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# Newsletter

## Commercial Law

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### Time is of the essence: Significant changes to the *Consumer Protection Act* (Quebec) are soon coming into force\*



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As a result of the amendments contained in Bill 134: *An Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs*<sup>1</sup> (the “Bill”) and the *Regulation to amend the Regulation respecting the application of the Consumer Protection Act* (the “Regulation”), significant changes to the *Consumer Protection Act* (Quebec) (the “CPA”) and its related regulation will be coming into force on August 1, 2019.<sup>2</sup> The Bill introduces an array of measures designed to further protect consumers, particularly in the context of contracts of credit. Certain changes have also been introduced in respect of contracts for the long-term lease of goods.

In anticipation of the imminent implementation of the numerous changes contemplated by the Bill, merchants who offer consumer credit to Quebec consumers should strongly consider having their contracts of credit revised so as to comply with these changes. Furthermore, merchants who offer the long-term lease of goods to Quebec consumers should also consider consulting their legal counsel to verify whether they may be subject to any new legal requirements as a result of the Bill. Though beyond the scope of this newsletter, we remind you that consumer protection authorities in Quebec may take a more liberal interpretation than one would expect of who is a consumer and, accordingly, protected by the CPA. A relatively easy bright line test is that a corporation is never a consumer under the CPA.

#### I. General Considerations

Pursuant to the CPA, a contract of credit is a contract whereby, in consideration of certain charges (e.g., interest), a merchant grants to a consumer the right to perform an obligation (i.e., repay a debt), within a term.<sup>3</sup> The types of contracts of credit governed by the CPA include:

- (i) contracts for the loan of money;
- (ii) contracts extending variable credit; and
- (iii) contracts of sale by instalment.<sup>4</sup>

Moreover, a contract for the long-term lease of goods is defined by the CPA as a contract which generally provides for the lease of goods for a leasing period of four months or more.<sup>5</sup>

#### II. Assessment of Consumer’s Capacity to Repay Credit or Perform Obligations

The Bill imposes a new obligation on merchants to assess, prior to entering into the contract with the consumer, the capacity of the consumer to repay the credit to be extended or satisfy the lease obligations to be incurred, as the case may be.<sup>6</sup> In conducting such an assessment, merchants are required to evaluate certain factors determined by the Regulation including, but not limited to:

- (i) the general level of the consumer's gross income;
- (ii) the total of the consumer's monthly recurring disbursements related to housing;
- (iii) the total of the consumer's monthly disbursements required under contracts of credit or under contracts for the long-term lease of goods; and
- (iv) where applicable, the consumer's credit history with that merchant.<sup>7</sup>

In respect of contracts of credit, a merchant who fails to perform its statutory assessment obligations may face consequences, including the loss of its right to the credit charges provided for by the contract of credit and the obligation to refund any such credit charges already paid by the consumer.<sup>8</sup>

### **III. Regulation of High-Cost Credit Contracts**

The Bill also introduces the concept of a high-cost credit contract, to protect consumers with bad credit ratings.<sup>9</sup> A high-cost credit contract is characterized by a fluctuating *credit rate* (i.e., interest and fees or other charges), which is defined by the Regulation as follows:

*"The credit contract under which the credit rate, calculated in accordance with the [CPA] at the time the contract was entered into, exceeds the rate obtained by increasing by 22 percentage points the Bank Rate of the Bank of Canada is a high-cost credit contract.*

*For the purposes of the first paragraph, the Bank Rate is the rate in force on the expiry of a 2-day period following its announcement by the Bank of Canada."<sup>10</sup>*

Considering that the bank rate of the Bank of Canada is currently at 1.75% per annum, a contract of credit under which the *credit rate* currently exceeds 23.75% will be considered a high-cost credit contract.

