# Chapter 10
# Innovation, Ethics, and Consumer Protection:
## The Context of Fintech Gamification in Quebec

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## ABSTRACT

*In recent years, firms that rely on fintech to develop and deliver financial products and services have become increasingly important in the banking and financial sector. Nevertheless, fintech products raise various ethical and legal issues, particularly relating to consumer rights. These issues can be analyzed in the light of behavioral law and economics which suggest that prevalent cognitive biases systematically affect the judgment of individuals. To mitigate this bounded rationality, it is possible to guide the decision-making processes through the use of nudges and configured sets of choices. A good example is fintech gamification, defined as the use of game-related mechanisms in other areas, particularly websites or social networks. However, the use of nudges for commercial purposes is often associated with some form of manipulative tactics explicitly aimed at exploiting individuals' biases without their consent. In this context, recourse to the law is useful as it provides for the minimum requirements needed to regulate the relationship between a firm and its customers.*

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## INTRODUCTION

In recent years, firms which rely on fintech to develop and deliver financial products and services have become increasingly important in the banking and financial sector (Calvet, 2017; Gorman, 2019). As a result of the 2008 financial crisis and the rapid and significant development of digital technologies, a growing number of companies have emerged offering various and innovative financial products, arousing the interest of investors around the world (De Cosmo, 2020; Mishra, 2020). With more than sixty fintech firms based in Montreal, the city offers a choice environment for developing this nascent industry (Ernst & Young, 2017).

Along with the curiosity and enthusiasm generated by this new ecosystem, fintech products raise various issues and questions, particularly relating to consumers of these new financial products (Kanaan & Bernoff, 2019; Murtarelli & al., 2020). Progress and technological innovation must take place within a regulatory framework capable of defending the interests of all stakeholders (Rayapati, 2019). In view of the emerging nature of this industry, it is particularly important to look at the issues associated with its arrival to ensure an ethical reference structure that makes it possible to guide the design and development of fintech firms (Hertzberg, 2020).

The supply and demand for financial products and services is complex, given that there is a great asymmetry between the parties (Weaver, 2020). This asymmetry is based mainly on the very nature of financial products, consumers' lack of knowledge, and their limited understanding of the contracts that bind them to companies. The technological aspect of fintech firms adds a degree of difficulty that exacerbates the unequal relationship between businesses and their customers (Shell & Buell, 2019; Wilson & al., 2019). In this context, how can more effective protection of consumer rights be ensured, both ethically and legally?

Theoretically, the issues linked to the emergence of fintech firms in the context of consumer protection can be analyzed in the light of behavioral economics and, by extension, of behavioral law and economics. This approach highlights the prevalence in individuals of heuristics and cognitive biases that systematically affect their judgment. Consumers are thus led to make choices which are not always best suited to their needs. In order to mitigate this bounded rationality (Simon 1957), the use of nudges makes it possible to configure a set of choices to guide them in their decision-making process. Indeed, nudges are part of our daily life. For example, public authorities use them to implement a wide range of public policies with the objective of improving general well-being (Sunstein, 2015). The private sector also has long used various kinds of nudges as a marketing strategy. In the fintech field, gamification is a good example. Gamification is defined as the use of game-related mechanisms in other areas, particularly on websites or social networks (Rodrigues & al., 2016). Its goal is to increase the adoption and use of these applications by building on the human predisposition to engage in play.

The use of nudges, however, raises many ethical issues, especially when used for commercial purposes. In fact, nudges are often associated with some form of paternalism or manipulative tactics explicitly aimed at exploiting individuals' biases without their consent. In this context, recourse to the law is useful since it provides for the minimum requirements to regulate the relationship between a company and its customers. These standards also apply when purchasing financial products or services offered by a fintech firm. However, their scope remains limited due to the special nature of its products and services.

These issues will be analyzed through a multidisciplinary study combining marketing, computer-mediated consumer behavior, social psychology and legal analysis. To begin with, a brief outline of the theoretical framework taken from behavioral law and economics will be presented. This framework will

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