

CANADA

Annual Report on Consumer Policy Developments 2001/2002

The **Office of Consumer Affairs** (OCA) works to promote a fair and efficient marketplace for Canadian consumers, and to protect the consumer interest. The Office focuses on policy analysis and new issues, and coordination with the government and with consumer organizations. The **Commissioner of Competition in Canada** is responsible for the administration and enforcement of the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, and the *Precious Metals Marking Act*. The Commissioner offers a variety of education, compliance and enforcement instruments in achieving the ultimate goal of conformity with consumer protection and competition legislation.

1. INSTITUTIONAL DEVELOPMENTS

Federal and Provincial Intergovernmental Co-operation: Federal-provincial-territorial consumer ministers are focusing on cooperation in the following key areas: the development of consumer protection measures in electronic commerce, including legislative harmonization, consumer education, improved cooperative enforcement (particularly as it applies to collection agencies); and an examination of both market-based consumer dispute resolution and the growing phenomenon of an “alternative consumer credit market” which is currently providing small loans of short duration to consumers at high effective interest rates. A successful meeting of Ministers was held in May 2001 making public the efforts of intergovernmental cooperation.

The federal government’s Act on the subject of , *“Reforming Canada’s Financial Services Sector”* came into force in the fall of 2001. The act will provide for such measures as: the creation of a new financial services ombudsman for all federally regulated financial institutions; plain language initiatives for standard consumer financial contracts; mandatory notice provisions for the closure of bank branches; mandatory low cost chequeing accounts; and a new Financial Consumer Agency of Canada which would regulate existing and new consumer protection provisions in federal financial institution statutes, monitor voluntary codes made among financial institutions to protect consumers, and assume a broad consumer education and information role.

Partnership Agreement - Project Emptor:

The Competition Bureau and the Royal Canadian Mounted Police (RCMP) in Vancouver, British Columbia, signed a memorandum of understanding (MOU), committing them to work together to curb illegal telemarketing operations in the province of British Columbia. The MOU formalizes an arrangement in which Bureau investigators and RCMP officers work side-by-side, exchanging information and strategy. The agreement confirms the Bureau’s membership in the RCMP E Division Telemarketing Task Force, Project Emptor, which includes law enforcers from Canada and the United States. The partnership has been successful in taking legal action against cross-border operations over the past two years, taking simultaneous legal action on both sides of the border against British Columbia-based telemarketers who target U.S. victims.

Partnership Agreement: Project COLT:

The Competition Bureau joined Project COLT (Centre of Operations Linked to Telemarketing fraud) when it signed a memorandum of understanding with the RCMP. Project COLT is an investigation task force set up to fight telemarketing fraud through a multi-jurisdictional approach. In addition to the Bureau and the RCMP, other law enforcement members include Sureté du Quebec, Montreal City Police Department, Canada

Customs and Revenue Agency, FBI, United States Customs Service and United States Postal Inspection Service.

The Contributions Program for Consumer and Non-Profit Organizations: provides consumer organizations with the resources to undertake research in order to provide analysis to policy debates and contribute to the policy-making process. In 2001-02, the program budget was increased from \$1,000,000 to \$1,690,000 a year, of which up to \$100,000 can be awarded for Development Contributions, and the rest for Research Project Contributions. The government awarded this increase, in part, as a result of the findings of the Task Force on the Future of the Canadian Financial Services Sector. The Task Force report recommended that more resources be made available to consumer organizations to enhance their capacity to undertake analysis on financial service issues. For 2001-02, 20 organizations submitted 86 funding requests under the program. Of these, 12 organizations were funded for 38 projects addressing such issues as: financial services, energy/sustainable consumption, food and health, international trade, consumer credit, consumer protection legislation/voluntary codes, privacy, transportation, and telecommunications.

2.CONSUMER SAFETY AND NATIONAL STANDARDS

In practice, the federal government is responsible for national standards regarding food safety; transport safety; product safety (except electrical); labelling; legal metrology; banking and interest rates; and competition policy. Provincial governments are responsible for contractual matters and most industry-specific issues; sale of goods and services; guarantees; licensing of traders; electrical safety; Credit Unions; and structural safety.

