Manufacturers: What you need to know about the new rules on planned obsolescence and product durability

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On Oct. 5, 2023, the Québec Lieutenant-Governor assented Bill 29, the *Act to protect consumers from planned obsolescence and to promote the durability, repair and maintenance of goods* (Act), which amends the Québec *Consumer Protection Act* (CPA). The bill was tabled in June 2023 and limited consultations took place in September with government-invited speakers only, leading to a very quick passing of the bill.

The generous protection already provided to consumers by the CPA has been further expanded. The concepts of sustainability, environmental protection and consumer protection were core considerations in the preparation of this important legislative reform.

While certain provisions came into force on the day of the assent, most of the modifications will be implemented over the next three years.

A non-exclusive focus on electronics, appliances and the automotive industry

The key measures of the Act consist of the following:

- **Right to repair and to availability of parts:** The Act extends the current obligation of availability of replacement parts and of repair services during a reasonable time contained in the CPA. The Act now imposes that the "information necessary for repairing the goods, including, where applicable, any diagnostic software and its updates" be made available to the customer as well as any third party, including the aftermarket industry. This section of the Act will come into force on Oct. 5, 2025.
- **Ban on planned obsolescence:** The Act prohibits any person, by any means, to engage in the business of manufacturing, distributing, or selling goods for which obsolescence is planned. Obsolescence of goods is considered planned when a technique aimed at reducing “its normal operating life” is employed. This

obligation applies to all goods, including technological devices such as mobile phones and software, which appears problematic since these often come with a known date at which support and updates will no longer be offered. This section of the Act has come into force on Oct. 5, 2023.

- **Creation of a new statutory warranty of good working order:** The Act creates a “good working order” warranty for specific appliances and electronics, including notably kitchen appliances, air conditioners, mobile phones and computers. This new warranty imposes that certain goods remain fully functional for a set period of time. The duration of the warranty will be regulated by type of product in the upcoming months.

  For instance, if the good working order warranty has a set duration of five years for a specific appliance, the merchant and the manufacturer will be required to perform the repair of said appliance or reimburse the fees related to third-party repairs if the product fails within the first five years after its initial purchase. As for the legal warranty of quality already in place, misuse by the consumer and normal maintenance will not be covered by the good working order warranty.

  This warranty will have a major impact on the handling of consumer claims since the duration of the warranty will be specifically determined, as opposed to the current legal warranty of quality, where the duration takes into account a number of factors, including the price of the specific product paid by the consumer.

- **Lemon law for seriously defective automobiles:** Since Oct. 5, 2023, consumers owning or long-term leasing an automobile have the right to apply to a court to have their vehicle declared a "seriously defective automobile" when a certain number of attempts to repair the vehicle is exhausted, namely:
  - (i) three unsuccessful attempts for the same defect; or
  - (ii) one or two unsuccessful attempts for the same defect where the merchant or the manufacturer responsible for performing the warranty has had the automobile in his possession for more than 30 days; or
  - (iii) twelve attempts for unrelated defects.

A vehicle declared a seriously defective automobile will be deemed affected by a latent defect, meaning that recourse may be taken against the manufacturer or merchant to cancel the contract (for instance, a sales contract or long-term lease) and/or to obtain compensatory damage. While the warranty of quality already granted consumers this possibility, the new rules lighten the burden on consumers.

- **Technical and manufacturing standards:** The Act grants the government with additional regulatory powers. Notably, regulation can be adopted in order to determine technical and manufacturing standards for goods, including standards ensuring the interoperability between goods and their chargers (as adopted recently in the EU for mobile phones).

In addition to the civil remedies available for consumers, fines and monetary administrative penalties could be imposed to merchants and manufacturers.

Key takeaway: Now is the time to adjust your business practices

The Act encompasses a variety of new obligations and prohibitions, and relies on regulation to determine some of its critical aspects, notably the duration of the good working order warranty. The impact of the Act on merchants and manufacturers will be clarified over the course of the upcoming years, as the regulation will be adopted and the Act comes into force. However, in light of the above, manufacturers selling their products in Québec must carefully review their warranty policies and programs in order to comply with the Act, and monitor the upcoming regulations.

Contact us

If you have any questions regarding this article or about how to adapt to the new Québec rules on planned obsolescence and product durability, please do not hesitate to reach out to the authors or any member of our Products Law Group.

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