



Insurance price comparison websites: Are they an effective tool?

RESEARCH REPORT

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Option consommateurs

MISSION

Option consommateurs is a non-profit organization whose mission is to promote and defend the rights and interests of consumers and ensure that they are respected.

HISTORY

Option consommateurs has been in existence since 1983, when it arose from the Associations coopératives d'économie familiale movement, more specifically, the Montreal ACEF. In 1999, it joined forces with the Association des consommateurs du Québec (ACQ), which had already pursued a similar mission for over 50 years.

PRINCIPAL ACTIVITIES

Option consommateurs helps consumers experiencing difficulties, by offering them budget consultation and information sessions on budgeting, debt, consumer law and the protection of privacy.

Each year we produce research reports on important consumer issues. We also work with policy makers and the media to denounce unacceptable situations. When necessary, we institute class action suits against merchants.

MEMBERSHIP

In its quest to bring about change, Option consommateurs is active on many fronts: conducting research, organizing class action suits, and applying pressure on companies and government authorities. You can help us do more for you by becoming a member of Option Consommateurs at: www.option-consommateurs.org.

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- Maya Raic, President and CEO, and Jannick Desforges, Director of Institutional Affairs and Compliance, Chambre de l'assurance de dommages

Legal experts:

- André Bélanger, professor in the Faculty of Law, Université Laval
- Marc Lacoursière, professor in the Faculty of Law, Université Laval
- Jacques St-Amant, lecturer in consumer law, Université de Québec à Montréal

Industry representatives and professionals:

- Lyne Duhaine, President, CLHIA Québec and Senior Vice President, Distribution, Canadian Life and Health Insurance Association
- Maxime Gauthier, head of compliance and mutual funds, Merici Services Financiers
- Christopher Johnson, Chair, and Typhaine Letertre, Project Manager, Communications and Public Affairs at the Regroupement des cabinets de courtage d'assurance du Québec (RCCAQ)

Foreign experts:

- Birny Birnbaum, CEO of the Center for Economic Justice
- Robert Hunter, Director of Insurance for the Consumer Federation of America and former Insurance Commissioner for the State of Texas

- Ira Rheingold, Executive Director of the National Association of Consumer Advocates
- Greg Van Elsen, Senior Policy Officer, Financial Services, the European Consumer Organization (BEUC)

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Primarily, Patrick Courtemanche and his team, who analyzed the results of our interviews¹.

¹ BIP's analysis report is presented in Appendix 4 of the French version of the report.

Summary

Insurance price comparison websites (insurance PCWs) are well established in Canada. We have in fact identified about a dozen such sites. The millions of Canadians who visit them every year generally appear to be pleased with them. This is what we found based on the interviews we conducted with some 150 consumers. They like being able to compare several insurance products and to make choices easily; they appreciate the simplicity and speed of the process, and are confident that they can find insurance at a low price.

But they need to be careful! The experts we interviewed and the foreign studies we consulted expressed serious reservations not only about the use of insurance PCWs in the insurance field, but also about their benefits for consumers. What we discovered upon analyzing five Canadian sites has led us to share these misgivings.

The information about the insurance products presented on insurance PCWs is often incomplete. The insurance PCWs' business relationships and modes of remuneration are rarely mentioned, whereas there is a strong possibility that these factors influence the way that results are presented or incite insurance PCWs to favour a quick sell. The amount of information collected, which is possibly passed on to third parties, is worrisome and may exceed what is necessary to calculate the insurable risk. In addition, insurance PCWs often limit their responsibility.

All this is scarcely surprising, because insurance PCWs are not required to register as a firm (even though, in Québec, they soon will be) and are therefore not subject to the same regulatory framework.

In short, even though these sites may be appreciated for some of their features, it is possible that the insurance products they offer to consumers will not be adapted to their needs. These findings have brought us to make several recommendations based on our study of the regulatory framework in Québec and other jurisdictions.

Option consommateurs therefore recommends that provincial legislators amend their respective statutes to require insurance PCWs to be registered as a firm. Exclusions from this obligation should be listed explicitly and should not be subject solely to the remuneration terms of insurance PCWs, as is the case in European Community law. Option consommateurs also recommends that provincial legislators explore the possibility of eliminating the spontaneous declaration requirement for the insured, which is a significant burden for consumers, especially when they do not benefit from the guidance of a certified representative. Finally, we encourage legislators to continue to promote insurance awareness and education activities for consumers.

Option consommateurs also has several recommendations for the insurance PCWs themselves. One of these is that they be required to disclose their business relationships and clearly present the characteristics of the insurance products being compared.

Our final recommendations are for the consumers. When using such sites, they need to be vigilant and, if they decide to purchase an insurance product, we strongly recommend that they contact a certified representative. In this way, they will be able to ensure that they have a product that meets their needs. Failure to take such precautions could have significant consequences for them.

In our opinion, these changes are necessary in order to guarantee that Canadian consumers who shop for insurance products online are protected.

Introduction

The sheer number and diversity of commercial offerings on the Internet is practically stupefying. Consumers understandably find it difficult to navigate between the characteristics of each provider's products and services, their fluctuating prices, and conditions of sale. This in large part explains the emergence of a new economic niche: the price comparison website (PCW).

These websites allow users to compare competing suppliers' offers for a wide variety of products and services such as airline tickets, accommodation or telecommunications. They promise to reduce search time while creating downward pressure on prices as a result of increased competition between companies.²

In Canada, this industry has expanded to include financial services, notably insurance. After providing the required information, consumers can almost instantly compare quotes from insurers for products such as auto insurance, home insurance and even life insurance. The recipe is a popular one, if we are to believe one of the biggest companies in the sector, Kanetix Ltd,³ whose insurance product comparison websites are visited by over 8 million Canadians every year.

On the face of it, the consumers appear to be the winners. However, the characteristics of insurance products, especially their complexity, call for an extra measure of attention. Even for a product such as auto insurance, whose terms have been standardized over time, consumers have twenty or so riders. It is therefore not surprising that one survey reported that 76% of consumers find damage insurance complicated.⁴

The issues raised by the characteristics of insurance products for users of insurance PCWs are not to be underestimated. By choosing an inadequate insurance product, consumers could end up being underinsured or having their claim denied. It is easy to imagine how disastrous the consequences could be, particularly for home insurance or personal insurance products. As the Chambre de la sécurité financière observed: [translation] "it is unfortunately when the claim is denied that the insured (or

² It is not the purpose of this report to ask whether this projection is realistic, yet it should be noted that it is questioned by some researchers, as in this article from *The Economist*:

<https://www.economist.com/finance-and-economics/2015/07/09/costly-comparison>.

³ <https://www.kanetixltd.ca/>

⁴ Chambre de l'assurance de dommages, Brief on Bill 141, *An Act mainly to improve regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*, page 7.

beneficiary) may discover the complexity of the contractual terms on which denial of coverage is based.”⁵

Insurance price comparison websites, therefore, raise the issue of the choice and quality of information available to consumers when they have to choose from among a range of offers. Is the information provided to them on insurance products relevant, sufficient, and accurate? Do the products they are presented with meet their needs? Do they have access to all the information they need to make an informed decision? What protection do they have when they decide to use an insurance PCW?

These are the issues we analyze in this report. In the course of this analysis, we focused on the regulatory framework for insurance PCWs, the content of the websites and the information presented to consumers. We were also interested in the experience and perceptions of Canadian consumers with regard to these sites. On the basis of the lessons we drew, we were able to formulate a series of recommendations to consumers and Canadian legislators.

We began our study by conducting a literature review on insurance PCWs. This research allowed us to familiarize ourselves with the issues raised by these sites in Canada and other jurisdictions. It also allowed us to identify the main insurance PCWs in Canada. We present a background summary based on the information obtained in **Section 2**.

We then analyzed the Canadian legal framework to see how much protection consumers who use insurance PCWs actually receive. We also studied the regulatory frameworks of three provinces, Québec,⁶ Ontario and British Columbia, as well that of Canada. We also looked closely at the legal framework of the European Union and that of four countries – France, the United Kingdom, Australia and the United States – in order to identify best practices. The results of our legal analysis appear in **Section 3**.

Equipped with this legal knowledge, we subsequently focused our attention on the insurance PCW offer in Canada. We established a characterization of the main sites operating in Canada, with the particular aim of evaluating the quality and accuracy of

⁵ Mémoire de la Chambre de la sécurité financière, Consultations particulières et auditions publiques sur le Projet de loi no 141, January 2018, p. 23.

⁶ It is important to note that at the time of this research, Bill 141 was under consideration in Québec (it was tabled in October 2017 and adopted on June 13, 2018). In our research, we took into account what it actually stated at the time as well as the major amendments that were made to it from February to June 2018.

the information presented to consumers. The results of this characterization appear in **Section 4**.

Subsequently, we attempted to better understand the views and experience of Canadians by conducting interviews with 150 consumers in three provinces: Québec, Ontario and British Columbia. A summary of the results of these interviews appears in **Section 5** and the statistical analysis conducted by the firm BIP is presented in **Appendix 4** of the French version of the report.

We consulted experts at every stage of our study. Their insights helped clarify several issues that we point out a number of times in **Sections 3 and 4**.

Finally, on the strength of our analysis, we present our main recommendations, some of which are addressed to consumers and others to legislators. These appear in **Section 6**.

1 Issues raised by insurance price comparison websites

1.1 Context

An Internet search has become the essential first step for anyone who wants to purchase a good or service. Consumers naturally want to find the best product. In the face of an often overwhelming commercial offer, they have many tools and digital resources at their disposal. They can view websites where experts test products (*Protégez-vous* in Québec, *Consumer Reports* in English Canada) or go to platforms such as YouTube to view videos posted by other consumers who bought the product they want.

Before making a purchase, however, consumers want to make sure that they compare one essential factor: price. In 2015, when the Canadian Internet Registration Authority conducted a survey of 1000 Canadian Internet users, 76% said they agreed with the statement “I almost always compare prices online before making a major purchase.”⁷

And when they do so, consumers will likely use a price comparison website (PCW). Through these sites, they can compare the prices asked by several vendors for the same product. In Canada, PCWs such as Shopbot, Shoptoit or PriceGrabber tell consumers the best price for thousands of different products, including furniture, children’s toys and electronic products.

Today, PCWs are specializing in ever more complex products; insurance PCWs are a notable example: consumers need merely to fill out an electronic form to access a quote from several insurers.

This type of PCW is already well established In Canada. An Internet search ended with us identifying a dozen insurance PCWs operating across the country, as shown in Table 1. Note that, on the Internet, some brokers offer comparisons of insurance products without comparing their prices, as the insurance PCWs do; to see prices and to continue the bidding process, users have to contact them.⁸ However, we have included in our selection the sites of brokers such as Insurance Hunter, which displays a comparison of insurance product prices online. Note that some offer several types of insurance while others limit their offers to auto insurance or travel insurance.

⁷ Online : <https://acei.ca/sites/default/files/public/Ecommerce-Factbook-March-2016.pdf>.

⁸ This is the case of Insurance Jack. Online: <https://insurancejack.com/>.

Table 1 - Main insurance PCWs in Canada

| Price comparison sites | Types of insurance offered** |
|---|--|
| Kanetix* (https://www.kanetix.ca) | Automobile, home, personal, life, health, commercial |
| InsuranceHotline.com* (https://www.insurancehotline.com/) | Automobile, home, travel, life, commercial |
| RateSupermarket.ca* (https://www.ratesupermarket.ca/) | Automobile, home, travel, life |
| ComparaSave* (https://www.comparasave.com/) | Automobile, home, travel, life, commercial |
| Rates.ca* (https://rates.ca/) | Automobile, home, travel |
| LowestRates.ca (https://www.lowestrates.ca) | Automobile |
| ShopInsuranceCanada (https://www.shopinsurancecanada.ca/) | Automobile |
| ClickInsurance (https://www.clickinsurance.com/) | Automobile, home, personal (life, salary, serious illness), travel, commercial |
| Term4Sale (https://www.term4sale.ca/) | Life |
| Insurance Hunter (https://www.insurancehunter.ca/) | Automobile, home, travel |
| BestQuote (https://www.bestquotetravelinsurance.ca/) | Travel |

* These companies are holdings of Kanetix Ltd.

** Some types of insurance offered on insurance PCWs will lead the consumer to an affiliate or partner site.

Consumers can find insurance PCWs useful. They provide them with the information available on the price of insurance products, and do so quickly and simply. They also allow them to learn about, to shop around for, or choose a product that they would not otherwise have thought of, such as one offered by another insurer. And all this promotes competition.

However, some features of insurance PCWs raise important issues that could adversely impact consumer protection. In addition, insurance PCWs do not provide all the information necessary for informed decision-making by consumers, and do not clearly disclose their business relationship with insurers.

These and other issues were raised by several of the experts⁹ we consulted within the context of this project. They also echo the findings of studies conducted abroad, including the UK¹⁰ and

⁹The full list of experts appears in the Acknowledgments section of our report. Note that our Canadian experts were all from Québec. Our requests for an interview with numerous experts in Ontario and British Columbia unfortunately remained unanswered or were refused. Despite numerous exchanges with the regulator in Ontario, an interview could not be arranged.

¹⁰ Financial Conduct Authority Price Comparison Website: general insurance sector, July 2014, Financial Conduct Authority Price Comparison Websites: consumer market research, June 2014 and UK Regulatory Network, Price Comparison Websites, September 2016.

Australia.¹¹ In the following subsections, in order to better identify the elements relevant to our analysis of insurance PCWs, we shall provide a summary our discussions with experts, and support these with certain of the results from the studies we consulted.

1.2 Information presented on price comparison websites

Our experts identified the quality of information presented to consumers as one of the major deficiencies of insurance PCWs.

First of all, insurance PCWs typically focus heavily on price at the expense of other features that are important when choosing an insurance product (coverage or exclusions, for example). By highlighting price, insurance PCWs seek to promote simplicity and speed of choice. However, as the experts pointed out, this quickly gives the false impression that insurance products are simple products, which closely resemble “ordinary” consumer products that one can choose as one pleases with no fear of the consequences.¹²

This position seems to be shared by several actors who gave their opinions in a consultation held in Australia:¹³

Submitters’ main concern with regard to an independent comparison service for general insurance is the propensity for such services to focus consumer attention on price, rather than the value or suitability of a product. Specifically, submitters argued that comparison services present and compare insurance products as undifferentiated commodities, thus reducing consumers’ purchasing decisions to one based on price alone. This overly simplistic comparison can result in consumers disregarding important differences in policy cover, terms and conditions, and risks their purchasing cover unsuitable to their needs.

In a study published in 2014, the Financial Conduct Authority (FCA) in the UK noted that when the emphasis is placed on the price of the insurance product at the expense of other characteristics, consumers mistakenly think that the various insurance products offer the same coverage and protection.¹⁴

¹¹ Senate Economics References Committee, “Australia’s general insurance industry: sapping consumers of the will to compare” 2017.

¹² Interview with André Bélanger, Professor in the Faculty of Law at Université Laval, Jacques St Amant, Lecturer at Université du Québec à Montreal, Maxime Gauthier, head of compliance and mutual funds, Merici Services Financiers and Birny Birnbaum, CEO of the Center for Economic Justice.

¹³ Senate Economics References Committee, “Australia’s general insurance industry: sapping consumers of the will to compare” 2017, p. 45.

¹⁴ Financial Conduct Authority Price comparison website in the general insurance sector, July 2014, p. 8.

More generally, it is clear from the FCA study that insurance PCWs in the UK do not provide the information needed for consumers to make informed choices that are adapted to their needs. It says:

While PCWs provide choice in the number of providers and products available, we found that they had not always taken reasonable steps to ensure consumers had the appropriate information to allow them to make informed choices. This finding applies to both the core policy and add-on products. This increases the risk that consumers may not always achieve fair outcomes, as they may buy products without understanding key features such as level of cover, excess levels, main exclusions and limitations.¹⁵

Note also that insurance PCWs generally do not present all the insurance products on the market.¹⁶ It can also be difficult to know what criteria were used to determine which insurance products will be presented to the consumer, and in what order. An additional problem is knowing whether the information presented to consumers by insurance PCWs is up to date.¹⁷

1.3 Complexity of insurance products

According to our experts, it is difficult for consumers to adequately understand the complex concepts related to insurance products. Accordingly, the simplified explanations offered by insurance PCWs may be of limited benefit. This point was raised by the Australian Securities and Investments Commission during consultations held in Australia:

It is easier to ensure that comparison services are effective for products that have fewer key variables or where price is in fact the best determinant of choice—for example, credit cards or compulsory third party (CTP) green slip insurance, where the terms are largely standardized—and that allow information about price to be easily weighed against other features that consumers may value. Conversely, where products are more complex with a wide range of interconnected features, such as with home, automobile and strata insurance, care needs to be taken that comparison sites do not over-simplify the decision-making process due to inadequate information.¹⁸

In insurance, there are significant information asymmetries between consumers and those offering the insurance products.¹⁹ According to several of the experts we consulted, few consumers have the skills or knowledge needed to determine their insurance needs and those

¹⁵ Financial Conduct Authority Price comparison website in the general insurance sector, July 2014, p. 4.

¹⁶ Interview with Maya Raic, President and CEO of the Chambre de l'assurance de dommages.

¹⁷ Birny Birnbaum, CEO of the Center for Economic Justice.

¹⁸ Senate Economics References Committee, "Australia's general insurance industry: sapping consumers of the will to compare" 2017, p. 49.

