims or defences against a card issuer. Point (1) of that section states:

“When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and finance or other charges imposed on that amount.”<sup>32</sup>

Regulation E of the U.S. Electronic Fund Transfer Act similarly protects consumers when they use electronic transfer systems, including debit cards.

The difference between the effects of those regulations and Canadian requirements was quite apparent when researchers reviewed web sites of Canadian banks that also offered U.S. banking services. U.S. customers of Royal Bank, for example, receive a great deal of information about how to dispute transactions.<sup>33</sup> The U.S. Electronic Fund Transfer Act Regulation E is referenced – so consumers see the authority of federal law demonstrated. Consumers are informed about what they need to provide, the time limits, the types of transactions covered, the common errors, the most common reasons for disputing a transaction, consumer liability for errors and the typical length of investigations.

In contrast to other countries where disclosure to consumers is required, issuers in Canada generally choose not to inform their customers of this protection.

## Gift Cards

The phrase “gift card” in Canadian commerce has at least two distinct meanings. It can refer to single use or reloadable gift or store cards, used at specific merchants (closed loop) or multiple merchants in an area, like a mall (semi-closed loop). It can also refer to prepaid credit cards given as a gift, and redeemable wherever those cards are accepted (open loop).

With prepaid credit cards, transactions are processed through those cards’ proprietary networks, including online or over the phone. These cards do not have to be connected to a bank account. So, a lost or stolen card becomes similar to cash, but the loss to the consumer is limited to the amount of funds on the card. “Chargeback” protection is also challenged in the gift scenario, when the cardholder is not the card purchaser. Researchers were not able to gain any clarity on the effectiveness or procedures of protection when prepaid cards are given as a gift and the person who purchased it is not the person using it to finance a purchase.

Canada’s federal *Prepaid Payment Product Regulations* came into effect in 2014. They require federally regulated financial institutions (banks) to provide certain information to consumers. There cannot be an expiry date, but there can be fees to transfer funds and issue a new card. Fees must be disclosed in an information box that is prominent on packaging.

Merchant- or shopping mall-issued cards are subject to provincial laws that restrict expiration date and fees, and require certain disclosures before purchase. Merchants activate purchased cards by swiping the magnetic stripe through a checkout terminal. The merchant’s acquirer will then authorize and process future transactions on the card. Most gift cards are transferable, though some have the ability to be registered online for additional funding. Some provincial consumer protection web sites have information about merchant gift card protections, but generally encourage consumers to contact the business first to resolve any issues. Consumers may purchase merchant gift cards with traditional credit cards, in which case they may have some protections against merchant bankruptcy. MasterCard’s merchant guide notes the time limits on protections when merchant-branded prepaid gift cards are purchased and the merchant subsequently goes out of business. (MasterCard guide, 57).

With the variety of merchant policies, provincial protections and flavours of gift cards, it is difficult to summarize the protections available in the distant purchase scenarios.

## IX

### Consumer Survey

What 2,000 Canadians said about distant transactions, disputes and chargebacks.

#### Questions for Consumers

The literature reviews and interviews produced a number of questions to ask Canadian consumers.

A consumer survey was designed to collect and evaluate consumer experiences with and opinions about distant transactions and disputes that arise in distant transactions. The survey asked consumers about:

- Participation in distant transactions, by Internet, mail or telephone and how those transactions are paid for.
- The common difficulties in distant transactions, how consumers first acted, the resolution, consumer satisfaction and whether the resolution involved payment intermediary assistance.
- Merchant responses after disputed transactions.
- Their views on the relative efficacy of industry codes of conduct and consumer protection laws.
- Their understanding of the cost recovery protections offered, and how they became aware of them.
- After each participant is provided with a basic understanding of chargebacks, they were asked whether certain common scenarios are covered or ought to be covered.

Survey results include cross-tabulations to measure the relationship between attitudes in questions and actions in other questions. For example, are consumers who are aware of credit card chargebacks more likely to use them? Demographic overlays allow for the measurement of responses against age, income, sex, education and province of residence.

#### The Consumer Survey

Consumer views on these topics were obtained through an online survey of 2,000 consumers conducted by Environics Research. The questionnaire consisted of up to 13

questions about distant transactions, payment choices, chargebacks and consumer protections and was designed to take approximately 10 minutes to complete.

Researchers designed the questionnaire, based on findings of the literature reviews and interviews, with additional input from Consumers Council of Canada executives, the project's research methodologist and Environics.

This section describes the key findings of the survey. The list of survey questions is in Appendix A. Complete results are available in Appendix B.

### **Participant Information**

The surveys were completed from March 13 to 24, 2017. A total of 2,000 respondents aged 18+ were interviewed using an online methodology. Consumers who had an immediate family member employed in the payment card or online marketplace industries were excluded. As this study is a non-probability sample, the policy of the MRIA (the governing body for the market research industry in Canada) is that the margin of error should not be cited. Participating panelists are recruited through thousands of web sites. Environics was responsible for translating the survey into French.

### **Key Findings**

Here are the most significant findings from the survey, followed by “secondary” findings and demographic breakdowns of interest.

### 1. Consumers are unsure about available protection.

Consumers were asked to rate on a scale from “strongly agree” to “strongly disagree” the statement: “Consumers who use debit and credit cards to pay for purchase can initiate action to get their money back for purchases made online, by phone or by mail that have been lawfully cancelled, returned or not received.”

Table 6

#### Consumer Attitudes on Protection Measures

Question: For each of the following statements, indicate your view.

| Statement  | Strongly Agree % | Somewhat Agree % | Somewhat Disagree % | Strongly Disagree % | Don't Know |
|--|------------------|------------------|---------------------|---------------------|------------|
| Consumers who use debit and credit cards to pay for purchase can initiate action to get their money back for purchases made online, by phone or by mail that have been lawfully cancelled, returned or not received. | 32               | 41               | 6                   | 2                   | 20         |

Note: 2000 respondents

While the majority of consumers expressed agreement, only 32 percent did so “strongly”. The “disagree” and “don’t know” responses suggest at least 28 percent did not know about this facility. The word “chargeback” was avoided in this context because Interac does not offer “chargebacks”, but does pledge to protect consumers when they are not at fault.

Prior to the next question, consumers were informed that this was the case. “Consumers who use debit and credit cards to pay for purchases are able to initiate action to get their money back for certain types of transactions that have been cancelled or not completed properly. These situations are often referred to as “chargebacks”, and involve the transaction’s payment intermediary (such as a credit card issuer, debit card issuer, PayPal, etc.)”

One key finding from the literature review was lack of information from card issuers about how to recover funds during disputes. Provided with the knowledge that protections do exist, consumers were asked how they became aware of this facility. The most common responses were “don’t recall” (26 percent) and “I was not aware of them until completing this survey” (22 percent).

Table 7

**Source of Consumer Awareness of Chargebacks**

Question: How did you first learn about the ability to seek cost recovery for certain kinds of problems through payment card issuers?

| <b>Information Source</b>                             | <b>Number</b> | <b>%</b> |
|---|---------------|----------|
| I was not aware of them until completing this survey  | 443           | 22       |
| From the financial institution that gave me a card    | 243           | 12       |
| From the credit card network (Visa, Mastercard, Amex) | 240           | 12       |
| From friends/family                                   | 180           | 9        |
| From a merchant                                       | 127           | 6        |
| From searching the Internet                           | 81            | 4        |
| I read something in print                             | 65            | 3        |
| I heard something about it on TV or radio             | 44            | 2        |
| From a third-party dispute resolution service         | 11            | 1        |
| From a government consumer protection department      | 8             | 0        |
| From a consumer group or legal help clinic            | 1             | 0        |
| Other   | 45            | 2        |
| I don't recall  | 512           | 26       |

*Note: 2000 respondents*

The next largest sources of information were issuers and credit card networks, though less than 25 percent of consumers specifically attribute this knowledge to them.

*1b. There is little understanding of what specific scenarios might qualify for cost recovery.*

Informed about chargeback protections, consumers were presented with eight scenarios and asked whether consumers were eligible for cost recovery, or if they should be. The scenarios were common occurrences discovered in the literature review, and the order of scenarios was randomized. In some cases, the language was simplified, and the “correct” answer would likely depend on specific details not provided.

“I don’t know” was the mode response in five of the eight situations. The only scenario in which participants displayed confidence in the aggregate was the “item arrived defective, merchant not responsive” which 59 percent believed was eligible, and only 7 percent believed shouldn’t be eligible for cost recovery. (In this scenario, a chargeback would quite likely be provided.)



Table 8

**Consumer Views on Chargeback Scenarios**

Question: For each of the following statements, identify whether consumers are eligible for cost recovery from payment intermediaries, or if they should be.

| <b>Scenario</b>  | <b>Currently eligible %</b> | <b>Not eligible but should be %</b> | <b>Not eligible and shouldn't be %</b> | <b>No knowledge or belief %</b> |
|--|-----------------------------|-------------------------------------|--|---------------------------------|
| An item I ordered arrived, but it was damaged or defective and the merchant has not responded to my calls.   | 59                          | 12                                  | 7                                      | 23                              |
| An item I ordered never arrived, but I forgot about it and didn't notice until six months later  | 22                          | 26                                  | 21                                     | 31                              |
| My 15-year-old child used my card information without my permission to purchase some music over the Internet   | 22                          | 21                                  | 27                                     | 29                              |
| I thought I was purchasing one thing, but it turns out I was agreeing to purchase one thing each month, and the merchant won't cancel it for the first 12 months.  | 32                          | 26                                  | 10                                     | 32                              |
| An item I purchased arrived, but it was not the quality I expected and the merchant refuses to refund my money.  | 39                          | 24                                  | 11                                     | 27                              |
| I ordered the item, but changed my mind and tried to cancel it. The merchant told me it was too late to cancel, because their delivery process had already started | 26                          | 22                                  | 23                                     | 29                              |
| I didn't mean to accept the online transaction, and I couldn't see a way to cancel it on the web site.   | 34                          | 21                                  | 11                                     | 34                              |
| I received the item I ordered, but I no longer require it, and the merchant's return policy requires me to pay for shipping and an unreasonable restocking fee.    | 14                          | 22                                  | 34                                     | 30                              |

*Note: 2000 respondents*

The key finding is not the number of "correct" answers, but instead that there was no general understanding, no consistency of views. The absence of consensus suggests that there is a great deal of uncertainty, and that consumers may not be using the protections to which they may be entitled.

*1c. There is no understanding of specific chargeback rules.*

One element of credit card chargebacks that can be objectively answered without subjective interpretation is the length of time consumers have to report non-delivery to be eligible for protection. To test this specifically, consumers were asked about the time-limit restrictions.

Table 9

**Consumer Knowledge of Chargeback Deadlines**

Question: Consider a scenario in which a consumer orders an item that is never delivered, the seller does not respond and the consumer notifies the seller of a desire to cancel the transaction. Within what time period after the transaction must the consumer notify the credit card issuer to be eligible to recover costs?

| Notification Deadline | Number | %  |
|-----------------------|--------|----|
| Up to 30 days         | 643    | 32 |
| Up to 60 days         | 240    | 12 |
| Up to 90 days         | 158    | 8  |
| Up to 120 days        | 23     | 1  |
| Up to 180 days        | 17     | 1  |
| There is no limit     | 52     | 3  |
| Don't know, no answer | 867    | 43 |

*Note: 2000 respondents*

Though there are variations depending on whether a delivery date was specified at the outset, in general, there is a 120-day limit within which a chargeback for non-delivery of goods and services can be considered. Very few consumers provided the correct answer. The vast majority indicated that they had no answer, or replied with a shorter time limit. This would suggest that consumers may not pursue remedies to which they are entitled, because they are not well informed.

*2. Forty-five percent (45%) of consumers have had a dispute on a distant transaction in the past 24 months.*

Another 9 percent report a disputed distant transaction prior to the past 24 months, while 46 percent report no problems in distant transactions. These figures exclude the 10 percent of consumers who said they do not engage in distant transactions.

Consumers were given a list of potential disputes and asked to select all that apply.

Table 10

**Consumers' Disputes in Distant Transactions**

Question: In the past 24 months, which of the following have you experienced in a distant transaction? Which problem have you experienced most recently?

| <b>Problem Description</b>                             | <b>Past 24 Months %</b> | <b>Most Recently %</b> |
|--|-------------------------|------------------------|
| A good I purchased never arrived                       | 21                      | 37                     |
| A good I purchased arrived, but was damaged or faulty  | 13                      | 16                     |
| The good or service was not the promised quality       | 12                      | 15                     |
| A good arrived, but it wasn't exactly what I purchased | 13                      | 14                     |
| Other problems not listed here                         | 4                       | 6                      |
| A service I ordered was never delivered/materialized   | 4                       | 4                      |
| Billed higher than agreed upon                         | 4                       | 3                      |
| A refund was not processed properly                    | 4                       | 3                      |
| Charged twice for a single purchase                    | 4                       | 2                      |
| No problems in past 24 months, but previous problems   | 9                       |                        |
| No such problems                                       | 46                      |                        |

*Note: 1802 respondents, 806 with a problem in past 24 months*

Again, the totals in the left column exceed 100 percent, because consumers selected all that apply. The right column shows the most recent problem. Additional questions were asked about each consumer's most recent dispute (detailed below).

The most common source of reported disputes relate to delivery, either non-delivery or damaged during delivery, followed by "quality of goods" issues. This suggests that the problems originate not with the online retailer (save those that do not ship purchased items) but with shippers, delivery agents and manufacturers. The retailer bears the brunt of these costs, but remedies might lie with stronger responsibility around manufacturer's warranties, in the case of faulty goods, or improved shipping practices.

*2a. Nearly 29 percent of consumers have sought reimbursement from a payment intermediary in the past 24 months.*

This figure includes both in-store and distant transactions, and was asked after consumers were introduced to the concept of chargebacks.

Table 11

### **Consumer Reimbursement Requests**

Question: Have you requested a reimbursement from your payment intermediary in the past 24 months?

| <b>Payment intermediary</b>    | <b>Number</b> | <b>%</b> |
|--------------------------------|---------------|----------|
| Credit card issuer             | 333           | 17       |
| Debit card issuer              | 85            | 4        |
| PayPal transfer                | 151           | 8        |
| Yes, from another intermediary | 86            | 4        |
| No                             | 1423          | 71       |

*Note: 2000 respondents*

Out of 2,000 consumers, 577 have sought reimbursement from a total of 655 different intermediary sources. The “other” responses likely include those who used the resolution services of online marketplaces, such as Amazon.

*2b. The payment choice in disputed transactions is primarily credit.*

Consumers were first asked about payment choices for distant transactions.

Table 12

**Consumers' Payment Choices in Distant Transactions**

Question: In a distant transaction, which of the following methods have you used to pay for purchases in the past 24 months?

| Payment Type                          | %  |
|---------------------------------------|----|
| Credit card                           | 84 |
| PayPal transfer                       | 47 |
| Prepaid gift card                     | 25 |
| Debit card                            | 22 |
| Electronic fund transfer (e-transfer) | 19 |
| Cheque                                | 10 |
| Money order or bank draft             | 5  |
| Bitcoin or other cryptocurrency       | 2  |
| Other                                 | 1  |

*Note: 1802 respondents*

The totals exceed 100 percent because consumers were asked to click all they have used.

The ordinality is roughly the same, when asked about the payment choice in their most recent distant transaction.

Table 13

**Disputed Distant Transaction Payment Choice**

Question: How did you pay for the item or service (in your most recent disputed transaction)?

| <b>Payment choice</b>                 | <b>Number</b> | <b>%</b> |
|---------------------------------------|---------------|----------|
| Credit card                           | 464           | 58       |
| PayPal transfer                       | 182           | 23       |
| Prepaid gift card                     | 69            | 9        |
| Debit card                            | 49            | 6        |
| Electronic fund transfer (e-transfer) | 9             | 1        |
| Bank draft or money order             | 9             | 1        |
| Cheque / Certified cheque             | 7             | 1        |
| Bitcoin or other cryptocurrency       | 2             | 0        |
| Other                                 | 13            | 2        |
| No recall                             | 2             | 0        |

*Note: 806 respondents*

The one exception is electronic transfers, used in distant transactions by 19 percent of consumers, but almost never the payment in the disputed transaction. This suggests consumers only use e-transfers in situations where they feel most certain about the seller.

### 3. The majority of disputes are resolved satisfactorily with the merchant directly.

Asked about the outcome of their most recent distant transaction dispute, 73 percent of consumers said their dispute was resolved satisfactorily, 13 percent were unsatisfied, 10 percent are ongoing and not resolved and 3 percent reported “other”.

Table 14

#### Disputed Distant Transaction Resolution and Satisfaction

Question: What was the final resolution of the problem?

| Resolution                                       | Number | %  |
|--|--------|----|
| Satisfaction (Total)                             | 594    | 73 |
| with the merchant / seller alone                 | 472    | 58 |
| with the assistance of a payment intermediary    | 64     | 8  |
| with the assistance of my bank                   | 30     | 4  |
| with the assistance of a lawyer I paid           | 8      | 1  |
| with the assistance of marketplace (Amazon/Ebay) | 7      | 1  |
| with the assistance of a consumers group         | 5      | 1  |
| with the assistance of media/ombudsman/others    | 8      | 1  |
| Not satisfied (Total)                            | 107    | 13 |
| and I did not contact my payment intermediary    | 57     | 7  |
| even though I contacted my payment intermediary  | 50     | 6  |
| It is ongoing and not yet resolved               | 81     | 10 |
| Other  | 24     | 3  |

Note: 806 respondents

If you remove ongoing disputes, more than 60 percent of disputes in distant transactions are resolved satisfactorily with the merchant or seller alone. Assistance from payment intermediaries and banks results in satisfied outcomes in an additional 12 percent of disputes. Of the unsatisfied, roughly half engaged their payment intermediary. Engaging the payment intermediary or bank contributed to a satisfactory resolution in 94 of the 701 disputes, and did not help in 50 disputes.

Excluding the ongoing disputes, banks and payment intermediaries were contacted in about 20 percent (144 of 701) of distant transaction disputes. Payment intermediaries were most commonly used in the “service not delivered” and “goods not arrived” situations. The lowest levels of satisfaction were found in Internet transactions of merchants without

stores (the survey used Air Canada as an example), mail orders and telephone orders.

Satisfaction was highest for consumers who paid through PayPal (81 percent satisfied, 10 percent not, 10 percent other), followed by credit cards (73-14-13), gift cards (75-11-13) and debit (69-14-16). PayPal customers were most likely to cite the payment intermediary as a source of assistance that led to satisfaction. Consumers in a distant transaction dispute are less likely to contact their payment intermediary if they used debit cards than the other common payment methods.

Participants could elaborate on “other” responses. A few identified assistance from marketplace dispute resolution services (Amazon primarily, but also e-Bay). Other responses showed ambivalence, taking no action, explaining with variations of “I didn’t complain, but I’ll never buy from that merchant again” or “the cost was low, so I just accepted it.” Others included unique circumstances such as items abandoned in customs.