Biotechnology

Regulation of Food Biotechnology in Canada - In November 2001, Health Canada, the Canadian Food Inspection Agency (CFIA), Environment Canada, Agriculture and Agri-Food Canada and the Department of Fisheries and Oceans prepared an Action Plan in response to the Royal Society of Canada Expert Panel Report *Elements of Precaution: Recommendations for the Regulation of Food Biotechnology in Canada*. The Action Plan will continually be revisited, the first update on progress was made in January 2002, and the next is expected to be made in May 2002. The Action Plan and progress reports are posted on Health Canada's Internet site, with links from other departments. <http://www.hc-sc.gc.ca/english/protection/royalsociety/>

Biotechnology Issues - In August 2001, the Canadian Biotechnology Advisory Committee (CBAC) released its interim report titled "Improving the regulation of Genetically Modified Foods and Other Novel Foods in Canada." It is expected that their final report be released in May 2002.

Voluntary labeling of foods derived from biotechnology - Government, industry, and consumer representatives continue to work on developing a national standard through Canada's General Standard's Board. Progress on the standard can be viewed at: http://www.pwgsc.gc.ca/cgsb/032_025/whatsnew-e.html.

E-Commerce

Canadian Online Trust Project:

The Electronic Commerce and Consumers Working Group, a multi-stakeholder group representing consumers, businesses and government (including the Office of Consumer Affairs (OCA) is finalizing a "Canadian Code of Practice for Consumer Protection in Electronic Commerce" based on the "Principles of Consumer Protection in Electronic Commerce: A Canadian Framework". These efforts are consistent with the "OECD Guidelines for Consumer Protection in the Context of Electronic Commerce". This voluntary code establishes best practices for business to consumer electronic commerce in such areas as information provision, contract

formation, online privacy, security, redress, unsolicited commercial Email and communications with children. Over the next year the working group will be promoting the code both nationally and internationally, reviewing commercial web sites as for compliance with the code and examining further means for the code's practical implementation within the online marketplace.

Consumer Law Revisions: Federal/Provincial/Territorial Cooperation

In May 2001, Federal, Provincial and Territorial Ministers responsible for consumer affairs approved a new approach to harmonized consumer protection legislation in electronic commerce which will ensure consumers benefit from equal protection across the country. A common template, *the Internet Sales Contract Harmonisation Template* will cover contract formation, cancellation rights, credit card charge-backs and information provision (available at http://strategis.ic.gc.ca/pics/ca/sales_template.pdf). The province of Alberta has passed amendments in accordance with the template: A copy of their amendment can be obtained at: http://www.qp.gov.ab.ca/Documents/REGS/2001_081.CFM

The federal and provincial governments commissioned studies from two legal experts on the question of applicable laws in disputes between sellers and consumers residing in different jurisdictions in the context of electronic commerce. The first report, "Is There a There There? Toward Greater Certainty for Internet Jurisdiction" by professor Michael Geist of the Faculty of Law at Ottawa University, deals with contractual disputes, while the second report, "Online Consumer Protection: a Study on Regulatory Jurisdiction" in Canada by Roger Tassé deals with the regulatory authority of provinces to enforce consumer protection laws.

Federal and provincial governments have worked with the Canadian Association of Internet Providers to provide products to inform business and consumers on the Consumer Protection in Electronic Commerce Guidelines (available on: <http://strategis.ic.gc.ca/oca>). The Office of Consumer Affairs has published an 'on-line shopping assistant' which enables consumers to check whether a merchant's website provides sufficient and clear information to facilitate an informed purchase.

Electronic Funds Transfer Code

The Electronic Funds Transfer working group is evaluating operations related to the Canadian Code of Practice for Consumer Debit Cards and is examining the need for expansion of the Debit Card Code to cover all electronic funds transfer transactions. The Office of Consumer Affairs has commissioned a legal paper on "Consumer Protection in Electronic Funds Transfers" to compare the various EFT regimes (e.g. U.S., Denmark, Australia, U.K.) and to recommend principles for a Canadian EFT code. This paper is likely to be available in April 2002.

Self-regulation, Voluntary Codes and Market-Driven Redress:

Standards: The Office of Consumer Affairs is working with the Standards Council of Canada to develop mechanisms to improve communication and coordination among consumer representatives participating in standards activities in the Americas. The Office of Consumer Affairs is participating in efforts to develop Canadian e-commerce standards for consumers based on the Canadian Code of Consumer Protection for E-Commerce.

In addition, in the development of ISO standards, OCA is:

- participating in the development of a complaints handling standard, which is intended to be relevant to both the online and conventional marketplace.

