

Québec seeks to amend Consumer Protection Act and related regulations to increase price and credit transparency

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On September 12, 2024, the Québec Minister of Justice presented Bill 72, *An Act to protect consumers against abusive commercial practices and to offer better transparency with respect to prices and credit* (Bill 72) which, if adopted, will introduce significant changes to the Québec Consumer Protection Act (the QCPA) and to the *Regulation respecting the application of the Consumer Protection Act* (the Regulation).

General overview

Bill 72 sets out proposed changes to the QCPA relating to the price of food products, tipping practices, credit contracts, long-term contracts of lease, and liability in cases of fraud or unauthorized use of a consumer's demand deposit account. In this Update, we summarize the major changes proposed by the bill, clarify its intent, and explore the impact of the bill on merchants conducting business in Québec.

Price of food products intended for human consumption

Bill 72 encompasses a range of provisions designed to ensure consumers are well-informed and protected against unfair pricing practices. To this end, Bill 72 notably

- mandates clear indication, near the price of the food product, whether GST and QST will be added to the price at checkout, to ensure consumers are aware of the total cost, inclusive of taxes, that they will pay
- requires merchants to display prices per unit of measurement (e.g. cost per 100g) and to use the same unit of measurement for all goods of the same nature to allow consumers to make easy and informed price comparisons
- addresses the disparity in pricing for consumers who are not participants in loyalty programs by stipulating that a merchant who offers to a consumer who is a member of a loyalty program a sale price for a food product that is different from the price offered to other consumers, must clearly indicate both prices next to each other

- increases the maximum indemnity payable to consumers from \$10 to \$15 when there is a discrepancy between the advertised price and the price charged at checkout, specifically in cases where optical scanner technology is employed. Where the discrepancy relates to a good costing \$15 or less, the good must be given free of charge to the consumer and, if the price of the good in question is more than \$15, a reduction of \$15 must be applied.

Practices related to tips

A framework for certain practices related to tips is also provided for in Bill 72. If the bill is adopted, proposed tips will have to be established based on the price for a good or service that excludes GST and QST. Furthermore, consumers must be able to determine the amount of the tip they wish to give. Finally, in the event multiple tip options are offered to the consumer, they will all have to be emphasized equally prominently. These new requirements will not only impact merchants, but also, and perhaps more notably, businesses developing payment terminal technologies.

Lenders and lessors

Several changes to the QCPA proposed by Bill 72 will have a significant impact on credit card issuers, providers of open credit, and lessors under long-term lease of goods contracts.

Changes that impact lenders and lessors

Permits: The bill introduces a permit requirement for all merchants entering into open credit contracts and high-cost long-term contracts of lease. While the QCPA has long required merchants entering into contracts for the loan of money or high-cost credit contracts to obtain a permit, open credit providers have been exempt from this requirement. If the bill is adopted as currently drafted, all merchants making contracts for the loan of money, open credit contracts, high-cost credit contracts or high-cost long-term contracts of lease, will have to hold a permit issued by the Office de la protection du consommateur..

Importantly, we note that the exemptions for banks and other deposit-taking institutions, insurance companies, as well as mortgage lenders set out in section 18 of the Regulation, have not been amended, meaning that, if these entities offer open credit or long-term leases, they would be required to obtain a permit. It is unclear if this is intentional or merely a drafting oversight that will be reflected in a subsequent draft.

The threshold rate for determining whether a lease is “high cost” is to be set out in the regulations but, at this time, no threshold has been set. Given that the new long-term lease provisions substantially leverage the credit provisions set out in the QCPA, it is likely the threshold rate for high-cost leases will mirror the high-cost credit rate.

Failure to comply with the requirement to obtain a permit could lead to the nullity of the contract or the suppression of the credit charges or implied credit charges, and the return of any part of the credit charges or implied credit charges already paid.