### 3a. Consumers accept their own choice as the source of dissatisfaction

Participants who expressed dissatisfaction with the resolution of their most recent distant transaction dispute were asked which statement best represented the source of the dissatisfaction.

Table 15

#### Disputed Distant Transaction - The Unsatisfied

Question: What was the main reason for your dissatisfaction?

| Reason  | Number | %  |
|---|--------|----|
| I chose not to pursue it  | 24     | 23 |
| I accepted that I had made a bad choice                         | 19     | 18 |
| My complaint was considered “too late” to address               | 14     | 13 |
| The dispute process took too long to resolve                    | 11     | 10 |
| The seller was non-compliant and it wasn’t worth my effort      | 8      | 8  |
| I paid in such a way that there was no recourse                 | 8      | 8  |
| The agreement prevented me: Items were sold “as is”             | 5      | 5  |
| The merchant had a “no refund” policy                           | 5      | 5  |
| The dispute process was too costly                              | 4      | 4  |
| I didn’t have enough proof – receipts, dates, order information | 2      | 2  |
| Other   | 6      | 6  |

*Note: 106 respondents dissatisfied with the resolution of their most recent disputed distant transaction.*

Combining responses “I chose not to pursue it”, “I accepted that I made a bad choice” and “It wasn’t worth my effort”, the most common reason for dissatisfaction is placed back on the consumer by the consumer (49 percent). This also suggests that consumers abandon remedies to which they are entitled.

### 3b. Successful resolutions are more common in-store

Participants without a disputed distant transaction were asked about their most recent “in-store” merchant dispute. Two-thirds reported no disputes. Of those who had experienced problems, satisfactory resolutions outnumbered unsatisfactory resolutions by about 10-to-1 (352 to 34). In distant transaction disputes, the ratio of satisfied to unsatisfied is about 9-to-2 (471 to 106). The difference may be related to the face-to-face environment and the desire for merchants to build and maintain trust and relationships

compared to less personal distant transactions. Only a small portion of the satisfactorily resolved in-store disputes (19 of 352) involved the assistance of a payment intermediary. The vast majority were resolved directly with the merchant.

### *3c. Consumers say their first step is to contact the merchant.*

One common view by merchants and chargeback management companies is that consumers contact their payment intermediary first and bypass the merchant. Almost 80 percent of participants said their first step is to contact the merchant. Approximately 10 percent contact their payment intermediary or bank as a first step, while 8 percent took no action in their most recent dispute.

Table 16

#### **Disputed Distant Transaction First Contact**

Question: When you realized there was a problem, what was your FIRST contact attempt to resolve it?

| <b>Point of First Contact</b> | <b>Number</b> | <b>%</b> |
|-------------------------------|---------------|----------|
| Merchant/seller               | 636           | 79       |
| I took no action              | 67            | 8        |
| Payment intermediary          | 50            | 6        |
| My bank                       | 33            | 4        |
| The government for assistance | 5             | 1        |
| Law enforcement               | 2             | 0        |
| Other                         | 13            | 2        |

*Note: 806 respondents*

#### *4. Consumers who are “aware” of chargeback protections generally behave the way the industry would like them to behave.*

One key question for the project was whether there was a difference in the views and behaviours of consumers who were aware of chargeback protections compared to those that were not aware. The group of consumers that “strongly agreed” with the survey’s statement that “Consumers who use debit and credit cards to pay for purchase can initiate action to get their money back for purchase made online, by phone or by mail that have been lawfully cancelled, returned or not received” were labelled “chargeback aware” and their results were compared to the overall sample.

The “chargeback aware” are:

- More likely to engage in all forms of distant transactions. For purchasing goods over the Internet, this is 85 percent compared to 79 percent for the sample at large.
- More likely to use all of the payment types – credit, PayPal, debit, gift cards, electronic transfers, money orders – except cheques.
- Less likely to have problems in distant transactions than the sample group, and have no major deviations in the types or payment choices of distant transactions.
- More likely to contact the merchant in the first step of resolving a distant transaction problem.
- More satisfied with the resolution of the disputes on average.
- More likely to know that their province has specific laws to address distant transactions and more likely to know that the laws direct credit card issuers to act on their behalf.
- More likely to favour a Canada-wide approach to consumer protection in distant transactions.
- More likely to have learned about chargeback provisions from their card issuer or network.

In each of these dimensions, the “chargeback aware” show consistent (often small) tendencies to behave the way the payments industry would prefer. They make more distant purchases. The “chargeback aware” are also more likely to seek reimbursement from a payment intermediary, and in each of the eight “is this recoverable” scenarios, more likely to believe consumers are currently entitled to cost recovery.

In contrast, consumers who responded “don’t know” to the “consumer aware” question are much less likely to believe that consumers are entitled to cost recovery for each of the eight scenarios. Those who had no awareness prior to the survey are more likely to have taken no action at all to resolve a dispute in a distant transaction. Those without prior awareness also showed less overall satisfaction with the resolution. Lack of awareness means consumers are less likely to take advantage of protections to which they are entitled.

*5. Consumer awareness of provincial protection is low, and consumers favour federal or industry protections.*

Participants were asked to evaluate five statements related to consumer protections on distant transactions, selecting from “strongly agree to strongly disagree”. The first four questions asked about provincial laws and industry codes of conduct.

Consumers have a great deal of uncertainty about how they are protected. In three of the four questions, the mode response was “don’t know”. In all four questions, the two top responses were “don’t know” and “somewhat agree”. Support for either extreme – strongly agree, strongly disagree – was modest. Consumers did show support for being better protected by industry codes of conduct than consumer protection laws (45 percent agree / 18 percent disagree). They also agreed that consumer protection laws are not really effective on purchases made over the Internet.

Table 17

**Consumer Attitudes on Protection Measures**

Question: For each of the following statements, indicate your view.

| Statement   | Strongly Agree % | Somewhat Agree % | Somewhat Disagree % | Strongly Disagree % | Don't Know |
|---|------------------|------------------|---------------------|---------------------|------------|
| My province has specific consumer protection laws to address distant transactions such as Internet purchases.   | 12               | 28               | 9                   | 2                   | 48         |
| My province has consumer protection laws that compel credit card issuers to act on my behalf if something I purchase does not arrive and I properly cancel the transaction with the seller. | 19               | 33               | 7                   | 2                   | 39         |
| Consumer protection laws are not really effective on purchase made over the Internet.   | 15               | 33               | 20                  | 4                   | 28         |
| Canadian consumers are better protected by industry codes of conduct than consumer protection laws.   | 12               | 33               | 13                  | 5                   | 37         |
| A Canada-wide approach to addressing consumer protection in distant transactions such as Internet purchases makes sense.  | 51               | 33               | 4                   | 2                   | 9          |

*Note: 2000 respondents*

Sample sizes from the two provinces without specific protections were too small to draw conclusions. Consumer reaction to the fifth statement about a Canada-wide approach was much more emphatically positive (84/6 agree/disagree). This is noteworthy because of the intended Bank Act revisions that may change consumer protection for federally regulated bank customers.

### 6. Merchants do re-activate disputes consumers thought settled.

About 11 percent of consumers reported that a dispute they had thought to be resolved had subsequent contact either from the merchant (7 percent) or a third-party debt collection service (4 percent). A total of 337 responses were received from the 277 consumers, indicating that some consumers had experienced more than one of the listed merchant responses, and that about 14 percent of consumers had experienced a merchant response to a disputed transaction.

Table 18

#### Merchant Responses to Disputed Transactions

Question: Within the past 10 years - not just your most recent distant transaction - have you experienced any of these responses after any kind of disputed transaction?

| Merchant Response   | Number | %  |
|---|--------|----|
| After I believed the problem to be resolved, the merchant again asked for payment | 143    | 7  |
| After I believed the problem to be resolved, a debt collector contacted me        | 87     | 4  |
| I subsequently discovered my credit score / rating was affected                   | 65     | 3  |
| I had a lien placed against my property   | 39     | 2  |
| I was sued  | 3      | 0  |
| There was a merchant response not listed here                                     | 39     | 2  |
| I don't recall any  | 1723   | 86 |

*Note: 2000 respondents*

This question was asked with a more broad timeline, and without any distinction between distant and in-store transactions.

### *Other Findings and Breakdowns*

- Approximately 80 percent of consumers purchased goods over the Internet. About 10 percent of consumers reported no distant transactions.
- The most common marketplace for disputed distant transactions were online marketplaces (such as Amazon), followed by merchant-owned web sites and auction web sites (such as e-Bay)
- Consumers over the age of 50 are less likely to participate in distant transactions; participation declines with age.
- Satisfaction with the dispute resolution rises with age. Younger consumers are the most likely (22 percent) to be unsatisfied by the resolution.
- Older consumers are more likely to respond “don’t know” to the questions about consumer protection, and to the questions as to whether chargeback protections should apply to different situations. Younger consumers are likely to think chargeback protections apply, or should apply in the situations described.
- Younger consumers are more likely to agree that consumer protection laws offer no real effectiveness on Internet purchases and that industry codes of conduct offer better protection than laws.
- Younger consumers are more likely to seek cost recovery from a payment intermediary (38 percent for ages 18-24), than older consumers (22 percent of those 50 and above).
- No notable difference in frequency of chargebacks sought in different provinces.
- Quebec consumers:
  - Report the lowest levels of merchant response
  - Show the strongest agreement with statements about provincial consumer protection laws
  - Are less likely to “strongly agree” that a “Canada-wide approach” makes sense (but have the highest level of “somewhat agree” )
  - Are the least likely to express awareness of chargeback rules prior to this survey (tied with Saskatchewan)
- Women are more likely to take no action to resolve a dispute.
- In all of the multiple statement scenarios, and chargeback knowledge scenarios, women are more likely to say they don’t know or have no opinion.
- There is a strong relationship between higher education and greater chargeback awareness as well as chargeback requests.
- Knowledge of chargebacks increases with household income, as does support for a “Canada-wide approach”.
- Higher-income consumers are more likely to have learned about chargebacks from their financial institution or credit card network.



# X

## Conclusions

How effective can protections be when you don't know they exist?

### Consumer Rights & Responsibilities Discussion

The Consumers Council of Canada advocates for eight globally recognized consumer rights and responsibilities, plus an additional one that has become increasingly important in an interconnected world.

#### 1. Basic Needs

- The right to basic goods and services which guarantee survival.
- The responsibility to use these goods and services appropriately. To take action to ensure that basic needs are available.

#### 2. Safety

- The right to be protected against goods or services that are hazardous to health and life.
- The responsibility to read instructions and take precautions. To take action to choose safety equipment, use products as instructed and teach safety to children.

#### 3. Information

- The right to be given the facts needed to make an informed choice, to be protected against misleading advertising or labelling.
- The responsibility to search out and use available information. To take action to read and follow labels and research before purchase.

#### 4. Choice

- The right to choose products and services at competitive prices with an assurance of satisfactory quality.
- The responsibility to make informed and responsible choices. To take action to resist high-pressure sales and to comparison shop.

\* \* \*

## **5. Representation**

- The right to express consumer interests in the making of decisions.
- The responsibility to make opinions known. To take action to join an association such as the Consumers Council to make your voice heard and to encourage others to participate.

## **6. Redress**

- The right to be compensated for misrepresentation, shoddy goods or unsatisfactory services.
- The responsibility to fight for the quality that should be provided. Take action by complaining effectively and refusing to accept shoddy workmanship.

## **7. Consumer Education**

- The right to acquire the knowledge and skills necessary to be an informed consumer.
- The responsibility to take advantage of consumer opportunities. Take action by attending seminars and workshops, work to ensure consumer education takes place in schools.

## **8. Healthy Environment**

- The right to live and work in an environment that is neither threatening nor dangerous and which permits a life of dignity and well-being.
- The responsibility to minimize environmental damage through careful choice and use of consumer goods and services. Take action to reduce waste, to reuse products whenever possible and to recycle whenever possible.

## **PLUS – Privacy**

- The right to privacy particularly as it applies to personal information.
- The responsibility to know how information will be used and to divulge personal information only when appropriate.

The following table sets out summary attributes of the issue being explored by this research through the lens of consumer rights and responsibilities.

Table 19

**Consumers Rights and Responsibilities**

| <b>Consumer Protection Issue</b>   | <b>Rights Affected</b>   | <b>Responsibilities Affected</b>                                 |
|--|--|--|
| Consumers do not have a clear understanding of the protections available to them in payment card transactions.   | Information, choice, redress, consumer education                 | Information, choice, redress, consumer education                 |
| There are considerable variances in consumer protections offered by provincial rules.  | Basic needs, choice, redress                                     | Basic needs, choice, redress                                     |
| Consumer protections are not well promoted and there are no laws that require or rules that compel industry participants to disclose their availability. Information can be difficult to obtain.   | Information, choice, representation, redress, consumer education | Information, choice, representation, redress, consumer education |
| Consumers are skeptical about the effectiveness of provincial consumer protection laws in e-commerce.  | Basic needs, choice, representation, redress                     | Basic needs, choice, representation, redress                     |
| The marketing campaigns of some chargeback management companies could contribute to unnecessary friction between consumers and some retailers.   | Redress, choice  | Redress, choice  |
| Consumers who are less informed about redress rights are less positive about engaging in distant transactions, which may lead them to shy away from online shopping.   | Choice, consumer education                                       | Choice, consumer education                                       |
| Merchants worried about online payment risks, being amplified by the marketing campaigns of some chargeback management firms, could eschew online offerings.   | Choice   | Choice   |
| Provincial consumer protection departments have differing views of their largely untested authority over chargebacks   | Redress  | Redress  |
| Authoritative federal consumer protection that modifies provincial initiatives may nurture federal-provincial constitutional conflicts that complicate or even hamper consumer protection enforcement, despite a broad consensus among all Canadian consumers that national solutions are preferred. | Information, consumer education, redress                         | Information, consumer education, redress                         |

## **Summary of Consumer Rights & Responsibilities Impacts**

### *Basic Needs*

An efficient payment system that provides transparency and protection to consumers will help them meet their basic needs. For many consumers remote from significant urban centres, distant transactions are essential to meeting these needs. Uncompensated losses on distant transactions for which consumers are entitled to receive compensation can affect their ability to pay for life's essentials.

### *Safety*

There have been several notable examples of identity theft associated with security breaches of corporate databases and card readers of consumer transactions. These are not unique to distant transactions.

### *Information*

It is impossible for consumers to make informed choices when information is denied to them. Consumers do not have a good understanding of what protections are available to them, because this information is not clearly disclosed to them by issuers and not required to be disclosed to them by governments or industry practices. The intent of chargebacks is in part to protect consumers against improperly labelled or unfit goods.

Consumers have a responsibility to research before making purchases. In the online world, this can include checking feedback scores on questionable merchants and learning about protections for different payment types.

### *Choice*

Distant transactions provide consumers with a greater choice of purchases. They can provide lower cost alternatives. Choice of payment is another dimension; consumers can choose between multiple payment options when transacting with certain online merchants. If there are differences in protections offered to consumers through different payment choices, consumers should be aware of this. The lack of understanding by consumers of an important means to obtain redress in distant transactions may reduce Canadians trust in e-commerce, slowing the development of new e-commerce businesses and depriving Canadians of domestic choice, as new Canadian online businesses emerge more slowly and global competitors prepared to address redress options assertively grow market share in Canada.

Consumers have a responsibility to comparison shop, which is a considerable benefit to e-commerce.

### *Representation*

Consumers benefit from having powerful, informed advocates working on their behalf. If there are public policy discussions forthcoming about consumer protection requirements

of federally regulated financial institutions and how those protections affect provincial protections, these consumers, as a class, deserve funded, effective, capable representation in addition to being granted and supported to have a voice of their own as individuals.

### *Redress*

Consumers' right to redress is at the core of this project. Consumers have the right to be compensated for misrepresentation, shoddy goods or unsatisfactory services. Chargebacks are intended to provide these protection elements for consumers in distant transactions.

Consumers have a responsibility to take action by complaining effectively. Chargebacks can help them to do this. Accumulated chargebacks are a tool that may press unreliable merchants to improve practices or face higher transaction costs. While not currently a common phenomenon, chargebacks, as a method of redress, could lead to professionally organized retaliation by merchants, who are in turn being marketed to by risk management firms that in some cases seek to stimulate merchant anxiety in pursuit of business.

Consumers favour a consistent national approach to redress in distant transactions.

### *Consumer Education*

Consumers have the right to learn about the protections available to them from trusted sources, including the providers of these services, governments and independent consumer organizations. Current information practices deny consumers an understanding of the protections to which they are entitled or the rules that may apply to different situations. In fact, some practices are misleading, and could result in consumer thinking that they were never or are no longer eligible for protections to which they are entitled. Service providers appear to have a common interest in non-disclosure of consumer rights concerning chargebacks. Governments appear constrained to provide consumers an overall picture using a simple one-stop shopping approach of how the federal system shares in delivering consumer protection. Resource-constrained Canadian consumer groups are challenged to be competing information sources for consumers, helping them to access a broader range of choices for redress than business or government have so far appeared motivated to offer. Consumers are entitled to a better understanding of what kinds of protections are available, and under what circumstances.

### *Privacy*

Fraud protection is one of the forces that shapes payment industry practices. Consumers run the risk of account takeover fraud and other frauds when they engage in distant transactions.

## **Conclusions**

This research sought to answer questions about protections available to consumers in distant transactions and their effectiveness in resolving disputes. That process required the

evaluation of consumer understanding of these protections – what they know and where they learned about them and how they use them. A survey of 2,000 consumers provided evidence of consumer attitudes, knowledge and behaviours.

Credit cards remain the dominant choice of consumers making distant transactions, so the majority of the research and results reflect those protections. The research produced these major conclusions, drawn from a combination of the consumer survey, literature review and industry participant interviews.

1. *Consumers do not have a clear understanding of the protections available to them in payment card transactions.* A significant portion of consumers – likely around 25 percent – have no awareness of chargebacks. There is little understanding of what specific scenarios might qualify for cost recovery. There is no understanding of some of the specific regulations, such as timeframes. Alternative payment mechanisms do a much better job of explaining the protections available to consumers. They also do a better job of providing information about payment card chargebacks than most card issuers.
2. *Consumers' lack of understanding reflects the disclosure choices of card issuers.* With a few exceptions, Canadian card issuers do not inform consumers of this facility in card agreements. It is often not detailed on web sites. It is not a promoted benefit. In fact, card agreements almost universally lead consumers to think they are not eligible for issuer-assisted cost recovery in merchant disputes. Credit card issuers will inform consumers about “Verified by Visa”, which essentially authenticates the consumer to the merchant, but not about protections available to the consumer if online merchants are fraudulent. U.S. consumers receive a much higher level of information because it is required by law. Issuers choose not to disclose this information to Canadian consumers because it is not required, either by law or by codes of conduct. They must believe it is in their interests not to do so. Consumers would be better served if they were better informed of this protection. Fewer than 25 percent of consumers specifically attribute their knowledge of credit card chargebacks to their issuer or card network. Disclosure of some of the basic protections and limitations could improve transparency, improve confidence and possibly reduce the number of frivolous claims. It is hard to believe the industry is optimized when consumers learn of protections available to them through word of mouth.
3. *Forty-five percent of consumers have had a dispute in a distant transaction in the past 24 months.* Almost 29 percent of consumers have sought a reimbursement from a payment intermediary in the past 24 months. The majority of disputes are resolved satisfactorily with the merchant alone. Involvement of a payment intermediary does

tend to increase satisfaction, but only about 10 percent of consumers indicate they begin the process by contacting the intermediary. This is substantially different from figures used by chargeback management firms to win business. About 20 percent of disputes result in any payment intermediary involvement.

