

Bill C-13: Parliament enacts the Use of French in Federally Regulated Private Businesses Act

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On June 20, 2023, Bill C-13, which makes several changes to strengthen, protect and promote the French language, received royal assent. While its first part amends the *Official Languages Act*, its second part enacts the *Use of French in Federally Regulated Private Businesses Act* (the Act). The provisions of the Act will come into force on a day to be fixed by order of the Governor in Council.^[1]

Since our last Update on the new rights and obligations that the Act provides respecting the use of French with consumers and employees of federally regulated private businesses (federal undertakings) operating in Québec, the Standing Committee on Official Languages studied Bill C-13 and proposed certain amendments, which were subsequently adopted by Parliament. This Update focuses on these amendments, many of which were made so that the employment obligations under the Act mirror those of the Québec *Charter of the French language*, as recently amended.

Of note, the Act allows federal undertakings to choose to be governed, in respect of their Québec operations, solely by the Québec *Charter of the French language*. Given that the Act has been harmonized with the Québec statute in many respects, the practical consequence of such an election is whether the federal undertaking accepts to submit itself to a francization program overseen by the Office québécois de la langue française or not. The Government of Québec takes the position that federal undertakings have the obligation to do so in any event, a position which raises constitutional considerations that have not been decided by the courts.

Language rights at work

Under the Act, employees of federal undertakings who occupy or are assigned to positions in a workplace in Québec *or a region with a strong francophone presence* will have the right to carry out their work and be supervised in French.^[2] They will also have the right to use French work instruments and computer systems that are regularly and widely used.^[3] The regions outside of Québec that will be considered as having a strong francophone presence will be determined by regulation.

Furthermore, they will have the right to receive all communications and documents in French, such as

- employment application forms
- offers of employment, transfer or promotion

- individual employment contracts
- documents related to the conditions of employment
- training documents produced for employees
- notices of termination of employment
- collective agreements and their schedules
- grievances^[4]

Even when these employees cease to be employed, this right will continue to exist.^[5]

Moreover, trade unions representing these employees will benefit from the same right.^[6]

Although this right will not prevent the use of English or a language other than French for communications and documents, the use of French will have to be at least equivalent in the case of widely distributed communications and in any documents.^[7]

It will also be possible for federal undertakings and their employees to agree on communications and documents being exclusively in English or a language other than French, even after the employee ceases to be employed.^[8]

Offer to fill a position

Federal undertakings with workplaces in Québec *or a region with a strong francophone presence* will be obliged to publish advertisements to fill a position that is assigned to one of those workplaces at least in French. Where applicable, they will have to ensure the simultaneous publication of the French and English versions by means identical in nature that reach a target public of a proportionally comparable size.^[9]

Individual employment contracts

A federal undertaking will have the possibility to enter into an employment contract exclusively in English or a language other than French with an employee of one of its workplaces in Québec *or a region with a strong francophone presence* if the employee agrees. Nevertheless, in the case of a contract of adhesion (a non-negotiable contract), it will be necessary to provide a French version of the contract to the employee in advance.^[10]

Fostering use of French

Federal undertakings will have to take measures to foster the use of French in their workplaces in Québec *or regions with a strong francophone presence*, which must include

- informing employees that they are subject to the Act
- informing employees of their language of work rights and their available remedies
- establishing a committee (the Committee) to support the management group responsible for the general direction in the fostering of French and its use^[11]

The Committee will need to develop programs intended to generalize the use of French at all levels, through the following:

- all members of the management group and employees having a good knowledge of

French

- an increase, if necessary, in the number of persons who have a good knowledge of French
- the use of French as the language of work and of internal communications
- the use of French in the working documents, work instruments and computer systems used
- the use of French terminology
- the use of French in information technologies
- any other means that the Committee considers appropriate^[12]

These programs will not prevent the use of English or a language other than French for communications and documents. However, the use of French will have to be at least equivalent in the case of widely distributed communications and in any documents.^[13]

Adverse treatment

Federal undertakings will be prevented from treating adversely an employee of one of its workplaces in Québec or a region with a strong francophone presence for any of the following reasons:

- the employee only speaks French
- the employee does not have a sufficient knowledge of a language other than French
- the employee claims the possibility of expressing themselves in French
- the employee has exercised a right under the Act or made a complaint to the Commissioner of Official Languages for Canada (the Commissioner)
- the federal undertaking is seeking to deter the employee from exercising such a right or making such a complaint
- the employee has taken part in meetings of, or carried out tasks for, the Committee or one of its subcommittees
- the employee has, in good faith, communicated information to the Commissioner in relation to a complaint or participated in an investigation conducted as a result of such a communication
- the federal undertaking is seeking to induce the employee to endorse a document prepared by the Committee or to dissuade the employee from doing so^[14]

Adverse treatment includes dismissing, laying off, demoting, transferring or suspending an employee. It also includes harassing, taking reprisals against, disciplining or imposing any other penalty on an employee.^[15]

However, federal undertakings will not be prevented from requiring an employee to have a knowledge of a language other than French if they are able to demonstrate that it is objectively required by reason of the nature of the work to be performed. In any advertisement to fill a position *assigned to one of their workplaces in Québec* that requires such knowledge, they will have to set out the reasons justifying the requirement.^[16] In addition, they will have to priorly, at a minimum

- assess the actual language needs associated with the work to be performed
- verify that the language knowledge already required of other employees is not sufficient

for the performance of that work

- restrict the number of positions involving work whose performance requires knowledge of a language other than French^[17]

These provisions of the Act do not intend to impose an unreasonable reorganization of federal undertakings' affairs.^[18]

Finally, federal undertakings will have to take all reasonable measures to prevent adverse treatment in the work environment.^[19] When made aware of adverse treatment in the work environment, they will have to take all reasonable measures to make it cease.^[20]

Remedies

Employees will have the right to make a complaint to the Commissioner if federal undertakings fail to comply with their obligations described above.^[21] The complaint will have to be made no later than the 90th day after the earlier of: (a) the day on which the employee became aware of the act or omission; and (b) the day on which the employee ought, in the Commissioner's opinion, to have become aware of that act or omission.^[22]

Further rights of action can subsequently be exercised before the Canada Industrial Relations Board or before the Federal Court, depending on the employee's preference, and damages and other forms of specific relief can be awarded to the employee.

[1] *An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts* (Bill C-13), s. 71(4). All italicized words will come into force on the second anniversary of the day on which the provisions of the Act will come into force.

[2] Paragraph 9(1)(a) of the Act.

[3] Paragraph 9(1)(c) of the Act.

[4] Paragraph 9(1)(b) of the Act.

[5] Subsection 9(1.1) of the Act.

[6] Section 9.2 of the Act.

[7] Subsection 9(3) of the Act.

[8] Subsection 9(6) of the Act.

[9] Subsection 9(2.1) of the Act.

[10] Subsections 9(4) and (5) of the Act.

[11] Subsection 10(1) of the Act.

[12] Subsection 10(1.1) of the Act.

[13] Subsection 10(3) of the Act.

[14] Subsection 11(1) of the Act.

[15] Subsection 11(8) of the Act.

[16] Subsection 11(3) of the Act.

[17] Subsection 11(4) of the Act.

[18] Subsection 11(5) of the Act.

[19] Subsection 11(6) of the Act.

[20] Subsection 11(7) of the Act.

[21] Subsections 18(1), (1.1) and (2) of the Act.

[22] Subsection 18(2) of the Act.