- supporting a proposal for the development of a standard on external dispute resolution (for those situations when complaints handling within firms does not work).
- exploring the feasibility of ISO corporate social responsibility standards
- supporting the ISO Consumer Policy Committee's resolution to ISO Council that ISO develop a standard on voluntary codes.
- operating, on behalf of ISO's Consumer Protection Committee, an online E-Commerce Consumer Standards Solutions Forum, with over 100 members located around the world. To join the Forum, contact: Kernaghan Webb at:webb.kernaghan@ic.gc.ca
- operating, on behalf of ISO, an online forum pertaining to ISO CSR standards (over 400 members). To join the Forum, contact: Kernaghan Webb at:webb.kernaghan@ic.gc.ca

Voluntary Codes: The Office of Consumer Affairs (OCA) has published a Guide on the Development and Implementation of Voluntary Codes, an Evaluative Framework for Assessing Voluntary Codes, and research papers on the subject, all of which are available on the Office of Consumer Affairs Consumer Connection website at: <http://strategis.ic.gc.ca/SSG/ca00973e.html>.

A volume entitled, "Voluntary Codes: Private Governance, the Public Interest and Innovation," which includes much of the aforementioned research, will be published through Carleton University in the spring, 2002.

OCA continues to operate an online Voluntary Codes Research Forum. The Forum provides government, private sector, academic and NGO representatives with updates on new voluntary initiatives and research. The Forum now has more than 300 members worldwide.

(See: <http://strategis.ic.gc.ca/SSG/ca00973e.html>).

Redress: With the participation of officials from provincial and territorial governments, industry representatives and consumer groups, the Office of Consumer Affairs is in the process of finalizing a Guide for Canadian Business on Consumer Complaints Management (to be published in the spring). This Guide is intended to build on case studies and other research concerning market-driven redress which is available on the OCA Consumer Connection website at: (<http://strategis.ic.gc.ca/oca>).

Transport Canada's Safety and Security Group is focusing on consumer safety including improved international safety standards for cars and trucks, public awareness campaigns on the proper use of air bags and child restraint systems in vehicles and on school bus safety; on the safety of small passenger vessels, and on the reduction of crossing and trespassing accidents on railway rights-of-way. The Group is continuing to explore possibilities to reduce incidents involving unruly airline passengers.

3. PROTECTION OF CONSUMERS ECONOMIC INTERESTS

Internet & Cross Border Enforcement Activities

Barber Blake Corp., S.D. Prestige Enterprises Ltd., L.A. Premiums, and J.C. & A.:

On June 27, 2001, criminal charges were laid against four Montreal-based telemarketing companies, their principal directors, and individual telemarketers. The charges stem from alleged misleading representations carried out by Farber Blake Corp., S.D. Prestige Enterprises Ltd., L.A. Premiums, and J.C. & A. The companies allegedly contacted consumers in Canada and New Zealand by phone and informed them that they

had been selected as prize winners. The consumers were told that in order to claim their prize, they had to buy one of the company's promotional items. The Bureau alleges the promotional items were sold at substantially inflated prices and that misrepresentations were made regarding the nature, value and quality of both the prizes and promotional items.

3636135 Canada Inc. carrying on business as Alexis Corporation and 3587932 Canada Inc.: On March 18, 2002, the Competition Bureau laid criminal charges under the *Competition Act* in relation telemarketing activity undertaken by 3636135 Canada Inc. carrying on business as Alexis Corporation and 3587932 Canada Inc., the administrative affiliate. It is the first case in which the Bureau used wiretaps to obtain evidence following amendments to the *Criminal Code* in 1999. The wiretaps were conducted with the assistance of the RCMP. Consumers in Australia and New Zealand had been targeted by the Canadian-based telemarketers and for payment up-front before receiving prizes.

Domain Name Registrataion: On July 18, 2001, the Competition Bureau issued a warning to consumers and businesses that own internet domain names to take caution before paying what appeared to be invoices from the "Internet Registry of Canada" for the registration or re-registration of their domain names. The "Internet Registry of Canada" is not certified by the Canadian Internet Registration Authority (CIRA), the body officially sanctioned to administer the registration of the ".ca" domain name in Canada. Only CIRA Certified Registrars can apply to CIRA for registration of ".ca" domain names. Complaints received by the Competition Bureau indicate that the mailings from the "Internet Registry of Canada", gave the impression that it is affiliated with the Government of Canada or that it is an officially sanctioned agency registering domain names in Canada. The "Internet Registry of Canada" is not associated with any government agency.