4. *Consumers who are “chargeback aware” are more likely to engage in all forms of distant transactions, more likely to use all payment types, less likely to have problems in distant transactions, more likely to contact merchants in the first resort to resolve issues and more satisfied with the resolution of the disputes.* Confident, rights-aware empowered consumers make purchases. Consumers who had no awareness of chargeback protections are more likely to take no action to resolve disputes, are less satisfied with the resolution, and shop less.
5. *The largest source of dissatisfaction in disputed transactions is consumers themselves – they simply decline to take action, absorb the costs, and/or realize they made an unwise purchase.* Consumers show the highest level of satisfaction in disputes which used PayPal to finance the transactions. Debit card transactions had the lowest level of satisfaction, though the differences were not large.
6. *Consumer protection laws vary by province, and efforts to create harmonious provincial rules are out of key and provide less protection than governments of other G-7 countries offer their consumers.* Only eight of 10 provinces adopted rules, and Ontario has a dramatically different view of the scope of its protections than the other seven. Provincial laws provide remedies through credit card networks, but not other payment avenues for distant transactions. U.S. laws require certain disclosures that Canadian laws do not. Government supported consumer protection groups in the United Kingdom and Australia also provide information to consumers that is not provided to Canadian consumers.
7. *Consumers have little knowledge about provincial protections and doubt their effectiveness in online transactions.* They have more faith in national initiatives and industry codes of conduct.
8. *The industry practices are more protective than the consumer protection laws; consumers use them more and they provide protections in provinces where there are no relevant provincial laws.* The provincial laws and industry practices are broadly similar; both appear to have similar roots in U.S. consumer protection legislation. The use of payment intermediary assistance shown in the survey dramatically exceeds provincial consumer complaint statistics, and the handful of chargeback disputes that reach banking dispute resolvers OBSI and ADR Chambers.
9. *Merchants do take further action on disputes consumers may believe have been resolved by a chargeback.* About 11 percent of consumers report that a dispute they thought resolved was not resolved and continued, with subsequent contact either

from the merchant (7 percent) or a third-party debt collection service (4 percent). Merchants are not powerless to fight credit card chargebacks. The card networks and acquirers both provide significant documentation and advice to help merchants reduce chargebacks. Chargeback management firms also provide advice, though some firms' claims about the risks to businesses of chargebacks are not supported by this research's survey of Canadian consumers.

10. *On simple issues, protections do not significantly differ by payment choice.* Of the major payment choices, (credit, debit, PayPal), only Interac does not offer "chargeback" protection. It does, however pledge to protect consumers in transactions for which they are not at fault. There is a grey area – this research was unable to conclude on the evidence available how Interac might resolve contentious disputes around "I didn't receive what I ordered" or "This isn't authentic" or "This merchant won't accept my return" – but for the other two template scenarios (never arrived, arrived broken), it appears consumers have broadly similar protections through all payment choices. There are procedural and timeline differences. There are likely some subtle differences in protection, even between credit cards, but researchers viewed the key questions about consumer awareness and perception of rules as more important first steps before a detailed evaluation of differential protections offered among payment cards. Michael Jenkin's original assertion that there is broad agreement in consumer protection for some basic scenarios is supported.
11. *Improving the current consumer protection regime on chargebacks will have positive impacts on market efficiency and competition and inter-firm rivalry.* The literature review identified few comments and insights on how the current consumer protection deficiencies on chargebacks involving distant transactions in Canada and elsewhere can influence market competition and efficiency. Nonetheless, the more general literature on the importance of the well-informed, demanding and "rights aware" final consumer to market competition and efficiency clearly indicate that measures designed to address and remedy:
  - Inadequate and confusing consumer information;
  - The intentional and unintentional activities of card issuers and other market participants that further confuse consumers regarding their rights and responsibilities with respect to chargebacks for distant transitions;
  - The high information and other transactions costs of consumers and other participants;
  - And the lack of consumer confidence and trust in current chargeback and related consumer protection systems in the public and private sectors, will add significantly to informed consumer choice and market efficiency and



competition in affected product, geographic and digital markets that are increasingly important to the final consumer.

Research also identified a number of areas for future study. These are summarized in Appendix K.

## XI

### Recommendations

Consumers should be informed of the measures available to protect them

#### Introduction

The objective of this project was to evaluate the protections available to consumers who engage in distant transactions, how those protections differ by payment choice, the level of consumer understanding of the protections, and their effectiveness. Because most distant transactions are through the Internet, and the majority of those use credit card payments, the key conclusions and recommendations focus on that area.

The two most important conclusions of the research are that consumers do not have a clear understanding of the protections available to them, and that this lack of understanding reflects the disclosure choices of card issuers.

Canadian consumers would benefit from a number of measures.

#### Issuer Disclosure

Consumers should be informed of the protections available to them. It requires a bewildering confluence of events for the financial services industry to design an elaborate mechanism to protect consumers in distant transactions and then choose to not systematically inform consumers of this protection. In fact, credit card disclosure routinely mis-informs consumers, suggesting the card issuer has no ability to help resolve a dispute with merchants when the opposite is true. Relatively new participants such as PayPal and Amazon do a much better job of disclosing available protections to participants.

Consumer protection legislation and industry best practices should ensure that basic information about credit card chargeback protection is included in card agreements, web sites, other consumer communications and as part of industry codes, as required in the United States by law. Consumers should be able to learn basic information about the types of protections, limitations and deadlines through those means.

Improved transparency and disclosure would allow consumers to make better informed decisions about payment choices in distant transactions.

## Technology Neutrality

The protections currently provided by some provinces to credit card payments should be extended to all forms of electronic payment. One inconsistency with current provincial implementation is that they provide some remedies through credit card networks, but not other payment avenues. Legislation should expand the types of protections available on distant credit card purchases to all electronic payment types – not just current alternatives (debit, PayPal, etc.), but also to future payment technologies without constricting their development.

Updated requirements should include protection guidelines when there are disputes with merchants.

The OECD (2016) guidelines include sensible recommendations about governments and stakeholders working together to develop minimum levels of protection across payment mechanisms. The OECD guidelines also recommended that protections include “limitations on consumer liability for unauthorised or fraudulent charges, as well as chargeback mechanisms, when appropriate. The development of other payment arrangements that may enhance consumer confidence in e-commerce, such as escrow services, should also be encouraged.”

With effective minimum standards set through legislation, payment alternatives could then legitimately compete on consumer protection (as well as merchant protection) against other payment choices.

## Public Policy Considerations

A clear resolution of the applicability of provincial consumer protection rules on practices of federally regulated institutions is required. *Bank of Montreal v Marcotte* has limitations, two provinces have no unique laws to protect consumers in distant transactions and Ontario limits the applicability of its laws. Clarification through new federal initiatives or new federal-provincial or inter-provincial agreements would benefit all participants.

It is not essential that new federal laws have paramountcy over provincial consumer protection. It is essential that any new laws should result from a co-ordinated regime so arguments about federal-provincial authority would be moot and practice in Canada would bear resemblance to global standards.

If a new federal law should be introduced to supersede or as an adjunct to provincial consumer protection laws, it is essential that in the ensuing public policy debate, all interested parties have capable representation, including consumers.

Credit card networks and other intermediaries are a current conduit of redress, and it is in their interest to have effective dispute resolution. It increases consumer confidence, which results in greater transaction volume on their networks and in their marketplaces.

Consumers deserve a voice at public policy discussions related to their protection. Too often, public discussions and formal decisions are dominated by vested interests and

participants who argue that their positions represent consumers' interests. Consumers deserve the right to speak for themselves, rather than having others speak for them. However, consumer groups representing consumers experience a "free rider" problem. Every individual is too busy to contribute time or money to the capacity to participate and each prefers to "free ride" on the efforts of others. Proper representation of consumers requires proper funding of consumer groups. Private and commercial interests will take advantage of the lack of proper consumer representation, funded by the fees they collect from consumers.

Government supported consumer protection groups in the United States, United Kingdom and Australia also provide information to their consumers that is generally not available to Canadian consumers from resource-constrained Canadian consumer groups.

### **Consumer Responsibility**

Consumers always benefit from increased education, and have an obligation to improve their knowledge. If card issuers are not forthcoming about protections, there could be other sources of information – and probably should be – to promote consumer awareness. Provincial government resources and third-parties can provide sensible advice and information to help reduce the likelihood of difficulties in distant transactions, guiding consumers to good information about choosing distant suppliers, illuminating payment options, and helping them protect their privacy and guard against identity theft and fraud.

## XII

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## XIII

# Glossary

### Industry Acronyms and Terms

**Abandonment** – Incomplete online transactions (the virtual shopping cart has been abandoned), often because consumers grow impatient with the number of steps required to complete the transaction.

**Acquirer** – A company that provides the technology and payment card network access to merchants. Leading Canadian acquirers include Chase Paymentech, Moneris, Global Payments and Desjardins.

**AVS** – Address Verification System, comparing the cardholder’s billing address with a delivery address to reduce the risk of unauthorized use of payment cards.

**CHIP** – Microchips embedded in payment cards, to provide higher levels of security on in-store transaction. Usually coupled with PIN.

**CNP** – Card Not Present, most commonly used in distant transactions (Internet, telephone). With certain payment apps, a customer may have their payment card with them, but the transaction may be categorized as CNP.

**CP** – Card Present, the payment card was presented to complete the transaction. Most common for in-store transactions. If the card was present, it is very difficult for consumers to prove a transaction was not authorized.

**CVV** – Card Verification Value, a three- or four-digit number located on the reverse side of most credit and debit cards to provide additional verification of possession of the card.

**EMV** – An alternative term for Chip and PIN cards, more secure than magnetic stripe because the chip technology and requirement to enter a unique PIN known only to the cardholder. (EMV stands for Europay, MasterCard and Visa - the firms that developed it).

**Issuer** – A financial institution that issues payment cards to its customers. The issuer is responsible for authorizing transactions and sending payments to merchants (and issuers) for purchases made with those cards.

**Network** – Firms that facilitate transactions between merchants and credit card issuers for customers who pay using their cards. The dominant credit card networks in Canada are

Visa, MasterCard and American Express.

**PIN** – Personal Identification Number, a security code known only to the cardholder (ideally) for authentication use with certain card technology.

# **XIV**

## **Appendices**

## APPENDIX A

### Survey

#### SCREENING QUESTIONS

Thank you for agreeing to participate in our online survey. Please be assured that all information you provide here will be kept entirely confidential. This survey will take approximately **10** minutes to complete and your opinions on the matter are highly appreciated!

Please proceed (or NEXT button)

DOB1. What is your year of birth?

*Select one response*

**Select Year** (drop down \_1917 ... \_2010)

**If 18yrs+ continue, otherwise thank and terminate**

37. What is your province of residence?

1. Newfoundland and Labrador [Allow English only]
2. Prince Edward Island [Allow English only]
3. Nova Scotia [Allow English only]
4. New Brunswick [Allow English or French language of interview selection]
5. Quebec [Allow English or French language of interview selection]
6. Ontario [Allow English or French language of interview selection]
7. Manitoba [Allow English or French language of interview selection ]
8. Saskatchewan [Allow English only]
9. Alberta [Allow English only]
10. British Columbia [Allow English only]
11. Other

**IF SELECTED A PROVINCE (CODES 01 - 10 AT Q.37) CONTINUE, OTHERWISE TERMINATE**

J. Do you identify as male or female?

[RECORD GENDER]

Male 1

Female 2

IND. Is anyone in your household employed in any of the following industries:

*Select one response for each*

*Credit or debit card payments*

*Online retailing*

*Online marketplaces*

*Travel/Tourism*

*Real Estate*

*Healthcare*

*Telecommunications*

*Manufacturing*

**IF SELECTED codes 4 – 8 CONTINUE, OTHERWISE TERMINATE**

continue TO SURVEY...

SHOW ON SEPARATE SCREEN

Many of the next few questions refer to “distant transactions”. These are the purchase of goods, services and digital content where the buyer and seller are geographically separated. This can include purchase over the Internet, via telephone, fax or mail. It does not include purchases through online classifieds such as Kijiji, because those transactions are typically completed in-person.

SHOW ON SEPARATE SCREEN

Q1 Which of the following “distant transactions” have you completed in the past 24 months?

Select all that apply

Randomize

- I have purchased goods over the Internet
- I have purchased services over the Internet
- I have purchased digital content such as music, games, television shows, movies, e-books, news and information, electronic subscriptions over the Internet
- I have purchased goods over the telephone
- I have purchased services over the telephone
- I have purchased goods through the mail
- I have purchased services through the mail
- I have purchased goods or services in other forms of distant transactions.  
[SHOW 2<sup>nd</sup> LAST]
- o I have not completed any distant transactions (if yes, Go to Q3B, then Q8.)  
[EXCLUSIVE – SHOW LAST]

**IF COMPLETED A DISTANCE TRANSACTION (CODES 1 – 8 AT Q.1) CONTINUE,  
OTHERWISE SKIP TO Q.3B**

Q2 In a distant transaction, which of the following methods have you used to pay for the purchases within the past 24 months?

Select all that apply

Randomize

- Credit card
- Debit card
- Paypal transfer
- Cheque
- Electronic fund transfer (e-transfer)
- Money order or bank draft
- Prepaid gift card
- Bitcoin or other cryptocurrency
- o Other (specify) \_\_\_\_\_ [SHOW LAST]

**IF COMPLETED A DISTANCE TRANSACTION (CODES 1 – 8 AT Q.1) CONTINUE,  
OTHERWISE SKIP TO Q.3B**

Q3 In the past 24 months, which of the following have you experienced with a distant transaction?

Select all that apply



- A good I purchased never arrived
- A good I purchased arrived but was damaged or faulty
- A good arrived, but it wasn't exactly what I purchased or was incomplete
- A service I ordered was never delivered/materialized
- I received what I ordered, but the good or service was not of the promised quality
- I was charged twice for a single purchase
- The amount I was billed was higher than agreed upon
- A refund to my account was not processed properly
- Other problems not listed here
- o No problems in the past 24 months, but problems in the more distant past (go to Q3b, then Q8) [EXCLUSIVE]
- o No such problems (if here, go to Q3b, then Q8) [EXCLUSIVE]

**IF COMPLETED A DISTANCE TRANSACTION AND MENTIONED AN ISSUE (CODES 1 – 8 AT Q.1 AND CODES 1 – 9 AT Q.3) CONTINUE, OTHERWISE SKIP TO Q.3B**

Q3a Which ~~issue~~ issue/ of these issues have you experienced most recently with a distant transaction?

Select one response

- o [show only if mentioned at q.3] A good I purchased never arrived
- o [show only if mentioned at q.3] A good I purchased arrived but was damaged or faulty
- o [show only if mentioned at q.3] A good arrived, but it wasn't exactly what I purchased or was incomplete
- o [show only if mentioned at q.3] A service I ordered was never delivered/materialized
- o [show only if mentioned at q.3] I received what I ordered, but the good or service was not of the promised quality
- o [show only if mentioned at q.3] I was charged twice for a single purchase
- o [show only if mentioned at q.3] The amount I was billed was higher than agreed upon
- o [show only if mentioned at q.3] A refund to my account was not processed properly
- o [show only if mentioned at q.3] Other problems not listed here

**IF haven't had a recent problem with an online purchase (CODE 10 OR 11 AT Q.3) or don't make online purchases (CODE 9 AT Q.1) CONTINUE, OTHERWISE SKIP TO**

**INSTRUCTION ABOVE Q.4**

Q.3B Think of the most recent dispute you had with a merchant over an in-store purchase. (Examples could include: purchasing defective merchandise, delayed or non-delivery, quality less than promised, incorrect billing, etc...) How was this dispute resolved?

Select one response

**It was resolved to my satisfaction...**

- with the merchant / seller alone
- with the assistance of a payment intermediary (such as the card issuer or paypal)
- with the assistance of a lawyer I paid
- with the assistance of legal aid or community legal assistance
- with the assistance of police or law enforcement
- with the assistance of industry ombudsman or other adjudicators
- with the assistance of consumer groups
- with the assistance of news media

**It was not resolved to my satisfaction...**

- It was not resolved to my satisfaction
- It is ongoing, and not yet resolved.
- I don't recall any recent disputes

**IF COMPLETED A DISTANCE TRANSACTION AND MENTIONED AN ISSUE (CODES 1 – 8 AT Q.1 AND CODES 1 – 9 AT Q.3) CONTINUE, OTHERWISE SKIP TO instruction above Q.8**

The next few questions refer only to the most recent problem you encountered with a distant transaction.

Q4. How did you purchase the item or service?

Select one response

**Randomize**

- It was a telephone order
- It was a mail order
- From the web site of a merchant that also has stores
- From the web site of a direct seller that has no “stores” (Example, Air Canada)

- From a marketplace web site, such as Amazon goods, or E-Bay (operating as a store through “buy it now”)
- From an auction site such as E-Bay
- From a website selling discount offers such as Groupon
- From a broker/intermediary web site, such as a travel service selling vacations, a ticket service selling entertainment, a transportation service matching drivers and passengers
- Other [SHOW LAST]

**IF COMPLETED A DISTANCE TRANSACTION AND MENTIONED AN ISSUE (CODES 1 – 8 AT Q.1 AND CODES 1 – 9 AT Q.3) CONTINUE, OTHERWISE SKIP TO instruction above Q.8**

Q5. How did you pay for this transaction?

Select one response

Randomize

- Credit card
- Debit card
- Cheque / certified cheque
- Paypal transfer
- Electronic fund transfer (e-transfer)
- Prepaid gift card
- Bank draft or money order
- Bitcoin or other cryptocurrency
- Other [SHOW 2<sup>ND</sup> LAST]
- I don't recall [SHOW LAST]

**IF COMPLETED A DISTANCE TRANSACTION AND MENTIONED AN ISSUE (CODES 1 – 8 AT Q.1 AND CODES 1 – 9 AT Q.3) CONTINUE, OTHERWISE SKIP TO instruction above Q.8**

Q6. When you realized there was a problem, what was your FIRST contact to attempt to resolve the problem?

