Planned obsolescence: Possible amendments to the Consumer Protection Act to keep an eye on

August 3, 2023

With the collaboration of

Francis Sabourin

Lawyer

Introduction

On June 1, 2023, the Minister of Justice, Simon Jolin-Barrette, tabled and presented Bill 29 entitled *An Act to protect consumers from planned obsolescence and to promote the durability, repairability and maintenance of goods* [1] (hereinafter the "**Bill**") before the National Assembly.

The Bill mainly provides for amendments to the *Consumer Protection Act* [2] ("**CPA**") and reaffirms the government's desire to protect consumers, in particular by improving the legal warranties available to them and introducing the notion of planned obsolescence into Quebec law.

The date on which the new provisions will come into force has not yet been set, but the Bill is nonetheless worthy to consider right now.

Proposed amendments to the *Consumer Protection Act*

Purpose of the amendments to the CPA

The main purpose of the Bill is to put an end to the business of trading in goods subject to planned obsolescence, defined as a "technique aimed at reducing the normal operating life" of a good[3].

Warranties

The CPA already provides a framework for the legal warranty of quality that may apply to goods forming the object of a contract between a consumer and a merchant. This warranty supplements

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

the warranty provided for in articles 1726 and following of the *Civil Code of Québec*. Under section 38 of the CPA, goods "must be durable in normal use for a reasonable length of time, having regard to their price, the terms of the contract and the conditions of their use[4]."

That being said, the Bill would further protect consumers by introducing "a warranty of good working order" for certain new goods that are the object of a contract of sale or long-term contract of lease[5]. The duration of such warranty would be determined by regulation[6]. If left unchanged, the warranty would apply to the following goods:

Refrigerator;
Dishwasher;
Washing machine;
Dryer;
Television set;
Desktop or laptop computer;
Electronic pad;
Cellular telephone;
Video game console;
Air conditioner;
Heat pump.

As for additional warranties, commonly referred to as "extended warranties," merchants would now be required to inform consumers of the terms of their right to resolve a contract that includes an additional warranty[7], adding to their obligation to inform consumers of the legal warranty before offering an additional warranty[8].

Merchant and manufacturer's obligations

The Bill would impose a number of new obligations on merchants and manufacturers, particularly as regards display. For example, merchants would have to indicate the duration of the warranty of good working order near the goods concerned, in a manner as equally prominent as their price[9].

The Bill introduces a warranty of "availability" for goods of a nature that requires maintenance work. Merchants or manufacturers bound by the warranty of availability would have to make the replacement parts, repair services and information necessary to maintain or repair the goods available for a reasonable length of time and at a reasonable price after the contract has been concluded[10].

Seriously defective vehicles

Under the Bill, automobiles would be declared "seriously defective" in the following circumstances, in particular[11]:

After one or more unsuccessful repair attempts for defects under the manufacturer's conventional warranty, including three unsuccessful repair attempts for the same defect;
If the defects appear within three years of the first sale or long-term lease of the automobile where it has not covered more than 60,000 kilometres;
The defects render the automobile unfit for the purposes for which it is ordinarily intended.

Where all of the above apply, the automobile in question would be deemed to be affected by a latent defect.

Penalties

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

As concerns penal fines, the Bill provides for a significant increase in the amounts involved and introduces new offences, such as the following:

> Failure to meet the obligation to disclose the legal warranty of good working order. This could give rise to a fine of $3,000 to $75,000 in the case of a legal person and of $1,500 to $37,500[12] in the case of a natural person.
> Trading in goods for which obsolescence is planned. Offending companies could be fined a minimum of $5,000 or an amount equal to twice the pecuniary benefit derived from the commission of the offence, whichever is greater. The maximum fine will be $125,000, or an amount equal to four times the pecuniary benefit derived from the commission of the offence, whichever is greater[13].

The Bill also proposes administrative monetary penalties for "objectively observable" failures to comply with the CPA[14]. The maximum penalty for a legal person will be $3,500 for each day the failure continues[15].

Moreover, the Bill provides that officers and directors of a company having committed an offence under the CPA would be presumed to have committed the offence themselves. It would be possible to rebut this presumption insofar as the person concerned is able to establish either that they exercised due diligence or that they took "all necessary precautions" to prevent the commission of the offence[16].

Conclusion

The Bill aims to put a stop to planned obsolescence. The obsolescence of goods is planned where a "technique aimed at reducing its normal operating life is used on them[17]."

The proposed amendments to the CPA establish a new warranty of "good working order." It will be interesting to see whether it will tie in with the teachings of the Supreme Court of Canada on the legal warranty of quality in the landmark *Domtar* decision[18].

How the notion of planned obsolescence will be applied in practice will also be something to watch closely, as the Courts will be confronted with it for the first time. Certain issues could arise, especially with the burden of proof and evidence aspects.

The amendments to the CPA will also entail new obligations for manufacturers and merchants, particularly in terms of disclosure and information regarding the warranty of good working order and the additional warranty. The proposed amendments in the Bill also include a legal warranty of availability of parts and services for goods of a nature that requires maintenance work.

The severity of the fines applicable to goods for which obsolescence is planned will be something to consider.

In short, this Bill is definitely one to watch!

---

1. *An Act to protect consumers from planned obsolescence and to promote the durability, repairability and maintenance of goods,* Bill29 (Introduction – June 1, 2023), 1st Sess., 43rd Legis. (Qc) ("**B.**")
2. *Consumer Protection Act,* CQLR c. P-40.1
3. B., s. 14; CPA, s. 227.0.4, para. 2
4. CPA, s. 38
5. B., s. 3; CPA., s. 38.1
6. B., s. 3; CPA, s. 38.1, para. 2
7. Current obligation under the CPA, s. 228.1., para. 1
8. B., s. 15; CPA, s. 228.3
9. B., s. 3; CPA, s. 38.8
10. B., s. 3; CPA, s. 39, para. 1; s. 39.3, para. 1
11. B., s. 5; CPA, s. 53.1
12. B., s. 19; CPA, s. 277

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

13. *Id.*
14. B., s. 18; CPA, s. 276.1
15. B., s. 18; CPA, s. 276.1, para. 2; s. 276.2
16. B., s. 19; CPA, s. 282.1
17. B., s. 14; CPA, s. 227.0.4, para. 2
18. *ABB Inc.* v. *Domtar Inc.*, 2007 SCC 50

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.