Internet Sweeps: International Marketing Supervision Network: As a member of the International Marketing Supervision Network(IMSN), the Competition Bureau participated in the annual International Internet Sweep Day. The target of the sweep was web sites making deceptive or misleading claims for health products and services (miracle cures or unrealistic performance claims, such as cures for cancer, AIDS and arthritis, or products offering effortless weight loss while you sleep). Sweep records have been sent to the Australian Competition and Consumer Commission which is coordinating the project and will issue a final report. Participating agencies will then follow up with appropriate action on the sites under their review.

Internet Surveillance Project "Fairnet"

Since August, 2001, the Competition Bureau has been conducting monthly surveillance of Internet advertising. The initiative, called Fairnet, focusses on Canadian web sites to assess whether they are making false or misleading representations. Different types of sites are selected for surveillance each month. Sites which appear to raise a concern under one or more of the statutes administered by the Bureau are subject to further investigation.

4. CONSUMER INFORMATION AND EDUCATION

The consumer portal – **the Canadian Consumer Information Gateway** (<http://ConsumerInformation.ca>) – is an innovative *Government on Line* portal providing single-window access to consumer information from 40 federal departments and agencies, more than 250 provincial/ territorial government partners and over 150 selected national and regional non-government organizations and now also houses a central complaints registration and distribution tool. This award winning site, gives consumers the tools they need to make informed decisions, safe and healthy product choices, alerts them to recalls and scams and provides them with the contacts to seek recourse.

OCA's website, **Consumer Connection** (<http://consumerconnection.ic.gc.ca/>), provides interactive information tools designed to enable consumers to obtain the information they need to protect their interests as quickly and efficiently as possible. New products include: Fraud Files, a mini quiz to help assess consumer's vulnerability to fraud; fourth *Annual Financial Service Charges Report* and *Privacy Town* - a guide to privacy protection in the Canadian marketplace

Products to inform business and consumers on the **Consumer Protection in Electronic Commerce Guidelines** are available on: <http://strategis.ic.gc.ca/oca>

Environmental Labelling and Advertising Guidelines: On July 17, 2001, the Bureau announced that it is seeking public comments on its intention to adopt new guidelines on environmental labelling and advertising, commonly referred to as "green marketing." The new guidelines will be used by the Bureau when assessing environmental labelling and advertising claims under the provisions of the *Competition Act* and the *Consumer Packaging and Labelling Act*. They aim to help businesses make sure that their representations are not misleading and to help consumers make better-informed decisions when shopping for products or services making environmental claims on their packaging or in their advertising

Internet Advertising Guidelines: On May 28, 2001, the Competition Bureau released its draft version of *Staying 'On-side' When Advertising Online: A Guide to Compliance with the Competition Act When Advertising on the Internet* for public comment. The guide sets out the approach the Bureau will take in applying the *Competition Act* to online advertising. It is designed to help businesses make sure their online representations are in conformity with the Act. The guide is also intended to remind advertisers that the rules of the game for business practices and advertising also apply to online promotional activities and to clarify the responsibilities of persons who publish representations on the Web.

ID-ROM and Multi-level Marketing: On June 4, 2001, the Competition Bureau launched *Multi-level Marketing and the Competition Act*, an animated multimedia tool designed to inform Canadian businesses and consumers about the multi-level marketing and pyramid selling provisions of the *Competition Act*. The animated presentation depicts the story of a Canadian entrepreneur as she learns how to operate a legitimate multi-level marketing business which conforms with the law.

"Made in Canada" diamonds: On November 13, 2001, the Competition Bureau announced a new enforcement policy regarding false or misleading representations relating to the marketing and advertising of Canadian diamonds. The new policy is outlined in the Bureau's *Enforcement Policy on the Marketing of Canadian Diamonds* and in the Bureau's updated *Guide to "Made in Canada" Claims*. It establishes an underlying principle that diamonds which are mined in Canada will be considered Canadian, regardless of where they are cut and polished. Diamonds mined outside Canada but cut and polished in Canada will not qualify as Canadian diamonds.

Pet Food Labelling Guidelines: On behalf of the Working Group on the Labelling and Advertising of Pet Food in Canada, the Competition Bureau issued a new pet food labelling and advertising guide for dog and cat food in September, 2001. The *Guide for the Labelling and Advertising of Pet Food* addresses consumers' concerns about the lack of uniformity and monitoring of pet food labelling and is the result of a broad consultation with the Canadian public and key industry stakeholders. It sets out industry standards for the labelling and advertising of these pre-packaged products and will be used as an enforcement tool when the Bureau evaluates allegations of false and misleading representations under the *Competition Act* and the *Consumer Packaging and Labelling Act*.