Select one response

- Contacted the merchant / seller
- Contacted the payment intermediary, such as the credit card or Paypal
- Contacted my bank to discuss options
- Contacted the government for assistance
- Contacted law enforcement

- Contacted a lawyer or legal representative
- I took no action
- Other

**IF COMPLETED A DISTANCE TRANSACTION AND MENTIONED AN ISSUE (CODES 1 – 8 AT Q.1 AND CODES 1 – 9 AT Q.3) CONTINUE, OTHERWISE SKIP TO instruction above Q.8**

Q7. What was the FINAL resolution to the problem?

Select one response that best matches your experience

**It was resolved to my satisfaction...**

- with the merchant / seller alone
- with the assistance of a payment intermediary (such as the card issuer or paypal)
- with the assistance of my bank
- with the assistance of a lawyer I paid
- with the assistance of legal aid or community legal assistance
- with the assistance of police or law enforcement
- with the assistance of industry ombudsman or other adjudicators
- with the assistance of consumer groups
- with the assistance of news media

**It was not resolved to my satisfaction...**

- even though I contacted my payment intermediary. [ASK Q7B]
- and I did not contact my payment intermediary [ASK Q7B]
  
- It is ongoing, and not yet resolved.
- Other (specify/describe) \_\_\_\_\_

**IF UNSATISFIED WITH RESOLUTION (CODES 10 OR 11 AT Q.7A) CONTINUE, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.8**

Q7b: What was the main reason for your dissatisfaction?

Select one response that most closely reflects your view

Randomize

- I chose not to pursue it
- The seller was non-compliant and it wasn't worth the trouble.

- o The agreement prevented me; items were sold “as is”
- o The merchant had a “no refunds” policy
- o My complaint was considered “too late” to address or remedy.
- o I didn’t have enough proof - receipts, dates, order information - to support my complaint.
- o The dispute process took too long to resolve
- o The dispute process was too costly.
- o I accepted that I made a bad choice.
- o I paid in such a way that there was no recourse available.
- o Other (specify): [SHOW LAST] [ALLOW 3 OR 4 LINES]

**ask all**

Q8. Within the past 10 years – not just your most recent distant transaction – have you experienced any of these responses after any kind of disputed transaction?

Select all that apply

- After I believed the problem to be resolved, the merchant again asked for payment
- After I believed the problem to be resolved, a debt collection service asked for payment
- I subsequently discovered my credit score / credit rating was affected
- I had a lien placed against my property
- I was sued
- Following a dispute, there was another merchant response not listed here
- o I don’t recall any [EXCLUSIVE]

ASK ALL

Q9. For each the following statements, indicate whether you strongly disagree, somewhat disagree, somewhat agree, strongly agree or don’t know.

*Select one response for each*

- 01 - Strongly disagree
- 02 - Somewhat disagree
- 03 - Somewhat agree
- 04 - Strongly agree
- 05 - Don’t know

\* \* \*

Randomize – Show in carousel format

- My province has specific consumer protection laws to address distant transactions such as Internet purchases.
- I am reluctant to use electronic fund transfers (e-transfers) for Internet purchases because of the risks of transferring payments through the Internet.
- Consumer protection laws are not really effective on purchases made over the Internet.
- Canadian consumers are better protected by industry codes of conduct than consumer protection laws
- Consumers who use debit and credit cards to pay for purchases can initiate action to get their money back for purchases made online, by phone or by mail that have been lawfully cancelled, returned or not received.
- My province has consumer protection laws that compel credit card issuers to act on my behalf if something I purchase does not arrive and I properly cancel the transaction with the seller.
- I am reluctant to provide personal financial information (such as payment card numbers) over the Internet and over the telephone to sellers, because of fear that information could be used to defraud me.
- A Canada-wide approach to addressing consumer protection in distant transactions such as Internet purchases makes sense.

## SHOW ON SEPARATE SCREEN

Consumers who use debit and credit cards to pay for purchases, are able to initiate action to get their money back for certain types of transactions that have been cancelled or not completed properly. These situations are often referred to as “chargebacks”, and involve the transaction’s payment intermediary (such as a credit card issuer, debit card issuer, Paypal, etc.)

## SHOW ON SEPARATE SCREEN

## ASK ALL

Q10. Have you requested a reimbursement from your payment intermediary in the past 24 months?

Select all that apply

- Yes, from my credit card issuer
- Yes, from my debit card issuer
- Yes, from Paypal transfer

- Yes, from another intermediary
- o No [EXCLUSIVE]

## ASK ALL

Q11. How did you first learn about the ability to seek cost recovery for certain kinds of problems through payment card issuers?

Select one response

- o I was not aware of them until completing this survey
- o From the financial institution that gave me a credit or debit card
- o From the credit card network (Visa, MasterCard, American Express) itself
- o From a merchant
- o From friends/family
- o I read something about it in print
- o From searching the Internet
- o I heard something about it on TV or radio
- o From a government consumer protection department
- o From a consumer group, legal help clinic or other life skills or helping organization
- o From a third-party dispute resolution service
- o Other
- o I don't recall

## ASK ALL

Q12. Consider a scenario in which a consumer orders an item that is never delivered, the seller does not respond and the consumer notifies the seller of a desire to cancel the transaction.

Within what time period after the transaction must the consumer notify the credit card issuer to be eligible to recover costs?

Select one response

- o Up to 30 days
- o Up to 60 days
- o Up to 90 days
- o Up to 120 days
- o Up to 180 days
- o There is no limit

- o Don't know / unsure

**ASK ALL**

Q13. For each of the following scenarios, identify whether consumers are a) currently eligible for cost recovery from payment intermediaries (credit cards, debit cards, Paypal, etc.) b) not eligible for cost recovery but should be, c) should not be eligible for cost recovery from payment intermediaries d) I have no knowledge or belief about this

*Select one response for each*

**Randomize – Show in carousel format**

- An item I ordered arrived, but it was damaged or defective and the merchant has not responded to my calls.
- An item I ordered never arrived, but I forgot about it, and didn't notice until six months later.
- My 15-year-old child used my card information without my permission to purchase some music over the Internet.
- I thought I was purchasing one thing, but it turns out I was agreeing to purchase one thing each month, and the merchant won't agree to cancel it for the first 12 months.
- An item I purchased arrived, but it was not the quality I expected, and the merchant refuses to refund my money.
- I ordered the item, but changed my mind and tried to cancel it. The merchant told me it was too late to cancel, because their delivery process had already started.
- I didn't mean to accept the online transaction, and I couldn't see a way to cancel it on the web site.
- I received the item ordered, but I no longer require it and the merchant's return policy requires me to pay for shipping and an unreasonable restocking fee.

**Continue with next section****ASK EVERYONE**

A. To be sure we include people from a wide range of backgrounds in the survey, please select the language you first spoke in childhood and still understand? [Select all that apply]

B. Please select the highest level of schooling you attended or completed.  
Select one response.



\* \* \*

No formal schooling 01  
 Some Public/Grade school 02  
 Completed Public/Grade school 03  
 Some Secondary school 04  
 Completed Secondary school 05  
 Some College/CEGEP 06  
 Completed College/CEGEP 40  
 Some University/post graduate 07  
 Completed University/post graduate 08  
 Other 98

C. Please check your current employment status. [CHECK ONE RESPONSE]

Currently employed full-time 01  
 Currently employed part-time 02  
 Self-employed 03  
 Currently unemployed 04  
 Retired 05  
 A homemaker 06  
 A student 07  
**or** Other [specify] \_\_\_\_\_

E. Do you own or rent your home? Own 1  
 Rent 2  
 Neither (living at home with parents  
 or with someone else 3

G. How many people including yourself currently live in the household?  
 Enter number below.

\_\_\_\_\_ [NUMERIC TEXT BOX]

IF MORE THAN '1' AT Q.G CONTINUE, OTHERWISE SKIP TO Q.K

H1. How many children under 18 years of age do you have living in the household?  
Enter number below.

\_\_\_\_\_ **[NUMERIC TEXT BOX]**

K. What is your relationship status? [CHECK ONE RESPONSE]

- Single, never married 1
- Married/living common-law 2
- Separated/divorced 3
- Re-Married, living common-law again 4
- Widowed 5

N. Please check your annual household income from all sources before taxes.  
[ Dropdown list ]

R. In order to categorize your responses please enter your 6-digit postal code.

\_\_\_ \_\_\_ \_\_\_    \_\_\_ \_\_\_ \_\_\_  
999-999 – DON'T KNOW

S2. Do you use any of the following social media sites at least once per month?  
Select one response for each.

- |           | <b><u>Yes</u></b> | <b><u>No</u></b> |
|-----------|-------------------|------------------|
| Facebook  | 1                 | 2                |
| LinkedIn  | 1                 | 2                |
| Twitter   | 1                 | 2                |
| Pinterest | 1                 | 2                |
| Google+   | 1                 | 2                |
| You Tube  | 1                 | 2                |
| Instagram | 1                 | 2                |
| Snapchat  | 1                 | 2                |

**THANK YOU FOR YOUR COOPERATION**

## **APPENDIX B**

### **Complete Survey Results**

Section IX of the report contains the highlights of the consumer survey for the purposes of the report. This Appendix details the complete survey results, along with some other observations, highlights and analysis. The full “script” of the survey is in Appendix A.

Some of the response boxes shown in the summaries in this section are truncated – the actual survey had longer descriptions.

The survey results were conducted online through the services of Environics Canada. The surveys were completed from March 13 to 24, 2017. A total of 2,000 respondents aged 18+ were interviewed using an online methodology. As this study is a non-probability sample, the policy of the MRIA (the governing body for the market research industry in Canada) is that the margin of error should not be cited. Participating panelists are recruited through thousands of web sites.

Consumers were asked a number of questions about distant transactions, payment choices disputes, their use and knowledge of chargebacks, and their understanding of consumer protections. Consumers who had an immediate family member employed in the payment card or online marketplace industries were excluded. The questionnaire consisted of up to 13 questions, and was designed to take approximately 10 minutes to complete. A French-language version was prepared through the translation services of Environics for use with French-speaking consumers.

## 1. Use of Distant Transactions

After some initial demographic and exclusion questions, consumers were asked about their use of distant transactions and payment choices. To provide a common understanding of “distant transaction”, consumers were told the following:

Many of the next few questions refer to “distant transactions”. These are the purchase of goods, services and digital content where the buyer and seller are geographically separated. This can include purchase over the Internet, via telephone, fax or mail. It does not include purchases through online classifieds such as Kijiji, because those transactions are typically completed in-person.

Table 20

### Consumers' Use of Distant Transactions

Question: Which of the following distant transactions have you completed in the past 24 months?

| Purchase Type and Avenue                                 | %  |
|--|----|
| Goods over the Internet                                  | 79 |
| Digital content (music, movies) over the Internet        | 41 |
| Services over the Internet                               | 34 |
| Goods through the mail                                   | 19 |
| Services over the telephone                              | 18 |
| Goods over the telephone                                 | 14 |
| Services through the mail                                | 9  |
| Goods or services in other forms of distant transactions | 7  |
| I have not completed any distant transactions            | 10 |

*Note: 2000 respondents*

Note that the individual responses total well over 100 percent, because consumers could select all those that applied. About 10 percent of consumers said they complete no distant transactions.

## 2. Payment Choice in Distant Transactions

Table 21

### Consumers' Payment Choices in Distant Transactions

Question: In a distant transaction, which of the following methods have you used to pay for purchases in the past 24 months?

| Payment Type                          | %  |
|---------------------------------------|----|
| Credit card                           | 84 |
| PayPal transfer                       | 47 |
| Prepaid gift card                     | 25 |
| Debit card                            | 22 |
| Electronic fund transfer (e-transfer) | 19 |
| Cheque                                | 10 |
| Money order or bank draft             | 5  |
| Bitcoin or other cryptocurrency       | 2  |
| Other                                 | 1  |

*Note: 1802 respondents*

As with the previous question, consumers were asked to select all that apply. Credit cards were the overwhelming top choice.

### 3. Disputes in Distant Transactions

Consumers were then asked whether they had experienced a dispute in a distant transaction in the past 24 months, and if so, asked to identify the type of dispute. Those with disputes were asked to then select the type of their most recent dispute.

Table 22

#### Consumers' Disputes in Distant Transactions

Question: In the past 24 months, which of the following have you experienced in a distant transaction? Which problem have you experienced most recently?

| Problem Description                                    | Past 24 Months % | Most Recently % |
|--|------------------|-----------------|
| A good I purchased never arrived                       | 21               | 37              |
| A good I purchased arrived, but was damaged or faulty  | 13               | 16              |
| The good or service was not the promised quality       | 12               | 15              |
| A good arrived, but it wasn't exactly what I purchased | 13               | 14              |
| Other problems not listed here                         | 4                | 6               |
| A service I ordered was never delivered/materialized   | 4                | 4               |
| Billed higher than agreed upon                         | 4                | 3               |
| A refund was not processed properly                    | 4                | 3               |
| Charged twice for a single purchase                    | 4                | 2               |
| No problems in past 24 months, but previous problems   | 9                |                 |
| No such problems                                       | 46               |                 |

*Note: 1802 respondents, 806 with a problem in past 24 months*

Again, the totals in the left column exceed 100 percent, because consumers were asked to select all that apply. Nearly half the sample (46 percent) responded they had never had disputes with distant transactions, while another 9 percent said they had problems with distant transactions, just not in the past 24 months. The right column shows the breakdown of the most recent problem.

### 3b. In-store Transaction Disputes

Consumers who had either not done distant shopping, or had no disputes in the past 24 months were asked instead about their experiences with disputes in-store.

Table 23

#### Consumer Satisfaction with In-Store Dispute Resolution

Question: For the most recent dispute with an in-store merchant, How was the dispute resolved?

| Resolution Type                               | Number | %  |
|---|--------|----|
| No in-store transaction disputes              | 797    | 67 |
| Satisfactorily (TOTAL)                        | 352    | 29 |
| with the merchant seller alone                | 326    | 27 |
| with the assistance of a payment intermediary | 19     | 2  |
| with the assistance of others                 | 7      | 1  |
| Unsatisfactorily                              | 34     | 3  |
| Dispute is ongoing, not resolved              | 11     | 1  |

*Note: Asked only of consumers without a distant transaction dispute in the past 24 months. (1194 respondents). Percentages may not add exactly because of rounding*

For clarity, two-thirds of consumers reported no disputes on their in-store transactions. Of the one-third that had experienced problems, satisfactory resolutions outnumbered unsatisfactory resolutions by about 10-to-1 (352 to 34). Only a small portion of the satisfactorily resolved disputes (19 of 352) involved the assistance of a payment intermediary. The vast majority were resolved directly with the merchant.

#### 4. Disputed Distant Transaction Originations

Consumers who had a dispute in a distant transaction in the past 24 months were asked four questions about their most recent dispute. How was the good or service purchased, how was it paid for, what was the first step in resolving the dispute, and what was the ultimate resolution of the dispute? A total of 806 respondents qualified for these four questions.

Table 24

#### Disputed Distant Transaction Originations

Question: How did you purchase the item or service (in your most recent disputed transaction)?

| Merchant type/location                     | %  |
|--|----|
| Marketplace web site such as Amazon        | 45 |
| Web site of a merchant that has stores     | 16 |
| Auction web site (E-Bay)                   | 13 |
| Web site of a merchant without stores      | 11 |
| Web site selling discount offers (Groupon) | 4  |
| Mail order                                 | 3  |
| Broker / intermediary web site             | 3  |
| Telephone order                            | 2  |
| Other                                      | 2  |

*Note: 806 respondents*

The survey provided greater detail on the choice of merchants than described in the summary box above. For example, the actual survey language read “From a broker/intermediary web site, such as a travel service selling vacations, a ticket service selling entertainment, a transportation service matching drivers and passengers”. Likewise, a site such as e-Bay has both a “Buy It Now” facility which makes it more like Amazon and an “auction” site. Consumers may have been uncertain how to code their responses. That said, there are two clear observations. First, web purchases are far more likely to result in disputes than telephone or mail order purchases. Second, sites where there is some ambiguity or anonymity about the seller, such as Amazon or e-Bay, seem more prevalent in disputes than items purchased directly from a merchant.



## 5. Disputed Distant Transaction Payment Choice

Table 25

### Disputed Distant Transaction Payment Choice

Question: How did you pay for the item or service (in your most recent disputed transaction)?

| Payment choice                        | Number | %  |
|---------------------------------------|--------|----|
| Credit card                           | 464    | 58 |
| PayPal transfer                       | 182    | 23 |
| Prepaid gift card                     | 69     | 9  |
| Debit card                            | 49     | 6  |
| Electronic fund transfer (e-transfer) | 9      | 1  |
| Bank draft or money order             | 9      | 1  |
| Cheque / Certified cheque             | 7      | 1  |
| Bitcoin or other cryptocurrency       | 2      | 0  |
| Other                                 | 13     | 2  |
| No recall                             | 2      | 0  |

*Note: 806 respondents*

The payment choices of the most recent disputed transaction follow the same ordinality as the payment choices in general (Table 21 above):

1. Credit cards
2. PayPal
3. Gift cards
4. Debit cards

The one exception is that electronic transfers, which were used in distant transactions by 19 percent of consumers, were almost never the payment source in the disputed transaction. This might suggest that consumers only use e-transfers in situations where they feel most certain about the seller.

## 6. Disputed Distant Transaction First Contact

Table 26

### Disputed Distant Transaction First Contact

Question: When you realized there was a problem, what was your FIRST contact attempt to resolve it?

| Point of First Contact        | Number | %  |
|-------------------------------|--------|----|
| Merchant/seller               | 636    | 79 |
| I took no action              | 67     | 8  |
| Payment intermediary          | 50     | 6  |
| My bank                       | 33     | 4  |
| The government for assistance | 5      | 1  |
| Law enforcement               | 2      | 0  |
| Other                         | 13     | 2  |

*Note: 806 respondents*

Almost 80 percent of consumers say their first step to resolving disputes in distant transactions is to contact the merchant. This contrasts with the commonly held view by merchants and chargeback management companies that consumers often bypass the merchant and seek cost recovery from the payment intermediary without giving the merchant an opportunity to resolve the dispute. Approximately 10 percent contact either their payment intermediary or bank as a first step, while 8 percent indicate that they took no action in their most recent dispute.

## 7. Disputed Distant Transaction Resolution and Satisfaction

Table 27

### Disputed Distant Transaction Resolution and Satisfaction

Question: What was the final resolution of the problem?

| Resolution                                       | Number | %  |
|--|--------|----|
| Satisfaction (Total)                             | 594    | 73 |
| with the merchant / seller alone                 | 472    | 58 |
| with the assistance of a payment intermediary    | 64     | 8  |
| with the assistance of my bank                   | 30     | 4  |
| with the assistance of a lawyer I paid           | 8      | 1  |
| with the assistance of marketplace (Amazon/Ebay) | 7      | 1  |
| with the assistance of a consumers group         | 5      | 1  |
| with the assistance of media/ombudsman/others    | 8      | 1  |
| Not satisfied (Total)                            | 107    | 13 |
| and I did not contact my payment intermediary    | 57     | 7  |
| even though I contacted my payment intermediary  | 50     | 6  |
| It is ongoing and not yet resolved               | 81     | 10 |
| Other  | 24     | 3  |

Note: 806 respondents

If you factor out the unresolved disputes, more than 60 percent of the disputes in distant transactions are resolved satisfactorily with the merchant or seller alone. Assistance from payment intermediaries and banks results in satisfied outcomes in an additional 12 percent of disputes. The ratio of satisfied to unsatisfied disputes is about 9 to 2 (471 to 106). This is less than the percentage of satisfied consumers on the in-store disputes identified earlier.