Amendments: Bill 72 introduces a significant restriction on the ability of merchants to unilaterally amend credit contracts and long-term leases. An amendment that has the effect of increasing the credit rate or credit charges in a credit contract, or the implied credit rate or implied credit charges in a long-term contract of lease, can only be made at the consumer's request. In addition, if such amendments are set out in a rider — as opposed to in a new

contract — the lender or lessor must obtain the consumer's express consent to the amendments.

Prior debt: Bill 72 specifies the conditions under which a merchant may transfer any outstanding amounts owed on a trade-in to a new instalment sale contract or a long-term contract of lease. These conditions include

- obtaining the consumer's consent
- informing the consumer in the manner prescribed by regulation that the net capital (or, in the case of a lease, the net obligation) of the contract includes the balance of the previous debt
- stating the balance of the debt in the contract

Motor vehicle dealers: Bill 72 will prohibit motor vehicle dealers and recyclers from making the purchase of a road vehicle contingent upon the consumer entering into a credit contract or a long-term contract of lease.

Itinerant merchants: Bill 72 restricts the possibility of financing goods sold by an itinerant merchant (e.g. door-to-door salespeople; vendors at sales kiosks in a shopping centre). The bill generally prohibits itinerant merchants from entering into a credit contract, a long-term lease of goods contract, or a contract prohibited by regulation (i.e. contracts concerning heating or air-conditioning appliances, decontamination services, or insulation services). Furthermore, an itinerant merchant cannot help or encourage a consumer to enter into any such contract or solicit a consumer for the purpose of making such a contract. This new restriction, however, allows for limited exceptions provided for in the Regulation.

Changes that impact lenders

Credit limits: Under Bill 72, all applications for open credit must include a field for consumers to indicate their desired credit limit. Merchants are prohibited from granting a higher credit limit than what the consumer initially requested, and any application form that does not state a credit limit must be declined. Furthermore, the application form for a credit card or the accompanying documents must state the minimum periodic payment, or the method of calculating that payment for each period.

Membership/renewal fees: Bill 72 stipulates that any fees associated with the membership or renewal of a credit card contract only can be excluded from the calculation of the credit rate if the fees are charged on an annual basis. While most issuers do charge such fees annually, issuers who prefer to break up the cost into a fee that is paid more frequently (i.e. monthly) will need to take note of this proposed change and consider either switching to an annual billing cycle or determine how to include such fees in the credit rate calculation.

Allocation of payments: Bill 72 prescribes a specific order in which consumer payments must be allocated to their outstanding credit balances for all open credit. The merchant must first allocate any payment to the debt with the highest credit rate, and subsequently to other debts by decreasing order of credit rate. If one of the debts consists of an installment plan, payments must be allocated in priority to the minimum payment required under the credit card contract followed by the payment required under the installment plan, and then to all other debt in accordance with the priority set out in the immediately preceding sentence. This type of provision is more relevant for credit card contracts, not open credit more generally, but perhaps this concept will be refined in a further iteration of Bill 72.

We also note that non-bank lenders operating outside of Québec generally have more latitude with respect to the allocation of credit card payments. For banks, the *Bank Act* allows for a choice between allocation methods. The first option is similar to the method proposed under Bill 72, while the second option allows banks to allocate a payment on a proportionate basis. Should Bill 72 proceed, this may have the effect of effectively eliminating the second option for banks, given the challenges of having national systems coded on a per-province basis.

Cancellation of insurance: In the event a consumer cancels any insurance that was purchased on entering into a credit contract, Bill 72 will require merchants to amend the credit contract, within 10 days, to remove the insurance premiums. In the case of a contract for the loan of money or a contract involving credit, the merchant must either reduce the payments or the term, at the consumer's option. If the consumer fails to provide an option, the merchant must reduce the amount of the payments due under the credit contract. Also, a new contract or rider must be given to the consumer which contains the information referred to in section 98 of the QCPA (as amended), even if the credit rate or credit charges are reduced,

Overlimit alerts: Bill 72 proposes changes to the overlimit provisions. Currently, lenders may not allow consumers to make transactions to exceed their credit limit unless the lender sends a notice to the consumer after the fact and imposes no charges on the consumer for exceeding the credit limit. Bill 72, somewhat borrowing from the federal consumer protection framework, will require a lender to send a notice at the technological address provided by the consumer for that purpose, notifying the consumer that the consumer's available credit is less than \$100 if the lender wishes to permit overlimit transactions. A post-transaction notice only will be permitted if the consumers fail to provide their technological address. Overlimit fees continue to be prohibited under Bill 72.

