

Bill C 13: Potential uncertainty for federal undertakings in Québec

OCTOBER 17, 2022 6 MIN READ

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On May 30, Bill C 13, which makes several changes to strengthen, protect and promote the French language, received its second reading before the House of Commons. The Bill is currently being studied by the Standing Committee on Official Languages, and the deadline to submit a brief is October 31, 2022.

The federal government's push to modernize its approach to Canadian official languages comes in the wake of the Québec National Assembly's adoption of Bill 96, which brought significant amendments to the *Charter of the French Language* (Charter). Bill C 13 has two parts: the first amends the *Official Languages Act* and the second enacts the *Use of French in Federally Regulate Private Business Act* (The Act). If its current version is adopted into law, the Act would provide new rights and obligations respecting the use of French with consumers and employees of federally regulated private business (federal undertakings) operating in Québec.

New consumer rights

The Act provides consumers in Québec and regions with a strong francophone presence with a right to communicate and receive services in French from federal undertakings, who are obligated to respect these rights. This language obligation applies to oral and written communications and with respect to any documents or activities that relate to those communications or services. If desired, the consumer may communicate with the corporation in a language other than French.

The Act also provides individuals or groups with a remedy in the form of a complaint mechanism to the Commissioner of Official Languages (Commissioner) if they believe that a federal undertaking has failed to comply with their obligations. The Commissioner may also investigate at her/his own initiative. Federal undertakings found not to have been compliant may face recommendations and orders outlined in the *Official Languages Act*, and monetary damages can be sought before the Federal Court.

New language rights at work

The Act provides employees, or those assigned to positions of federal undertakings in Québec, with a right to work in French. This includes the right to receive all communications and documentation from their employer in French, such as offers of employment, promotions, notices of termination, collective agreements and grievances arising from them. It also extends to the language in which work instruments and computer systems are available.

This new right does not, however, preclude providing communications and documents in

both official languages simultaneously, provided that the use of French is at least equivalent to that of English. Federal undertakings also will have to inform their employees that they are subject to the Act and that they have recourse against their employer in matters of language of work. Moreover, federal undertakings will be required to establish a committee to support their management in promoting the use of French within the corporation.

It will not be possible to require the knowledge of a language other than French as a condition of employment unless the comprehension of that other language is objectively justifiable for that position. Treating an employee adversely for the sole reason that their knowledge of another language is insufficient or because the employee exercised a right under the Act will be prohibited.

The Act provides for acquired rights so that an employee who does not have an adequate knowledge of French at the time the Act is adopted cannot be treated unfavourably for that reason. Federal undertakings also will be responsible for examining the factors and conditions that may explain why certain employees have a lesser knowledge of French, and may be required to adopt measures to promote knowledge of French by employees.

Where a federal undertaking fails to respect language rights at work, employees may make a complaint to the Commissioner. Where the Commissioner cannot resolve a complaint within a reasonable time, the complaint can be referred to the Canada Industrial Relations Board. The Board may take any number of actions, including reinstating the complainant in their job and taking any measures the Board feels are fair that are likely to remedy or counteract the efforts of the failure to comply.

Potential conflicts arising from the application of Bill C 13 and the Québec Charter of the French Language

Notably, Bill C 13 provides federal undertakings the option to be subject to the Charter in its activities in Québec instead of the Act, a choice which would be reversible.

In contrast to the choice mechanism in the Act, Québec's Bill 96 indicates that it cannot be interpreted to prevent its application to any corporation or employer operating in Québec. Even though the Charter does not expressly state that it applies to federal undertakings, Québec's Minister of Justice indicated during the study of Bill 96 that the Charter will be applied to businesses operating in the province, regardless of whether they fall under the jurisdiction of the Parliament of Canada. The regulator charged with enforcement of the Charter, the *Office Québécois de la langue française*, has been reaching out to federal undertakings with operations in Québec to require them to register to undergo a "francization program" under the Charter.

Furthermore, the remedy mechanism under the Charter differs from the one set out in Bill C 13, is more extensive and creates a new private right of action for all Québec residents to seek injunctive relief, damages and punitive damages for violations of the provisions of the Charter, without any prior requirement to seize the *Office Québécois de la langue française* of the issue through a complaint. This is different than the remedy mechanism under Bill C 13, which allows for a private right of action, but only before the Federal Court and only subsequent to the filing of a complaint with the Commissioner. Federal undertakings operating in Québec who are compliant with the Act and who do not opt to be governed by the Québec Charter may nonetheless face the concurrent application of the Charter and its remedy mechanism.

This potential conflict sets the stage for a constitutional battle over the division of powers. Under the modern approach to adjudicating constitutional issues of this nature, courts have

emphasized the principle of cooperative federalism. This principle favours the simultaneous application of valid laws enacted at the federal and provincial levels, even if they deal with the same subject matter. In the recent *Bell Canada* decision,^[1] the Québec Court of Appeal has held valid the application of Québec's *Consumer Protection Act* to federal undertakings on the grounds that the federal government's jurisdiction was not trammelled or frustrated by the application of the provincial law. Conversely, it is a long-established principle that the Parliament of Canada has exclusive jurisdiction to regulate the essential parts of federal undertakings, including their management and operation,^[2] and many of the provisions of the Québec Charter attempt to regulate this same subject matter despite exclusive federal jurisdiction with respect to federal undertakings.

[1] *Bell Canada c Directeur des poursuites criminelles et pénales (Office de la protection du consommateur)*, 2022 QCCA 408.

[2] See, for example, *Bell Canada v Québec (Commission de la santé et de la sécurité du travail)*, [1988] 1 SCR 749.