¹⁹ Interview with Jacques St Amant, lecturer in consumer law at Université du Québec à Montréal.

of their dependents.²⁰ There are a host of variables to consider, and only a certified professional is able to ask the right questions to determine a consumer's insurance needs and their risk profile.²¹ It is therefore difficult for a PCW to replace the judgment of a professional. In this context, the greatest risk is of consumers taking out insurance that does not suit their needs and consequently, of not being covered in the event of a claim.²²

Moreover, even with the help of an insurance PCW, consumers can find it difficult to compare every aspect of the products offered to them. Similar insurance products may have significant differences in coverage, exclusion or franchise. For each product included in the comparison, it is essential that consumers know exactly what is covered and what is not.²³

Some experts also fear that consumers will not understand the nature of the services offered. For example, they might believe that an insurance PCW offers them personalized advice.²⁴ The results of the FCA study also point to this possibility:

Our customer research also indicated that some consumers believed that the PCW had provided them with advice or guidance. They believed that the PCW had provided them with quotes on the best policy for their needs, had assessed the suitability of the policy for them or gave assurance regarding the security of the provider.²⁵

It needs to be said that there is huge difference between information and advice, and that choosing the wrong insurance product can have catastrophic consequences for a consumer's property. Home insurance contains significant protections, such as against water damage, which are often offered in the form of a rider. There are three types of protection against water damage, depending on whether the damage is caused by sewer backup, by ground water or by overland water.²⁶

Let us finally raise the possibility of a consumer omitting to disclose a material fact when using an insurance PCW – this is quite possible due, among other factors, to the use of electronic

²⁰ Interview with Ira Rheingold, Executive Director of the National Association of Consumer Advocates. See also *Mémoire de la Chambre de la sécurité financière, Consultations particulières et auditions publiques sur le Projet de loi no 141*, January 2018, p. 23.

²¹ Interview with Maxime Gauthier, head of compliance and mutual funds, Merci Services Financiers.

²² *Mémoire de la Chambre de la sécurité financière, Consultations particulières et auditions publiques sur le Projet de loi no 141*, January 2018, p. 23.

²³ Interview with Jacques St Amant, lecturer in consumer law at Université du Québec à Montreal and Ira Rheingold, Executive Director of the National Association of Consumer Advocates

²⁴ Jacques St Amant, lecturer at Université du Québec à Montreal and André Bélanger, Professor in the Faculty of Law at Université Laval and Ira Rheingold, Executive Director of the National Association of Consumer Advocates.

²⁵ Financial Conduct Authority, *Price Comparison Website in the general insurance sector*, July 2014, p. 5.

²⁶ *Mémoire de la Chambre de l'assurance de dommages, Consultations particulières et auditions publiques sur le Projet de loi no 141*, January 2018, p. 7 and Insurance Bureau of Canada, www.ibc.ca

forms with limited or incomplete choices. As one judge pointed out in a decision in the UK, electronic forms filled in on the Internet do not always possess sufficient flexibility:

The questions in the pro forma online website might not be sufficiently flexible to accommodate non-standard or qualified information which the consumer would have given in, for example, a face-to-face interview, or in a written form which permitted some narrative or explanation from the consumer.²⁷

In Canada, the situation is particularly worrying due to the fact that consumers have an obligation to act in “utmost good faith,” which involves declaring all information relevant to deciding the premium. We shall return to this concept in Section 2.

1.4 The role and business relationships of insurance PCWs

Our experts consider the business relationships of insurance PCWs and their mode of remuneration to be important issues. In particular, they raise the possibility that a conflict of interest²⁸ could adversely affect the results presented to consumers.²⁹ They also point out that if commissions are based on the number of products sold, an insurance PCW might encourage consumers to purchase hastily.³⁰ In the same vein, certain stakeholders in Australia have raised the possibility that some comparison websites might be owned by insurance companies, or that the insurance brands proposed to consumers might belong to the same parent company.³¹

In this regard, the FCA noted that the UK insurance PCWs analyzed in the study “did not make clear their role in the distribution of the product or the nature of the service they provided.”³² It also stated that “their business models were not necessarily aligned with the best interests of their customers.”

Insurance PCWs should clearly disclose their business relationships, as this would ensure greater transparency. When a comparison website does not present all the insurance products, it should say so.³³

²⁷ *Southern Rock Insurance Company Ltd v Hafeez* (2017).

²⁸ This issue was identified by a large number of the experts we interviewed.

²⁹ This issue was identified by all the experts we interviewed.

³⁰ Interview with André Bélanger, professor in the Faculty of Law at Université Laval.

³¹ Senate Economics References Committee, “Australia’s general insurance industry: sapping consumers of the will to compare” 2017, p. 59.

³² Financial Conduct Authority Price comparison website in the general insurance sector, July 2014, p. 4.

³³ Interview with Greg Van Elsen, Senior Officer for Financial Services, The European Consumer Organization, Maxime Gauthier, head of compliance and mutual funds, Merici Services Financiers and several other experts.

This disclosure must be made in clear, simple language.³⁴ In particular, it must be ensured that the way that information is presented (page layout, font, character size, etc.) takes into account the fact that many consumers use their cell phones to access insurance PCWs. In any event, steps should be taken to avoid hiding relevant information by placing it at the bottom of a page or by printing it in small type. In this regard, one expert suggests finding inspiration in the disclosure procedures adopted by the banking sector, for example, the information box included in the *Cost of Borrowing Regulations*.^{35 36}

Another problem is that the criteria for selecting the products presented to consumers, their source, and the order in which they will be presented are not specified. It may well be that this is linked to the websites' mode of remuneration and to their business relationships. If this is the case, it should be disclosed to consumers.³⁷ Some experts note that the same sequence is often presented to consumers (for example, two insurers followed by a firm),³⁸ while others note that two customers with the same profile can get completely different results. The fact that it is a comparison in no way absolves it from the obligations of disclosure and transparency with regard to remuneration and business relationships.

1.5 Personal information

Finally, we note that the issue of consumer privacy drew the attention of several experts and the AMF during its consultation on the offer of online insurance.³⁹ A particular challenge arises with regard to the collection of consumers' personal information. A comparator should ask only as much as is necessary to determine the insurable risk.

The three American experts we interviewed were clear in this regard: they believe that the legislator should intervene to ensure that only information that is truly related to the insurable

³⁴ The majority of experts pointed out this issue.

³⁵ Section 6 (2.2) (b) *Regulation on the Cost of Borrowing* and example given in the interview with Marc Lacoursière, professor in the Faculty of Law at Université Laval.

³⁶ Interview with Marc Lacoursière, professor in the Faculty of Law at Université Laval.

³⁷ Maya Raic, President and CEO of the Chambre de l'assurance de dommages, Jannick Desforges, Director of Legal Affairs and Compliance Chambre de l'assurance général, and Ira Rheingold, CEO of the National Association of Consumer Advocates.

³⁸ This is the presentation sequence followed by Clickinsurance.

³⁹ AMF, *Internet Insurance Offerings in Québec*, 2015, page 17.

risk is collected. They mention that the State of California sets a limit on information that can be collected to establish a premium.⁴⁰

Some fear that information that is not relevant, such as their online activities and those of their friends and their networks, could be used to the detriment of consumers without their knowledge.⁴¹ Also, there is the fear that the price offered to consumers could be based on factors that are unrelated to their insurable risk. One has only to think of the online price differentiation practiced in sectors other than insurance.⁴²

Other experts also fear that the comparators, particularly those who are not obliged to be registered with the regulator or are free sites, could collect extensive personal information and sell it to third parties.⁴³ Moreover, there is a major cybersecurity issue involved. Protective measures need to be put in place, as well as appropriate supervision.⁴⁴

1.6 In summary

Although insurance PCWs seem to offer several advantages to consumers, our discussions with experts and our review of studies abroad have shown that there are important issues raised by the comparison of insurance products online. The information provided to consumers is sometimes incomplete. Business relationships and the role of insurance PCWs may be ambiguous. The often complex nature of insurance products is a significant barrier to consumers making independent, informed decisions. The consequences in the event of failure to mention certain information and incomplete coverage are not to be underestimated.

In the following section, we will attempt to determine how these issues are regulated in Canada and abroad.

⁴⁰ Interview with Iran Reingold, director general of the National Association of Consumer Advocates, Bob Hunter, Director of the Consumer Federation of America and Former Commissioner of Insurance, State of Texas, and Birny Birnbaum, CEO of the Center for Economic Justice.

⁴¹ This issue was identified by experts from foreign consumer associations.

⁴² Interview with Greg Van Elsen, Senior Officer for Financial Services, the European Consumer Organization. Note: at the time of this writing, Option consommateurs was conducting a study on online price differentiation. It should be released in the fall of 2018 or the winter of 2018-2019.

⁴³ Interview with Jacques St-Amant, Lecturer at Université du Québec à Montréal and another expert, who wished to remain anonymous.

⁴⁴ Interview with Jannick Desforges, Director of Legal Affairs and Professional Practice Compliance at the Chambre de l'assurance de dommages

2 Legal Framework - Canada

In Canada, both levels of government regulate the actors in the field of insurance in accordance with their respective jurisdictions, each being responsible for passing laws within their respective spheres. The provinces play a central role in regulating insurance, particularly with regard to the disclosure of information in the insurance contract, consumer protection, business practices, oversight of intermediaries (firms and certified representatives) and the stability of the financial system.⁴⁵ In order to better understand this role, we focus our legal analysis on three Canadian provinces: Québec, Ontario and British Columbia.

Since the regulation of insurance is such a vast, technical subject, our analysis concentrates on the elements that we believe to be most relevant to the regulation of insurance PCWs. We first set forth the essential elements in the regulation of the insurance sector by presenting the regulators and the applicable laws in the three provinces. We then briefly discuss the nature of the insurance contract. Next, we present the respective obligations of representatives and the insured. On the one hand, the obligations of the officials, such as their obligation to provide certain information to consumers, are of interest because they are useful, even crucial, for the consumer purchasing the insurance. Also, insurance PCWs can be considered as firms that have specific obligations with regard to the distribution of insurance.⁴⁶ On the other hand, the obligations of the insured, including the accuracy of the information they provide to the insurer, are important in the context of PCWs and personal information transmitted by the use of Internet forms. Finally, we analyze certain provisions currently under study by regulators and lawmakers aimed at regulating the distribution of online insurance products.

2.1 Provincial regulators

The regulators in Québec, Ontario and British Columbia play a supervisory role to ensure that the players in the insurance field comply, within their respective jurisdictions, with the laws and regulations applicable to the insurance sector. They also develop policies and regulatory administrative procedures to control their application and the conduct of the market. This allows them to ensure consumer protection, good business practices, and stability in the financial sector.⁴⁷

⁴⁵ Denis Boivin, *Insurance Law, Second Edition*, Essentials of Canadian Law, LexisNexis, 2015, p. 65.

⁴⁶ As introduced by Bill 141, see Section 3.6.

⁴⁷ Denis Boivin, *Insurance Law, Second Edition*, Essentials of Canadian Law, LexisNexis, 2015, p. 65.

2.1.1 Québec

In Québec, the Autorité des marchés financiers (AMF) is the regulatory body in the domain of financial products and services, including insurance. Its task is to protect the public, to ensure the solvency of companies and to administer the Compensation Fund.⁴⁸ It also manages the application of numerous legal requirements, regulations and guidelines.⁴⁹ Finally, it issues licenses in the insurance industry for insurers and for insurance firms.⁵⁰

Two self-regulating organizations (SROs) oversee certified representatives in Québec: the Chambre de l'assurance de dommages⁵¹ and the Chambre de la sécurité financière,⁵² the latter overseeing the field of personal insurance. Both of these organizations have the mission of protecting the public by ensuring the training and supervision of certified representatives.

2.1.2 Ontario

The insurance regulator in Ontario is the Financial Services Commission of Ontario (FSCO). Its mission is to protect the public and to build its trust in various sectors that it regulates, including insurance.⁵³

2.1.3 British Columbia

The regulatory body in British Columbia is the Financial Institutions Commission (FICOM), whose mandate is similar to that of the FSCO: to protect consumers against unfair practices in the private insurance market.⁵⁴

2.2 Legislation

The field of insurance is highly regulated in order to achieve three specific objectives: to ensure the stability of financial markets, to ensure the competence and honesty of those working in the sector and to protect consumers. In all the jurisdictions studied, insurers, insurance brokerage firms and the vast majority of certified professionals must be registered with the regulator and are subject to the regulations that apply to their license.

⁴⁸ <https://lautorite.qc.ca/en/general-public/about-the-amf/mission/>.

⁴⁹ <https://lautorite.qc.ca/en/professionals/insurers/guidelines/>.

⁵⁰ <https://lautorite.qc.ca/en/general-public/about-the-amf/mission/>.

⁵¹ <http://www.chad.ca/en/consumers/protecting-the-public>.

⁵² <https://www.chambresf.com/en/the-chambre/about-us/our-mission/>.

⁵³ <https://www.fSCO.gov.on.ca/en/about/pages/default.aspx>.

⁵⁴ https://www.fic.gov.bc.ca/?p=about_us/core_business_areas and *Financial Institutions Act*, RSBC 1996, Ch. 141.

2.2.1 Québec

In Québec, insurance is explicitly governed by several laws: the *Civil Code of Québec*,⁵⁵ the *Insurance Act* (IA)⁵⁶ and the *Act Respecting the Distribution of Financial Products and Services* (*Distribution Act*)⁵⁷ and related regulations. Other legislation may touch on the insurance sector, such as the *Act to Establish a Legal Framework for Information Technology* (AELFIT)⁵⁸ or the *Act Respecting the Protection of Personal Information in the Private Sector* (APPIPS).⁵⁹

Insurers that offer insurance products to Québec consumers are therefore subject to numerous obligations. The disclosure requirement in the IA, for example, forbids making false and misleading representations. Insurers must also comply with the sound commercial practices guideline. Note also that the IA contains obligations with regard to information, obligations with regard to the creation and marketing of insurance products (e.g. insurers must ensure that their product is suitable for the target audience), and the implementation of measures that take into account the interests of consumers at every stage (including mechanisms for complaint processing and dispute settlement).

In Québec, the general method of distribution is through a representative. There is, however, an exceptional distribution method in which there is no representative. It should be noted here that there exists a grey area with regard to online distribution within the meaning of Section 12 of the *Distribution Act*, which may have an impact on the practices of insurers.

Some insurers give consumers the opportunity to complete a subscription online, but make certain that a representative contacts them before finalizing the transaction. Others permit contracts to be concluded online.⁶⁰ They claim they are able to do so in virtue of Section 12 of the *Distribution Act*, which states:

Subject to the provisions of Title VIII, no person may act as or purport to be a representative without holding the appropriate certificate issued by the Authority.

However, a financial institution may, by distributing brochures or flyers or using direct mail or any other form of advertising, invite the public to purchase insurance products.

⁵⁵ *Civil Code of Québec*, CQLR c. CCQ-1991.

⁵⁶ *Act Respecting Insurance*, CQLR A-32. Bill 141 provides that the Act will be replaced by the *Insurance Act*.

⁵⁷ *Act Respecting the Distribution of Financial Products and Services*, CQLR c D-9-2. Note that Bill 141 contains numerous amendments to this law.

⁵⁸ *Act Respecting the Legal Framework for Information Technology*, CQLR c C-1.1.

⁵⁹ *Act Respecting the Protection of Personal Information in The Private Sector*, CQLR C p-39.1.

⁶⁰ Annik Bélanger-Krams, *Option consommateurs*, "Protection des consommateurs et distribution de produits d'assurance en ligne : des enjeux inconciliables?" Research conducted thanks to a financial contribution from the *Chambre de l'assurance de dommages* and the *Chambre de la sécurité financière*, December 2016 p. 18.

The second paragraph of Section 12 of the *Distribution Act* must be read in conjunction with Sections 33.1 and 33.2, which together define the activities of insurers, and also with Section 406.1 of the *Insurance Act*, which states:

Every insurer, other than a professional order, who accepts an insurance application or proposal from a person other than the insured, the policy holder, the participant or a person authorized to do so under the *Act respecting the distribution of financial products and services (chapter D-9.2)* is guilty of an offence.

The above interpretation is shared by several industry players, including the Canadian Life and Health Insurance Association (CLHIA) – Québec. In two letters (one dated 2012 and the other in 2015), the CLHIA gave an *a contrario* interpretation of the above-mentioned sections. An insurer could thus directly receive a proposal from either an insured person or from someone in authority. It could also invite the public to buy an insurance product (through advertising, for example), without contravening the *Distribution Act*.⁶¹ Note that insurers are considered to be financial institutions, and that an advertisement may contain all the elements needed to conclude a contract.

Bill 141, which was introduced in the fall of 2017, clarifies certain aspects of the regulation of the online distribution of insurance products in Québec. The method of distribution without a representative will remain an exceptional practice, yet the supervision of the sites will become more transparent. Firms that perform online distribution will have specific rules to follow. Consumers will be able purchase insurance online without being obliged to go through a certified representative, yet will have the right to request the assistance of a certified representative at any time. We shall discuss these aspects later on (see Section 3.6).

2.2.2 Ontario

The *Insurance Act* of Ontario (IAO) states that no person engaged in the business of insurance shall engage in any unfair or deceptive act or practice.⁶² Ontario Reg 7/00 *Unfair or Deceptive Acts or Practices*⁶³ gives a list of all the practices that meet this definition, the main lines of which we will summarize here. Under the *Regulation*, the commission of any act prohibited by the *Act* and its regulations constitutes a prohibited practice. Furthermore, it is prohibited to distribute any literature (illustration, circular or memo) containing inaccurate or incomplete information about the characteristics of an insurance policy or contract.

⁶¹ CLHIA-Québec, *Report on the Implementation of the Act on the Distribution of Products and Services*, September 20, 2015, page 3 and ACCQ Québec, “Lettre à l’Autorité des marchés financiers,” May 30, 2012, p. 2 and *Ibid*.