To allow for a variety of unpredictable responses, the survey allowed consumers to provide details about “other” responses. A few consumers identified assistance from marketplace dispute resolution services (Amazon primarily, but also e-Bay). Other consumers took the opportunity to explain a response which was closer to ambivalence than satisfaction/unsatisfaction: either they took no action, explaining with variations of “I didn’t complain, but I’ll never buy from that merchant again” or “the cost was low, so I just accepted it.” A few shared longer “stories”, and some unique circumstances such as items caught and abandoned in customs.

### 7b. Sources of Dissatisfaction

Consumers who were not satisfied with the resolution were asked about the reasons for their dissatisfaction.

Table 28

#### Disputed Distant Transaction - The Unsatisfied

Question: What was the main reason for your dissatisfaction?

| Reason  | Number | %  |
|---|--------|----|
| I chose not to pursue it  | 24     | 23 |
| I accepted that I had made a bad choice                         | 19     | 18 |
| My complaint was considered “too late” to address               | 14     | 13 |
| The dispute process took too long to resolve                    | 11     | 10 |
| The seller was non-compliant and it wasn’t worth my effort      | 8      | 8  |
| I paid in such a way that there was no recourse                 | 8      | 8  |
| The agreement prevented me: Items were sold “as is”             | 5      | 5  |
| The merchant had a “no refund” policy                           | 5      | 5  |
| The dispute process was too costly                              | 4      | 4  |
| I didn’t have enough proof - receipts, dates, order information | 2      | 2  |
| Other   | 6      | 6  |

*Note: Asked of the 106 respondents who expressed dissatisfaction with the resolution of their most recent disputed distant transaction.*

Combining the responses to “I chose not to pursue it” or “I accepted that I made a bad choice”, the most common reason for dissatisfaction is placed back on the consumer by the consumer (41 percent). This is another indicator that consumers are not pursuing remedies to which they may be entitled.

This ended the distinct set of questions for consumers with a disputed distant transaction. All consumers answered the balance of the survey, starting with a question about merchant responses after any disputed transaction.

## 8. Merchant Responses

Table 29

### Merchant Responses to Disputed Transactions

Question: Within the past 10 years - not just your most recent distant transaction - have you experienced any of these responses after any kind of disputed transaction?

| Merchant Response   | Number | %  |
|---|--------|----|
| After I believed the problem to be resolved, the merchant again asked for payment | 143    | 7  |
| After I believed the problem to be resolved, a debt collector contacted me        | 87     | 4  |
| I subsequently discovered my credit score / rating was affected                   | 65     | 3  |
| I had a lien placed against my property   | 39     | 2  |
| I was sued  | 3      | 0  |
| There was a merchant response not listed here                                     | 39     | 2  |
| I don't recall any  | 1723   | 86 |

*Note: 2000 respondents*

This question was asked with a more broad timeline, and without any distinction between distant and in-store transactions. About 11 percent of consumers reported that a dispute they had thought to be resolved was not resolved because of subsequent contact either from the merchant (7 percent) or a third-party debt collection service (4 percent). A total of 337 responses were received from the 277 consumers, indicating that some consumers had experienced more than one of the listed merchant responses.

## 9. Chargeback Knowledge

The next question asked consumers to express their views about eight different statements. Consumers were asked to select from strongly agree, somewhat agree, somewhat disagree or strongly disagree. The questions asked about different topics, including their understanding of provincial consumer protection laws, voluntary codes of conduct, and their perceived security of certain payment choices. These questions were presented in a random order during the survey.

Table 30

### Consumer Attitudes on Protection Measures

Question: For each of the following statements, indicate your view.

| Statement   | Strongly Agree % | Somewhat Agree % | Somewhat Disagree % | Strongly Disagree % | Don't Know |
|---|------------------|------------------|---------------------|---------------------|------------|
| My province has specific consumer protection laws to address distant transactions such as Internet purchases.   | 12               | 28               | 9                   | 2                   | 48         |
| My province has consumer protection laws that compel credit card issuers to act on my behalf if something I purchase does not arrive and I properly cancel the transaction with the seller.                           | 19               | 33               | 7                   | 2                   | 39         |
| Consumer protection laws are not really effective on purchases made over the Internet.  | 15               | 33               | 20                  | 4                   | 28         |
| Canadian consumers are better protected by industry codes of conduct than consumer protection laws.   | 12               | 33               | 13                  | 5                   | 37         |
| A Canada-wide approach to addressing consumer protection in distant transactions such as Internet purchases makes sense.  | 51               | 33               | 4                   | 2                   | 9          |
| Consumers who use debit and credit cards to pay for purchases can initiate action to get their money back for purchases made online, by phone or by mail that have been lawfully cancelled, returned or not received. | 32               | 41               | 6                   | 2                   | 20         |

|  |    |    |    |    |   |
|--|----|----|----|----|---|
| I am reluctant to use electronic fund transfers for Internet purchases because of the risks of transferring payments through the Internet.   | 23 | 35 | 25 | 11 | 7 |
| I am reluctant to provide personal financial information (such as payment card numbers) over the Internet and over the telephone to sellers, because of fear that information could be used to defraud me. | 32 | 39 | 21 | 5  | 4 |

*Note: 2000 respondents*

The first four questions listed ask about provincial consumer protection laws, their efficacy and industry codes of conduct. These questions were drawn from the research findings. Eight provinces have specific laws that are intended to offer protection, but are consumers aware of those laws, and do they believe that Internet commerce is something that governments can effectively police?

The results suggest that consumers have a great deal of uncertainty. In three of the four questions, the mode response was “don’t know”. In all four questions, the two top responses were “don’t know” and “somewhat agree”. Support for either extreme – strongly agree, strongly disagree – was modest. Some consideration was given to alternative wording on these statements, i.e., “Canadian consumers are better protected by consumer protection laws than industry codes of conduct” to test whether the responses were true or just default affirmatives, but the logistics of doing this in an online survey were too difficult.

Consumer reaction to the fifth statement about a Canada-wide treatment was much more emphatically positive.

Consumers were asked about chargebacks, without using that term, in the next statement. While 73 percent of consumers agreed with the statement, only 32 percent did so strongly. The combination of the disagreement and “don’t know” responses suggest that 27 percent of consumers had no knowledge of this.

The final two statements asked about consumer attitudes about security. More than half (58 percent) agreed that they are reluctant to use electronic transfers for Internet purchases because they understand that the “funds” move through the Internet. There are risks associated with electronic transfers, but the payments do NOT move through the Internet – only the notifications do. Seventy-one percent of consumers are reluctant to provide payment card information over the Internet or telephone for fear that they are exposing themselves to fraudulent risk.

## 10. Payment Intermediary Requests

Prior to the next question, consumers were told ....

Consumers who use debit and credit cards to pay for purchases, are able to initiate action to get their money back for certain types of transactions that have been cancelled or not completed properly. These situations are often referred to as “chargebacks”, and involve the transaction’s payment intermediary (such as a credit card issuer, debit card issuer, Paypal, etc.)

This disclosure allowed for questions about consumer cost recovery to be asked even of those who doubted or were not previously aware of their existence. It also allows for points of comparisons. The consumers who “strongly agreed” with the earlier statement were considered to have awareness of chargebacks, and made for an interesting subset of the consumers as a whole for further analysis. Do consumers who were “chargeback aware” have different opinions, start disputes differently, have higher or lower rates of satisfaction, etc? Those results are also detailed below.

After chargebacks were described, participants were asked if they had sought cost recovery on any transaction in the past 24 months from a payment intermediary.

Table 31

### Consumer Reimbursement Requests

Question: Have you requested a reimbursement from your payment intermediary in the past 24 months?

| Payment intermediary           | Number | %  |
|--------------------------------|--------|----|
| Credit card issuer             | 333    | 17 |
| Debit card issuer              | 85     | 4  |
| PayPal transfer                | 151    | 8  |
| Yes, from another intermediary | 86     | 4  |
| No                             | 1423   | 71 |

*Note: 2000 respondents*

There have been 577 consumers who have sought reimbursement from a total of 655 different intermediary sources. Of course, consumers could have also made multiple requests of a single intermediary. The “other” responses likely include those who used the resolution services of online marketplaces, such as Amazon.



## 11. Sources of Chargeback Awareness

One of the key findings of the research was the difficulty consumers have in gathering meaningful information from their card issuer over how to gain cost recovery. Participants were asked how they first became aware of this facility.

Table 32

### Source of Consumer Awareness of Chargebacks

Question: How did you first learn about the ability to seek cost recovery for certain kinds of problems through payment card issuers?

| Information Source                                    | Number | %  |
|---|--------|----|
| I was not aware of them until completing this survey  | 443    | 22 |
| From the financial institution that gave me a card    | 243    | 12 |
| From the credit card network (Visa, Mastercard, Amex) | 240    | 12 |
| From friends/family                                   | 180    | 9  |
| From a merchant                                       | 127    | 6  |
| From searching the Internet                           | 81     | 4  |
| I read something in print                             | 65     | 3  |
| I heard something about it on TV or radio             | 44     | 2  |
| From a third-party dispute resolution service         | 11     | 1  |
| From a government consumer protection department      | 8      | 0  |
| From a consumer group or legal help clinic            | 1      | 0  |
| Other   | 45     | 2  |
| I don't recall  | 512    | 26 |

*Note: 2000 respondents*

Apart from those who could not recall, the mode response was that consumers were not aware of this facility until undertaking the exercise. The next largest sources of information were the issuers and credit card networks, though in many cases it is likely that consumers believed they were dealing with the network when they were actually dealing with the issuer, such as in a discussion following a question about a charge or statement. Word of mouth from friends and family was almost as prominent.

## 12. Chargeback Deadline Knowledge

The final questions evaluated consumer knowledge and opinions about their rights to cost recovery. To test awareness of chargeback rules, consumers were first asked about the time limit restrictions, that is the maximum time that can elapse between when a disputed transaction is first apparent and when the consumer can seek cost recovery from the credit card issuer.

Table 33

### Consumer Knowledge of Chargeback Deadlines

Question: Consider a scenario in which a consumer orders an item that is never delivered, the seller does not respond and the consumer notifies the seller of a desire to cancel the transaction. Within what time period after the transaction must the consumer notify the credit card issuer to be eligible to recover costs?

| Notification Deadline | Number | %  |
|-----------------------|--------|----|
| Up to 30 days         | 643    | 32 |
| Up to 60 days         | 240    | 12 |
| Up to 90 days         | 158    | 8  |
| Up to 120 days        | 23     | 1  |
| Up to 180 days        | 17     | 1  |
| There is no limit     | 52     | 3  |
| Don't know, no answer | 867    | 43 |

*Note: 2000 respondents*

Though there are some variations depending on whether a delivery date was specified at the outset, in general, there is a 120 calendar day limit within which a chargeback for non-delivery of goods and services can be considered. Very few consumers provided the correct answer to this question. The vast majority indicated that they had no answer, or replied with a shorter time limit.

### *13. Is this covered by chargeback?*

In the final exercise, consumers were presented with eight different scenarios, and asked whether chargeback provisions were currently available, and if they were not, whether they should be. The scenarios were a mixture of common occurrences discovered and discussed in the literature review of the research. The order was randomized. In some cases, the language was simplified and the “correct” answer would depend on specific details not provided.

Table 34

**Consumer Views on Chargeback Scenarios**

Question: For each of the following statements, identify whether consumers are eligible for cost recovery from payment intermediaries, or if they should be.

| <b>Scenario</b>  | <b>Currently eligible %</b> | <b>Not eligible but should be %</b> | <b>Not eligible and shouldn't be %</b> | <b>No knowledge or belief %</b> |
|--|-----------------------------|-------------------------------------|--|---------------------------------|
| An item I ordered arrived, but it was damaged or defective and the merchant has not responded to my calls.   | 59                          | 12                                  | 7                                      | 23                              |
| An item I ordered never arrived, but I forgot about it and didn't notice until six months later  | 22                          | 26                                  | 21                                     | 31                              |
| My 15-year-old child used my card information without my permission to purchase some music over the Internet   | 22                          | 21                                  | 27                                     | 29                              |
| I thought I was purchasing one thing, but it turns out I was agreeing to purchase one thing each month, and the merchant won't cancel it for the first 12 months.  | 32                          | 26                                  | 10                                     | 32                              |
| An item I purchased arrived, but it was not the quality I expected and the merchant refuses to refund my money.  | 39                          | 24                                  | 11                                     | 27                              |
| I ordered the item, but changed my mind and tried to cancel it. The merchant told me it was too late to cancel, because their delivery process had already started | 26                          | 22                                  | 23                                     | 29                              |
| I didn't mean to accept the online transaction, and I couldn't see a way to cancel it on the web site.   | 34                          | 21                                  | 11                                     | 34                              |
| I received the item I ordered, but I no longer require it, and the merchant's return policy requires me to pay for shipping and an unreasonable restocking fee.    | 14                          | 22                                  | 34                                     | 30                              |

*Note: 2000 respondents*

"I don't know" is the mode response in five of the eight situations described. The only scenario in which participants displayed confidence in the aggregate was the "item arrived defective, merchant not responsive" which 59 percent believed was eligible, and only 7 percent believed shouldn't be eligible for cost recovery. In this scenario, a chargeback

would quite likely be provided.

In three other scenarios, only 10 percent of respondents thought consumers should not be eligible for cost recovery. These include the two “accidental” scenarios (accidentally accepted the transaction, accidentally subscribed for a year when I only wanted one), as well as the “not of anticipated quality” scenario. Chargebacks would likely be provided to the first two scenarios, but the “not anticipated quality” would be less trivial as the consumer would likely have to provide some additional evidence to support the case. The evidence could be photographs from a brochure or web site compared to photographs of the merchandise provided, perhaps evidence that the dimensions of the delivered product differ from what was ordered, or a statement from an “expert” that might support the consumer’s contention that the received merchandise did not match the promised goods.

One scenario in which consumers thought cost recovery should *not* apply was the “I don’t need it any more and it costs too much to return it”. Ironically, this specific scenario could well be covered, depending on how the merchant’s return policy was detailed in the original agreement. If the purchase was made with a “no returns” or “as is” proviso, the consumer would not likely be eligible for cost recovery.

The overall results suggest strongly a lack of clarity in what currently is eligible for cost recovery through a chargeback, and considerable ambiguity about what consumers think ought to be eligible.

## *Demographic Overlays*

The survey also collected basic information about participants. This allows an examination of and how age, household income, province of residence and other basic characteristics affect consumers' views and behaviours. Here are some findings about how the basic demographic information influences results.

**Age** – Consumers over the age of 50 are less likely to participate in distant transactions, and participation declines with age.

Credit cards are the most common payment choice in all demographics, but are particularly strong in older age groups. Prepaid gift cards, electronic transfers, bitcoins and money order/bank draft are more favoured by younger age groups. The payment choices in the most recent disputed transaction match those overall payment preferences.

Younger consumers are more likely to report problems of any kind. In the 25-34 age group, 33 percent report no problems in distant transactions. In the 65-74 age group, 60 percent report no problems.

Older consumers are more likely to start the resolution process by dealing with the merchant.

Satisfaction of the dispute resolution rises with age. Younger consumers are the most likely (22 percent) to be unsatisfied by the resolution.

Older consumers are more likely to respond “don't know” to the questions about consumer protection, and to the questions as to whether chargeback protections should apply to different situations. Younger consumers are also likely to think chargeback protections apply, or should apply in the situations described.

Younger consumers are more likely to agree that consumer protection laws offer no real effectiveness on Internet purchases and that industry codes of conduct offer better protection than laws. Support for the “Canada-wide” solution increases with age.

The reluctance to provide personal information in a distant transaction also rises with age.

Younger consumers are more likely to seek cost recovery from a payment intermediary (38 percent for ages 18-24), than older consumers (22 percent of those 50 and above.)

**Province of Residence** – The number of respondents from some provinces is small, limiting reliability of some data.

The lowest rate of participation in distant transaction are consumers in Newfoundland and Labrador, Quebec and Alberta.

Credit card use as a payment in distant transactions is highest in Alberta, lowest in Nova Scotia.

Consumers in Western Canada are more likely to report no recent problems in distant

transactions.

There is no notable difference in the frequency of chargebacks sought in different provinces.

Most other unique provincial responses belong to Quebec. Quebec consumers:

- Report the lowest levels of merchant response
- Show the strongest agreement with statements about provincial consumer protection laws
- Are less likely to “strongly agree” that a “Canada-wide approach” makes sense. They also have the highest level of “somewhat agree”
- Are the least likely to express awareness of chargeback rules prior to this survey (tied with Saskatchewan)

**Sexual Identification** – Men are more likely to purchase services online than women.

Men are more likely to use PayPal to pay for distant transactions.

Women are more likely to have a dispute with a web site of a merchant that has stores.

Women are more likely to take no action at all to resolve a dispute.

Women are more likely to accept that they made a mistake or choose not to pursue a dispute.

Women are also more likely to not recall any kind of dispute with merchants than men.

Men are more likely to seek cost reimbursement from merchants in general.

In all of the multiple statement scenarios, and chargeback knowledge scenarios, women are more likely to say they don’t know or have no opinion.

**Language** – The sample sizes for non-English and non-French “first language” consumers is also fairly small. This group is more likely to engage in distant transactions, more likely to have a dispute, more likely that this dispute is “item received but damaged” or “item received but not of expected quality”, and more likely to first approach the merchant directly to resolve.

**Highest Level of Education Achieved** – The use of all types of distant transactions increases with the level of education.

The use of credit and PayPal to pay for distant transactions also increases with education. Credit is also more commonly the form of payment in the most recent dispute for higher levels of education. Debit is more frequently used by those with lower levels of education.

The types of problems encountered appear unrelated to education.

There appears to be a small relationship in resolution satisfaction. Those with higher levels of education are more likely to express satisfaction with the resolution.

There is no found relationship between merchant responses and education.

In the series of statements related to consumer protection, those with higher education are less supportive of industry codes of conduct. Otherwise, there appears to be little effect.

There is a strong relationship between higher education and greater chargeback awareness and greater use of intermediary assistance.

The level of “don’t know” responses to the chargeback scenarios declines with education.

**Household Income** – All types of distant transaction purchases rise with income.

Credit card use and electronic transfer use rise with income. Prepaid gift card and debit card use drop with income. The type of payment use in the most recent disputed transaction follows the pattern of payment choices in general.