Characterization of certain fees: There is some limited relief for lenders. If the bill as currently drafted is adopted, lenders will be expressly permitted to charge certain non-sufficient funds (NSF) fees in addition to credit charges. The merchant may claim from the consumer only the charges paid following a financial institution's refusal to accept a cheque or other payment instrument given by the consumer in payment of amounts owed (or if it is impossible to complete a transfer of funds, unless the impossibility results from the fault of the merchant).

Although NSF fees were not prohibited, there was some uncertainty as to whether they formed part of the credit charges and thus had to be included in the calculation of the credit rate. As it would be impossible to predict if and when a borrower would incur an NSF fee prior to entering into a credit agreement, lenders were unable to disclose an accurate credit rate that included the impact of NSF fees, with the result that, currently, lenders generally do not charge NSF fees in Québec.

The bill also changes the characterization of security registration fees. Currently, registration fees are excluded from the credit charges. Bill 72 clarifies that *all* charges related to security will be included in the credit charges. However, fees for registration in or access to a public register of rights will continue to be excluded from the computation of the credit rate.

Changes that impact lessors

Unlike in many other provinces, Québec currently only lightly regulates long-term leasing activities from a cost of credit disclosure perspective, except for guaranteed residual value leases which are less common in the industry. This is set to change as Bill 72 introduces a series of important measures aimed at requiring lessors to extend consumer protections to lessees that are analogous to those required in credit transactions, and leverage the credit

provisions for this purpose.

For example, instead of setting out a lease-specific APR (annual percentage rate), Bill 72 proposes using the same formulation for calculating the implied credit charge and the implied credit rate. The Bill sets out a list of disclosures that must be included in a long-term contract of lease, which will be familiar, at least in part, to lessors operating in other Canadian jurisdictions. As with credit contracts, lessees will have a two-day cooling off period during which they can cancel the lease without cost or penalty, except if the lease is a high-cost long-term contract of lease, in which case, there is a 10-day cooling off period.

Bill 72 imposes additional restrictions on excess wear and tear charges, including specifying when and under what conditions such charges can be imposed. Other than such excess wear and tear charges, and any overdue lease payments, no charges may be imposed on a consumer at the end of the lease term.

Finally, the bill also addresses long-term lease advertisements. The following will be prohibited if Bill 72 is adopted

- referring to an implied credit rate without disclosing that rate
- disclosing a rate relating to implied credit unless the implied credit rate, calculated in accordance with the QCPA, is also disclosed with equal emphasis
- increased merchant liability in cases of fraud or unauthorized use of a consumer's demand deposit account

Bill 72 requires merchants with whom a consumer holds a demand deposit account to refund any sum debited from that account without the consumer's authorization or that of a person authorized to make transactions on that account. Merchants also will be required to refund any sum debited with the authorization of the consumer, where the latter is a victim of fraud, if the merchant debited that sum without taking the necessary precautions to prevent the fraud despite strong indications raising a suspicion of fraud. The consumer's liability is limited to a maximum of \$50.

Refunds must be made within five working days after the consumer's request to that effect. However, the consumer will be held liable for the losses incurred by the merchant if the merchant establishes that the consumer committed a gross fault with regard to the protection of the consumer's personal identification number.

It should be noted neither the QCPA nor the Regulation provide a definition of a demand deposit account. Thus, there remains an uncertainty with the meaning of that term and the intended scope of the provisions of the bill on that matter.

Conclusion

As Bill 72 has only recently been presented and is in the process of being studied in detail by the Québec National Assembly, we will continue to follow its progress and any amendments that may be made before its adoption. If you think these proposed changes may impact your business operations in Québec, please do not hesitate to contact us.