⁶² 439 IAO

⁶³ Ontario Reg 7/00: *Unfair or Deceptive Acts or Practices Regulation*

Similarly, making a false or misleading statement about the terms, benefits or advantages of an insurance policy or contract is a proscribed act. Interestingly, insurers may not provide an incomplete comparison between insurance policies or contracts. They may not give any payment, whether in the form of money or valuables or offer a reduced premium in return for consideration. Finally, insurers may not provide, in a separate document, a premium different from the one specified in the policy.⁶⁴

2.2.3 British Columbia

In British Columbia, the *Marketing of Financial Products Regulation*⁶⁵ sets forth the information that every insurer must disclose when dealing with consumers: their name, the relationship between them and the person or agent offering the insurance product, whether a commission or compensation is to be paid to the agent or the person offering the insurance product and the name of the person for whom the insurer is offering the insurance product, if applicable.⁶⁶ Furthermore, the *Financial Institutions Act* (FIA) requires that insurers must clearly identify themselves in all documentation, including advertising, that they distribute as part of their business.⁶⁷

The *British Columbia Insurance Act* (BCIA) specifically mentions the insurer's obligation to disclose only in the section on life insurance. However, in practice, the consumer will often deal with certified representatives who have additional obligations. Section 3.4 of the *Act* specifies that the insured may cancel the contract if the insurer fails to disclose a material element or misrepresents an essential fact. However, the insured may only profit from such cancellation if the contract has been in effect for 2 years. Of course, in the event of fraud on the part of the insurer, the contract is voidable at any time.⁶⁸

2.3 The insurance contract

The characteristics of the insurance contract are quite similar in the three provinces studied. It must be noted that the insurance contract is formed by the sole exchange of consents.⁶⁹ The policy evidences the existence of the insurance contract.⁷⁰ All the conditions of the insurance

⁶⁴ 1 and 2 *Unfair or Deceptive Acts or Practices Regulation*

⁶⁵ *Marketing of Financial Institutions Regulation*, BC Reg. 573/2004

⁶⁶ 3 (1) *Marketing of Financial Products Regulation*

⁶⁷ 91 FIA

⁶⁸ 53 BCIA.

⁶⁹ Art. 1385 of the *Civil Code*, CQLR c CCQ-1991.

⁷⁰ Art. 2399 of the *Civil Code*, CQLR c CCQ-1991.

contract must be set forth within the insurance policy.⁷¹ In the case of insurance PCWs, we consider two themes to be particularly important.

First, when there is an intermediary, an insurance contract may be concluded only if the intermediary has the authority to bind the insurer. If there is no valid mandate, it will require the insurer's acceptance for the contract to be concluded. In this case, acceptance by the intermediary alone is not enough.⁷²

Second, the contract will have the same legal value whether it is electronic or on paper.⁷³ An electronic contract will be subject to the same rules of contract formation and evidence as contracts concluded otherwise. Similarly, the signature can be used to establish the link between the parties and the document, regardless of the medium used.⁷⁴

2.4 The obligations of certified representatives

2.4.1 Québec

In Québec, given the vulnerability of the consumer, the legislator has intervened to require the intervention of a certified representative, except under the exceptional regime of distribution without a representative.

The certified representative has to fulfil several obligations that are intended to protect consumers and reduce the informational asymmetry between the parties. Note that the certified representative is personally responsible for meeting certain obligations. These ethical obligations include the duty of competence, the duty of loyalty and the duty of avoidance of conflict of interest. Two additional obligations are particularly important for consumer protection regardless of how the insurance is distributed: the duty to inform and the duty to advise. It is certainly relevant to study these in the context of PCWs.

The duty to inform is defined as “the obligation for a person to provide another with specific information so as to enable the latter to make a decision or act in an enlightened manner.”⁷⁵

⁷¹ 127 (1) LAO 11 BCIA.

⁷² Natalie Durocher, “La distribution de produits d’assurance par Internet,” *L’assurance de dommages Deuxième colloque*, Collection Yvon Blais, vol 22, 2015, p. 17

⁷³ Fasken Martineau, “La vente de produits d’assurances en ligne : Où en sommes-nous au Québec?” *Bulletin institutions financières*, April 16, 2012.

⁷⁴ Section 39 LCCJTI and Natalie Durocher, “La distribution de produits d’assurance par Internet,” *L’assurance de dommages Deuxième colloque*, Collection Yvon Blais, vol 22, 2015, p. 17

⁷⁵ Sébastien Lanctôt, *Les représentants en assurance : pouvoir de représentations et obligations*, Ontario LexisNexis Canada Inc., 2007, p. 114.

The duty to inform is linked to the duty of good faith⁷⁶ and varies depending on the identity and degree of knowledge of the other party.⁷⁷ The informational requirement takes into account three factors. The first is knowledge of the information and its importance for the insured. The second is the importance of the information; any relevant, useful or crucial fact should be disclosed to the insured. The third is the possibility of learning - all relevant information should be easily accessible to the insured. However, according to the Supreme Court, the insured also needs to demonstrate a measure of vigilance.⁷⁸

The certified representative also has the ethical obligation⁷⁹ to give advice. This obligation is set forth in Section 27 of the *Distribution Act*. The duty to advise involves giving advice to a person that is in their interest and in accordance with their needs. It requires judgment about the quality of the information, while the duty to inform only requires disclosure.⁸⁰

Finally, representatives must present all elements objectively, taking into account the particular needs and characteristics of the insured.⁸¹ They must also go beyond the information provided by the insured. They must seek to know the needs of their customers and advise them well.⁸² Customers should expect that their interests are better protected than if they had acted alone. On the other hand, certified representatives have only one obligation of means.⁸³ They must inform consumers, but may not decide for them.⁸⁴

⁷⁶ *Bank of Montreal v. Bail Ltée*, [1992] 2 SCR 554

⁷⁷ *Bank of Montreal v. Bail Ltée*, [1992] 2 SCR 554 and ⁷⁷ Patrice Deslauriers, "L'impact de l'Internet sur l'offre de services par les représentants en assurance de dommages", 2017, p. 5.

⁷⁸ Patrice Deslauriers, "L'impact de l'Internet sur l'offre de services par les représentants en assurance de dommages", 2017, p. 5-6.

⁷⁹ Section 37 (6) *Code of ethics of damage insurance representatives*, ss. 12 and 15 *Code of ethics of the Chambre de la sécurité financière* and s. 6 of the *Regulation respecting the pursuit of activities as a representative* D-9.2, r. 10

⁸⁰ Patrice Deslauriers, "L'impact de l'Internet sur l'offre de services par les représentants en assurance de dommages", 2017, p. 15.

⁸¹ Patrice Deslauriers, "L'impact de l'Internet sur l'offre de services par les représentants en assurance de dommages", 2017, page 5 and 6 and Jacques St-Amant, "L'encadrement de la distribution d'assurance en ligne : quelques éléments d'analyse," 2008, p. 32 and following.

⁸² Patrice Deslauriers, "L'impact de l'Internet sur l'offre de services par les représentants en assurance de dommages", 2017, p. 16-17.

⁸³ Patrice Deslauriers, "L'impact de l'Internet sur l'offre de services par les représentants en assurance de dommages", 2017, p. 16-17.

⁸⁴ *Laflamme v. Prudential-Bache Commodities Canada Ltd.*, [2000] 1 RCS 638, Jacques St-Amant, "L'encadrement de la distribution d'assurance en ligne : quelques éléments d'analyse", 2008, p. 32 and following and *Lemieux v. Dessureault*, [1969] CS 383.

2.4.2 Ontario

In Ontario, the obligations of certified representatives are regulated differently. The province distinguishes brokers from agents and has adopted two separate laws to regulate them. Agents and brokers must both be licensed.

Brokers are supervised by the IAO and by the *Registered Insurance Brokers Act (RIBAO)*⁸⁵ and their related regulations. The majority of a broker's acts are reserved for brokers, but some are also permitted to insurance agents.⁸⁶ The RIBAO general regulations list the qualifications required for the broker certificate. The general regulations also list the thirteen points of the members' code of conduct. These are almost identical to those for brokers in British Columbia (see next section). They both provide that brokers must demonstrate integrity towards the public, their customers and others involved in the field of insurance. The RIBO (Registered Insurance Brokers of Ontario),⁸⁷ which regulates the practice of insurance brokers in the province, explains these thirteen statements in its brokers' manual.⁸⁸ The RIBO also issues guidelines and has adopted a code of conduct applicable to all brokers.

Insurance agents themselves are regulated by the IAO and certain of its related regulations, namely the *Agents Regulation*⁸⁹ and the *Unfair or Deceptive Acts or Practices Regulation*.⁹⁰ The agent is the insurer's intermediary. He is paid by the insurer, to whom he is affiliated by receiving a commission, and sometimes bonuses, for selling insurance.⁹¹ However, he must act in the best interests of consumers by proposing insurance that responds to their needs.⁹² The agent may be liable if failure to obtain the coverage requested by the insured results in harm to the latter. Several courts have in fact ruled along these lines.

In the decision *Fine's Flowers*⁹³, the Ontario Court of Appeal concluded that the agent was responsible for the insured being inappropriately covered. The insured had instructed the agent to obtain full insurance coverage for its business. The coverage he received contained exclusions, but the agent did not notify him of this. The agent should have known that the coverage was incomplete and should not have proposed it, or at the very least, should have notified the insured of the exclusions. Agents therefore have a so-called duty of care: the obligation to provide adequate information to the insured.⁹⁴

⁸⁵ *Registered Insurance Brokers Act*, RSO 1990, c. R.19.

⁸⁶ 3 RIBA.

⁸⁷ Website: <http://www.ribo.com/>.

⁸⁸ *Registered Insurance Brokers of Ontario Code of Conduct*.

⁸⁹ *Regulation 347/04 Ontario: Agents*.

⁹⁰ *Unfair or Deceptive Acts or Practices Regulation*.

⁹¹ McMillan p. 11.

⁹² It is not, however, his duty to consult the offers of other insurers in order to do so.

⁹³ *Fine's Flowers Ltd.* 1977 Ontario Court of Appeal.

⁹⁴ *Canadian Insurance Law*, Billingsley p. 134.

This duty of care has been repeatedly investigated by the courts, which have developed a three-point test to gauge its scope.⁹⁵ In fact, the agent has a duty of care if:

- The consumer relies on the information provided by the agent;
- It is reasonable under the circumstances, for the consumer trust the information;
- The agent knows or should know that the consumer will rely on the information he provides.⁹⁶

2.4.3 British Columbia

In British Columbia, the terms “agent” and “broker” are interchangeable. However, the preferred term is “insurance intermediary,” as specified in the FIA.⁹⁷ Insurance intermediaries are required to hold a license from the Insurance Council of British Columbia (ICBC) to act as such.⁹⁸ The conditions for obtaining the license are set forth in the ICBC Rules; one notable condition is the requirement to have a written representation authorization from an insurer.⁹⁹

Moreover, according to the ICBC Rules, an insurance seller¹⁰⁰ can only act in “general insurance” (damage insurance).¹⁰¹ The insurance seller is subject to certain additional restrictions.¹⁰²

In British Columbia, agents are subject to numerous obligations from different sources, including laws, regulations and other rules and codes of conduct. The list of information items that insurers must disclose under the Marketing of Financial Products Regulation applies fully to agents.¹⁰³ Agents, however, have other obligations under this regulation. They should for example divulge their status as public officers, before even starting to act as such. If compensation has been paid to a third party, they also have to mention this to their customers, and do so prior to the transaction.¹⁰⁴ Only life insurance agents are subject to obligations related

⁹⁵ *Hedley Byrne & Co. v. Heller & Partners Ltd* (1964) AC 465 and *Canadian Insurance Law*, Billingsley p. 137.

⁹⁶ *Fletcher v. Manitoba Public Insurance Co* [1990] 3 SCR 191 (1990), 45, and *Canadian Insurance Law*, Billingsley p. 137.

⁹⁷ Brian G. Sunohara, “The Relationship Between Brokers, Insureds, and Insurers” Rogers Partners LLP 2013.

⁹⁸ 171 FIA.

⁹⁹ Rule 7, ICBC Rules.

¹⁰⁰ The insurance salesman is defined by the FIA as: “an individual who is employed by an insurance agent or by an insurer to solicit, obtain or take an application for general insurance, or to negotiate for or procure general insurance, or to collect or receive a premium for general insurance.”

¹⁰¹ *Id.* (Rule 1, ICBC Rules).

¹⁰² *Id.* (Rule 6, ICBC Rules).

¹⁰³ See the section of this document concerning the obligations of insurers

¹⁰⁴ *Marketing of Financial Products Regulation*.

to their representation within the FIA. Under this law, it is forbidden for them to misrepresent, use their influence or offer a financial benefit to convince an insured to favour one insurer over another.¹⁰⁵

On the other hand, all agents and sellers are subject to the ICBC's Code of Conduct.¹⁰⁶ This code covers a multitude of obligations and principles that must be respected, including integrity, competence and honesty. Agents must not misrepresent or mislead consumers with regard to their status or field of expertise.¹⁰⁷ The code states that the insurance industry is based on fiduciary relationships and, accordingly, agents must be reliable and act in good faith.¹⁰⁸ They must also demonstrate competence and act in a prudent, diligent manner with regard to their customers and their assets.¹⁰⁹ Customers must be able to trust the advice of agents, who must prioritize the interests of their customers.¹¹⁰

Also, agents must be able to properly assess their customers' needs and goals. They must disclose to them all the information necessary for informed decision-making. This must be based on the behavior that a prudent and diligent officer would demonstrate in the same circumstances to assess the extent of the information they must provide.¹¹¹ The Code states that agents must protect the interests and privacy of their customers. It also reminds them of the principle of "duty of care," which states that the customer's interests must prevail; agents are forbidden to favour their own interests or those of third parties to the detriment of the customer's interest.¹¹²

2.5 The obligations of the insured

Both in Québec and in the provinces of Ontario and British Columbia, the insurance contract is a contract deemed to be of the utmost good faith.¹¹³ For the insured, this means disclosing all relevant elements to the insurer¹¹⁴ so that the latter may be able to properly assess the risk. Historically, it is agreed that the insured has a better knowledge of their situation than the

¹⁰⁵ 177 FIA.

¹⁰⁶ 7 (8) *ICBC Code of Conduct*.

¹⁰⁷ 10.3 *ICBC Code of Conduct*.

¹⁰⁸ Rules 3 and 4 *ICBC Code of Conduct*.

¹⁰⁹ 5 and 6 Rules *ICBC Code of Conduct*.

¹¹⁰ 7 Rules *ICBC Code of Conduct*.

¹¹¹ 7.3.1 Rules *ICBC Code of Conduct*.

¹¹² 7.3.9 *ICBC Code of Conduct*.

¹¹³ Eric A. Dolden, *Recent Developments in the Law Relating to Changes Material to the Risk*, 2009, Dolden Wallace Follick, 2009 and Denis Boivin, *Insurance Law, Second Edition*, Essentials of Canadian Law, LexisNexis, 2015.

¹¹⁴ CanLII 19507 (QC CQ) par. 35.

insurer and that the insurance contract is a speculative contract.¹¹⁵ Note that this rule has been tempered in Québec by the *Civil Code*¹¹⁶ and case law, the courts recognizing that due to the technological advancements, this is not always the case.¹¹⁷ However, the insured have a duty of spontaneous declaration, that is to say, they must do more than just reply to the insurer's questions. They should, in theory, take the initiative to disclose any relevant information related to a risk.

Finally, it should be pointed out both civil law and common law recognize that the insurer has a duty to inform and that the insured has the right to expect to do business with a competent insurer.¹¹⁸

2.6 Online distribution of insurance products

Even though insurance companies are highly visible on the Internet and Canadians have access to their sites, there is a huge difference between the rules imposed on them by the various provincial regulators and those imposed on online insurance products. For example, Québec is the only province of the three studied to have developed a legal framework explicitly applicable to the distribution of online insurance products: Bill 141. Lawmakers in Ontario and British Columbia have not yet adapted their laws.

We therefore begin this section by discussing the implications of Bill 141 on the online distribution of insurance products, which was still under consideration at the time this report was drafted.¹¹⁹

2.6.1 Québec

I. The 2012 consultation on online insurance offerings in Québec

In 2012, well before the tabling of Bill 141, the AMF held a consultation on insurance offerings in Québec. Eight topics were discussed, including one specifically devoted to insurance PCWs. On

¹¹⁵ Lord Manfield in *Carter v. Boehm*, Michael J. Bailey, "Alberta Insurance Law and Commentary" LexisNexis, p. 23.

¹¹⁶ Art. 2409 of the *Civil Code*, CQLR c CCQ-1991.

¹¹⁷ *Jarry v. Industrial Alliance Auto and Home Insurance inc.* 2010 QCCQ 12088, para. 68-70.

¹¹⁸ Denis Boivin, *Insurance Law, Second Edition*, Essentials of Canadian Law, LexisNexis, 2015, p. 65., chapter 5

¹¹⁹ In this research, we took into account what it provided at the time as well as the major amendments thereto made from February to June 2018.

the strength of the results yielded by this consultation, the AMF announced several orientations.¹²⁰

From the outset, the AMF expressed concern over certain issues related to sites offering comparisons of different insurance products, particularly as regards coverage. In the opinion of the AMF, these activities amount to offering insurance advice, an act associated with and reserved for registered organizations. “Comparison shopping websites” should therefore be registered. Another issue addressed by the AMF is that the comparators’ modes of remuneration raise questions about the independence of insurance PCWs, and about transparency and disclosure of information. It also says it is important that the insurance PCWs disclose with whom the personal information they collect will be shared.¹²¹ All this is necessary to adequately protect the consumers who use these sites.¹²² The AMF concludes by stating that the activities of price comparison websites should be duly registered with the Authority, since they perform reserved activities. The AMF also stated that insurance PCWs should be required to comply with the applicable regulations.¹²³

II. Regulation proposed by Bill 141

Tabled in fall 2017, Bill 141 provides for significant amendments to the supervision of insurance in Québec, including to the *Act Respecting the Distribution of Financial Products and Services (Distribution Act)*. Here we address the main changes affecting insurance PCWs. In this regard, it is useful to distinguish PCWs covered by Bill 141 from those that are not.

a) *PCWs covered by Bill 141*

First, Bill 141 formally permits the distribution of insurance products without the intervention of a certified representative and provides a regulatory regime. This is stipulated in the *Insurers’ Act* and in Section 71.1 of the *Distribution Act*. However, a consumer must have access to a certified representative if he so requests.¹²⁴

¹²⁰ AMF “Internet Insurance Offerings in Québec – Presentation of Consultation Findings and Orientations,” April 2015, p. 5.

