

## amendments to Québec's Consumer Protection Act: a brief synopsis of the upcoming changes

In June 2009, Québec's Minister of Justice, Kathleen Weil, introduced Bill 60 concerning, among other things, modernization of the *Consumer Protection Act*. Welcomed by consumer organizations, Bill 60 primarily targets the new system of contracts involving sequential performance of a service provided at a distance, unilateral modifications of a contract by a merchant, price disclosure and new provisions applicable to prepaid cards. After numerous modifications to Bill 60 following its review by a committee of Québec's National Assembly, the *Act Modifying the Consumer Protection Act* was adopted on December 2, 2009. The new provisions are expected to come into force, at the latest, on June 30, 2010.

### contractual modifications

The *Consumer Protection Act* amendments are intended to regulate the unilateral modification of a contract by a merchant. Bill 60 provides that unilateral amendment clauses in a contract will be prohibited, unless these clauses are accompanied by elements specifically enumerated in the modernized Act. It should also be noted that a consumer contract will have to include provisions specifying which sections of the contract can be unilaterally modified, once certain requirements are met. Bill 60 also prohibits clauses allowing an essential element of the contract to be unilaterally amended by a merchant, as well as clauses providing that the consumer must pay a fee, penalty or damages of an amount or percentage fixed in advance in the contract, in the case of a default to perform its obligations. Bill 60 provides that, henceforth, only accrued interest may be claimed from the consumer in the event of a failure to perform. Bill 60 also sets out strict rules regarding the termination of a consumer contract, whether such contract is for a determinate or indeterminate term.

## warranties

Bill 60 sets out new rules applicable to warranties. Businesses will have an obligation to inform the consumer, both orally and by written notice, of the content of the legal warranty and of the existence, length and terms of any warranty, including the manufacturer's warranty that comes with the goods, before offering the consumer the possibility of purchasing an additional warranty.

## gift cards and prepaid cards

While rules regulating the sale of gift cards and prepaid cards already exist in many other Canadian provinces, the proposed amendments to the *Consumer Protection Act* introduce such rules for the first time under Quebec law. These rules will apply to all gift cards, gift certificates and other similar exchange instruments by which a business offers a good or a service to a consumer in exchange for a payment made in advance.

First, Bill 60 provides that a merchant will have an obligation to disclose to the consumer the terms and conditions of use for the prepaid card, as well as the procedure that has been put in place for the consumer to verify the balance on the card in question. Second, the new amendments specify that expiry dates on prepaid cards will be prohibited, unless the contract provides for unlimited use of a service. Third, Bill 60 provides that no fee may be charged to the consumer for the issuance and use of the prepaid card.

## cell phones and other contracts involving sequential performance of a service provided at a distance

with the enactment of Bill 60, the legislator will be adopting a strong attitude towards "contracts involving a sequential performance of a service provided at a distance". For example, the proposed changes will have an impact on telecommunication contracts, including those for mobile telephones and cable or satellite television.

From now on, a merchant's obligation to inform consumers will be reinforced as the contract will have to include additional information. Consumers will have to be informed of certain details of the contract, as well as the economic benefits granted to the consumer following signature of the contract. Bill 60 also introduces new rules governing the termination of a contract by the consumer, as well as maximum penalties that can be claimed by the merchant in such a case. In addition, new provisions will apply to the automatic renewal of a contract. As well, Bill 60 contains provisions governing security deposits given by a consumer.

## hidden fees

Bill 60 introduces a rule governing a merchant's obligation to disclose the full price of a good or service. According to this rule, any posted price will have to include the aggregate sum that the consumer will have to pay to obtain the good or service, with the exception of fees due pursuant to a federal or provincial law, such as sales taxes. For example, car dealers will have an obligation to include transportation and preparation fees in the advertised price of their vehicles.

## compensation funds

Bill 60 introduces the possibility to create compensation funds in certain industry sectors through the adoption of regulation. Inspired by the travel industry's compensation fund for travel agencies' clients, such a measure would allow for consumer compensation following the shutdown of businesses in a given sector.

## conclusion

The Québec government wishes to put an end to certain commercial practices considered inappropriate by consumer organizations with the adoption of the new amendments proposed by Bill 60. This new legal framework covers several sectors that were not specifically governed by the *Consumer Protection Act* first adopted in 1971. While the Act was first amended in 2007, in order to govern commercial practices for internet purchases, a third phase to the Act's vast reform is on its way, as amendments concerning consumer credit and debt overload will be introduced. We understand that this third phase is nearly complete and that the Minister of Justice intends to introduce a new bill before the end of this year.

by Stéphanie Hamelin

For further information on this topic, please consult with our Consumer Law Group:

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**a cautionary note**

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted. © McMillan LLP 2010.