

# QUÉBEC BILL 29 – A POTENTIAL RIGHT TO REPAIR AND PLANNED OBSOLESCENCE BAN THAT WOULD AFFECT APPLIANCES AND ELECTRONICS

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The Province of Québec is known for the generous protections afforded under its Consumer Protection Act<sup>[1]</sup> (the “**QCPA**”), including certain statutory warranties of durability and fitness for purpose that may not be avoided or disclaimed by companies doing business in the Province.<sup>[2]</sup> This robust regime may yet become even stronger with the tabling of Bill 29 – *An Act to protect consumers from planned obsolescence and to promote the durability, repairability and maintenance of goods*.<sup>[3]</sup>

This is not the first time legislation enshrining these concepts is proposed,<sup>[4]</sup> although prior attempts were the initiative of individual MPs, whereas the current legislation emanates from the Government and seems to carry more traction, based notably on popular concepts of sustainability, environmental protection and consumer rights. Work on the Bill is expected to resume when the National Assembly reconvenes in the fall of 2023.

In this bulletin, we refer to the new bill as “**Bill 29**”, and the QCPA, as it would be amended by Bill 29, as the “**Amended QCPA**”. We further examine the impacts and the right to repair mechanisms it creates on all products sold in Québec, as well as certain rules that will apply specifically to certain categories of appliances and electronics, and their manufacturers. We finally review the updates to (and strengthening of) the applicable sanctions.

## General Requirements

The core of Bill 29 consists in:

- Banning the planned obsolescence of a good, being any technique aimed at reducing a product’s normal operating life, and the sale of such goods<sup>[5]</sup>; and
- Giving consumers the right to repair their goods, including by banning the use of techniques that would make it more difficult for the customer to repair a product<sup>[6]</sup>.

For instance, the QCPA has long required companies to maintain a replacement parts inventory and repair services for a reasonable period after a sale, unless such availability was disclaimed in writing.<sup>[7]</sup> However,

under the Amended QCPA, regulations may specify certain types of parts or services that may not be excluded.<sup>[8]</sup> These regulations will also require disclosures by the merchant and/or manufacturer of certain information relating to the availability of replacement parts and repair services, as well as information necessary to perform that maintenance.<sup>[9]</sup> Bill 29 further specifies that replacement parts should be installable using commonly used tools and without damaging the product.<sup>[10]</sup> In addition, repairs must be made possible at a reasonable price which does not discourage the customer from accessing it.<sup>[11]</sup>

Bill 29 also introduces a new punitive scheme for merchants and companies that fail to maintain a generally available inventory of parts or repair services. The consumer may then request that the manufacturer or the seller repairs the product himself.<sup>[12]</sup> If the merchant or manufacturer doesn't respond to the customer's request within 10 days<sup>[13]</sup> or if it agrees to make the repairs, but doesn't meet the agreed deadline for repairs<sup>[14]</sup>, it will be forced to replace or refund the entire product.<sup>[15]</sup> The customer will also have the option of accepting or refusing the repair deadline offered by the seller. If the consumer refuses, he/she will have the option of having the product repaired by a third person, at the expense of the seller or manufacturer.<sup>[16]</sup>

### Specific Requirements for Appliances and Electronics

While the aforementioned requirements will be applicable to all types of goods and items, Bill 29 also seeks to create a regime that specifically targets certain categories of consumer appliances and electronics, namely the following, either in the event of a sale or long-term (four months and above) lease.

- Cooking ranges
- Refrigerators;
- Freezers;
- Dishwasher;
- Washing machines;
- Dryers;
- Television sets;
- Computers (laptops and desktops);
- Tablets;
- Cellular phones;
- Video game consoles;
- Air conditioners; and
- Heat pumps.

This list may also be fleshed out via regulations in the future. For those categories of goods, the goal won't be to regulate maintenance requirements for regular wear and tear, as outlined above, but rather to create a special "*warranty of good working order*"<sup>[17]</sup> covering parts and labor in the event of a break.<sup>[18]</sup> Conversely, normal maintenance, consumer misuse or accessories would generally not be covered by the new regime.<sup>[19]</sup>

The warranty would take effect upon delivery<sup>[20]</sup> and apply for the duration determined by regulation.<sup>[21]</sup> It seems likely that those durations would be determined on a per category basis, which change may be welcomed by some, as providing some certainty on what standard their products will need to meet. By contrast, the existing statutory warranty requirement is for goods to last a "*reasonable length of time*", which gives rise to a highly factual and uncertain exercise that often ends up in front of the courts.<sup>[22]</sup> The merchant will even be required to prominently indicate the duration of the warranty next to the price of the products.<sup>[23]</sup>

This warranty will also benefit the consumer who is the subsequent purchaser of the good.<sup>[24]</sup> In the event of a break, the merchant or manufacturer would need to perform the repair of the goods (including paying for shipping) or pay the cost of third-party repairs.<sup>[25]</sup>

Finally, regulations will be issued imposing the following disclosure requirements and manner in which they must be met.

1. The manufacturer must indicate both the details and the duration of the warranty;<sup>[26]</sup>
2. The merchant ensure that the prescribed information is also sent to the consumer as soon as the sale or lease is concluded.<sup>[27]</sup>

### **Universal Charging**

While this bulletin already identifies a number of areas to keep an eye on for future regulations, buried at the end of the Bill, the government also gives itself broad powers to affect the design of products sold in the Province.<sup>[28]</sup> Indeed the Government would now have the power to adopt regulations “*determining 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 they apply*”.

Based on news coverage and public declarations surrounding Bill 29, this is aimed at first imposing a common charger for mobile phones, but could obviously have much broader consequences in the coming years.