¹²¹ *ibid.*, p. 20.

¹²² *ibid.*, p. 19.

¹²³ *ibid.*, p. 20.

¹²⁴ Note, the first version of the Bill used the term legal person (*personne physique*), which is a much wider definition than certified representative. This could allow a consumer to talk to a salesperson rather than a certified representative. The latter has individual responsibility and ethical obligations, whereas a salesperson is required only to make no false representations. Obviously, if consumers are experiencing technical problems that are unrelated to insurance products, they can speak with support staff, to get technical help from a computer technician, for example.

With regard to the regulation of insurance PCWs, Bill 141 adds a paragraph to Section 71 of the *Distribution Act* that states that:

A legal person that, without acting as a firm, receives a commission or other remuneration based on the sale of financial products or the provision of financial services must be registered with the Authority. As of its registration, the legal person is, for the purposes of this Act, considered to be acting as a firm in the sector in which the products and services are offered.¹²⁵

Bill 141 thus requires PCWs, whose business models are based on a commission or other compensation from the sale of financial products, to register as a firm since they offer advice. To register as a firm, insurance PCWs must comply with the requirements laid down in Section 492 of Bill 141, which adds Section 86.0.1 of the *Distribution Act* (ADFPS). Accordingly, firms will need to disclose any commission or remuneration they receive.¹²⁶ They must send notification to consumers informing them of their right to rescind the contract within 10 days of signing.¹²⁷ They must also disclose their business relationships with insurers.¹²⁸ These relationships include a business interest, whether direct or indirect, that an insurer holds in the ownership of a firm or, conversely, that a firm holds in the ownership of an insurer. A business relationship also includes the granting by the insurer of any benefit or other interest determined by regulation.¹²⁹

Another modification made by Bill 141 concerns Section 27, which states the obligation to inquire about the situation of customers in order to assess their needs. Section 27 previously stated the obligation of the representative to personally gather information in order to assess consumers' needs and present them with the most appropriate products. From now on, representatives must appropriately advise their customers in matters that fall within the sectors in which they are authorized to act. In the view of numerous interested parties, the amendment to Section 27 of Bill 141 will result in reduced protection for consumers.

The other obligations of firms remain. For example, certified damage insurance representatives¹³⁰ and certified personal insurance representatives¹³¹ must always disclose the names of the insurers whose products they are authorized to offer as well all other information prescribed by regulation. If the representative is bound by an exclusivity agreement with an insurer, he must disclose this fact.¹³²

¹²⁵ It is expected that the articles of the *Distribution Act* will come into force one year after the adoption of Bill 141, in June 2019. A regulation will be adopted before that date to mark the interpretation of the *Distribution Act*.

¹²⁶ S. 17 *Distribution Act*, (ADFPS) CQLR c D-9.2

¹²⁷ S. 19 ADFPS, CQLR c D-9.2

¹²⁸ S. 26 ADFPS, CQLR c D-9.2.

¹²⁹ S. 26 para 2 ADFPS, CQLR c D-9.2.

¹³⁰ S. 28 ADFPS, CQLR c D-9.2.

¹³¹ S. 31 ADFPS, CQLR c D-9.2.

¹³² S. 32 ADFPS, CQLR c D-9.2.

For their part, insurance brokers must now offer a range of insurance products to their customers.¹³³ Note: Bill 150, tabled in fall 2017, also included the amendment to Section 38 of the *Distribution Act* by imposing the obligation to offer customers insurance products from at least four insurers. However, this article was eventually incorporated into Bill 141 with a reduced obligation. Now, the broker must offer at least three products from three insurers.

During consideration of Bill 141, several parties initially raised concerns, since two regimes seemed to have been created with regard to consulting and information: insurers appeared to have an information requirement under the *Insurers Act* while firms had an advisory requirement under the *Distribution Act*. Following subsequent amendments to Bill 141, and the effect of Section 12 of the *Distribution Act*, we can consider that insurers have a duty to advise.

With respect to insurance PCWs, those who are obliged to register as a firm must offer advice. The comparator will compare both prices and products. The products presented must be based on information collected about the consumer. It is also important to mention that price should not be the only criterion, otherwise there is a risk of being blinded by very low prices, causing inconvenience or even significant harm if the consumer does not buy at a price that is better suited to him.

Section 486 of Bill 141, which adds the second paragraph of Section 71, also specifies acts that are prohibited to firms and comparators that are required to register as a firm. It is forbidden to make the conclusion of a contract subject to the requirement to have insurance.¹³⁴ It is also forbidden to exert undue pressure or indulge in deceptive practices to encourage consumers to purchase a financial product or service.¹³⁵ The regulations proposed by Section 492 of Bill 141, which adds Section 86.0.1 of the *Distribution Act*, may reduce some of the risks identified by the foreign doctrine and the AMF's consultative document, including disclosure of information, transparency of business relationships and the collection of personal information.

Bill 141 does not amend Section 36 regarding personal information. When a representative obtains medical information or information about the lifestyle of an insured, he may not disclose this information to anyone.¹³⁶ When renewing an insurance policy, the certified representative must take the necessary steps to ensure that the coverage offered meets the customer's needs.

Finally, it should be noted that the process of amending the regulatory framework in order to apply to online distribution of insurance is not complete. It remains to be seen how useful the

¹³³ S. 38 ADFPS, CQLR c D-9.2.

¹³⁴ S. 18 ADFPS, CQLR c D-9.2.

¹³⁵ Add Item ADFPS, CQLR c D-9.2.

¹³⁶ S. 26 ADFPS, CQLR c D-9.2.

regulatory measures will be in protecting consumers using the services of PCWs. Only then will we have a clear picture of how effectively consumer protection is regulated in this sector.

b) *PCWs not covered by Bill 141*

Point of clarification: not all comparators are required to register as a firm and to respect the related obligations. For example, comparators that do not receive remuneration or a commission based on the sale of services and financial products are not required to register as a firm. Some comparators may be provided by the regulators, as is the case in the U.S.,¹³⁷ or even other consumer associations, as in France.¹³⁸

The situation is more troubling when a comparator is a private company. For instance, PCWs that appear to be “free” often finance their activities with “clicks” or the sale of personal information.¹³⁹ It is therefore worrying that these types of comparators are not subject to the obligation to register as a firm and to respect the obligations, particularly with regard to privacy. Comparators who are not obliged to register as a firm must comply with the provisions of common law. Comparators might collect extensive personal information in the process of offering certain insurance products.

According to the *Chambre de l’assurance de dommages*, it is important for comparators to have obligations with regard to information and protection of privacy obligations regardless of their mode of remuneration.¹⁴⁰ If these “free” comparators are not subject to the rules imposed on firms within the meaning of the *Distribution Act*, it needs to be asked whether they are governed by some other legislation aimed at protecting consumers. In Québec, Section 5a) of the *Consumer Protection Act* partially exempts insurance contracts from its application, but not totally; the section on prohibited practices comes particularly to mind.¹⁴¹ What is needed is to look at the activities offered by the comparator and ask whether these fall under the definition of an insurance contract or the definition of a service contract and a consumer contract. The fact that the contract is free is not enough for it not to be considered a consumer contract.¹⁴²

¹³⁷ See Section 3.

¹³⁸ See for example: <https://www.quechoisir.org/comparateur-assurance-habitation-n44712/>

¹³⁹ Brief by the *Chambre de l’assurance de dommages*, *An Act mainly to improve regulation of the financial sector, the protection of deposits of money and functioning system of financial institutions* Bill 141, submitted to the Committee on Public Finance, January 17 2018, p. 21 and Brief by *Option consommateurs*, *An Act mainly to improve regulation of the financial sector, the protection of deposits of money and functioning system of financial institutions, Bill 141*, submitted to the Committee on Public Finance, January 18, page 13 and following.

¹⁴⁰ Brief by the *Chambre de l’assurance de dommages*, *An Act mainly to improve regulation of the financial sector, the protection of deposits of money and functioning system of financial institutions, Bill 141*, submitted to the Committee on Public Finance, January 17, 2018, p. 21.

¹⁴¹ S. 5a *Consumer Protection Act*, CQLR c P.40.1.

¹⁴² *Douezc. Facebook, Inc.*, 201,[2017] 1 SCR 751 and *Demers c. Yahoo! Inc.*, 2017 QCCS 4154.

Another concern is the conclusion that these “free” comparators are governed by common law. If so, consumers will not benefit from the additional protections offered by management firms, and this may limit their recourse. It is not uncommon, in consumer law, for “free” sites to limit the recourse offered to consumers.¹⁴³ The courts have been asked to rule on this issue on a number of occasions.¹⁴⁴ However, no such ruling has as yet been made in the context of an insurance PCW.

If no specific regulatory regime is applicable, the general rules will apply. In Québec, this will necessitate determining the company’s level of control. There are some helpful pointers, such as the activities of the users and of the site as well as the degree of control over the document, including the production of content.¹⁴⁵

Another scenario that could be troublesome for consumers who use “free” comparators is that the latter are considered to be digital intermediaries within the meaning of Section 22 of the *Act to Establish a Legal Framework for Information Technology (AELFIT)*. The impact of this section is that the responsibilities of the intermediaries are light; they need only ensure that there is no fraud or illegal activity on the site. In addition, many sites limit their responsibility by stating that they merely connect people, while in fact they do much more than that. It should be noted that the scope of Section 22 has never been settled by the courts, even though it has been in force since 2001¹⁴⁶.

2.6.2 Canadian Council of Insurance Regulators (CCIR)

In 2013, the CCIR held public consultations and published a position paper regarding the online distribution of insurance products.¹⁴⁷ It began by acknowledging the importance of protection for consumers on the Internet and the danger that informational asymmetry poses for them. It is important for consumers to be able to choose an insurance product suited to their needs¹⁴⁸

¹⁴³ Marina Pavlovic “Contracting out of Access to Justice: Enforcement of Forum-Selection Clauses in Consumer Contracts” (2016) R.D. McGill 389 and *Douez v. Facebook, Inc.*, 201,[2017] 1 SCR 751.

¹⁴⁴ Luc Thibaudeau “Le i-consommateur à la recherche de protections adéquates” National Symposium on Class Actions: Recent Developments in Québec, Canada and the United States (2014), *Douez v. Facebook, Inc.*, 201,[2017] 1 SCR 751 and Option consommateurs *An Act mainly to improve regulation of the financial sector, the protection of deposits of money and functioning system of financial institutions, Bill 141*, submitted to the Committee on Public Finance, January 18, p. 13 and following.

¹⁴⁵ Vincent Gautrais and Pierre Trudel “Circulation des renseignements personnels et web 2.0”, 2010.

¹⁴⁶ Brief by Option consommateurs: *An Act mainly to improve regulation of the financial sector, the protection of deposits of money and functioning system of financial institutions, Bill 141*, submitted to the Committee on Public Finance, January 18, page 13 and following. Annik Belanger-Krams, Option consommateurs, “Sharing Economy: the Canadian Perspective” June 2017, p. 14.

¹⁴⁷ CCIR, “Position Paper: Electronic Commerce in Insurance Products,” 2013.

¹⁴⁸ *Ibid.* pp. 4 and 5.

and to know whether they are dealing with a regulated organization.¹⁴⁹ The websites must make sure that they foster informed decision-making on the part of consumers, notably by providing appropriate information.¹⁵⁰ Consumers should also be able to verify the accuracy of information and have access to both the proposal and the policy for reference purposes.¹⁵¹

More specifically, CCIR states that since the main function of these sites is to compare different insurance products in terms of their coverage, PCWs act in a similar way to brokers or firms. However, the mode of remuneration of these sites and their business relationships may present problems for consumer protection, especially if the business relationships are not adequately disclosed. The difference between a website that simply compares information and a transactional site should also be evident. Unless the sites have the necessary permits, they must not give out advice, give the impression that they are acting like a registered organization (an insurer or a firm, for example) or display insurance proposals that create the impression that consumers are dealing with an insurance provider. Finally, regulators should be vigilant and investigate these sites.¹⁵²

Finally,¹⁵³ we should point out that the CCIR and the Canadian Insurance Services Regulatory Organizations (CISRO) have launched a consultation on a directive for the fair treatment of customers¹⁵⁴ and that Ontario has undertaken a similar process.¹⁵⁵ The aim is to improve protection for consumers when dealing with insurers and intermediaries. This includes agents, representatives and distribution firms. Note that the CCIR directive relates to the creation of products and the clear, transparent disclosure of information that takes into account the interests of all consumers at every stage of the process and of mechanisms for improving the way that disputes and complaints are dealt with. The directive will apply to online distribution as well as other distribution methods.¹⁵⁶ For the moment, it is unclear whether insurance PCWs will be subject to the CCIR directive, which would be a gain for consumers.

¹⁴⁹ *Ibid.* p. 6.

¹⁵⁰ *Ibid.* p. 7.

¹⁵¹ *Ibid.* p. 9.

¹⁵² *Ibid.* p. 11.

¹⁵³ After this report was drafted, but before it was submitted.

¹⁵⁴ This consultation was begun after the completion of this study. See: CCIR and CISRO “Guidance on Fair Treatment of Customers” 2018.

¹⁵⁵ https://www.fsco.gov.on.ca/fr/about/superintendent_guidelines/pages/default.aspx.

¹⁵⁶ CCIR and OCRA “Directive sur le traitement équitable des consommateurs,” 2018, p. 3.

3 Legal framework - foreign jurisdictions

Outside of Canada, insurance PCWs are already popular among consumers, especially in the UK. It is therefore of interest to consider whether PCWs are supervised by regulatory bodies in international jurisdictions and, if so, how. We focus in this study on the following jurisdictions: the European Union, France, the UK, Australia and the USA. In this section, we limit ourselves to examining the key elements affecting insurance PCWs in order to identify best practices.

3.1 European Union

The European Union has adopted numerous directives aimed at regulating insurance. We present below the most important ones in regard to the creation of the single European market and the regulation of intermediaries and insurers.

Creation of a single market:

- Directives **73/239/EEC**¹⁵⁷ and **79/267/EEC**¹⁵⁸: Establishment of “single market” in insurance in the European Union to permit consumers access to insurance products, even when the insurer is located in another member State.¹⁵⁹
- Directive **88/357/EEC**¹⁶⁰: Improvement of consumer protection and introduction of concept of a European passport for the convenience of insurers offering their services in another Member State.¹⁶¹
- Directive **90/619/EC**: Recognition and minimum harmonization of standards, also with the aim of furthering the concept of a European passport.¹⁶²
- Directive **2002/83/EC**: Consolidation of initiatives to permit insurers to offer their services throughout the EU.

Regulation of insurance agents and brokers:

¹⁵⁷ Non-Life Insurance Directive

¹⁵⁸ Life Insurance Directive

¹⁵⁹ Yvonne Lambert-Faivre and Laurent Leveneuer, *Insurance Law*, 2011, pp. 69 and 137

¹⁶⁰ Directive 92/49/EEC of 18 June 1992 on the Coordination of Laws, Regulations and Administrative Provisions Relating to Direct Insurance Other than Life Insurance.

¹⁶¹ John Lowry, Phillip Rawling and Rob Merkin 2011, *Insurance Law: Doctrines and Principles* ”pp. 19 and 20.

¹⁶² John Lowry, Phillip Rawling and Rob Merkin, *Insurance Law: Doctrines and Principles*, 2011, p. 19 and 20.

- **Directive 77/92/EEC:** Regulating, in particular, insurance intermediaries by setting a minimum threshold of competence to be attained. Distinction between brokers intermediaries who deal with several companies and those dependent on a single company,¹⁶³ similar to the distinction between a broker and an agency, for example.
- **Directive 2002/65/ EC:** Regulating distance marketing of services, including the sale of insurance to consumers. Every company must adapt the disclosure of information to the medium employed, and transmit clear, understandable information. It must also describe the insurance product offered by indicating its major characteristics, such coverage.¹⁶⁴ It must also provide information on price, which includes the total price as well as costs such as commissions, expenses and taxes. It must inform consumers of their right of withdrawal, which is 14 days in the case of non-life insurance and 30 days for life insurance, as well their recourse.¹⁶⁵ Finally, the company must supply a copy of the contract on paper or other durable medium.¹⁶⁶
- **Directive 2002/92/EC:** Amendment of Directive 77/92/EEC to facilitate freedom of establishment. Harmonization of intermediate skills, and establishing a minimum threshold to be attained before exercising the reserved activities. Establishing rules for disclosure of information to consumers. Rules intended to reduce the risk of conflict of interest and minimum rules on solvency.¹⁶⁷
- **Directive 2009/138/EC:** Creation of additional obligations for insurers and reinsurers to create new risk management and solvency rules in order to promote market stability.¹⁶⁸

In 2016, the *Insurance Distribution Directive* (IDD) was introduced. It presents a recasting of the *Insurance Mediation Directive* (IMD). The IDD provides innovative solutions for protecting consumers. It entered into force in January 2018.¹⁶⁹ With respect to insurance PCWs, IDD

¹⁶³ Yvonne Lambert-Faivre and Laurent Leveneur, *Droit des assurances*, 2011, p. 175.

¹⁶⁴ S. 3.1.2 of Directive 2002/65/EC.

¹⁶⁵ S. 6 Directive 2002/65/EC.

¹⁶⁶ S. 5.1 of Directive 2002/65/EC.