There is no obvious relationship between income and the type of disputes experienced.

Higher income consumers are more likely to be satisfied by the resolution of in-store disputes with merchants.

There is no relationship between income levels and the “first steps” consumers take to resolve.

There is a rise in resolution satisfaction with income, as well as a rise in the percentage of disputes that are resolved with the merchant alone.

There is no relationship between merchant response and consumer household income.

Through the set of statements about consumer protection, the level of “don’t know” response declines with income.

Knowledge of chargebacks increases with income, as does support for a “Canada-wide approach”.

In relation to where consumers learned of chargebacks, higher income consumers are more likely to have learned from their financial institution or credit card network.

Consumers with higher income are more likely to seek chargebacks for credit card payments, but there is no relationship between income and other payment choices.



### *Question Interrelationships*

Similar to the demographic analysis, the survey results were also analyzed for interrelationships between questions. The answers to one specific question can be used to identify a group of respondents. How this group answered other questions can often be revealing. Do consumers take different “first steps” depending on the nature of the problem? Do consumers satisfaction levels in disputes differ based on their payment choice? Do people who agree with the statement “consumer protection laws are not really effective in online transactions” shop online less or choose different forms of payment? There are hundreds of these relationships to consider. Reliability of the results decreases as smaller samples are examined.

Here are summaries of the different groups of respondents and the other questions for which those groups’ answers were sought.

*For each type of problem in a distant transaction, is there a difference in the “first step” a consumer takes to resolve the problem? Is there a difference in satisfaction levels on resolution?*

In terms of “first steps”, there were two notable specific differences. Consumers who identified their most recent problem as being billed more than they should were more likely to start the process by contacting the merchant than in other disputes, and more likely to eventually contact their payment card or bank. And for problems where the purchased item was not of promised quality, consumers were more likely to take no action than in other scenarios.

Overall satisfaction with the resolution was remarkably consistent across all the scenarios. There was variance in the source of the resolution, with merchant and sellers most likely to resolve the “goods arrived broken” alone and least likely to resolve the “service never delivered” and “excess or duplicate billing” problems. Payment intermediaries were most commonly used in the “service not delivered” and “goods not arrived” situations, as you would expect in cases of merchant fraud.

*For each venue of purchase in a distant transaction, is there a difference in the first step to resolution or in the ultimate consumers satisfaction?* For purchases from auction web sites or online stores of brick and mortar retailers, consumers are more likely to contact merchants directly. Mail order transactions are most likely to have no followup action from consumers. Consumers were most satisfied with the resolutions to their problems with auction sites such as e-Bay, followed by the web sites of merchants with stores. The lowest levels of satisfaction were found in Internet transactions of merchants without stores (the survey used Air Canada as an example), mail order and telephone orders.

And for each payment choice, the “first steps” and ultimate satisfaction were also evaluated. Among the four payment methods with large enough samples, (credit, debit, PayPal, gift cards), there was no difference in first steps. All indicate between 79 and 82

percent of the time, the first contact was the merchant. Satisfaction was highest for PayPal customers (81 percent satisfied, 10 percent not, 10 percent other), followed by credit cards (73-14-13), gift cards (75-11-13) and debit (69-14-16). Consumers identified the assistance of a payment intermediary leading to satisfaction more frequently with PayPal than other payment options.

Consumers in a distant transaction dispute are less likely to contact their payment intermediary if they used debit cards than the other common payment methods. This was also observed when evaluating the first steps and ultimate satisfaction of those who had sought reimbursement from their payment intermediary in the past 24 months.

The series of questions in which consumers were asked whether they agreed or disagreed with statements were also used to measure the relationship between expressed attitudes and behaviour. These answers were all in a survey environment and that expressed behaviour may not correspond with actual behaviour in the marketplace.

*Do consumers who agreed that consumer protection laws are not really effective in distant transactions actually conduct fewer distant transactions?* Yes. They purchase goods, digital content and services slightly less often than those who disagree with that statement. There is no notable difference in their payment choices, however.

*Do consumers who express a reluctance to provide personal financial information in distant transactions also conduct fewer distant transactions?* Yes. They are definitely less likely to make Internet purchases, but there is no difference in their purchase through the mail or telephone. This group is more likely to pay by cheque, money order or bank draft and less likely to use credit cards, debit cards and PayPal.

*Do consumers who agree that consumer protection laws are not particularly effective in protecting consumers online agree that consumers are better protected by industry codes of conduct?* Yes, but only by a very slight degree. Of the “consumer protection skeptics”, 59 percent favour codes of conduct and 20 percent do not. Among the “consumer protection non-skeptics” the split is 53-24. (In each case the balance is “don’t know”.)

*Do consumers who agree that a “Canada-wide approach to addressing consumer protection in distant transactions makes sense” believe that their province has consumer protection rules?* As with many of these questions, the high level of “don’t know” responses clouds the results. But of those in favour of the “Canada-wide” approach, 44 percent think their province has consumer protection laws, while 11 percent do not. Those against the “Canada-wide” approach are split 39 - 28 about whether their province has laws. To the extent a conclusion can be drawn, it would be that consumers favour consumer protection laws. Those who believe they exist provincially are more likely to welcome them federally, and those that doubt their existence provincially are more likely to disagree with the “Canada-wide approach”. It is not an “either/or” situation between the two levels of government.

**The Chargeback Aware** – Of particular interest are consumers that “strongly agreed” with the statement that “Consumers who use debit and credit cards to pay for purchase can initiate action to get their money back for purchase made online, by phone or by mail that have been lawfully cancelled, returned or not received.” The results of this group – dubbed “chargeback aware” – are of particular interest, and their responses to a number of questions were analyzed. The “chargeback aware” are:

- More likely to engage in all forms of distant transactions. For purchasing goods over the Internet, this is 85 percent compared to 79 percent for the sample at large.
- More likely to use all of the payment types in the survey – credit, PayPal, debit, gift cards, electronic transfers, money orders – except cheques.
- Less likely to have problems in distant transactions than the sample group, and have no major deviations in the types or payment choices of distant transactions.
- More likely to contact the merchant in the first step of resolving a distant transaction problem
- More satisfied with the resolution of the disputes on average than the sample
- More likely to know that their province has specific laws to address distant transactions and more likely to know that the laws may direct credit card issuers to act on their behalf.
- More likely to favour a Canada-wide approach to consumer protection in distant transactions.
- More likely to have learned about chargeback provisions from their card issuer or network.

In each of these dimensions, the “chargeback aware” show consistent, often small, tendencies to behave the way the payments industry would prefer.

The “chargeback aware” are also more likely to seek reimbursement from a payment intermediary, and in each of the eight scenarios presented, more likely to believe consumers are currently entitled to cost recovery.

Confident, rights-aware, empowered consumers make purchases.

In contrast, consumers who responded “don’t know” to the “consumer aware” question are much *less* likely to believe that consumers are entitled to cost recovery for each of the eight scenarios outlined.

Table 35

### The Chargeback Aware vs Chargeback Unaware

How consumers with different levels of awareness of chargeback rules responded to other survey questions.

| Question   | Chargeback Aware % | Chargeback Unaware % | Don't Know % |
|--|--------------------|----------------------|--------------|
| I have purchased goods over the Internet                         | 85                 | 72                   | 68           |
| Uses credit cards on distant purchases                           | 86                 | 75                   | 79           |
| Uses PayPal on distant purchases                                 | 51                 | 47                   | 44           |
| Uses debit on distant purchases                                  | 25                 | 20                   | 26           |
| No problems on distant transaction                               | 43                 | 32                   | 61           |
| First contacted merchant after problem                           | 85                 | 65                   | 78           |
| Satisfied with resolution of problem                             | 77                 | 63                   | 69           |
| Knowledge of provincial laws                                     | 63                 | 50                   | 20           |
| Consumer protection laws are not effective on Internet purchases | 45                 | 53                   | 32           |
| Consumers better protected by codes of conduct                   | 52                 | 42                   | 17           |
| Supports a Canada-wide approach                                  | 89                 | 71                   | 70           |
| Sought reimbursement in past 24 months                           | 34                 | 40                   | 17           |
| First learned of chargebacks from issuers or card networks       | 34                 | 22                   | 8            |

*Note: Categories based on responses to the statement: "Consumers who use debit and credit cards to pay for purchase can initiate action to get their money back for purchase made online, by phone or by mail that have been lawfully cancelled, returned or not received." 636 strongly agreed (chargeback aware), 148 disagreed (chargeback unaware) and 396 did not know.*

*Is there a relationship between how a consumer first learned of chargeback opportunities and the first response to their most recent dispute?* The only key difference is not at all surprising: Those who had no awareness prior to the survey are more likely to have taken no action at all to resolve a dispute in a distant transaction. Similarly, those without prior awareness also showed less overall satisfaction with the resolution.

Simple comparisons between questions can also provide some insight. Here are some examples:

### 1. Consumers report greater satisfaction with the resolution of in-store disputes

Consumers who had no problems in a distant transaction in the past 24 months were asked instead about their satisfaction with the resolution of their most recent dispute related to an in-store purchase. Were these customers more or less satisfied than consumers who had a distant transaction problem?

The vast majority (67 percent) reported no disputes on in-store purchases. Of those who reported a dispute, the ratio of satisfied to unsatisfied was about 10-to-1.

The question about consumer satisfaction with their most recent distant transaction dispute showed a ratio of about 9 to 2 in favour of satisfied. About 10 percent qualified their most recent dispute as “ongoing” while 5 percent chose “other” instead of either “satisfied” or “unsatisfied”.

### 2. Payment intermediary assistance increases satisfaction

As Table 27 shows, the assistance of a payment intermediary was part of a “successful” resolution to about 8 percent of distant transaction disputes. Bank assistance added another 4 percent. About 6 percent of consumers reported an unsuccessful resolution, even after contacting the payment intermediary. So payment intermediary involvement appears to contribute positively to consumer satisfaction.

## APPENDIX C

### Anatomy of a Chargeback

This section describes the process by which chargeback claims are resolved for credit card transactions involving Visa or MasterCard. There are some small variances between the two processes, but for the first steps they are functionally identical. This information is drawn from published sources, most notably Hayashi (2016), as well as information published by credit card networks and chargeback management firms.

There are five parties involved in the transaction. The cardholder (consumer), the card issuer (the bank or financial institution that provided the card to the consumer), the card network (Visa or MasterCard in this instance), the merchant, and the acquirer. The acquirer is probably least known to the consumer. Acquirers are firms that provide merchants with equipment and software that allow the processing of transactions. Most Canadians will recognize acquirer names Moneris, Chase Paymentech, Global Payments and TD Merchant Services as the brands of terminals that process credit and debit card payments at retail checkout.

Hayashi outlined the following 10-step (MasterCard) and 11-step (Visa) processes to resolve a chargeback.

Step 1: The cardholder disputes a transaction by calling the card issuer.

Step 2: The card issuer reviews the facts of the transaction and evaluates whether it meets the qualifications for a chargeback as defined by credit card networks. If so, they will initiate a chargeback (see Step 3). Issuers can determine that the cardholder claim is eligible for a chargeback, and keep the charge in the cardholders account, or accept that the fault is theirs, putting the issuers at loss.

Step 3: The network evaluates the chargeback and either forwards it to the acquirer (Step 4) or rejects it back to the issuer.

Step 4: The acquirer screens the chargeback, and determines whether to forward the chargeback to the merchant (Step 5), or re-present the chargeback (Step 7).

Step 5: The merchant decides whether to accept the loss or re-present the chargeback through the acquirer (Step 6). Typically, if the merchant wishes to re-present, they include evidence that disputes the initial claim. This evidence can vary, depending on the nature of the claim, but could include proof of delivery or information from other online verification technology.

Step 6. The acquirer decides whether to forward the re-presentment (Step 7) or advises the merchant not to re-present the chargeback, which results in a merchant loss.

Step 7: The network screens the re-presentment and determines whether to forward it to the issuer (Step 8) or if inappropriate, reject it, which results in a merchant loss.

Steps 8 and on vary by network.

### **Mastercard**

Step 8: The credit card issuer decides whether to accept the re-presentment from the acquirer and take the loss, or re-post the transaction to the cardholder's account, or issue a second chargeback (Step 9).

Step 9: The merchant decides whether to accept the second chargeback (and the resulting merchant loss) or file for arbitration (Step 10).

Step 10: The network ultimately decides whether the merchant or issuer is responsible for the disputed transaction.

### **Visa**

Step 8: The credit card issuer decides whether to accept the re-presentment (issuer loss) or send the merchant pre-arbitration (Step 9)

Step 9: The Merchant decides whether to accept the loss or reject the pre-arbitration (Step 10).

Step 10: The issuer decides whether to file for arbitration (Step 11) or accept it as issuer loss.

Step 11: The network ultimately decide whether the merchant or issuer is responsible for the disputed transaction.

### **American Express**

American Express operates as acquirer, which streamlines its chargeback process. Its processes are not covered in the Hayashi report, but from American Express' Merchant Reference Guide.

Step 1: A Cardmember disputes a charge and American Express opens a case. They may also open cases when an issuer (a bank that provides American Express branded cards) or the network itself initiates a dispute.

Step 2: The merchant can accept the chargeback (bearing the costs), issue a credit to the Cardmember (also bearing the costs), or provide certain materials another supporting documentation if they wish to support their claims.

Step 3: American Express reviews the merchant response and makes a determination.

Step 4: If the Cardmember provides new or additional information after American Express' initial review, American Express may reinvestigate and request additional information from merchants.

Step 5: Merchants may request a chargeback reversal if the chargeback was applied in error, and the merchant proves that a credit was already issued to a Cardmember. Merchants must not resubmit a disputed charge after it has been resolved in favour of the Cardmember.

**Notes:** Steps 3 and 7 of the Visa and MasterCard process are essentially automated. The networks are not serving as an arbiter at these stages as much as they are serving as a conduit.

In the Visa and MasterCard processes, consumers have no role in the resolution after the initial claim is filed. In American Express, there is an opportunity to provide additional information so that consumers may be able to address points made by the merchant.



## APPENDIX D

### Chargeback Cost Estimates

The best estimates of the costs of chargebacks – and how those costs are broken down – is disclosed in a January 2016 study *Chargebacks: Another Payment Card Acceptance Cost for Merchants*, by Fumiko Hayashi, Zach Mankiewicz and Richard Sullivan for the Federal Reserve Bank of Kansas City. The goal of the paper was to generate detailed statistics, as chargebacks were perceived as a major cost component for merchants to accept card payments and little research had been conducted. It collected chargeback and sales data from selected merchant processors (acquirers) from Oct 1, 2013 to Sept. 30, 2014, covering general-purpose credit, debit and prepaid card transactions. The acquirers represented about 20 percent of the overall transaction market.

The results focused on Visa and MasterCard transactions only,<sup>34</sup> and showed that the total chargeback rate is 1.6 basis points (bps) (or 0.016 percent) in terms of quantity of transactions, and 6.5 bps in value. Stated another way, for every \$1,000 of sales, chargebacks costs total 65 cents. Merchants are held responsible in 80 percent of transactions, or 70 percent of value, suggesting that about 30 percent of chargeback costs were determined to be issuers' costs, and that merchant losses are about 46 cents per \$1,000 of sales. The most common reason for chargebacks is fraud, which accounts for about 50 percent of the total chargebacks. Merchant fraud loss was estimated at 2.6 bps in value, or 26 cents on every \$1,000 of sales.

There are at least three obvious limitations in the applicability of these figures for Canadian research. First, Canadian and U.S. spending patterns and security measures are different. Second, the acquirers used in the Hayashi study may not be typical of the industry as a whole. Acquirers can select specific risk profiles of their merchant clients; A sample of acquirers may not be representative of the whole. Third, the study was conducted before the Chip and PIN technology was widely adopted in the U.S. marketplace.

The research offered a number of breakdowns in chargebacks data, by reason code, merchant type and transaction channel.

The average chargeback was US\$222, while the average sales transaction in the sample was \$56, suggesting that chargeback transactions are larger in value than average. The average value per transaction of a merchant's loss is slightly lower than the average value per chargeback, signalling that merchants are more likely to dispute chargebacks with

higher value and accept those with lower value.

Chargeback rates for Card-Not-Present transactions are significantly higher than those in the Card-Present environment. In the latter, the values are about 3.1 bps, (31 cents on \$1,000) while in Card-Not-Present transactions, the chargeback rate is about 38 bps (\$3.80 on \$1,000).

The research sorted the chargeback codes into seven categories. Fraud was the code used in about half of the chargebacks. Merchant losses on fraudulent transactions were much higher than on the other codes.

The research examined merchants in five major categories:

1. Department stores (including big box and apparel)
2. Grocery (including drug stores)
3. Petroleum
4. Restaurants (includes bars and caterers)
5. Travel (including airlines, car rentals and hotels)

Together, these categories had more than 50 percent of sales, but less than 50 percent of chargebacks, so in the aggregate, were less likely to receive chargebacks. But among these categories, chargeback costs were significantly higher in travel (17.93 bps) and department stores (8.07) than in the other three categories. Looking solely at Card-Not-Present transactions, the restaurant and travel chargeback rates were 393 bps and 671 bps respectively, with merchant loss rates of almost 300 bps, or \$30 per \$1000 of sales.

The report noted that while merchant losses might be much less significant than merchant discount fees for example, in these instances, there are other costs associated with chargebacks “For example, when a merchant incurs losses from a fraud chargeback, the merchant loses not only the transaction funds but also the merchandise consumed by the fraudster.” (Hayashi, 46) It concluded that the fight against CNP fraud was urgent for all participants in the payment industry “because more card transactions will continue shifting from CP to CNP, and fraudsters will also shift their focus to CNP transactions as the EMV migration makes CP transactions more secure.” (Hayashi, 45)

## APPENDIX E

### Bilateral Consumer Protection

A number of provinces referenced a 2014 Supreme Court ruling on *Marcotte v Bank of Montreal* as evidence that federally chartered banks were subject to provincial consumer protection laws.

The case originated as a class action suit in Quebec against a number of financial institutions. (The Bank of Montreal was listed first among the defendants). The suit alleged that the banks violated the Consumer Protection Act by not disclosing the existence or amounts of certain credit charges. The defendants sought to have it dismissed on several grounds. One of those grounds was that the provincial Act attempted to govern activity that fell under federal banking authority, and conflicted with existing federal legislation.

The cases were largely decided in favour of Marcotte in the Quebec Superior Court, then largely overturned by the Quebec Court of Appeals in 2012. The Supreme Court of Canada ruling in 2014 overturned the Quebec Court of Appeals ruling.

The important implications of the case that relate to chargebacks are that provincial consumer protection laws can be applied to federally chartered banks. The relevant sections of Quebec's Act did not impair the federal banking power, and "cannot be said to frustrate or undermine" the Bank Act.