A merchant who enters into a high-cost credit contract will be required to provide the consumer with a written copy of the documents containing the consumer's repayment capacity assessment and information on the consumer's debt ratio, which is the measure of the consumer's liabilities expressed as a percentage calculated in accordance with the Regulation.<sup>11</sup>

Furthermore, if a contract qualifies as a high-cost credit contract, the consumer may cancel the contract at its discretion, without cost or penalty, within 10 days following the date on which each of the parties is in possession of a duplicate of the contract.<sup>12</sup> In the event of such termination, the parties must return to each other what they have received from one another and such restitution shall be at the merchant's expense.<sup>13</sup>

Moreover, if a consumer's debt ratio exceeds the ratio determined by the Regulation (i.e., 45%), such a high-cost credit contract must include certain compulsory statements and warning clauses.

A consumer who enters into such a high-cost credit contract may also demand the nullity of the contract or a reduction of his or her obligations.<sup>14</sup>

Finally, every merchant who enters into a high-cost credit contract will be required to obtain a licence issued by the *Office de la protection du consommateur* to that effect.<sup>15</sup> As a reminder, in the event that a merchant enters into a consumer contract without holding the required permit, if applicable, the consumer in question may apply to have said consumer contract annulled.<sup>16</sup>

### **IV. Grounds of Defence Against Vendor or Lessor of Goods May Be Used Against Credit Provider**

The Bill provides that in the event that a credit provider grants a loan to a consumer in relation to a contract for the purchase or lease of goods or services, the grounds of defence that the consumer may raise against the vendor or lessor of such goods or services may also be raised against the credit provider.<sup>17</sup> These provisions will impact any 'hell or high water' clauses in consumer contracts, though only to the extent such clauses were actually enforceable prior to the coming into force of the Bill.

### **V. Credit Charges and Credit Rate**

While the Bill maintains the existing definition of "credit charges" (which credit charges go directly to the calculation of the credit rate that must be disclosed to the consumer) which is to the effect that credit charges are the amount that the consumer must pay under the contract in addition to the net capital and any down payment, it modifies the specific inclusions and specific exclusions from the concept of credit charges. Notably, insurance premiums charged by the merchant for optional insurance of persons (e.g., disability and death), for property insurance on the goods that are the object of the contract and for automobile or home insurance are excluded, as are registration fees (e.g., RPMRR). The Bill does not however preclude merchants from charging such components to the consumer separately from the credit charge.<sup>18</sup>

### **VI. Disclosure Requirements, Compulsory Clauses and Information Boxes**

Pursuant to the Bill, certain contracts of credit will be required to include additional mandatory information prescribed by legislation.<sup>19</sup> Moreover, whereas merchants were previously only required to reproduce the relevant content of the disclosure schedules provided by the CPA, under the Bill, the presentation of contracts of credit must be in conformity with the disclosure schedules contained in the Regulation.<sup>20</sup> The format of these disclosure schedules now reflects, *inter alia*, the changes to the

definition of “credit charges” (and, accordingly, “credit rate”), as described above.

Similarly, the content of the compulsory clauses that must be inserted in certain contracts of credit as well as the content of certain notices to be sent by the merchant in relation to contracts for the long-term lease of goods have also been updated.<sup>21</sup>

Furthermore, contracts of credit will be required to include a mandatory “information box”, either at the beginning of each contract or in a separate document given to the consumer. The purpose of this “information box” is to summarize the essential elements of the contract as determined by the Regulation.<sup>22</sup>

## VII. Credit Cards: Minimum Payment Requirements and Credit Limits

The Bill will also affect rules relating to “open credit contracts”, which include credit card contracts. In the case of credit cards, the minimum payment required for a billing period can no longer be less than 5% of the outstanding balance at the end of that period.<sup>23</sup> The Bill does, however, contain a transitional provision applicable to credit card contracts in progress that provides for a gradual increase of the percentage payable.<sup>24</sup> The merchant may also not allow the consumer to make transactions that exceed the credit limit during a billing period unless the merchant:

- (i) sends the consumer a notice stating that the consumer made a transaction resulting in the credit limit granted being exceeded; and
- (ii) imposes no charges on the consumer for exceeding the credit limit.<sup>25</sup>

Additionally, any unilateral increase of the credit limit by the merchant cannot be invoked against the consumer and, in such event, the consumer is not required to pay the amounts charged to the account that exceed the credit limit in place before that increase.<sup>26</sup>

## VIII. Advertisements

Generally, the Bill brings modifications to the mandatory content of advertisement targeted at consumers. For example, according to the Bill, merchants are prohibited from falsely or misleadingly representing to consumers that credit may improve their financial situation or solve their debt problems.<sup>27</sup> Unlike the other changes discussed in the present newsletter, most of the provisions of the Bill concerning changes to the advertisement requirements of the CPA have already come into force.