¹⁶⁷ *Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 Regarding Insurance Mediation (Insurance Mediation Directive)*, Yvonne Lambert-Faivre and Laurent Leveneur, "Insurance Law", 2011, 175 and Annik Bélanger-Krams, *Option consommateurs*, "Protection des consommateurs et distribution de produits d'assurance en ligne : des enjeux inconciliables?" Research conducted thanks to a financial contribution from the Chambre de l'assurance de dommages and the Chambre de la sécurité financière, December 2016, p. 37.

¹⁶⁸ *Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the Taking-up and Pursuit of the Business of Insurance and Reinsurance*; John Lowry, Philip Rawlings and Rob Merkin *Insurance Law: Doctrines and Principles*, 2011, p. 20.

¹⁶⁹ Note: Other directives regarding regulation should apply in principle to the regulation of Insurance PCWs.

explicitly states that it is applicable to “insurance distribution.” This term is defined in section 2 (1) (1) as:

The activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

The IDD, however, made two exceptions in the case of insurance PCWs. It does not apply to insurance PCWs that merely provide information and whose aim is not to lead towards the conclusion of a contract.¹⁷⁰ Nor does it apply to PCWs such as those of consumer associations, whose aim is not to conclude a contract:

This Directive should apply to persons whose activity consists of the provision of information on one or more contracts of insurance in response to criteria selected by the customer, whether via a website or other media, or the provision of a ranking of insurance products or a discount on the price of an insurance contract when the customer is able to directly or indirectly conclude an insurance contract at the end of the process. This Directive should not apply to websites managed by public authorities or consumers’ associations which do not aim to conclude any contract but merely compare insurance products available on the market.

Note that, despite certain limitations, the IDD uses a more flexible definition than Bill 141 in Québec. The definition is not limited solely to traditional remuneration methods such as commissions and compensation based on sales, but rather the activity of leading toward the conclusion of a contract. Moreover, it explicitly states which actors it seeks to exclude from the application of the IDD, namely consumer associations and governments. This should prevent sites whose business models are non-traditional, such as free sites, from being exempt from the application of the IDD when these sites aim to conclude a contract. In addition, the IDD makes several other changes, including the following:

- Since the IDD seeks to prevent abusive sales of insurance products, an assessment must be made of customers’ needs, and the insurance products must meet these needs.¹⁷¹ Information on these insurance products must be presented in an understandable way in order to foster informed decision-making on the part of the consumer.¹⁷² The IDD also includes the obligation to customize offers. In this regard, intermediaries have

¹⁷⁰ Para. 13 of the preamble to the IDD.

¹⁷¹ Para. 44 of the preamble to the IDD.

¹⁷² Para. 44 of the preamble to the IDD.

greater obligations than insurers because they have to explain the characteristics of the various products.

- The IDD also aims at regulating the insurance sector more strictly in order to reduce the risk of conflict of interest. States also have the obligation of ensuring that distributors act in an honest, impartial, and professional manner that is in the best interests of consumers.¹⁷³
- The IDD includes obligations with respect to transparency, aimed at limiting the risk of conflict of interest. For instance, intermediaries must disclose any direct or indirect holding of 10% or more of the voting rights or capital of an insurance company.¹⁷⁴ When intermediaries provide personalized service in order to offer an insurance product, they must indicate whether they have exclusivity agreements with one or more companies and disclose the names of these companies.¹⁷⁵ If they are not subject to an exclusivity agreement, they must disclose the names of the insurance companies with which they do business or with which they may do business.¹⁷⁶ They also have to disclose any remuneration received.¹⁷⁷ When the customer pays the fee, this must be clearly disclosed, as well as the calculation method used.¹⁷⁸
- Another innovation in the IDD is *Product Oversight and Governance* (POG). This requires companies to carry out an assessment whenever a new insurance product is created or when substantial changes are made to existing insurance products in order to take into account the market for which the insurance product is intended, the possible risks to customers and the distribution strategy.¹⁷⁹
- Finally, the IDD includes obligations with respect to information and advice. It should be noted here that the Member States are not obliged to impose an advice requirement. However, the type of product must be part of the equation in the intermediary's intervention. First, the IDD requires suppliers to gather information on customers so as to offer products that meet their needs. Second, at the intervention level, the IDD defines advice as the provision of a personal recommendation, either upon the request of the customer or the intermediary. Third, the IDD requires independent advisors to make an impartial analysis and present a sufficient number of contracts from different vendors.¹⁸⁰

¹⁷³ S. 17 IDD.

¹⁷⁴ S. 19 (1) (a) (b) IDD.

¹⁷⁵ S. 19 (1) (c) (i) (ii) IDD.

¹⁷⁶ S. 19 (1) (c) (iii) IDD.

¹⁷⁷ S. 19 (d) IDD.

¹⁷⁸ S. 19 (2) IDD.

¹⁷⁹ S. 25 IDD

¹⁸⁰ S. 20 IDD and Annik Bélanger-Krams, *Option consommateurs*, "Protection des consommateurs et distribution de produits d'assurance en ligne : des enjeux inconciliables?" Research conducted thanks to a

3.2 France

3.2.1 Community Law

European Union Community Law takes precedence over national law. France, like the other Member States, must incorporate the content of directives into its national law; there is a minimum threshold that has to be attained.¹⁸¹ It is possible for Member States to provide more protective measures in national law. In this section, we discuss only the best practices that were not discussed in the section on European Community law.

It is important to clarify that the Insurance Distribution Directive (IDD) was originally to be incorporated within French law on February 23, 2018. However, that deadline was postponed until July 1, 2018.¹⁸² Furthermore, the French intermediaries have until October 9, 2018 to comply with the new IDD obligations that apply to them.¹⁸³

3.2.2 Regulators

In France, the l'Autorité de contrôle prudentiel et de résolution (ACPR) is mandated to ensure the stability of the financial system and the protection of consumers with regard to insurance products and also to regulate the actors in the insurance sector. ACPR is the regulatory body for several types of insurance, including life insurance and damage insurance. Its mandate is to ensure that those in the insurance sector respect legislation such as the *Code des assurances*, the *Code de la mutualité*, certain sections of the *Code de la consommation* and the *Code de conduite homologue*. It also ensures compliance with guidelines and best practices.¹⁸⁴

Le Bureau central de tarification (BCT) is the authority that administers mandatory insurance, such as automobile and medical insurance. Anyone who is refused compulsory insurance can

financial contribution from the Chambre de l'assurance de dommages and the Chambre de la sécurité financière, December 2016,, pp. 11 and 112.

¹⁸¹ Directives bind the Member States of the European Union by obliging them to incorporate their rights and obligations into their national legislation, in a timely manner. This is "indirect legislation," see Robert Schütze, *European Union Law*, Cambridge (UK), Cambridge University Press, 2015, p. 96.

¹⁸² European Parliament, "Directive of the European Parliament and the Council of Amending Directive (EU) 2016/97 as regards the dates of implementation of Member States' transposition measures" March 9, 2018, <http://data.consilium.europa.eu/doc/document/PE-1-2018-INIT/en/pdf> and <http://www.consilium.europa.eu/en/press/press-releases/2018/03/09/insurance-distribution-council-delays-application-of-new-rules/>

¹⁸³ L'Argus de l'Assurance, "Directive distribution d'assurances (DDA) : son application officiellement reportée" March 9, 2018.

¹⁸⁴ <https://acpr.banque-france.fr/en>

contact the BCT, which will determine what the minimum premium should be for an insurer to agree to insure them against the risk.¹⁸⁵

3.2.3 Legislation

At the national level, insurance law is governed by several laws, including the *Code des assurances*, the *Code Civil* and some sections of the *Code de la consommation*. The purpose of the *Code des assurances* is protect consumers. It therefore limits the contractual freedom of the parties, stipulating that the parties may not agree to derogate from it.¹⁸⁶ Moreover, Article 132-1 of the *Code des consommateurs* prohibits abusive clauses in contracts between professionals and non-professionals.¹⁸⁷ According to some authors, this article applies to insurance contracts.¹⁸⁸ There are also numerous other directives and harmonization agreements that insurers must comply with. In addition, the case law plays an important role in overseeing the sector.

3.2.4 The insurance contract

The insurance contract is subject to certain formal obligations. These obligations result both from EC directives and French law. The contract must be in writing¹⁸⁹ and the policy must set forth the clauses of the contract.¹⁹⁰

The insurance contract is a contract concluded in good faith.¹⁹¹ Unlike what happens in the three Canadian provinces analyzed previously, this is not a contract of the utmost good faith. Nevertheless, in France, the parties must proceed with loyalty.¹⁹² Insurers have to rely on the statements of the insured, for example, when they describe their property.

Note: in France auto insurance is mandatory; home insurance is too, but only for tenants.¹⁹³ Community law states that when a State imposes compulsory insurance, the contract must be in compliance and minimum guarantees must be respected. In auto insurance, the State requires that certain clauses be standardized.¹⁹⁴ Unlike in other jurisdictions, French consumers may

¹⁸⁵ <http://www.bureaucentraldetarifification.com.fr>

¹⁸⁶ Hubert Groutel, *Droit des assurances*, Les mémentos Dalloz, 13th edition, 2015, p. 11

¹⁸⁷ The French legislator uses the term “professional,” which is similar to the concept of “merchant” and the term “non-professional,” which may include the notion of “consumer” as defined by Canadian consumer law.

¹⁸⁸ Hubert Groutel, *Droit des assurances*, Les mémentos Dalloz, 13th edition, 2015, p. 12.

¹⁸⁹ S. 112-2 of the *Code des assurances*.

¹⁹⁰ S. 112-2 of the *Code des assurances*.

¹⁹¹ Yvonne Lambert-Laurent Favre and Leveneur “Insurance Law “13th edition, 2011, p. 123

¹⁹² Art. 1134 of the *Code Civil*.

¹⁹³ Book II of the *Code des assurances*.

¹⁹⁴ S. L. 111-4 of *Code des assurances*.

terminate their auto insurance and home insurance policies without paying any fees or penalty. The purpose of this is to allow consumers to switch insurers, which may also help promote competition¹⁹⁵.

French law incorporates Community law in instances involving distance contracts. This includes the requirement to describe the different types of contracts, ways of correcting errors, ways of conserving documents, the conditions for accessing documents, and explanations about the double clicking rule (this rule stipulates that when consent is given by a “click” it is followed by an acknowledgment of receipt). It should be noted that insurance laws are supposed to be technologically neutral.¹⁹⁶

3.2.5 The duty to advise

French intermediaries have a duty to give their customers advice. Accordingly, they must offer products appropriate to their needs and explain why they chose to propose these products. They must also inform them of the risks involved in cases of false declaration. Finally, they have the obligation to ensure that their customers are not found to be without warranty, which would result in their incurring civil liability.¹⁹⁷

3.2.6 The obligations of the insured

It is important for the insured to disclose information. Insurers depend on this information to insure them against the risk and determine the amount of the premium. The duty to inform requires informed consent, which is one of the conditions for the formation of a contract.¹⁹⁸

It is interesting to note that before 1989, the customer was required to provide certain information even without specific questions by the insurer.¹⁹⁹ In 1989, the legislature intervened to abolish the rule of spontaneous declaration.²⁰⁰ Accordingly, the customer is under no obligation to provide information to the insurer in the absence of a specific question.²⁰¹ The role of the customer is passive; they need only answer questions and not make any false statements.²⁰²

¹⁹⁵ *La Loi Hamon* s. L.310-8 and Yvonne Lambert- Favre and Laurent Leveneur, *Droit des assurances*, 13th edition, 2011, p. 123.

¹⁹⁶ Yvonne Lambert- Favre and Laurent Leveneur, *Droit des assurances*, 13th edition, 2011, pp. 205-206 and JuriClasseur, *Pratique des assurances du particulier*, 2013, p. 548.

¹⁹⁷ Yvonne Lambert- Favre and Laurent Leveneur, *Droit des assurances*, 13th edition, 2011, p. 124-127.

¹⁹⁸ Bernard Beignier and Sonia Hadj Yahia, *Droit des assurances*, 2nd edition, L.G.D.J. 2015, p. 215.

¹⁹⁹ Hubert Groutel, *Droit des assurances*, Les mémentos Dalloz, 13th edition, 2015, p. 71

²⁰⁰ *La loi du 31 décembre 1989* and Bernard Beignier and Sonia Hadj Yahia, *Droit des assurances*, 2nd edition, L.G.D.J. 2015, p. 215.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

To determine the insurable risk, the insurer must ask precise questions. He cannot rely on the fact that the insured gave a vague answer if his question was general.²⁰³

3.3 The United Kingdom

There are three sources of law in the United Kingdom: National Law, Community Law and Common Law. As stated above, any State that is part of the European Union is obliged to incorporate EU law into its national law, and there is a minimum threshold to be attained. Since the majority of European Community law had been integrated into National Law before the vote in favour of Brexit in June 2016, several British experts claim that, as far as consumer protection is concerned, in the short term at least, things should remain as they are.²⁰⁴

3.3.1 The regulators

The financial products and services sector in the UK was formerly regulated by the Financial Services Authority (FSA) under the *Financial Services and Markets Act 2000* (FSMA). Since 2012, the FSA has been divided into three bodies, the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Financial Policy Committee (FPC).

The FCA's mandate is to ensure healthy financial markets. It does this by ensuring consumer protection and the integrity of the financial system and by promoting healthy competition. To achieve these objectives, it is given many powers: it can prohibit companies from distributing certain products, undertake major studies on various topics, and compile data on consumer complaints made to various organizations, including the Financial Ombudsman Service (FOS). This organization, which has been in existence since 1981, is independent and impartial. It acts in an expert capacity to solve problems with financial products and services, including insurance. Last year, it helped nearly 2 million consumers.²⁰⁵

²⁰³ In one case, the insurer asked a woman if she had any problems that prevented her from working when she applied for insurance. She said she did not, even though she had undergone a double mastectomy two years earlier. This did not constitute false representation, since the question implied "unable to work" at the time she applied.

²⁰⁴ Annik Bélanger-Krams, *Option consommateurs, "Protection des consommateurs et distribution de produits d'assurance en ligne : des enjeux inconciliables?"* Research conducted thanks to a financial contribution from the *Chambre de l'assurance de dommages* and the *Chambre de la sécurité financière*, December 2016, p. 45

²⁰⁵ <http://www.financial-ombudsman.org.uk/about/index.html>.

3.3.2 Legislation

The aim of the FSMA is to ensure stability and confidence in the financial services sector.²⁰⁶ It requires and firms to be licensed and authorized to carry on regulated activities such as insurance, unless they benefit from an exemption.²⁰⁷

There are also the High Level Standards (HLSs), which apply to entities regulated by the FCA. These standards state that a firm must:

- conduct its business with integrity;
- conduct its business with due skill, care and diligence;
- take reasonable care to organize and control its affairs responsibly and effectively with adequate risk management systems;
- establish appropriate norms to ensure that consumers' interests and information needs are taken into consideration;
- communicate information in a way that is clear, fair, and not misleading;
- take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment;
- protect consumers and their assets;
- deal with regulators in an open and cooperative way;²⁰⁸
- respect certain rules of solvency and prudential risk.²⁰⁹

For its part, *Senior Management Arrangements, Systems and Controls* aims to promote individual leadership in directors and senior management to ensure that companies comply with their statutory obligations. The legislation also sets forth the prerequisites for legal entities and individuals wishing to engage in this sector as well as their ongoing training education obligations.²¹⁰

The *Insurance Conduct of Business Sourcebook* (ICOBS) imposes obligations on companies and intermediaries, particularly as regards the honest, fair and professional treatment of consumers. These obligations are applicable to both insurers and intermediaries. For example, in an advisory situation, they must make sure to present information appropriately in order to enable consumers to make informed decisions. Intermediaries must also communicate with their customers in a clear, fair manner and not mislead them.²¹¹ They may not limit their liability.²¹²

²⁰⁶ S. 3-6 FSMA.

²⁰⁷ S. 19 FSMA.

²⁰⁸ PRIN 2.1, FCA Handbook <https://www.handbook.fca.org.uk/handbook/PRIN/2/?view=chapter> John Lowry, Philip Rawlings and Rob Merkin, *Insurance Law: Doctrine and Principles*, 2011, p. 34

²⁰⁹ *Ibid.* P. 36.

²¹⁰ SYSC 3.1 Systems and Controls <https://www.handbook.fca.org.uk/handbook/SYSC/3/1.html> and John Lowry, Philip Rawlings and Rob Merkin, *Insurance Law: Doctrine and Principles*, 2011, p. 34

²¹¹ ICOBS 2.2.2, 2.2.3. PRIN 7.

They must process claims quickly, fairly and with diligence.²¹³ They may not refuse a claim or reduce it except in cases permitted by law.²¹⁴ Finally, they must establish complaint and dispute settlement mechanisms²¹⁵.

Note: Mediation can only be performed by a licensed individual who is registered with the regulator. Mediation can be defined as the activities involved in introducing, proposing or carrying out other work preparatory to the conclusion of insurance contracts, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. Mediation and advising must be performed in compliance with a specific set of standards.²¹⁶ Intermediaries must act in the consumers' interests. They have obligations of competence and diligence. They have the duty to inform and advise. They must follow the customer's instructions. They must provide a product that meets the customer's wishes and instructions. They should explain the main features of this product, such as its coverage and exclusions. If this is not possible, they should inform the customer and obtain new guidelines.²¹⁷ Note: the obligations of UK brokers are less stringent than those of brokers in France and Québec. However, they often involve more than what is imposed on them.²¹⁸ The obligations set forth in the ICOBS also apply to intermediaries.²¹⁹

In another vein, it should be noted that the question of reading the conditions for online agreement has been a source of much debate. In the UK, the fact of simply clicking on "I agree" is probably insufficient to comply with the *Unfair Terms in Consumer Contracts Regulations 1999* (UTCCR), which was replaced by the *Consumer Rights Act 2015*. UTCCR incorporates the legal bases of *Directive S3/13/EEC on Unfair Terms in Consumer Contracts*.²²⁰

²¹² ICOBS 2.5.1.

