# Major changes to the Québec Consumer Protection Act are now in effect

**October 13, 2023**

On Oct. 5, 2023, the *Act to protect consumers from planned obsolescence and to promote the durability, repairability and maintenance of goods* (in French) (the Act), formerly known as Bill 29, received royal assent. The Act means significant changes to Québec's *Consumer Protection Act* (CPA). While some provisions have already come into effect, many will be phased in gradually over a three-year period, with certain provisions requiring the adoption of regulations.

As its title suggests, the Act introduces a range of new protections for Québec consumers. It is specifically aimed at manufacturers, retailers, automobile dealers and car makers, and impacts merchants who sell extended warranties.

However, the Act will also significantly alter the legal risk landscape for any business in Québec that engages with consumers due to the substantial fines that may be levied for non-compliance. In less than 15 months, failure to comply with the CPA may result in fines amounting to as much as five per cent of a business' worldwide turnover for the prior fiscal year.

In light of these potential new penalties, it would be prudent for businesses dealing with consumers in Québec to reassess their compliance with the CPA. This article provides an overview of changes.

## A significant increase in potential fines

The Act will significantly raise the amounts prescribed for fines under the CPA as the maximum fine for a single offence will increase to five per cent of a business's worldwide sales for the previous fiscal year.

The Act will also grant the president of the CPA's supervisory authority, the *Office de la protection du consommateur*, the power to issue administrative monetary penalties for "objectively observable failures to comply with the CPA." These failures will be defined by regulation. While the maximum administrative monetary penalty will remain relatively low, at $3,500 per infraction, any order will be public, which will substantially increase the risk of claims related to the non-compliance, including class actions.

The Act provides that the above changes will come into effect fifteen months after the date on which it received royal assent. This period will allow enterprises to re-evaluate their overall compliance with the CPA in light of the new risks associated with a potential breach of the CPA.

## Prohibition on planned obsolescence

One of the most notable amendments already in effect is a ban on “carrying on the business of trading in goods for which obsolescence is planned,” with the manufacturer of such goods deemed to carry on such business.

The Act states that obsolescence of a good is planned "where a technique aimed at reducing its normal operating life is used on [it].” This definition of planned obsolescence is very broad.

## New power to establish technical standards

The Act has granted the government the authority to establish technical or manufacturing standards for goods, including standards for ensuring interoperability between goods and chargers, and prescribing in what cases and on what terms and conditions these standards apply. The government may thus mandate the introduction of a universal charger for certain electronic devices, similar to what the European Union has done. These standards will be introduced by regulation.

## The automobile anti-lemon rule

The Act also creates an "anti-lemon" rule. A first in Canada, it allows consumers who own or are the long-term lessee of an automobile the right to have a court declare their automobile a “seriously defective vehicle” when certain conditions are met, such as repeated attempts to repair certain defects affecting the vehicle.

Upon such a declaration, consumers may have their purchase or lease cancelled and may obtain compensatory damages, either from the manufacturer or the car dealer. Car dealers will also have to disclose that the automobile has been declared seriously defective to subsequent purchasers.

## Obligation to offer inspection for leased cars and goods

The Act also introduces new rights for consumers who enter long-term automobile leases.

With these changes, merchants must offer customers a complimentary inspection of their vehicle or goods at least 90 days before the lease expires. If the consumer agrees, the inspection must take place no fewer than 30 days and no more than 60 days before the lease ends, either at the consumer’s home or at the merchant’s place of business. Upon completion of the inspection, a written report must immediately be provided to the consumer and must include certain mandatory information.

These changes will come into effect six months after the Act received royal assent.

## Replacement parts and repair services

Two years following royal assent, the Act will require that replacement parts, repair services and information necessary to maintain or repair goods, including any diagnostic software and updates, be available for a reasonable time after the contract has been signed in cases where goods are of a nature that require maintenance. However, merchants and manufacturers may waive these obligations by warning the consumer in writing before the contract is signed that they do not supply replacement parts, repair services or information necessary to maintain or repair the goods. The government may limit, by regulation, the circumstances under which such a waiver can be used, namely by prescribing cases where the availability of replacement parts, repair services or information necessary to maintain or repair goods must be guaranteed.

The Act also requires that it be possible to install replacement parts using commonly available tools and without causing irreversible damage to the goods.

Moreover, a merchant or manufacturer that is required to guarantee the availability of replacement parts, repair services or information necessary to maintain or repair their goods will have to make these items and services available at a reasonable price. The Act defines a reasonable price as one that “does not discourage the consumer from accessing it.” The government may specify cases where the price of replacement parts and repair services will be presumed to discourage consumer access.

## Right to access certain information free of charge

Two years after the Act received royal assent, automobile manufacturers will be required to give car owners, long-term lessees and their authorized representatives access to their automobile’s data for purposes of diagnostics, maintenance or repair. This access must be free of charge.

The Act does not include details on what “automobile’s data” means in practice.

## Warranty for “good working order”

The Act establishes a warranty for "good working order" that applies to specific goods purchased by consumers, including refrigerators, freezers, dishwashers, washing machines, dryers, laptop computers, electronic pads (tablets), cellphones and video game consoles. The government may also, by regulation, extend this new warranty to any other type of goods.

In essence, this warranty will require that certain goods remain fully functional for a set period. The duration of the warranty will be specified by regulations and will likely vary based on the category of goods to which it applies.

The good working order warranty must be explicitly disclosed to consumers before they enter into a contract of sale or long-term lease relating to the goods.

The duration of the good working order warranty must be specified by regulation. Both regulatory power and the warranty will come into effect three years after the Act received royal assent.

## Mandatory disclosures

The Act also includes new disclosure obligations that apply to merchants and manufacturers. These pertain to the good working order warranty, as well as the availability of replacement parts, repair services and maintenance of goods. For instance, merchants will have to disclose the duration of the good working order warranty near the advertised price of a product and in an obvious manner. This obligation will also apply in an e-commerce context.

These new disclosure obligations will, to a great extent, be refined by regulation and will come into effect three years after the Act received royal assent.

## Extended warranties

The Act also includes changes affecting extended warranties. Many of the changes relating to extended warranties are already in effect, while others will come into effect three years after the Act received royal assent.

In particular, the CPA now includes a new right for consumers to cancel the extended warranty they purchased within 10 days of entering into the agreement, at their sole discretion and without costs, fees or other penalties, provided they send the merchant a written notice. The contract for the additional warranty is cancelled upon the sending of such notice. The merchant will then have to refund the consumer for any amounts paid for the additional warranty.

This new cancellation right does not apply when the extended warranty contract is underwritten by an insurer.

In addition, under certain circumstances, the 10-day cancellation period will be extended to up to a year.

## Conclusion

Given the changes to the CPA already in effect, and the upcoming significantly increased penalties for non-compliance, all merchants doing business in Québec, regardless of their industry, should consider reviewing their current state of compliance with this law.

In addition, retailers and manufacturers doing business in Québec, including car dealers and car manufacturers, and any merchant selling extended warranties to consumers should ensure that they comply with the new obligations already in effect.

If you have any questions  on this new Act or need information on how to comply with the CPA, contact the authors or any member of our retail and e-commerce teams.

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