Advertising, loyalty programs and consumer credit: what's new and what's coming up

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Following the adoption of the *Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs*[1] in November 2017, major legislative and regulatory provisions affecting the rights and obligations of Québec merchants and consumers were assented to and published in the *Gazette officielle du Québec* on July 18, 2017.

Substantial changes and additions were made to the *Regulation respecting the application of the Consumer Protection Act*,[2] the *Regulation respecting the application of the Act respecting the collection of certain debts*,[3] and the *Regulation respecting travel agents.*[4] The progressive dates of coming into force of the provisions of Act 24 were enacted at the same time. The amendments to the *Consumer Protection Act,*[5] its application regulation and the new provisions come into force on four different dates next year.

Overview of amendments substantially affecting the obligations of merchants

Commercial and advertising practices

The following provisions came into force on August 1st, 2018:

- Under the new s. 231.1 CPA, any picture of goods or services in an advertisement that also discloses their price or value must accurately depict the goods or services provided.

- The new s. 244.1 CPA prohibits merchants from falsely or misleadingly representing to

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consumers in an advertisement that credit may improve their financial situation.

- The new s. 251.1 CPA prohibits any person from withholding an amount of money on a credit card unless the person discloses, before the transaction, why and for how long it is to be withheld.

- The new s. 251.2 prohibits merchants from informing a personal information agent that a consumer has exercised a right to cancel or rescind a contract under a law supervised by the OPC or information unfavourable to the consumer concerning amounts that are no longer payable following the exercise of that right.

Under the new s. 223.1 CPA, merchants must present the information contained in an advertisement in a clear, legible and understandable manner. This provision comes into force on February 1st, 2019.

Clarification on loyalty programs

The many merchants offering loyalty programs under which consumers can obtain goods or services valued at over $50 may have to change their practices once the new provisions in ss. 79.6.1 *et seq.* of the Regulation come into force on August 1st, 2019:

- The new s. 79.6.4 provides that the conditions that allow consumers to receive exchange units, the terms applicable to the exchange, the terms applicable to the expiry, and the conversion factor used to convert exchange units, is information that loyalty program merchants must give to the consumer.

- The new s. 79.6.7 limits a merchant's ability to increase the number of exchange units required to obtain goods and services, unless the increase is justified by a significant increase in the market value of the goods or services.

Under the new s. 187.8 CPA, since August 1st, 2018, exchange units obtained by a consumer remain valid and cannot expire at a given date or after a determined period. The effect of this new provision will be relaxed one year later by the new s. 79.6.4 of the Regulation.

High-cost credit

The provisions concerning high-cost credit come into force on August 1st, 2019:

- According to the new s. 61.0.3 of the Regulation, a credit contract is high cost when its credit rate is 22 percentage points higher than the Bank of Canada bank rate.

- The additions under the new s. 93 of the Regulation require that merchants offering high-cost credit hold a special permit. The new s. 18 of the Regulation provides, however, that banks, financial services cooperatives, trust and loan companies, mortgage lenders and insurance companies are exempt from the obligation to hold a permit.

- Under the new s. 73 of the CPA, a high-cost credit contract may now be cancelled within 10 days after the date on which each of the parties is in possession of a duplicate of the contract.

Tightening the rules on assessing the consumer's repayment capacity

The following provisions will apply as of August 1st, 2019:

- Under the new ss. 103.2 *et seq.* CPA, and the new ss. 61.0.1 *et seq.* of the Regulation, the merchant must assess the consumer's capacity to repay before granting credit, and the consumer's capacity to repay will now be assessed according to the criteria set out, in particular the consumer's gross income, the total of the monthly recurring disbursements related to housing, the total of the disbursements required under a credit contract or long-term lease of goods contract, the information

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contained in a credit report prepared at the time the capacity to repay is assessed and, where applicable, the credit history with that merchant.

- The new s. 103.3 CPA states that a merchant who fails to conduct the assessment under s. 103.2 may lose the right to claim the credit charges. Where applicable, such merchant may have to refund any credit charges already paid by the consumer.

- The new s. 61.0.5 of the Regulation provides that lenders who enter into high-cost credit contracts must provide consumers with a document summarizing the result of the assessment of their repayment capacity, their debt ratio, the methods for calculating the debt ratio, the elements used in the calculation of the consumer's debt ratio and, where the debt ratio exceeds 45%, the document must include a compulsory warning.

- The new s. 103.5 CPA states that any consumer having entered into a high-cost credit contract with a debt ratio in excess of 45% is presumed to have contracted an obligation that is excessive, abusive or exorbitant.

- The new s. 103.1 CPA provides that any ground of defence raised by a consumer concerning a good financed is enforceable against the lender; in addition, in certain circumstances, the consumer can assert his or her rights against the merchant against the lender.

Information on consumer credit

The following provisions come into force on August 1st, 2019:

- For variable credit contracts, under the new wording of s. 126 CPA, merchants must give consumers specific information in every statement of account, in particular the consumer's rights and obligations regarding billing errors.

- Under this section, credit card statements must indicate the estimated number of months or years required to repay the entire outstanding balance.

- The new s. 126.1 CPA provides that the minimum monthly credit card payment may not be less than 5% of the outstanding credit card balance. All new contracts entered into after August 1st, 2019 are subject to this provision. For existing contracts, the transition period is six years. Therefore, the minimum payment will gradually increase by half a percentage point per annum, from 2% to 5%.

- For the purposes of s. 127 of the CPA and s. 69.0.1 of the Regulation, statements of account sent electronically by credit card issuers must be available to cardholders for a period of two years.

In accordance with the new s. 21 of the Regulation, umbrella mortgages will be subject to a double consent. The act constituting the hypothec must identify the consumer credit contracts secured by such a hypothec. In addition, the contract must also explicitly stipulate that the credit contract is secured by a hypothec on the value of the consumer's property. Merchants who enter into credit contracts must comply with the provisions on umbrella mortgages starting August 1st, 2019. Note that this provision does not apply to first-ranking immovable hypothecs.

Use of standard contracts

As of August 1st, 2019, money lending contracts, credit card application forms, variable credit contracts, variable credit contracts entered into for the use of a credit card, instalment sales contracts, contracts of lease with guaranteed residual value, and contracts involving credit other than an instalment sale contract must now contain certain specific information found in a box at the very beginning of the contract, and satisfy several requirements as to form.

Conclusion

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Other obligations will gradually come into force over the coming year. This is particularly true for the rules applicable to travel agencies that came into force on August 1st, 2018, and others that will come into force on January 1st, 2019, and for provisions on the issuance of certificates for representatives of collection agents and stipulations that must be included in contracts entered into by debt settlement service merchants, applicable starting February 1st, 2019. Finally, merchants will have to comply with all the other provisions in Act 24 and its regulations commencing August 1st, 2019.

Merchants should pay special attention to the consumer law provisions that come into force over the coming year. The CPA contains penal provisions that impose considerable fines for those who contravene the Act or its regulations, ranging from $600 to $100,000.

Finally, please note that all contracts covered under the *Consumer Protection Act* must now be drafted on good quality white paper.

At least while paper still exists.... and with regards to that, there is unfortunately nothing in the new law. Let’s hope that the legislature will enact provisions in the near future that expressly permit merchants to enter into consumer contracts using electronic tablets.

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1. SQ 2017, c. 24 (hereafter **“Act 24**”).
2. CQLR, c. P-40.1, r. 3 (hereafter the “**Regulation**”).
3. CQLR, c. R-2.2, r. 1
4. CQLR, c. A-10, r. 1
5. CQLR, c. P-40.1 (hereafter the “**CPA**”).

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