²¹³ ICOBS 8.1.1.

²¹⁴ ICOBS 8.1.2. and John Lowry, Philip Rawlings and Rob Merkin, *Insurance Law: Doctrine and Principles*, 2011, p. 36.

²¹⁵ John Lowry, Philip Rawlings and Rob Merkin, *Insurance Law: Doctrine and Principles*, 2011, p. 44.

²¹⁶ 5.3 *The Perimeter Guidance Manual* (ERG), 5.16.2. PERG 5.6.2. ERG.

²¹⁷ *Ground Gilbey Ltd. v. JLT UK Ltd.* [2011] EWHC 124, *Youell v. Bland Welch & Co Ltd* (No. 2) [1990]. Lloyd's Rep 431 (the "Superhulls Cover" case), *Dunlop Haywards Ltd v. Barbon Insurance Group Ltd.* [2009] EWHC 2900 and John Lowry, Philip Rawlings and Rob Merkin, *Insurance Law: Doctrine and Principles*, 2011, pp. 28 and 29.

²¹⁸ Interview conducted with David Sparkes of the British Insurance Brokers' Association in the context of the study by Annik Bélanger-Krams, *Option consommateurs, "Protection des consommateurs et distribution de produits d'assurance en ligne : des enjeux inconciliables?"* Research conducted thanks to a financial contribution from the *Chambre de l'assurance de dommages* and the *Chambre de la sécurité financière*, December 2016.

²¹⁹ John Lowry, Philip Rawlings and Rob Merkin, *Insurance Law: Doctrine and Principles*, 2011, p. 175.

²²⁰ John Lowry, Philip Rawlings and Rob Merkin, *Insurance Law: Doctrine and Principles*, 2011, p. 175.

3.3.3 The obligations of the insured

Previously, insurance policies were considered to be contracts in utmost good faith. The insured had to disclose all relevant information to the insurer. In the UK, this obligation, which is derived from the *Marine Insurance Act* of 1906, was based on the jurisprudence of the eighteenth and nineteenth centuries, at which time the insurer was at a disadvantage and had no means of determining the insurable risk.

The problem is that in the absence of specific questions, customers lacked the knowledge to understand what the insurer needed in order to calculate the insurance risk, which could sometimes lead to the claim being denied. Here is an example from the decision *Lambert v. Co-operative Insurance Society Ltd* concerning a lady who wanted to insure her jewellery collection. The lady had not disclosed to the insurer that her husband had been convicted of stealing cigarettes, for which offence he was ordered to pay a fine of £25. Following the theft of the lady's jewels, the insurer refused the claim on the grounds that she had not disclosed this information. The insurer's decision was upheld by the Court.²²¹

During a consultation process begun in 2006,²²² the Law Commission and the Scottish Law Commission recognized that the duty of utmost good faith and the obligation of declaration were no longer necessary in insurance and that they were detrimental to consumers. The legislator also took into consideration the fact that the online distribution of insurance products and the use of price comparison sites could increase the risk in such instances, as consumers are left to their own devices - and perhaps do not know what information to disclose.

These considerations led to the establishment of the *Consumer Insurance (Disclosure and Representations) Act* (CIDRA). Under CIDRA, it is the insurer who has the burden of demonstrating that a reasonable person would have known this information and would have disclosed it while answering questions. Thus, if the insured has made a "fair and reasonable" false representation, the insurer will pay the claim. If the policyholder acted imprudently while answering questions, and the insurer would not have insured the risk if the policyholder had answered correctly, the CIDRA states that the insurer may cancel the contract and refund the amount of the premium. Finally, if the insured's misrepresentations were made deliberately or negligently, the insurer may cancel the contract and keep the premiums.²²³

²²¹ *Lambert v. Co-operative Insurance Society Ltd*, [1975] Lloyd's Rep 431.

²²² See the 2009 report: <https://www.scotlawcom.gov.uk/files/3512/7989/6641/rep219.pdf>. A report on the implementation of the proposals was published in 2012: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/247112/1900.pdf

²²³ The consumer should not make any misrepresentation. CIDRA s. 2. "Reasonable care" is defined in s. 3 (1) of CIDRA and the remedies available to insurers are described in section 4 (1) (a) and (b). "Misrepresentation" is defined in s. 5 (1) (a) of CIDRA and it is up to the insurer to show that it was

One other new law is also of interest: the *Insurance Act 2015* (IA). While CIDRA abolishes utmost good faith for pre-contractual representations and renewal,²²⁴ the IA abolishes all contractual steps. The IA applies to mixed contracts, for example for a car that is used for both personal and commercial purposes. It also applies to all commercial insurance and all businesses. By abolishing the rule of utmost good faith, the IA states that a contract cannot be cancelled based on the fact that the other party did not comply with the requirement of utmost good faith.²²⁵ One might be tempted to believe that the changes brought about by CIDRA and the IA enhance consumer protection regardless of the distribution channel used, including insurance PCWs. In fact, some PCWs that connect consumers and insurers believe that they involve very little risk of false declarations being made.²²⁶ This is not necessarily true. When insurance PCWs allow the consumer to fill in an online form and send it to the insurance company, there is a risk that the consumer will make a false statement. In this case, it is highly likely that CIDRA would apply.²²⁷

Finally, on December 14, 2017, the Scottish Court of Session reached an initial decision on CIDRA with regard to insurance PCWs. In this case, the policyholder took out auto insurance via an insurance PCW. In doing so, he gave one of his two addresses. Now, in giving that address, he was given a lower premium than if he had given another address. The insurer denied the claim on the grounds that the policyholder had made a false statement. The judge ruled in favour of the policyholder, believing that it is conceivable that a person can have multiple addresses. She stated that although the use of a PCW may be convenient, the insurance PCW does not make it possible to gather much information about the policyholder. Here, the insurer had the burden of asking the policyholder a specific question.²²⁸

“deliberate or reckless” under s. 5 (4) of CIDRA. See also John Birds, Ben Lynch and Simon Milnes *MacGillivray on Insurance Law*, 2015, pp. 544-545.

²²⁴ Also John Birds, Ben Lynch and Simon Milnes *MacGillivray on Insurance Law*, 2015, pp. 544-545.

²²⁵ S. 14 IA 2015.

²²⁶ Out-Law.com, *The Consumer Insurance Act*, pp. 6-7

²²⁷ *Ibid* and Annik Bélanger-Krams, Option consommateurs, “Protection des consommateurs et distribution de produits d’assurance en ligne : des enjeux inconciliables?” Research conducted thanks to a financial contribution from the Chambre de l’assurance de dommages and the Chambre de la sécurité financière, December 2016, p. 54.

²²⁸ *Southern Rock Insurance Company Limited v. Hafeez* [12017] CSOH 127.

3.4 Australia

3.4.1 The regulators

In Australia, apart from a few exceptions,²²⁹ the insurance sector falls under federal jurisdiction. It is overseen by two regulators.

The Australian Prudential Regulation Authority (APRA) supervises insurance companies that offer general insurance, life insurance and health insurance, with regard to their financial obligations. Accordingly, insurers must be licensed by the APRA to offer insurance products within Australia. The *Insurance Act 1973*²³⁰ dictates the minimum capital and solvency that companies must maintain, and the APRA ensures enforcement.

The Australian Securities and Investments Commission (ASIC), for its part, ensures consumer protection. It oversees the actors in the field of insurance, including insurers, brokers, agents and insurance distributors.²³¹ These actors must have a license or qualify for an exemption.²³² The ASIC also ensures the smooth conduct of business with regard to the fair treatment of consumers by the actors specified in the *Insurance Contracts Act* adopted in 1984.²³³ The ASIC has a dispute resolution procedure and agencies mandated to apply it, one of which is the Financial Ombudsman Service.²³⁴

3.4.2 Responsibilities of insurers and policyholders

The insured have the obligation of making disclosures in good faith. The insurer must also act in good faith.²³⁵ Insurers are prohibited from making false and misleading representations or exhibiting unfair or unreasonable conduct. In addition, disclosure has been the subject of several government and private studies in recent years, as industry and government bodies seek to improve consumer protection by clarifying its parameters.

In 2011, the financial services sector conducted a comprehensive reform aimed at standardizing rules to better protect consumers²³⁶. It was at the time of this reform that the current disclosure

²²⁹ For example, compensation insurance for work injuries, which comes under state jurisdiction.

²³⁰ *Insurance Act 1973*, No. 76, 1973.

²³¹ ASIC Website <http://www.asic.gov.au/>.

²³² *Insurance Regulation in Asia Pacific - Ten Things to Know about 20 countries*, Norton Rose Fulbright, 2018, p. 6.

²³³ *Insurance Contracts Act 1984*, No. 80, 1984 Compilation No. 24.

²³⁴ *Australia's general insurance industry: sapping consumers of the will to compare*, Australia Senate p. 10.

²³⁵ *Insurance Contracts Act 1984*, s.13 (1).

²³⁶ *Financial Services Reform Bill*, 2001, C2004B00956.

requirements for insurers and intermediaries were introduced. When customers deal directly with insurers, the latter are required to provide them with a document, the *Product Disclosure Statement* (PDS), that explains the features of the insurance product, including its limitations and exclusions.²³⁷ The ASIC has produced a guide listing best PDS practices.²³⁸

When a sale is concluded via an intermediary, including a broker, the latter must provide the consumer with another document, the *Financial Services Guide*. This document contains, in addition to the items specified in the PDS, information on the remuneration system in place as well as potential conflicts of interest.²³⁹

In 2012, the *Insurance Contract Act 1984* was the subject of an amendment requiring insurers offering home insurance to provide their customers with a one-page document containing key elements of the proposed insurance product (Key Facts Sheet). The information that has to be included on this sheet is prescribed by regulation; the same goes for the font used, the size of the characters and the colour of the text.²⁴⁰ Interestingly, insurers who operate a publicly accessible website must preserve the most recent versions of all documents, and they must be downloadable at any time.

Then in 2014, the Insurance Council of Australia (ICA)²⁴¹ produced a voluntary code of conduct for its members: the General Insurance Code of Practice (GICP). This code sets forth the standards that insurers must follow when providing services to the insured and touches on various aspects of their practice, such as the time allowed to process a claim or the insurance companies' internal complaint procedure.²⁴²

A study commissioned by the Department of the Treasury, published in 2014, states that disclosure of information is not always enough to lead consumers to make informed decisions.²⁴³ In 2015, the ICA set up a working group to study the insurers' obligation of disclosure in the field of general insurance.²⁴⁴ The report²⁴⁵ contains a number of findings and recommendations. In particular, it recommends taking into account the ability of consumers to

²³⁷ *Corporations Act*, s. 1012C.

²³⁸ *Regulatory Guide 168*, "Disclosure: Product Disclosure Statements (and other disclosure obligations)," ASIC 2011.

²³⁹ *Corporations Act 2001* para. 942C (2) (f).

²⁴⁰ *Insurance Contracts Regulation 2012* (No. 2).

²⁴¹ The CIA represents the interests of the insurance domain and its stakeholders, including insurers and their intermediaries, to the government.

²⁴² "Insurance Council kicks off fresh review of industry Code of Practice," Insurance Council of Australia, February 2017, p.1.

²⁴³ *Financial System inquiry*, Department of the Treasury of Australia, 2014 and *Financial System Inquiry, Final Report*, November 2014, p. 193.

²⁴⁴ "ICA Launches Effective Disclosure Taskforce" ICA media release, 2015

²⁴⁵ "Too Long; Didn't Read: Enhancing General Insurance Disclosure Report," ICA 2015

understand the information disclosed in order to permit better understanding of the issues and more effective decision-making.

Finally, in 2016, the Senate Economics References Committee (the Committee) considered various issues related to general insurance. The committee consulted several bodies and reported its findings in November 2017. There were several criticisms and recommendations for improving the situation, some related to disclosure.²⁴⁶ The Committee first recommended disclosing the price of each component of the premium to be paid, in order to improve transparency and help consumers be better informed about the sources of risk perceived by the insurer. This would make it easier for consumers to understand how the amount of the premium to be paid is determined.²⁴⁷

The committee also recommends that PDSs be better regulated, because although they contain information, they are poorly presented. PDSs are often large and complex, and they use terminology that leaves room for interpretation.²⁴⁸ In addition, although a so-called standard coverage has been established for certain types of insurance, insurers have to indicate in the PDS that they waive the minimum level of coverage for this exception to be valid.²⁴⁹

3.4.3 Regulation of insurance PCWs

There are two types of PCW in Australia: sites managed by private companies and sites managed by government agencies. The ICA says that the insurance PCW is a platform that acts as an intermediary between insurers and consumers. The latter generally have to provide certain personal information online so that information on the insurance products to be compared can be sent to them.²⁵⁰ Although the law contains no provisions specifically targeting private insurance PCWs, they are dealt with in various best practice guides.

In 2012, the ASIC stated that PCWs provide financial services and must be licensed. It also stated that these sites are subject to the consumer protection laws in force in Australia.²⁵¹ So that year the ASIC published a guide for organizations offering financial products - including insurance products - to help them meet their legal obligations with regard to misrepresentation and good

²⁴⁶ *Australia's general insurance industry: sapping consumers of the will to compare*, Australia Senate p. 10.

²⁴⁷ *ibid.*, p. 33.

²⁴⁸ *ibid.*, p. 34.

²⁴⁹ *ibid.*, p. 35.

²⁵⁰ *ibid.*, p. 43.

²⁵¹ 12-304MR – “ASIC Warns comparison websites,” ASIC, 2012

conduct.²⁵² It includes a list of best practices they should adopt to ensure compliance with the law.²⁵³

One section of the guide deals with PCWs. It specifies the type of information that should be disclosed and states that this should be phrased very explicitly. For example, in the case of PCWs, all the PCWs' business relationships, the nature of these and the method of classifying results should be listed; there should also be a list of all fees charged (including commissions, reference fees and compensation fees). The guide also suggests adding a visible warning to indicate that the PCW does not offer the products of every insurer. It also suggests that when every feature of a product is not covered in the comparison, this should be clearly stated.²⁵⁴

In addition, the Australian Competition and Consumer Commission (ACCC)²⁵⁵ has also published a voluntary guide applicable to every type of insurance PCW.²⁵⁶ This guide aims to encourage the administrators of these sites to respect the *Competition and Consumer Act 2010*. It is also designed to provide a positive experience for consumers and promote ethical online trade.²⁵⁷

During the Senate consultation of 2016, several stakeholders in the insurance sector voiced their concerns in relation to private price comparison sites. Among these was the disclosure of the PCWs' modes of remuneration and their business relationships, which are factors that could influence what is presented to consumers. In fact, most of the participants in the consultation, including the ACCC, agreed that business relationship should be disclosed unequivocally.²⁵⁸ They argued that such disclosure should be mandatory, which is also what the consultation report recommends to the legislator.²⁵⁹

Finally, it should be noted that some PCWs have been developed by government agencies. For example, ASIC has set up a damage insurance PCW in the North Queensland region, which is known for its high rate of natural disasters. Interestingly, the site, which is said to be independent, urges consumers to think carefully about all the features of the insurance product, not just its price.²⁶⁰

²⁵² *Regulatory Guide 234 Advertising financial products and services (Including credit): Good practice guidance*, 2012 ASIC

²⁵³ *Regulatory Guide 234* RG 234.9

²⁵⁴ *Regulatory Guide 234* RG 234207-234211

²⁵⁵ The ACCC ensures that businesses and individuals, whether in the financial sector or not, comply with the requirements of consumer protection and antitrust laws, including the *Competition and Consumer Act 2010*.

²⁵⁶ *The comparator website industry in Australia*, ACCC, 2014

²⁵⁷ *Australia's general insurance industry: sapping consumers of the will to compare*, p. 14.

²⁵⁸ *Ibid.* p. 59.

²⁵⁹ *Ibid.* p. 62.

²⁶⁰ *Ibid.* p. 57.

One PCW is also administered by the Private Health Insurance Ombudsman. This site uses the Standard Information Statements prescribed by law, which summarize the characteristics of insurance products.²⁶¹ Note that health insurance premiums are regulated and increase annually. Price is not a key factor when it comes time to choose to do business with one rather than another. This activity sector is also tightly regulated and the products offered within it are standardized, making comparison relatively easy.

3.5 The United States

Insurance regulation in the U.S. comes under the jurisdiction of each state, except for certain items such as health insurance or flood insurance, which are regulated federally.

The Federal Insurance Office (FIO), which reports to the Treasury Department, is authorized to monitor the entire insurance industry in the United States. It is also responsible for identifying gaps in the regulations of each state. Every U.S. state has an agency (State Insurance Department) that acts as the regulator in the insurance sector. These agencies are funded by insurance companies and contributions from the various stakeholders in the sector.²⁶² They may become members of the National Association of Insurance Commissioners (NAIC), a voluntary association whose aim is to promote regulatory coordination between states.²⁶³ It is nonetheless the responsibility of the State Legislatures to legislate in all matters related to the insurance sector.²⁶⁴ All the actors in this sector must obtain a permit from the state regulator.²⁶⁵

Certain states seek to procure good protection for consumers. In life insurance for example, the New York Department of Financial Services (NYDFS) plans to impose a fiduciary duty on brokers that would oblige them to take the interests of their customers into account. Brokers must now provide consumers with sufficient information to permit them to compare products. In addition, measures have been set in place to counter financial abuse and misrepresentation.

Similarly, in 2017, the Delaware Department of Insurance proposed that operatives in the fields of life, drug, and disability insurance provide a written analysis of the adequacy of the proposed insurance product, and that this be done prior to issuing the policy. The same kind of initiative is under way in Nevada, a proposal to this effect having been filed by the Nevada Division of Insurance in January 2018.