"The basic rules of contract cannot be said to frustrate the federal purpose of comprehensive and exclusive standards, and the general rules regarding disclosure and accompanying remedies support rather than frustrate the federal scheme. In addition, ss. 12 and 272 of the CPA are not inconsistent with ss. 16 and 988 of the Bank Act <sup>35</sup> .

"With respect to the Banks' broader argument that provinces cannot provide for additional sanctions on top of federal sanctions, in our view this argument is similar to their argument respecting interjurisdictional immunity, whereby they seek a sweeping immunity for banks from provincial laws of general application. There are many provincial laws providing for a variety of civil causes of action that can potentially be raised against banks. The silence of the Bank Act on civil remedies cannot be taken to mean that civil remedies are inconsistent with the Bank Act, absent a conflict with ss. 16 and 988. In the present appeals there is no such conflict as the Plaintiffs are not seeking to invalidate their contracts. <sup>36</sup>

It would be an error to claim that all banks must abide by all provincial consumer protection laws, based on this ruling. A different case with a different set of facts – particularly one in which there was a more obvious conflict between the intent of provincial

laws and federal laws – may have produced a different outcome. Because the federal government had no laws around chargebacks, it would seem that there would be no conflict with provincial laws, but this is an untested conclusion.

### *Federal Government Reaction*

The Federal Government attempted to establish the supremacy of federal legislation over consumer protection in the banking industry in the fall of 2016.

On October 25, 2016, the federal government introduced Bill C-29, a bill to implement the measures included in the federal budget. However, the bill also included proposed amendments to the Bank Act. Most critically, these included measures to make federal consumer protections laws paramount to any provincial law. “This Part is intended to be, except as otherwise specified under it, paramount to any provision of a law or regulation of a province that relates to the protection of consumers or to business practices with respect to consumers.”<sup>37</sup>

The Bill also included a clause that set out the broad purposes of the new consumer regime including “ensure the uniform supervision of institutions and enforcement of provisions relating to the protection of their customers and of the public.” It included a section on dealing with customers and public, intended to consolidate existing consumer protection principles. One of the five principles was: “Complaints processes should be impartial, transparent and responsive.” It further elaborated on the key protection areas to be covered by the consumer code, many requirements of which were left for regulations to detail.

The Bill faced opposition from several senior Quebec ministers and from some Senators. Finance Minister Bill Morneau initially supported the initiative, stating that consumer protections in the Bill were “an enhancement of consumer protections across this country” and “by asserting the federal supremacy in this regard, we’re ensuring that those consumer protections stay appropriate and do protect consumers in the way we’re trying to do across the country consistently over time.”<sup>38</sup>

Senator Paul Massicote cited Marcotte in raising his objection to the proposal.

“The protections afforded by the Province of Quebec, and I’m sure it’s the case for many other provinces, exceed by far the protection being proposed under Bill C-29.”<sup>39</sup> While noting that C-29 did make some improvements to the rights and recourse of consumers, he also noted that the fact that the recourse was being directed through a bank-selected ombudsman also left him unconvinced that the relationship is fair and satisfactory. “The concern I have is why take away the rights of clients of banks to have recourse to their provincial rights? In Quebec, you have all kinds of rights, of class action and so on, but with the passage of this bill it makes it exclusive that the province has no further jurisdiction for these matters.... Why not give the clients and customers maximum protection? What is the issue? Certainly the banks would love the federal approach. It makes it clear; they deal with one federal system and not all provinces. But I’m quite concerned it doesn’t satisfy our responsibility to the consumers and clients of banks.”

Senator Andre Pratte also drew on the Marcotte ruling, noting that while the Supreme Court sought cooperative federalism, “the federal government instead chose a more traditional approach to federalism: taking jurisdiction away from provincial governments.”<sup>40</sup>

Morneau removed the Bank Act provisions from the Bill, and tasked the Financial Consumer Agency of Canada to assure that the proposed federal protections would at least match those available provincially, at which point the provision would be re-introduced as a standalone bill.

These developments underscore some important points. First, the relationship between provincial consumer protection law and federally regulated issuers is both unclear and unstable. Second, future developments will include public policy debate that needs to include an evaluation of the protections afforded consumers across all provinces and under any proposed federal laws.

## APPENDIX F

### Issuer Disclosure

#### *Cardholder Agreements*

Researchers viewed and downloaded a representative sample of credit card agreements presented on issuer web sites.<sup>41</sup> With about 200 credit cards available for use in Canada (according to FCAC's Credit Card Selector tool), resource constraints prevented a methodical search. Nonetheless, there was a high similarity of agreements within issuers. Approximately 20 agreements were reviewed to see what consumers were disclosed about disputes with merchants, problems with statements, chargeback provisions and rules, how to direct complaints and other relevant considerations.

There were some areas with a high degree of similarity. Guidelines about dispute resolution processes with the issuer were detailed, reference bank ombudsman offices, external firms and FCAC. There was also a high level of uniformity about statement review. Consumers must notify the issuer within a specific period after the date of the statement – usually 30 days (15 days for Scotiabank, 60 days for National Bank) – in order to make any adjustments to the statement. Here is language from RBC Visa Gold's agreement: "It is up to you to review your monthly statement and to check all transactions, interest charges and fees. If you think there is an error on your monthly statement, you must contact us. If you do not contact us within 30 days of the last day of the relevant statement period, the monthly statement and our records will be considered correct and you may not later make a claim against us in respect of any charges on the Account." Here is what TD Cash Back Mastercard's agreement says: "You must immediately review each statement and tell us about any errors. We will investigate errors that you tell us about within 30 days of the statement date. If you do not tell us about errors within 30 days of the statement date, we will consider the statement, every item on it and our records to be correct (except for any amount that has been credited to the Account in error). This means that you may not make any claim against us after that 30 day period." Other cards had very similar language.

This language could easily lead consumers to believe that they have no course of action after 30 days for any kind of mistake on their statement, including merchant disputes.

None of the agreements mentioned the Zero Liability Policy as a protection offered to

consumers. The FCAC web site notes: “This type of policy is not usually listed in a credit card agreement since it is a public commitment, not a legal requirement.” Some card agreements include some of the provisions as the Zero Liability Policy, but not by that name.

All of the agreements found had language about disputes with merchants. In most cases, the language directed consumers to resolve disputes with the merchants directly.

“We are not responsible for any problem you have with a merchant.” (Bank of Montreal MasterCard Agreements).

“Subject to applicable law, if you have a complaint or problem with a merchant or any goods and services charged to your account, you must still pay all charges on your account and settle the dispute directly with the merchant.” (American Express Cardholder Agreement).

“If you have any problems with Purchases on the Account, you must settle them directly with the merchant. You must still pay us the full amount of the Purchase, even if you have a dispute with the merchant.” (TD Aeroplan Visa Premium).

There were some agreements with softer language. Scotiabank agreements note: “If a dispute arises about a transaction which you authorized, you must settle it directly with the merchant or business concerned. In addition, you may contact us through any of the methods we offer to discuss the transaction in question.”

RBC agreements for both Visa and MasterCard state: “In some circumstances, we may be able to provide assistance in resolving disputed transactions.”

CIBC language is the only agreement language found that goes beyond that. All CIBC agreements audited include: “If you have a dispute with a merchant about a transaction, you must attempt to settle it directly with the merchant before contacting us. Although you may contact us to discuss a dispute, we are not obliged to take any action on the dispute unless we are required to do so by law.” (Section 15.b) And “We are not liable if we are unable or unwilling to assist you with a merchant dispute for any reason. You agree that in cases where we do attempt to assist you with a merchant dispute, we are subject to credit card network rules which place time limits and other restrictions on transaction disputes.... In certain situations, you may be required to sign additional documentation and take additional steps before we can attempt to dispute a transaction on your behalf.” (Section 15 c)

Two other notes about agreements: Some smaller issuers (Laurentian Bank, Citizen Bank) do not appear to make agreements available without completing an application; some agreements included language about purchase security insurance and protection and other programs that may provide some protection to consumers in some of the test scenarios.

With some exceptions, consumers who sought guidance from their credit card agreements about their rights would likely *not* conclude that their credit card issuer could

be a source of recourse. Most would conclude that recourse was only available from the merchant.

### *Issuer Websites*

More than the agreements, a review of selected issuer websites shows divergent views of what information to disclose to consumers. Researchers took the approach of a typical consumer, navigating through issuer sites, and noting language around “consumer protection” or “dispute resolution” or even “chargeback”. In most instances, issuer web sites have “search” facilities, in which case those terms were all entered, as a typical consumer might. (All browsing was done in English.)

Web site audits of selected smaller issuers such as Laurentian Bank, Citizens Bank and PC Financial did not have much information about consumer protection related to disputes with merchants. Most had information about zero liability and its equivalents. Some referenced services such as “Verified By Visa” and “MasterCard SecureCode Service”, which provide password or PIN-like protections for transactions. Citizens Bank lists Visa Card Benefits, and includes PIN and chip security. No references to “chargebacks” or how they could help resolve disputes with merchants were found.

More care was taken with the web sites of the “Big Six” banks. Still, there are limitations to this approach. Navigational choices may vary, and web sites also are subject to change.

**CIBC:** Under the basic credit card information section, there is a subsection called tips and advice that included a FAQ-style section. One of the questions was “How do I dispute a charge on my credit card statement?” The answers to that question include first contacting the merchant, document that interaction, pay the bill, and then a statement that “CIBC will use this information to investigate the dispute.” A subquestion on “What is a disputed transaction”, includes a requirement to notify CIBC within 30 days of the statement date, along with examples that include “receiving damaged merchandise”, “failing to receive ordered products”, being charged twice and unauthorized transactions. That response includes a link to a “Disputed Transaction Lifecycle” which is an infographic that explains the basic steps to resolution. Another FAQ provides information on “How do I protect myself from being charged for phone, mail or online purchases that I cancelled?” Searching on “disputed charge” or “merchant disputes” provide links to the same information.

**Royal Bank:** The basic card information section allows consumers to select different types of cards. Each of those cards references the “enhanced security” offered by Chip and PIN technology, as well as Zero Liability. An easily found credit card FAQ includes the question “How do I dispute a charge on my statement?” The answer refers only to cards being used without your knowledge or consent and directs consumers to customer service. A site search of the term “chargebacks” links to commercial and business sites related to Royal Bank. Searching on “merchant disputes” leads to a helpful guide for cardholder protection for online and telephone credit card transactions. It advises some basics about



checking out merchants and requesting terms and conditions before providing credit card information. After dealing with such a merchant, it directs consumers to resolve situations directly with the merchant before calling RBC, keep all the tracking information as well as correspondence for any disputes before concluding “RBC credit card transactions can be disputed by calling ...”. However researchers could not navigate to this page. It seemed only accessible through the search facility. Another search provided a link to RBC’s U.S. site, which provided considerably greater detail about chargeback procedures, time limits, deadlines, and allowable transactions (see Section VIII.)

**Scotiabank:** The main credit card page identifies all the possible cards, and the focus appears to be card selection. It is more difficult to find card agreement language than on other sites. The only reference found related to security or protection were links to Online Shopping Security, which links to information about the Verified by Visa program, and links to the Zero Liability Policy information or American Express equivalent. Web searches on “chargeback”, “merchant dispute” and “disputed transaction” returned no relevant links.

**Bank of Montreal:** There is a fairly easy to find link through a FAQ facility on the basic page about credit cards. The FAQ information covers the basics about disputes, chargebacks, how to prepare and the basic steps taken toward resolution. It distinguishes between a dispute, a chargeback and potential fraud, before focusing on the first two elements. It lists 10 common reasons a charge may be disputed. The list includes non-receipt of goods and/or services, goods and/or services not as described, double billing and others. Consumers are urged to first deal with the merchant directly. Contact should be initiated within 30 days of the account statement date. Consumers should assemble all the supporting documentation. It also notes the ability to begin the dispute procedure online through a “Dispute a Charge” facility. Consumers are not required to pay the charge while it’s in dispute and will not be charged interest during the dispute process. The FAQ notes that merchants have 45 days to respond, and that followup with the customer may ensue. It notes that even if the dispute is considered closed or resolved in favour of the merchant “you can still attempt to resolve your dispute with the merchant even after the dispute is closed.” There is additional information under a subheading “Hints and Tips to protect myself”. This includes warnings about providing credit card information during free trials, and to always read terms and conditions to learn about the merchant’s refund policy. This was the best disclosure researchers found among Canadian issuers.

**TD Canada Trust:** As with some of the other issuers, there is some helpful information on the site, but it is not obviously located. From the main credit card information page, a header “Security while you shop online” directs to information about Verified by Visa and MasterCard SecureCode. The main page has a link that directs to a “Manage my Card” facility, which has a link about disputed charges. The entirety of that message is “if you believe a fraudulent transaction has been charged to your Account, call us.” A protect-

yourself-from-fraud link directs to six basic online safety tips. There is an FAQ list, which isn't particularly helpful. The best information is available through the "Ask a Question" facility. Typing in the words "chargebacks" or "merchant dispute" or "disputed transaction" will lead to a list of actual customer questions with responses from TD Canada Trust customer service staff. Some of those responses contain useful information. Done in the context of an individual complaint, the service reps almost always default to "call us" in the response. Still, there are examples of consumers being directed to try to resolve with merchants before contacting the TD Credit Card Contact Centre. One response notes that investigations must be initiated within 115 days of the purchase "otherwise we lose our rights to dispute". Another response notes "As per Visa International Regulations, merchants have 60 days from the transaction date within which to deliver goods and/or service purchased. If these 60 days have passed, please call us."

**National Bank:** No information was found about dispute resolution, merchant disputes or chargebacks. The site does list 20 different advantages and benefits of its credit cards, but none of those protections are listed. There is an easy to find tab about "How to be Safe when Shopping Online" that includes some basic information about knowing the merchant, clearing browser cache and using MasterCard Secure Code.

**Summary:** While acknowledging the limitations in the methodology, it seems reasonable to conclude credit card issuers take divergent approaches to disclosing that consumers may be entitled to issuer assistance in resolving disputes with merchants. Only a few mention "chargebacks" by name. Most say nothing in printed sales materials and little or nothing in credit card agreements. There is greater divergence in web site disclosure; some banks offer useful information, while others offer little or none. This facility is not "promoted". It is not mentioned as a "feature" or "benefit" of any card ownership. The fact that a consumer may be cost protected should a merchant fail to deliver an acceptable product or service seems more beneficial than some of the benefits issuers choose to promote.

This seems a curious choice with harmful implications for consumers. Based on current disclosure, consumers could easily conclude that they have no protection on non-delivery if not reported within 30 days of statement receipt. With distant transactions, 30 days of non-delivery may be perfectly normal if consumers chose the least expensive delivery option from a distant merchant. It is not clear what harm would arise if consumers were aware that complaints needed to be initiated within 120 days of the transaction, for example.

## APPENDIX G

### Industry Codes of Conduct

Industry participants were asked to identify the relevant codes of conduct that apply to disputed distant transactions. Here are summaries of the codes, including the dates of implementation and some details about consumer protection offered.

#### *Canadian Code of Practice for Consumer Debit Card Services*

Established by the Electronic Funds Transfer Working Group, which consisted of about 20 different government, bank and consumer groups. The first code was developed in 1992, and has been revised in 1996, 2002 and 2004. The code “outlines industry practices and consumer and industry responsibilities, which will help to protect consumers in their use of debit card services in Canada.” It does not cover transactions that take place or transfer funds outside Canada.

Section 5 of the code indicates that cardholders are not liable for losses resulting from circumstances beyond their control, and specifies that

“Such circumstances include, but are not limited to:

1. technical problems, card issuer errors and other system malfunctions
2. unauthorized use of a card and PIN where the issuer is responsible for preventing such use, for example after:
  - the card has been reported lost or stolen
  - the card is cancelled or expired
  - the cardholder has reported that the PIN may be known to someone other than the cardholder
3. unauthorized use, where the cardholder has unintentionally contributed to such use, provided the cardholder cooperates in any subsequent investigation.”

Section 6.3 of the code says: “In the event of a problem with merchandise or retail service that is paid for through a debit card transaction, a cardholder should resolve the problem with the retailer concerned.” An interpretation in the appendix to the code, however, indicates that cardholders are not liable for losses relating to transactions “that are caused by the fraudulent or negligent conduct of any of the following:” and includes “merchants who are linked to the electronic fund transfer system, or their agents or employees.”

Section 7 of the code covers “resolving disputes” but only deals with disputes between the cardholder and the “PIN issuer”.

So in the simplest cases, the “item not received, item received damaged, or ‘ordered a red one, got a blue one’” scenarios, the protection under this code would appear to rest on the

definitions of “negligent conduct” and “agents”. Non-delivery and non-responsiveness would likely be viewed as fraudulent or negligent conduct, and the “ordered a red one, got a blue one” scenario could also be covered. In the “item received but damaged” scenario, the protection would apply if the merchant’s delivery services were to be viewed as an “agent” of the merchant.

*Code of Conduct for the Credit and Debit Card Industry in Canada*

Established in 2010 and updated in 2015, this code deals primarily with the relationship between merchants, acquirers and credit card networks. It was established after a number of concerns from merchants about poor transparency in credit card transaction fees. It requires credit card networks to provide advance warning about fee changes, requires card issuers to only offer premium cards to consumers who meet certain spending criteria, and allows merchants to offer discounts for preferential payment methods, i.e., the merchant can discount prices for consumers who pay cash.

There are other provisions, but none relate directly to the consumer-issuer or consumer-merchant relationship.

*Principles of Consumer Protection in Electronic Commerce: A Canadian Framework*  
*Canadian Code of Practice for Consumer Protection in Electronic Commerce*

The Code was endorsed by Canadian federal and provincial ministers in January 2004, but was drawn from principles established five years earlier by the Working Group on Electronic Commerce and Consumers. Co-ordinated by the federal Office of Consumer Affairs of Industry Canada, the group consisted of about 15 different government, industry and consumer organizations. From 1999 to 2004, various draft versions of the Code were reviewed and revised to provide a final set of principles to guide businesses, consumers and governments in the development of consumer protection for electronic commerce. The original document established three principles. The first was “equivalent protection” – that “Consumers should not be afforded any less protection in ‘electronic commerce’ than in other forms of commerce. Consumer protection provisions should be designed to achieve the same results whatever the medium of commerce. The second, was Harmonization, that ultimately led to the Internet Sales Contract Harmonization Template. The third was International Consistency, linking Canadian rules to those established by international bodies such as the OECD.

The principles established in this code are part of current industry practices.

Section 1.3 e) requires that vendors disclose their cancellation, return and exchange policies, including any charges;

Section 1.3 g) requires that vendors disclose their complaints process;

Section 1.5 d) requires that vendors make all the terms and conditions of the transaction

available to consumers before completion of the contract, including their cancellation, return and exchange policies and any associated charges;

Section 3.2 requires vendors to notify consumers and give them the option to cancel an order at no charge when an order cannot be fulfilled within the time frame originally specified.