### **Penalties and Sanctions**

Prior to Bill 29, anyone who failed to comply with the QCPA or its regulations committed an offence and was subject, in most cases, to monetary penalties between \$600 and \$6,000 for individuals or \$1,000 and \$40,000 for corporations.<sup>[29]</sup> For repeat offenses, the aforementioned maximum and minimum amounts were doubled. Bill 29 raises and diversifies these penal sanctions. Violations are now grouped into different categories, each of which gives rise to different fines. For example, violations of rules relating to the form and content of consumer contracts will carry a fine of \$1,500 to \$37,000 for physical persons and \$3,000 to \$75,000 otherwise. For other violations, such as failure to obtain required permits, giving false or misleading information or failing to comply with a decision or a requirement of the provincial consumer protection regulator, the fines may be as high as \$175,000 for a corporation and \$87,500 for a physical person.

Furthermore, when considering these new minimum and maximum thresholds, Bill 29 requires courts to take into account six new criteria in order to determine the amount of pecuniary penal sanctions:<sup>[30]</sup>

1. the violating party's business, assets, turnover, income or market share;
2. the ability of the violating party to take reasonable measures to prevent the commission of the offence or

mitigate the consequences of the violation when they failed to do so;

3. the pecuniary or other benefits derived or that could have been derived from the commission of the offence;
4. the economic harm caused to consumers by the commission of the infringement;
5. the number of consumers harmed or who could have been harmed by the commission of the infringement;
6. the offender's past conduct with respect to compliance with the QCPA, including failure to act on warnings to prevent the offence.

### **Administrative Sanctions**

In addition to significantly reforming monetary penalties for penal offences, Bill 29 creates a new category of administrative sanctions. The Bill is currently silent on exactly which breaches would give rise to administrative sanctions, preferring to leave this up to the government to decide in future regulations. However, Bill 29 still establishes general rules governing this new type of sanctions,<sup>[31]</sup> such as a two-year time limitation,<sup>[32]</sup> and specific notice requirements.<sup>[33]</sup>

A crucial addition in this section is the ability to secure the payment of administrative sanctions by encumbering the violating party's movable and immovable property with a legal hypothec.<sup>[34]</sup> This implies that Québec's consumer protection regulators may be able to seize a violator's property in order to ensure payment of administrative sanctions.

It remains to be seen which breaches will give rise to administrative sanctions under future regulations following the adoption of Bill 29. These future regulations should also establish the exact amounts and method of calculating such administrative sanctions.<sup>[35]</sup> Nevertheless, the prescribed amount will not be able to exceed \$1,750 for individuals and \$3,500 for non-individuals.<sup>[36]</sup>

[1] *Consumer Protection Act*, CQLR c P-40.1 (the "QCPA")

[2] QCPA, arts. 34-54.

[3] Bill 29, *An Act to protect consumers from planned obsolescence and to promote the durability, repairability and maintenance of goods*, 43rd Legislature, 1st Session.

[4] E.g. Bill 195 - *An Act to amend the Consumer Protection Act to fight planned obsolescence and assert the right to repair goods* (43rd Legislature) and Bill 197 - *An Act to amend the Consumer Protection Act to fight planned obsolescence and assert the right to repair goods* (42nd Legislature).

[5] Amended QCPA; art. 227.0.4.

[6] Amended QCPA; art. 227.0.3. par. 1.

[7] QCPA, art. 39.

[8] Amended QCPA; art. 39 par. 3.

[9] *Ibid*, art. 39.1-39.2.

[10] *Ibid*, art. 39(2).

[11] *Ibid*, art. 39.3.

[12] *Ibid*, art. 39.5.

[13] *Ibid*, art. 39.6.

[14] *Ibid*, art. 39.7.

[15] *Ibid*, art. 39.6-39.7.

[16] *Ibid*, art. 39.7.

[17] *Ibid*, art. 38.1.

[18] *Ibid*, art. 38.2.

[19] *Ibid*, art. 38.3.

[20] *Ibid*, art. 38.4.

[21] *Ibid*, art. 38.1.

[22] QCPA, art. 38. Thousands of cases have been rendered on that specific section.

[23] Amended QCPA, art. 38.8.

[24] *Ibid*, art. 38.6.

[25] *Ibid*, art. 38.5.

[26] *Ibid*, art. 38.7.

[27] *Ibid*, art. 38.9.

[28] Amended QCPA, art. 350(1)(d.1).

[29] QCPA, arts. 277, 279.

[30] *Ibid*, art. 282.

[31] Amended QCPA, article 276.1 al.1.

[32] *Ibid*, article 276.4.

[33] Amended QCPA, article 262.3

[34] *Ibid*, article 276.8.

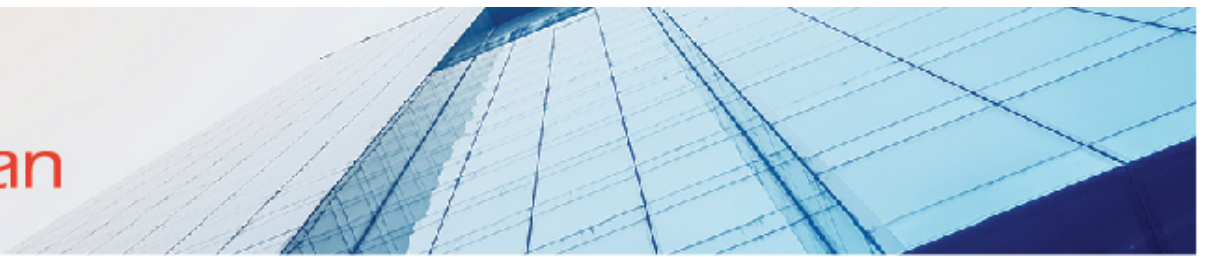
[35] *Ibid*, article 276.1 al. 2.

[36] *Ibid*.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against



making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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