²⁶¹ *Ibid.* p. 56.

²⁶² *Insurance and Reinsurance Law Review* p. 439

²⁶³ *Id.*

²⁶⁴ *Insurance and Reinsurance Law Review* p. 440; John Dembeck, Debevoise & Plimpton, 2008, pp. 3-14

²⁶⁵ Caitlin Bronson "Are you an agent or a broker? It matters in a fiduciary duty lawsuit," *Insurance Business America*, December 11, 2014 <https://www.insurancebusinessmag.com/us/news/marine/are-you-an-agent-or-a-broker-it-matters-in-a-fiduciary-duty-lawsuit-17730.aspx> and *Insurance Regulation in a Nutshell*, Debevoise & Plimpton, 2008, p. 17

Note also that several states prohibit discrimination based on race, religion and nationality. This is the case in California, New Jersey, New Mexico, Texas, Wisconsin and the states of New York and Washington. Some states also prohibit discrimination based on sexual orientation, including California, Delaware, Vermont and Washington.

Our analysis of the legal framework in the United States did not allow us to verify these facts, nor did it permit us to identify interesting practices that might be applicable to the context of insurance PCWs in Canada.

On the other hand, several states have their own insurance PCWs. The NAIC identifies two forms of insurance PCWs: static sites and interactive sites. The static websites provide a list of insurers accredited by the state insurance department accompanied by predetermined, user-friendly scenarios. The interactive sites permit consumers to customize information based on their own situation. It will be noted that interactive websites are now far more common than static ones.²⁶⁶ The NAIC emphasizes that the comparison tool should not focus only on price, but present all the characteristics of the insurance product, the quality and level of service offered by each company and the extent of the coverage.²⁶⁷

²⁶⁶ *Best Practices for Developing a Premium Comparison Tool*, 2013, National Association of Insurance Commissioners (NAIC), p 23.

²⁶⁷ *Best Practices for Developing a Premium Comparison Tool*, 2013, National Association of Insurance Commissioners (NAIC), p.1.

4 Analysis of insurance price comparison websites

4.1 Methodology

After discussing the issues raised by insurance PCWs and their legal framework, we now turn to a descriptive analysis of a selection of insurance PCWs used by Canadian consumers.

The selection was made from the list of insurance PCWs presented in Section 1. We chose PCWs that offer consumers comparisons of three major types of insurance: auto insurance, home insurance and life insurance. We then selected five insurance PCWs as the focus of our study: Kanetix, RateSupermarket.ca, InsuranceHotline.com, ClickInsurance and LowestRates.²⁶⁸ In order to analyze these insurance PCWs²⁶⁹ a set of questions had been developed based on the issues raised by the experts and the studies discussed in Section 1. The grid, presented in Appendix 2 of the French version of the report, is organized around four major themes:

1. The PCWs' business relationships;
2. Personal information management;
3. Information provided to consumers;
4. Offer of insurance products.

Note that our analysis of insurance PCWs takes into account only the information presented to consumers from the time they arrive at the site and the time that the comparison of insurance products appears. We did not continue the process until the end because it would have involved getting in touch with an agent or an insurance broker.

The main findings of our analysis are presented in the following sections.

4.2 PCWs' business relationships

Most of the PCWs in our selection present a list of insurers for comparison (RateSupermarket.ca is the only one that does not). They all, however, provide more or less the same information. In

²⁶⁸ Five of the PCWs identified in Section 1 (Kanetix, InsuranceHotline.com, RateSupermarket.ca, ComparaSave and Rates.ca) are affiliated with the same company (Kanetix Ltd.). We therefore decided to limit their number within our selection in order to obtain a better overview of the entire market. Note, however, that although these PCWs are affiliated with the same company, they do not all provide the same information and do not all use the same forms, terms of use or privacy policies.

²⁶⁹ Note also that we retained the typical scenarios for each type of insurance. For example, for home insurance, we requested a quote for a family of four people living in a condo in a complex of over 100 units. We knew, however, that this domain is mainly addressed to people living in a single family home with a backyard. In our scenario, we wanted to check whether the products were adapted to specific realities and the challenges they entail.

general, the list is presented on the home page, in a banner. One PCW, Kanetix, presents a table summarizing the rates of all the insurers compared, on a separate page.²⁷⁰

It may also be difficult to determine whether those listed are insurers or to brokers. For example, on the same page, ClickInsurance names insurers presented by their partners and “partners.” After a while it becomes clearer that some of the partners mentioned are, in fact, insurance brokers or agencies, but this would not be clear to a consumer who does not have a good understanding of the differences between the various players in the insurance industry.

In every case, it is difficult to ascertain how much of the market the insurers compared actually cover. Even though insurance PCWs display lists on their websites of insurers with whom they do business, it is difficult for a consumer to know if these lists are comprehensive and contain all the players in a given sector. For example, in auto insurance, InsuranceHotline.com compares offers from 30 insurers, but only gives a detailed list of 14 of them. When we viewed the website of ClickInsurance, we noted that among the insurers named, there are no financial institutions, whereas it is well known that several Canadian financial institutions offer a variety of insurance products.

Generally, insurance PCWs do not clearly state their method of remuneration. Most of the time, no mention is made to consumers. For instance, the insurance PCW RateSupermarket.ca lists a series of statements under the heading “How do we make money?” However, it does not answer this question at all: it merely informs consumers that the comparison service is free for them. Another insurance PCW, ClickInsurance, limits itself to saying that its service is “neutral.” When this is specified, the information is not easily accessible since it is often contained inside the terms of use located at the bottom of the page. For example, this is where the PCW LowestRates states: “We are paid by charging those third party providers a fee and/or commission.”

Note that the majority of insurance PCWs offer affiliated services that enable third parties to be remunerated if they manage to direct more traffic to their insurance PCW. Kanetix explains this simply by stating: “you add a link or banner to your website. When your visitors click through the link and complete a quote, we will pay you for each valid lead.”²⁷¹ It is therefore not surprising that insurance PCWs lead consumers to other insurance PCWs; e.g. LowestRates.ca, directs consumers who want home insurance towards ClickInsurance.

Several PCWs post advertisements. These are relatively discreet, however. Kanetix is an exception; an advertisement opens at each “click” leading to the next step in a submission. Typically, the ads are related to insurance or banking services.

²⁷⁰ https://www.kanetix.ca/about_suppliers_gen

²⁷¹ <https://www.kanetix.ca>

4.3 Privacy

Information relating to customers' personal information is described in the privacy policy found at the bottom of insurance PCW pages.

The information collected is extensive, and affects most of the consumer's interactions with the PCW. For example, LowestRates says:

Due to the nature of some of these activities, we may collect personally identifiable information that you submit such as your name, contact data (address, email address, phone number), gender, social insurance number, driver's license number, income level and other financial information, license information, username, password, age or date of birth and employment information. We may also collect additional personally identifiable information that you voluntarily include in your postings or transmit with your communications to us. Other users will be able to view who has posted certain content or documents.

It states that after consumers give their consent, the data is transferred to third parties for the preparation of insurance product offerings. Kanetix is reassuring in this regard, stating: "This information, along with the other details you have provided, will only be used to provide services you specifically request. They will not be used for any other reason." It also states:

We forward this information to the insurance company who will be reviewing your application or underwriting your policy. If you agree to purchase a policy from the insurance company, it may use your personal information for the purpose of fulfilling the requested insurance transaction and for future contact in accordance with the terms and conditions of its own privacy policy. "

When it comes to home and auto insurance, some PCWs ask consumers to give their consent to a credit check in order to obtain the "best deals." In these cases, the information given to consumers about the consequences of credit checks is unclear. For example, according to ClickInsurance, the authorization is valid for both the PCW and its partners, whereas for Kanetix, authorization "may be required by some insurers." Only Kanetix notes that this authorization will not affect the credit score; in doing so, however, it does not mention how many insurers will have access to this information, nor for how long, or whether the information will be destroyed after a certain period of time. This means that consumers are agreeing to give their consent for access to information that may be exposed to identity theft without their knowing how this consent will be used.

PCW Privacy Policies usually specify that they use cookies²⁷² to customize the offers on the website.

²⁷² Definition of cookie by Canada's Privacy Commissioner: "A cookie is a small piece of text that is placed on a user's computer when visiting a website. Cookies can be used to track what sites users visit and what they do on them. From this information, third parties, such as advertisers, can build profiles of users that

They rarely specify whether the data is sold. LowestRates says:

We will not sell your personally identifiable information to any company or organization except we may transfer your personally identifiable information to a successor entity upon a merger, consolidation or other corporate reorganization in which LowestRates.ca participates or to a purchaser of all or substantially all of LowestRates.ca's assets to which this site relates.

The privacy policies usually provide some details relative to data security. For example, PCWs typically indicate whether communications are encrypted by Secure Sockets Layers (SSL) protocol. However, Kanetix states as follows: “While we strive to use commercially acceptable means to protect your personal information, we cannot guarantee its absolute security.” The PCWs usually post the acronyms of data security certificates such as Entrust and Truste.

Finally, interestingly, only Insurance Hotline provides information for contacting a Privacy Officer within the company. This privacy officer, according to the *Protection of Personal Information and Electronic Documents Act*²⁷³ is the person within a company, who is responsible for ensuring the privacy protection.

4.4 Information provided to consumers

Although the PCWs sometimes provide some information of a technical nature, such as explanations of terms relating to insurance, they do not suggest that consumers consult other sources of information. For example, LowestRates has a help center that provides brief explanations of issues related to insurance products.

Similarly, no explanation is ever offered to consumers concerning what their remedies are in the event of a problem, either in the conditions, or in the subscription questionnaire.

PCWs do not usually indicate that they are registered as a firm with the regulator. When they do so, this information is difficult to find. For example, Ratesupermarket states that it is registered in Ontario and British Columbia, but this information is located at the bottom of the “About us” page. ClickInsurance is registered as a firm with the AMF; however, it is impossible to find this information on the company’s website. To do this, we had to go to the AMF website. This information is important because ClickInsurance is a tool that supposedly protects consumers.

can then be used to place specific advertisements on the websites those users visit.” For more details, see.:<https://www.priv.gc.ca/en/privacy-topics/technology-and-privacy/cookies/>.

²⁷³ SC 2000, c. 5, Schedule 1, s. 5, Principle 1.

PCWs sometimes specify that they do not provide advice. For example, ClickInsurance posts the following disclaimer:

This article is intended for information purposes, with the sole objective of providing food for thought. Under no circumstances should it be construed as advice regarding insurance solutions. Only a duly certified insurance professional is qualified to analyze your personal situation, discuss your needs with you and advise you on insurance solutions.

This disclaimer is reproduced in small print at the top of every page in the Helpful Information section.

It should also be mentioned that in the context of home insurance, the PCWs we consulted asked for a lot of information for the purposes of the insurance quote; the forms were several pages long.

4.5 Insurance products offered

When PCWs present their comparison of insurance products, the focus is on price, since it is often the only information the consumer is given. To get more information, users have to click on the word “more” in small print. Interestingly, Kanetix presents the various offers in the form of a table, which makes comparison easier.

Users may sometimes get the impression they are being pushed to buy insurance products. Consumers are directed to “secure this rate” or “get this rate.” Among the PCWs we consulted, not one permits the purchase to be made directly online; the consumer has to contact an agent or broker to conclude the transaction. Also, at the end of the process, a pop-up may appear to remind consumers to contact the representative.

Some insurance PCW propose riders to consumers, but it is not always clear whether these truly are riders. For example, in a quote submission for home insurance, Insurance Hotline and RateSuperMarket ask the question: “Do you have any bicycles, fine art, furs, golf clubs, jewellery, or non-professional musical instruments that require additional protection?” Whether consumers answer yes or no to this question, they are not asked for any further information.

In another quote submission, ClickInsurance asks consumers if they wish to obtain an additional amount of coverage. If so, the consumer must choose from among predetermined amounts (\$2,500, \$5000, \$10,000, \$15,000, \$20,000, \$25,000). There is no mention here of what the additional amount will cover. ClickInsurance also asks consumers if they wish to obtain “coverage for water damage.” Here again, it is unclear whether this is an rider or a protection that could be included in the contract. Such protection is important when buying home insurance, since damage caused by water can represent a huge expense for consumers.

5 Interviews with consumers

5.1 Methodology

To complete our overview of the issues raised by insurance PCWs in Canada, we wanted to learn about the experiences and perceptions of Canadian consumers with this type of tool. For example, what insurance products do they have? Do they use insurance PCWs when they shop for insurance products? What is their opinion of these? What do they believe are the advantages and disadvantages of comparison websites?

We conducted interviews on two occasions with about 150 Canadian consumers from across the three provinces whose legal frameworks were analyzed in Section 3: Québec, Ontario and British Columbia. The first round of interviews took place before the participants consulted an insurance PCW, the second afterwards.

The French and English questionnaires were developed by Option consommateurs and are presented in Appendices 2 and 3.²⁷⁴ The questions posed to participants in the two sets of interviews were inspired by the study conducted by the Financial Conduct Authority (FCA) and issues raised by our experts, which we presented in Section 2.

Participants were first asked about their consumer habits with regard to insurance products, how they learned about such products and their experience and perception of insurance PCWs. They then had to consult one of four proposed PCWs: ClickInsurance, Kanetix InsuranceHotline.com, or RateSupermarket.ca. During the second round of interviews, they were asked to describe their experiences and give their opinions, including the advantages and disadvantages of such tools.

Analysis of the results was completed by the polling firm BIP. This analysis and a presentation of the methodology appears in Appendix 4 of the French version of the report. In the remainder of this section, we present the most interesting results of the survey.

²⁷⁴ In analyzing the results, we encountered a problem with the choice of responses available to respondents to determine their level of education. The results have been regrouped to avoid the risk of misinterpretation.

4.6 Key elements

Here, in summary, is what the consumers we interviewed said on the various topics.

On their insurance buying habits:

The respondents possess a variety of insurance products. Most of them have group insurance, auto insurance and home insurance. Almost a third have more than six insurance products. Respondents from British Columbia or those working full-time were most likely to be in this situation. A majority of respondents have more than one insurer and about a quarter never change insurers.

On the likelihood of their changing insurers and learning about insurance offers:

Very few respondents change insurers on a regular basis (three years or less) and about a third do so following an increase in their insurance premium. About a quarter of respondents never inquire about insurance rates and another quarter inquire only upon renewal. When looking for information, the majority of respondents either consult insurance company websites or ask friends or relatives.

On their use of insurance PCWs:

Half of the respondents, mostly those 35 or younger or holding multiple insurance products, said they had consulted insurance PCWs to find out about the products offered. These respondents were most likely to use insurance PCWs for home and auto insurance. In contrast, only a minority would use an insurance PCW for critical illness insurance, disability insurance and salary protection insurance.

On their perception of the information on these insurance PCW:

The majority of respondents felt that the information provided by insurance PCWs is as reliable as that provided by insurance companies and brokers. Respondents appreciate the fact that insurance PCWs allow them to compare different insurance products in one place, that it is easy to choose an insurance product, that they are able to find low prices, that the process is simple and fast, and that it gives them more control over their choices. Respondents were almost unanimous that the insurance PCWs give a good idea of the products available on the market. The majority believe that some insurers may pay to be at the top of the PCW lists and that one needs to consult several PCWs to be properly informed.

On what they noticed about these insurance PCWs:

After using PCWs, a large majority of respondents noticed the corporate name of the insurance PCW, its role and the list of its partners. However, only a minority saw an indication that the insurance PCW was registered with a regulatory body, or that there was a physical address and contact information to be used in the event of complaints. The respondents mostly considered that the information provided on the insurance PCW was presented in easy-to-understand language. Also, the majority felt they had access to clear product descriptions, that they had obtained a summary of essential information about the proposed insurance products and that they had discovered how to contact someone in order to obtain more information.

On their perception of the role of the PCWs:

A majority of respondents perceive that the role of a PCW is to provide information and offer a service similar to that of an insurance broker. Also, a majority believe that insurance PCWs have business relationships with insurers. Nearly a third believe that insurance PCWs are neutral intermediaries. A large majority of respondents say they did not feel they were being pressured to buy an insurance product while they were consulting an insurance PCW.

On respondents' opinions about these insurance PCWs:

Respondents manifested a certain reserve toward the deals proposed on insurance PCWs. For example, a large majority agreed that a less expensive insurance product is not necessarily a bargain. They believed that a much cheaper product might provide less coverage, have hidden charges or be unsuitable to their needs. Most agreed that without the assistance of an insurance representative, consumers might purchase insurance that was not suited to their needs.

More generally, the respondents were mostly satisfied with the assistance provided by the PCWs. After consulting the PCW, they appreciated being able to compare different products in one place, that choosing can be simple and that purchasing can be done quickly. In contrast, they saw certain disadvantages, such as the possibility of receiving unsolicited marketing communications, the collection and disclosure of personal information to third parties, the sale of their data to other companies, and the ranking of results based on the PCW's business relationships. Finally, a majority of respondents believed that insurance PCWs focus more on price than on the other characteristics of the products.

Conditions for purchasing products via an insurance PCW:

A minority of respondents said they noticed advertising items while they were consulting via a PCW. The majority believed, however, that this would not affect their decision to purchase a product. A large proportion of respondents claimed they had not studied the PCW's conditions of service, mainly because they were too long and because they had not seen them on the website. However, when it came to purchasing an insurance product, a majority of respondents said they would read the insurance contract. Most said they would do this to try understand the ins and outs of their contracts and assure themselves that everything was in order. Finally, a majority expressed a preference for taking the time to compare products or even talking to a representative before purchasing a product via an insurance PCW.