## IX. Recommendations

Merchants who offer consumer credit to Quebec consumers should prepare to comply with the requirements discussed above prior to August 1, 2019. Indeed, in case of a breach of these new obligations,

merchants may be exposed to fines ranging from \$1,000 to \$100,000, depending on the nature of the offence.<sup>28</sup>

Therefore, it is crucial for merchants to promptly consult their legal advisors to assess what actions they should take as a result of the various changes introduced by the Bill to contracts of credit and contracts for the long-term lease of goods. Moreover, merchants should bring their contracts of credit in line with legislative requirements soon, and in so doing ensure that there are no provisions within such contracts that are inconsistent with the new rules and requirements, so that they can go live with those contracts on August 1, 2019.

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- \* This newsletter does not purport to provide a comprehensive or exhaustive review of all changes introduced by the Bill. It focuses on those changes specifically relevant to contracts of credit and contracts for the long-term lease of goods.
  - 1. *Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs*, Bill n° 134 (adopted), 1<sup>st</sup> sess., 41<sup>st</sup> legis. (Qc) (the “Bill”).
  - 2. *Gazette Officielle du Québec*, July 18, 2018, Vol. 150, No. 29, *An act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs – Coming into force of certain provisions of the Act*.
  - 3. *Consumer Protection Act*, CQLR c P-40.1, s. 1 (f) (the “CPA”).
  - 4. *Ibid.*, ss. 66-110; 132-149.
  - 5. *Ibid.*, s 150.2.
  - 6. ss. 19 and 39 of the Bill (ss. 103.2 and 150.3.1 of the CPA).
  - 7. *Gazette Officielle du Québec*, July 18, 2018, Vol. 150, No. 29, *Regulation to amend the Regulation respecting the application of the Consumer Protection Act* s. 37 (the “Regulation I”) (s. 61.0.1 of the *Regulation respecting the application of the Consumer Protection Act*, CQLR c P-40.1, r 3 (the “Regulation II”).
  - 8. s. 19 of the Bill (s. 103.3 of the CPA).
  - 9. s. 19 of the Bill (s. 103.4 of the CPA).
  - 10. s. 19 of the Bill (s. 103.4 of the CPA); s. 37 of the Regulation I (s. 61.0.3 of the Regulation II).
  - 11. s. 19 of the Bill (s. 103.4 of the CPA); s. 37 of the Regulation I (ss. 61.0.4 and 61.0.5 of the Regulation II).
  - 12. s. 12 of the Bill (s. 73 of the CPA).
  - 13. s. 77 of the CPA.
  - 14. s. 19 of the Bill (s. 103.5 of the CPA); s. 37 of the Regulation I (s. 61.0.6 of the Regulation II).
  - 15. s. 63 of the Bill (s. 321 of the CPA).
  - 16. s. 322 of the CPA.
  - 17. s. 19 of the Bill (s. 103.1 of the CPA).
  - 18. s. 10 of the Bill (s. 70 of the CPA).
  - 19. ss. 36 and 38 of the Bill (ss. 134 and 150 of the CPA).
  - 20. *Ibid.*
  - 21. ss. 17-21;44-45 of the Regulation I (ss. 31.1-36;69.6.1-69.8 of the Regulation II).
  - 22. s. 37 of the Regulation I.

23. s. 31 of the Bill (s. 126.1, para. 1 of the CPA).
24. s. 82 of the Bill.
25. s. 34 of the Bill (s. 128.1 of the CPA).
26. s. 34 of the Bill (s. 128.2 of the CPA).
27. s. 55 of the Bill. (s. 244.1 of the CPA).
28. s. 277-279 of the CPA.

**The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.**

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