Section 3.4 requires vendors to not hold consumers liable in the following circumstances:

- a) the transaction was not authorized by the consumer;
- b) the good or service delivered was materially different from that described by the vendor;
- c) the vendor failed to provide material information about the good or service;
- d) the good or service was not delivered in the time specified, or under the conditions stated in the original offer; or
- e) there was no adequate opportunity for the consumer to cancel an inadvertent transaction when the consumer acted reasonably.

Under these circumstances, vendors shall refund any payments consumers make, including, when applicable, any reasonable charges consumers pay directly to return the good in question to the vendor, in good order and within a reasonable time.

Point d) seems to cover the “non-delivery” scenario as well as the “item received but damaged” scenarios. Point b) would likely cover the “ordered a red one, got a blue one” scenario. Note also that vendors are required to pay delivery charges for goods returned under these scenarios.

Section 6 is labelled “Complaint Handling and Dispute Resolution”. It requires vendors to provide consumers with “access to fair, timely and effective means to resolve problems with any transaction”. The balance of the section is a requirement for vendors to offer an internal complaints-handling process, and if a consumer and vendor cannot resolve a complaint “the vendor is strongly encouraged to offer to refer matters to an appropriate third-party dispute resolution service, use of which shall be at the consumer’s discretion.”

Interestingly, in the initial principles from 1999, there was a rule stating “credit card issuers should make reasonable efforts to help consumers resolve complaints with vendors in the event of non-delivery or unauthorized transactions.” Those provisions were in the Harmonized Sales Contract template but not in this code.

### Zero Liability Policy

The major payment card networks in Canada – American Express, MasterCard, Visa and Interac – provide protection to cardholders under public commitments commonly known as “Zero Liability Policy”. (American Express refers to its as “Fraud Protection Guarantee”.) In each case, the commitment is that if someone uses a payment card to make unauthorized transactions, consumers can typically be reimbursed. All warn that customers must make

some kind of “reasonable effort” to protect their card information, including their PIN.

The commitments are monitored by the Financial Consumer Agency of Canada (FCAC). Because they are public commitments, not a legal requirement, details are not found in most credit card agreements. They are, however, commonly featured on issuer web sites.

FCAC notes that while the commitment applies to transactions made on the Internet and by phone, there may be exclusions.

The FCAC web site links to the credit card network disclosures, which provide some details. All three credit card sites make the same basic points: if your card is used fraudulently, you are protected, even on purchases made through the Internet. If you notice fraudulent activity on your card, report it immediately, and always monitor your monthly statement for unauthorized transactions.

Interac’s web site section on Customer Commitment notes the Zero Liability Policy, as well, and repeats the language from the Debit code above that consumers will not be liable for losses resulting from circumstances beyond their control that are related to the payment transaction. Merchant issues are not mentioned. Interac’s site also notes that merchants that offer Interac Online must comply with the *Canadian Code of Practice for Consumer Protection in Electronic Commerce* and provides a link to that document.

None of the participants interviewed thought the Zero Liability Policy was relevant to the three scenarios (item not received, etc.) or in disputes with merchants.

## APPENDIX H

### Types of Fraud

The thrust of this research project is consumer disputes in distant transactions, and not specifically fraud. But chargebacks are the most prominent protection tool used by consumers. Merchants cannot easily determine by a chargeback code whether the consumer was a legitimate victim of fraud or whether there is a legitimate dispute.

The chargeback management firms discuss many different types of frauds. Some of those discussions and definitions are provided here to help understand the types of fraud (and techniques of fraudsters) that can complicate the ability of industry participants to determine how to address chargebacks.

The two main sources for this section are the *Visa E-Commerce Merchant's Guide to Risk Management*, and *Fraud the Facts*, a 2016 publication of Financial Fraud Action UK.

The vast majority of distant transaction fraud involves acquiring the card details of real consumers, and using those details to acquire goods through fraudulent purchase over the Internet, phone or mail order.

*Counterfeit card fraud* – Using details from the magnetic stripe of a genuine card, a duplicate “fake” card is created. This information can be gained by techniques such as skimming, where devices are placed over card swipe mechanisms on card readers. The device captures and stores all the details from the card’s magnetic strip. Hidden cameras or the skimming device can record PIN entry, giving the thieves the information needed to make fake cards or online purchases. Cards with embedded chips are obviously more difficult to counterfeit.

*Lost or stolen card fraud* – A cardholder loses possession of the card through carelessness or theft. If the thief was able to learn the PIN by watching before theft, it can be used in-store or at an ATM, even with a CHIP. The CVV will allow for many distant transactions to be completed, at least until the card is reported lost to the issuer.

*Application fraud* – Using a fraudulently obtained or stolen personal information (or credit card information), to open a new credit card account in the name of the victim.

*Account takeover* – This occurs when thieves gain access to someone’s accounts - by gathering information about the victim - then change the contact and security information to “take over” the account. Warnings and notifications are sent to the thieves themselves. This is cited in a number of reports as a “growing” type of fraud.

*Card non-receipt fraud* – This involves stealing cards while in transit. The criminal then activates the card and uses it.

*Clean fraud* – Cybersource defines this as “a transaction that passes a merchant’s typical checks and appears to be legitimate, yet is actually fraudulent. For instance, the order has valid customer account information, an IP address that matches the billing address, accurate AVS and card verification number, etc.”

*Friendly fraud* – Sometimes called ‘chargeback fraud’, this occurs when a merchant receive a chargeback because a cardholder denies making the purchase or receiving the order, yet the goods or services were received. Consumers claim non-receipt for delivered items, claim items were damaged or don’t work, or claim they don’t recognize transactions or aren’t aware that another family member made the purchase.

*Re-shipping* – Criminals can recruit an innocent accomplice to package and re-ship merchandise purchased with stolen credit cards. This accomplice has a legitimate shipping address, the merchant has no reason to suspect fraud.

*Botnets* – A network of machines controlled by a fraudster to be used with stolen payment and identity information to make it appear that transactions are originating from locations that match the credit card in use.

*Phishing, farming and whaling* – These are different techniques to gain account information. Phishing involves fake, but official looking e-mails sent to consumers to steal account information and passwords. Farming re-directs website traffic to an illegitimate site where consumer personal data is captured. Whaling is a variation of phishing, but targets specific customers or employees by sending tailored messages that appear as if they originated from within the target’s organization, colleague, partner or other trusted party.

*Triangulation* – Criminals post a product for online sale at a severely discounted price. A customer purchases the item using a valid credit card. The criminal now has access to the credit card information, and uses other false identities to purchase and ship the product from a legitimate website to the customer.



## APPENDIX I

### Links to Provincial Legislation

Here are links to the provincial legislation that implemented the Harmonization Template to regulate Internet or distant transactions and place obligations on credit card issuers to reverse credit card charges for certain lawfully cancelled transactions.

Alberta: [Regulation 81/2001 of the Fair Trading Act](#)

British Columbia: [Part 4, Division 4 of the Business Practices and Consumer Protection Act.](#)

Manitoba: Part XVI of the [Consumer Protection Act](#)

Newfoundland and Labrador: Sections 28 to 35 of the [Consumer Protection and Business Practices Act.](#)

Nova Scotia: Sections 21X and onward in the [Consumer Protection Act.](#)

<http://nslegislature.ca/legc/statutes/consumer%20protection.pdf>

Ontario: Internet rules are sections 37-40, and remote transactions are sections 44-47 of the [Consumer Protection Act.](#) The associated [regulations](#) are here.

Quebec: Section 54 of the [Consumer Protection Act.](#) Section 350 of the regulations also apply.

Saskatchewan: The Act is C-30.2 The [Consumer Protection and Business Practices Act.](#) The important sections are contained in Sections 3-3 to 3-13 of the [Regulations](#)

New Brunswick and Prince Edward Island have no specific legislation in this area.

There is a [Sale of Goods Act](#) in New Brunswick which may offer some protection. The [Consumer Product Warranty and Liability Act](#) provides some protections for consumers in regards to products that may be damaged. Prince Edward Island's [Consumer Protection Act](#) is here

The Federal Payment Card Networks Act is legislation that allows the FCAC to monitor the compliance of participants the credit and debit card industry in Canada.

## APPENDIX J

### Future Payments

A detailed examination of the future of consumer payment choices is beyond the scope of this report. However, one important rationale for establishing consumer protection standards independent of payment choice is that the number of payment vehicles is likely to increase. Just a few years ago, it was difficult to imagine the market acceptance that “digital wallets” or PayPal have managed to achieve today. Consumers are using their “smart phones” to transact in ways unanticipated by legislation.

A more current initiative, Bitcoin (and other cryptocurrencies) present a more complex challenge to consumer protection frameworks, as they have elements of assets and currency, but are unattached to any particular country or jurisdiction, and, in fact, were specifically designed to operate independently of existing governments, networks and protections.

The literature review identified dozens of other emerging payment technologies, including biometric security solutions (fingerprint, voice recognition authorization), “wearable” payments, two-factor authorization, a dramatic reduction or elimination of physical cards, mostly in the name of reduced fraud. In its 2016 *Modernizing Canadian Payments*, Payments Canada concluded: “Payments should be possible with just an e-mail address, telephone number or even social media handle” as part of its systems upgrade objectives.

These developments challenge consumer protection measures. As payment options expand, it becomes harder to provide equivalent protections to consumers across payment choices.

The OECD noted the changes in its updated *Consumer Protection in E-Commerce* in 2016. Based on a series of other reports, the new guidelines addressed non-monetary transactions, digital content products, active consumers, mobile devices, product safety and payment protection.

It noted: “consumers’ understanding of their rights and obligations was often challenged when they make purchases through non-traditional payment mechanisms, such as mobile phone bills or pre-paid cards, or when they acquire digital content products, such as apps or e-books.” (OECD, 2016)

Specifically on payment protection, it noted: “[Because] the level of payment protection

can vary depending on the type of payment mechanism used, the recommendation calls on governments and stakeholders to work together to develop minimum levels of consumer protection across payment mechanisms.” (OECD 2016) The report further called for governments and stakeholders to develop protections that should include “limitations on consumer liability for unauthorised or fraudulent charges, as well as chargeback mechanisms, when appropriate. The development of other payment arrangements that may enhance consumer confidence in e-commerce, such as escrow services, should also be encouraged.”

It also reiterated some points from the 1999 guidelines, about providing consumers with access to “fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate.” (OECD 2016) “Subject to applicable law, the use of such out-of-court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress.” It adds that e-commerce protection should not be less than the protection afforded to other forms of commerce.

## APPENDIX K

### Areas for Future Study

During the course of this project, researchers identified a number of potential topics that were beyond the scope of this project, yet worthy of further study. In no particular order, these include:

1. Is the chargeback system biased in favour of consumers? Numerous interview participants and many online resources for merchants insisted that it was. Merchant representatives indicated that network rules are biased in favour of consumers because they value consumer loyalty, while merchants are (effectively) required to accept the card network rules. “Merchants do not have the protection that the consumer has”, one told researchers. “Unfortunately for merchants, chargebacks were established with the main goal of protecting cardholders. This is because the policies side with the cardholder when there is lack of evidence,” writes one acquirer web site.<sup>42</sup> On the other hand, dispute resolution service representatives noted the asymmetry of information. Merchants and issuers have much greater knowledge of the system than individual consumers.

2. What triggers the link to criminal charges? By most definitions, friendly fraud is criminal. But what levels, what frequency, what types of complaints trigger police involvement? Is there objective criteria? Acquirers are motivated to shut down fraudulent merchants. But if a criminal uses multiple cards from multiple issuers to engage in “friendly fraud”, neither individual issuers nor acquirers may have the ability to accumulate evidence to trigger criminal investigations.

3. What is the relationship between chargebacks and purchase insurance that is part of many credit cards? How do issuers decide when a consumer’s non-delivery complaint is a chargeback, and when it is a claim eligible for purchase insurance? What are the implications of that decision?

4. What would be the implications of more widespread use of chargebacks? It is one small portion of a complicated network of payments, and its costs are effectively borne by all participants, including consumers and merchants. It is necessary to support consumer confidence and trust in market efficiency and fairness. Merchants recognize these costs (as well as frustrations), and also have reputational benefits from resolving chargebacks as quickly and fairly as possible. This may explain why online purchases continue to grow, despite the costs and frustrations of dealing with chargebacks. But are those competitive

and reputational forces sufficiently strong for all participants, including merchants, or is greater government intervention required?

5. While payment intermediaries play a logical, critical role in dealing with cross-border disputes, where should that responsibility end? Smith (2000) cites a 1999 letter from a Visa executive to the U.S. Federal Trade Commission that noted that chargebacks are contractual obligations between the financial institutions that issue VISA cards and those that sign merchants to accept them. The letter points out a key advantage of chargebacks in international transactions: “[T]hey provide a consistent and standard level of protection on behalf of consumers in situations where the merchant is beyond the reach of local law.” (Smith 2000). Yet the implementation of those protections is left – at least theoretically – to local issuers, acquirers, governments and law enforcement.

6. How would consumers evaluate chargeback protection against other features of a payment choice? Is it a possible point of differentiation that could provide a particular payment system a competitive advantage? There is little room for issuers to differentiate the credit card protections available, but they do have different disclosure policies. Likewise, there were very few differences between MasterCard and Visa rules. Are the motivations to run networks that balance the interests of buyers and sellers so strong that no participant has an incentive to change the rules?

7. What techniques might be most effective in reducing fraud in distant transactions? Hayashi (2015) notes that card issuers absorb fraud losses in “card-present” transactions and thus are incented to adopt authentications (CHIP, signature, PIN) that deter fraud. But issuers generally do not absorb losses on fraudulent distant transactions and thus do not have as much incentive to improve authentication. Merchant-based authentication adds steps to online shopping and increases abandonment.

8. Do Canadian small businesses worry that payment risk is too great to participate in online selling, thus reducing choice for Canadian consumers?

9. Are the levels of consumer/friendly fraud suggested by chargeback management firms accurate? Or are they exaggerated by those that profit from such transactions? What are the actual costs of these transactions, and how are they borne by the different participants? Are retailers more forgiving of returns in face-to-face transactions because of personal trust and loyalty transactions. How do merchants decide whether to accept returns on clothing items that were clearly worn once before returned?

10. What specific legislation governs all the contractual components of the card payment systems? Chargebacks work because they are binding on merchants. Yet merchants contract with acquirers, not card networks, although contracts (undisclosed to researchers) do require merchants to commit to follow card network rules. Is the merchant-acquirer contract a private transaction under provincial authority, not federal?

11. Would consumers be better served if the federal government adopted in law the

position taken by most provinces, in the interest of harmonizing the law and facilitating internal trade? This would end the jurisdictional debate through complementary legislation and regulation, perhaps administered by FCAC, and facilitate complementary bilateral oversight through an agreement under the AIT. Could the example set by the CRTC and the Wireless Code be an example, written to accommodate rather than exclude supporting provincial laws?

12. As noted in the main text, further research could be conducted on the competition aspects of chargebacks, including on whether, how and the extent to which proposals to enhance consumer information, understanding, redress and informed consumer choice would also enhance market efficiency, competition and inter-firm rivalries in affected markets.

Also, statistics on Canadian chargeback use, rates, merchant costs, outcomes, transaction types and other areas would be of tremendous value to comprehensive public policy debates.

## XV

### Notes

1. Jenkin's address, November 4, 2015
2. Telephone interview with Jenkin
3. This report is supplemented by several English-language appendices. Appendix A is the online survey questions. Appendix B is the complete results of the online survey. Appendix C is a step by step discussion of credit card chargeback processes. Appendix D is an estimate of chargeback costs to merchants based on US data. Appendix E is a look at the relationship between provincial and federal protections. Appendix F provides detailed examinations of what issuers disclose to consumers. Appendix G details the various industry protection measures. Appendix H is a discussion of several types of fraud. Appendix I is a listing of provincial consumer protection legislation. Appendix J touches on technology in development. Appendix K is a summary of areas for future research.
4. <http://consumer.laws.com/fair-credit-billing-act>
5. Interview with chargeback management firm executive
6. <https://www.ontario.ca/page/review-travel-industry-act-summary-phase-1-consultations>
7. <https://www.mastercard.ca/en-ca/about-mastercard/what-we-do/rules.html>
8. <https://www.visa.ca/dam/VCOM/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf>
9. Interview with Interac representatives, December 2016.
10. <https://www.payments.ca/sites/default/files/rule-e2.pdf>
11. <https://www.paypal.com/ca/webapps/mpp/ua/useragreement-full>
12. MasterCard representative interview November 2016
13. Ontario through S 99(7), and Quebec through S 350(z) of their respective legislation.
14. UC 2014 p 40 cites Ontario regulations and Quebec S 54.14
15. E-mail exchange with Ontario government representatives.
16. E-mail exchange with Ontario government representatives
17. Telephone interview December 2016
18. E-mail response from CBA representatives January 2017
19. Bill C-29, Revisions to Bank Act, Section 627.03,(2)
20. <http://strategis.ic.gc.ca/eic/site/cmc-cmc.nsf/eng/fe00113.html>
21. Researchers have no legal expertise, just a layman's understanding of legal terms.
22. Card network executive telephone interview.
23. [https://www.visa.ca/en\\_CA/run-your-business/merchant-resources/verified-by-visa.html](https://www.visa.ca/en_CA/run-your-business/merchant-resources/verified-by-visa.html)
24. There are some differences in how the card networks calculate this.
25. <http://www.mastercard.com/gateway/fraud-management/index.html>

26. <https://www.dalpay.com/en/support/chargebacks.html>
27. <http://thechargebackcompany.com/chargebacks/>
28. <https://chargeback.com/ecommerce-can-expect-nearly-7-billion-chargebacks-2016/>
29. <https://www.citizensadvice.org.uk/consumer/somethings-gone-wrong-with-a-purchase/if-something-you-ordered-hasnt-been-delivered/>
30. For example, <https://www.moneysmart.gov.au/managing-your-money/banking/different-ways-to-pay/online-shopping>
31. See <https://www.consumer.vic.gov.au/shopping/refunds-and-returns/chargeback> and <https://www.fos.org.au/small-business/merchant-chargebacks/>
32. Truth In Lending Act S226.12(c)(1)
33. <https://www.rbcbank.com/help-and-faqs/security/transaction-disputes/index.page>
34. The study included some data about three party networks such as American Express, but noted significant limitations in the use of that data. Generally, these networks had lower chargeback rates and costs.
35. Bank of Montreal v. Marcotte, 2014 SCC 55, [2014] 2 Par 83
36. Bank of Montreal v. Marcotte, 2014 SCC 55, [2014] 2 Par 84
37. Bill C-29, Revisions to Bank Act, Section 627.03,(2)
38. Globe and Mail, December 8
39. Senate Chamber Debates Dec 6
40. Senate Chamber Debates Dec 6
41. Researchers have no legal expertise, just a layman's understanding of legal terms.
42. <http://insights.moneris.com/h/i/161103984-chargebacks-and-your-business-facts-and-fiction>