4.7 First round of interviews prior to insurance PCW consultation

4.7.1 Consumers' insurance habits

- A majority of respondents (69%) said they have group insurance. They are more likely to be in this situation if they work full time (80%), if they earn more than \$100,000 (86%) and if they are aged 35 to 44 (88%).
- A majority of respondents have four insurance products: auto insurance (75%), home insurance (73%), drug insurance (61%) and travel insurance (61%). BC stands out in this regard, as respondents in that province are more likely to have auto insurance (86%), drug insurance (80%) or life insurance (84%). The three lowest rates are for liability insurance (35%), critical illness insurance (35%) and salary insurance (19%). Finally, only 4% of respondents said they had no insurance.
- Nearly a third of respondents (36%) said they have more than 6 insurance products. Respondents from British Columbia (57%), those working full time (45%) and those 35 to 44 years of age (45%) are most likely to be in this situation. In contrast, people under 35 (47%) and those with incomes below \$60,000 (60%) own proportionally fewer insurance products (3 products or less).
- Only a minority of respondents (16%) said they do business with just one insurer. People 35 to 44 years of age (96%) and those with more than 6 insurance products (94%) are more likely to do business with more than one insurer.
- About a quarter of respondents (26%) said they never change insurers. This category is largely composed of respondents under 35 (35%), from Ontario (35%) or possessing 3 insurance products or less (41%).

4.7.2 Acquisition of information on insurance products

- Only 16% of respondents said that they change insurers on a regular basis, either every 2 or 3 years or more frequently. About 31% said they change insurers after an increase in the premium and 28% said they do so based on the characteristics of the product.
- About a quarter of respondents (26%) said they never inquire about insurance rates on the market. Those who do so regularly (29%) are more likely to live in British Columbia (41%) and have more than 6 insurance products (41%). Finally, about 28% said they get information on insurance rates upon renewal.
- When they want to find information about insurance products, a majority of respondents said they consult the websites of certain insurance companies (66%) or ask their friends and family (63%). Respondents in British Columbia were more likely to consult insurance companies' sites (77%), but less likely to ask friends and family (41%).

4.7.3 Use of insurance PCWs

- When it comes time to inquire about insurance products, about half of the participants (52%) said they use insurance PCWs. Those most likely to do so are people under 35 years of age (65%), those with more than 6 insurance products (78%), women (59%) and full-time workers (57%).
- When asked about the use of PCWs to purchase of certain types of insurance products, respondents said that they would use this kind of tool mainly for home insurance (82%) and auto insurance (79%). Slightly less than half of respondents, 47% and 44%, said they have considered using insurance PCWs to purchase travel insurance and property insurance (housing). In both categories, however, the highest number was in British Columbia, at 71 % and 64% respectively. The three types of insurance products that received the least enthusiastic responses with regard to the use of insurance PCWs are critical illness insurance (27%), disability insurance (24%) and salary insurance (14%).
- Half of the respondents said they had consulted an insurance PCW. People under 35 are more likely to have done so (63%). Those who have used an insurance PCW previously said it was mostly for auto insurance (68%) and home insurance (53%). Only a small minority of respondents reported using an insurance PCW for drug insurance (7%), disability insurance (5%) and critical illness insurance (4%). No respondents had used a PCW for a salary insurance product.

4.7.4 Perceptions of insurance PCWs

- Just over half of respondents said they believe that the reliability of the information found on PCWs is comparable to the information provided by the insurance companies (59%) and brokers (61%). Nearly one in five (21%) believes that the information provided by insurance PCWs is more reliable than that provided by insurance companies, while 13% have the same opinion of the information provided by brokers.
- When asked about their reasons for using insurance PCWs, a large number of respondents (80%) said that it is because they allow you to compare a range of insurance products in one place. A majority of respondents also said they would use insurance PCWs for the following reasons: the process is simple and fast (64%), it makes it easy to choose an insurance product (59%), you have the opportunity to pay less (55%) and you have more control over your choices (54%). Note that respondents in Québec (82%) were more likely to say that they use a PCW because it gives them the opportunity to pay less.
- 51% of respondents, moreover, consider PCWs useful for comparing certain insurance products and 46% feel they are useful for all insurance products. Half of respondents said that insurance PCWs helped them to choose. In contrast, 36% (47% in Québec) considered that there were too many factors to consider before being sure of making a good choice. Finally, 15% said that the PCWs did not help them to make an informed decision.
- A large majority of respondents (96%) said they strongly agree or somewhat agree that insurance PCWs provide a good idea of the products available on the market, while also agreeing that none of them covers the market as a whole. They also mostly agree that some insurers might pay to be at the top of the PCW lists (78%) and that to obtain complete information, they need to consult several insurance PCWs (79%). Finally, about half of respondents said they agreed or somewhat agreed with the idea that all insurance PCWs produce similar results and that the offers found there are identical to those presented on the websites of insurance companies.

4.8 Second round of interviews after the insurance PCW consultation

4.8.1 Information obtained on insurance PCWs

- After consulting an insurance PCW, a majority of participants (92%) said they saw, on the website, the legal name of the insurance PCW, the role of the insurance PCW (84%) and the list of partners (82%). Among the information least noticed by respondents

were a statement of certification with a regulatory body (26%) and a physical address (25%).

- A large majority of respondents (91%) said they found the information on the insurance PCW to be written in easy-to-understand language. A majority also reported that they had access to a clear description of products (73%), had obtained a summary of essential information about the insurance product (66%) and had identified a place to get more information by talking to someone (63%). Note that people aged 45 and older were less likely to say they had access to clear information (60%) and that only 47% of Québec respondents said they had access to a summary of the information.

4.8.2 Respondents' perceptions of insurance PCWs

- A majority of respondents (62%) said they feel that the aim of insurance PCWs is to provide information. 61% believed that insurance PCWs have business relationships with insurers and that PCWs offer services similar to those of an insurance broker. Finally, 41% thought that insurance PCWs provide services similar to those of an insurance company and 31% said that insurance PCWs are neutral intermediaries. Note that respondents in British Columbia have a different view in this regard, since 75% agreed with the last two items.
- A majority of respondents (77%) did not experience any sales pressure while consulting the PCW. Only 16% answered "yes, somewhat" and 6% "yes, very much" to this question.
- Just under half of respondents (42%) said that on the website they found only products offered by insurers with business relationships with the insurance PCW. Also, 18% said they had found products of some insurers that matched the price they were willing to pay; only 11% said they found that all the products of every insurer met the selection criteria.

4.8.3 Views of respondents on insurance PCWs

- A large majority of respondents (84%) said that a less expensive product is not necessarily a bargain. In fact, they tended to think that a more economical product may provide less coverage (84%), that it might be hiding additional costs (74%) or that it might not meet their needs (72%).
- A slight majority of respondents (56%) felt that insurance PCWs propose insurance products that are tailored to their needs. 65% of these said that this the case because they would have attempted to inform themselves regardless, and they wanted to see

what options they had, and 20% said that insurance PCWs make it possible to compare several sites and find the best product.

- More generally, a large majority of respondents were “somewhat satisfied” or “very satisfied” with the assistance provided by PCWs. People 35 to 44 years of age (44% vs. 30%), residents of Ontario (44% vs. 30%) and women (39% vs. 30%) were more likely to pronounce themselves “very satisfied.”
- Respondents agreed in the same proportion (80%) with the statement that, without the assistance of an insurance representative, consumers might purchase insurance that is unsuited to their needs.
- Respondents mostly saw the same benefits after consulting a PCW as they saw before consulting one. They therefore mostly consider that a PCW enables them to compare different insurance products in one place (80% before and after), that it makes choosing simpler (59% before vs. 65% after), and that it speeds up the purchasing process (64% before vs. 59% after).
- Conversely, the majority saw several disadvantages. In particular, they felt that they might receive unsolicited marketing communications after using a PCW (78%), that their personal information might be collected or disclosed to third parties (65%), that the data might be sold to other companies (65%) or that the results could be ranked based on business relationships between the PCW and certain insurers (57%).
- After consulting a PCW, respondents are more likely to feel that PCWs produce similar results (59% before vs. 50% after) but are less likely to consider that the deals offered by insurance PCWs are identical to those presented on the websites of insurance companies (43% before vs. 51% after). The respondents’ views about the PCWs’ coverage of the insurance market or the possibility that some insurers might pay to be placed at the top of the list was unchanged after consultation.
- A majority of respondents (78%) believe that PCWs put the emphasis on price rather than on the other characteristics of the product. They are more likely to feel this way in Ontario (86%) than in Québec (67%). Also, a majority of respondents (59%) feel they will get a product that meets their needs by purchasing via a PCW.

4.8.4 Conditions related to purchasing products via an insurance PCW

- If they buy an insurance product, a majority (75%) said they will read the insurance contract. They will do this to get a better understanding and see if it is compliant (65%) and less often, to check prices or to see if there are any hidden fees (26%).

- When questioned as to why they did not buy any products on the PCW, most respondents said they only visited the website for the study (73%). Other reasons cited were that they wanted to take their time to better compare products (60%), they preferred to wait to speak to a representative (41%), and they did not find all the information they needed (33%).
- A third of respondents said they noticed advertisements on the insurance PCW and 71% believed that seeing advertising items would have no impact on their decision to buy one insurance product rather than another. They explained this by saying that they choose their products according to specific criteria (39%) and that ads do not change anything (37%).
- A large proportion of respondents (71%) stated that they did not consult the PCW's conditions of service. Those who did not read the terms of service explained that they were too long (58%), that they did not see them (48%), that it was pointless to do so because they could not change anything (35%) or that they had no interest in reading them (34%).
- If they buy an insurance product, a majority (75%) said they will read the insurance contract. They will do this to help them understand the contract and check that it is in order (65%); a lower proportion said they will do this to check prices or see whether there are any hidden fees (26%).

5 Conclusion and Recommendations

Insurance PCWs that do business in Canada claim to be the consumer's allies. They declare, for example, that "saving money on car insurance has never been this easy,"²⁷⁵ or that they are "helping people make smarter decisions with their money."²⁷⁶ But do they really keep their promises? Is there cause for concern over online comparison of products as complex as insurance? Although insurance PCWs may be useful in some respects, our analysis shows one thing: as far as their promises are concerned, they still have quite a way to go.

It should first be borne in mind that PCWs are apparently well established in Canada; we identified about a dozen such web pages offering to compare various products in auto insurance, home insurance or life insurance. Also, their services seem to be popular. One of the largest PCWs in Canada, Kanetix, claims to be visited by over 8 million Canadians annually.²⁷⁷

Consumers appreciate several aspects of insurance PCWs. A majority of the respondents we interviewed expressed appreciation for being able to compare several insurance products in one place, for having access to a quick, simple process that allows them to easily choose an insurance product, or to pay less for one. Most also feel that insurance PCWs provide equally reliable information to what is offered by insurance companies and brokers.

However, we feel that consumers would do well to temper their optimism in light of several potential problems we identified. Indeed, the experts we interviewed expressed a number of concerns about the use of insurance PCWs, concerns that are reflected in studies of PCWs carried out abroad. Our analysis of insurance PCWs in Canada has confirmed some of these concerns.

First, the experts and studies we consulted point to the fact that the information provided on insurance products by these PCWs is often incomplete. For example, the descriptions of the products compared emphasize price over other characteristics (coverage, exclusions, etc.). Our own analysis of insurance PCWs in Canada leads us to concur: there is very little information available on the website about the characteristics of the insurance products compared. To obtain enough information to make an informed choice, one has to rely on the certified representative one needs to contact in order to finalize the submission. But in the absence of sufficient information, one can never be sure of obtaining a suitable product at the best price.

Next, the complexity of the insurance products results in an asymmetry of information between consumers and insiders (insurers, brokers, agents) that is far from negligible in the context of insurance PCWs, which emphasize the simplicity and speed of the comparison process.

²⁷⁵ See: <https://www.kanetix.ca/#auto-insurance>.

²⁷⁶ See: <https://www.lowestrates.ca/about-us>.

²⁷⁷ See: <https://www.kanetixltd.ca/>.

Consumers who consult a PCW may not understand all the characteristics of the service and believe, wrongly, that they are getting personalized advice. In this regard, the consumers we interviewed generally demonstrated confidence in the PCW. In fact, the majority felt that insurance PCWs propose insurance products that are adapted to their needs (56%), did not check the terms of service (71%), and said they were satisfied with the assistance provided (80%). As we have noted in our analysis, the PCWs do not present their role clearly, offer only a limited amount of useful information to consumers and do not provide links to the regulatory bodies.

A third issue raised by the experts consulted concerns the PCWs' business relationships and modes of remuneration. These could possibly affect the results presented or encourage PCWs to promote rapid sales. Our analysis has revealed a lack of transparency on the part of insurance PCWs in this regard. This information is either not presented, or when it is, it is located inside the conditions, which a large majority of our respondents say they never read. Also, respondents did not seem surprised about the possibility of business relationships existing between the PCW and insurers, as 78% agreed that some insurers may pay to be at the top of the PCW's list.

Finally, our experts were concerned about the amount of personal information that insurance PCWs collect and disclose to third parties, as this may exceed what is necessary for calculating the insurable risk. For example, many fear that the information can be used, without the knowledge of the consumer, to promote some insurance products over others. It should be noted here that sharing personal information and communicating it to third parties was a concern for our respondents; 65% saw it as a disadvantage of PCWs. Although our analysis of the sites did not permit us to reach a clear conclusion in this regard, it did afford a glimpse of some possible problems, particularly with regard to checking credit scores.

In sum, our analysis of insurance PCWs in Canada confirms some of the concerns raised by experts and studies about the current limitations of this type of tool for purchasing complex insurance products such as home insurance. Some of the facts, however, are reassuring.

First, in order to finalize the purchase of an insurance product via an insurance PCW in Canada, consumers are required to discuss it beforehand with a certified representative who has the obligation of ensuring that the product is well suited to their needs. Also, the interviewees remained cautious vis-à-vis insurance PCWs, even though they found them to have some advantages. For example, a large majority said that an inexpensive insurance product is not necessarily a good deal since it might offer more limited coverage or entail having to pay a higher deductible in the event of a serious incident. Also, a large majority of respondents suggested that, without the assistance of an insurance representative, consumers could subscribe to an insurance plan that is not suited to their needs.

These findings have led us to focus on the legal framework of insurance PCWs. What solutions have Canadian provinces and foreign jurisdictions adopted to deal with the issues raised by

insurance PCWs? There are three important factors at play here. First, Québec's Bill 141, tabled in the fall of 2017, modernizes the legal framework governing the distribution of online insurance products. A significant fact from our perspective, is that from now on, a PCW that "receives a commission or other remuneration based on the sale of financial products or the provision of financial services"²⁷⁸ will be obliged to register as a firm, which will force it to submit to a series of obligations that could result in heightened consumer protection. It should not be overlooked, however, that this does not reduce the importance of the role of the certified representative as a consumer protection tool.

Then, in early 2018, the European Union incorporated into its legislation the Insurance Distribution Directive (IDD), which is an innovative solution aimed at protecting the consumer. Specifically, the Directive oversees price comparison sites by adopting a more flexible definition than that contained in Bill 141. This definition, which is not centered on remuneration modes but on the actions leading to the conclusion of a contract, explicitly excludes some comparison websites such as those of consumer associations and governments.

Finally, we note that France and the UK have both eliminated the requirement of "utmost good faith" on the part of the insured in the context of insurance. This is to remove the spontaneous declaration requirement from the insured, which was a heavy burden for consumers and in the past led to unfair, even disastrous consequences, especially when claims were denied.

The lessons learned from our legal analysis, combined with the results of our interviews and our analysis of insurance PCWs in Canada, permit us to draw a number of lessons that we consider pertinent to articulate in closing.

²⁷⁸ S. 71 Bill 141.

Our recommendations

Option consommateurs recommends

That Canadian provincial legislators:

- 1. Oblige PCWs to be registered as a firm (if they are not already).**
- 2. Use the definition of the Insurance Distribution Directive adopted by the European Union to determine whether an insurance PCW must register as a firm.**
- 3. Eliminate the requirement of utmost good faith and the obligation of spontaneous declaration for the insured, as has been done in France and the UK.**
- 4. Continue to promote awareness and education for consumers, devoting special attention to the challenges posed by insurance PCWs. This could be done in collaboration with consumer associations.**

That insurance PCWs:

- 5. Clearly disclose:**
 - a. all the business relationships they have with insurers and insurance firms;**
 - b. their modes of remuneration;**
 - c. an exhaustive list of all insurers compared.**
- 6. Improve the forms that consumers have to complete, in order to permit them a wider choice of answers to certain questions or even permit them to give open answers.**
- 7. Present all the quotes that might suit the consumer.**
- 8. Present several characteristics of the insurance products compared (not just the price and premium).**
- 9. Clearly present the resources available to consumers to enable them to file a complaint.**
- 10. Clearly state when they are registered as a firm.**
- 11. Provide links to insurance regulatory bodies.**

That consumers:

- 12. Exercise vigilance when using an insurance PCW.**
- 13. Consult a range of PCWs and confer with several representatives.**
- 14. Do not hesitate to contact a certified representative.**

In closing, we believe that one idea discussed during Senate Committee consultations held in Australia,²⁷⁹ namely, the development of insurance PCWs by an independent body, merits

²⁷⁹ Senate Economics References Committee, *Australia's general insurance industry: sapping consumers of the will to compare*, 2017

special attention. The committee considered this type of solution to have both advantages and disadvantages. On the one hand, representatives of Australian consumer groups felt that independent PCWs would reduce informational asymmetry while increasing competition. On the other, several industry players said that such a tool would be expensive to maintain and difficult to implement.

The Committee noted, however, that a middle ground exists, which is the model used by Ireland's Competition and Consumer Protection Commission (CCPC). This model offers a simplified version of insurance PCWs, whereby consumers choose a profile suited to their situation and are then given an approximate price. We believe, like the committee, that this could be an interesting avenue that should be explored by regulators and legislators. This reflection could be conducted in collaboration with Canadian consumer associations.