

## Government of Québec proposes stricter French language law

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On May 13, 2021, the Government of Québec tabled *An Act Respecting French, the Official and Common Language of Québec* (the Act), which proposes the most significant changes to the *Charter of the French Language* (the Charter) since its enactment in 1977.

A number of these amendments, if adopted, would result in new and more onerous requirements and would present material and novel legal risks for those who carry on business in Québec. We have highlighted the most significant considerations that may apply should the legislation come into force. Several of these key amendments may be particularly significant in light of the new private right of action created in the Act, which could create material exposure for those not complying with the Act.

### New right for employees to carry on their activities in French

The Act proposes to modify the existing obligation for communications in writing with employees to be in French and would provide for a broader right to “carry on [...] activities in French.” This would include, in particular, the publication of job offers, contracts of employment, written communications, application forms, documents relating to conditions of employment and training documents. Job offers will be subject to a new requirement for a French language version to be simultaneously published “using transmission means of the same nature and reaching a target public of proportionally comparable size” as the English or other language version.

### Stricter test for making knowledge of English a condition of employment

The Act proposes to introduce more prescriptive requirements for an employer to satisfy before being permitted to make knowledge of English a condition of employment. Under the Act, an employer would be required to demonstrate that

- an assessment of the actual language needs associated with the duties to be performed was carried out
- other employees who are already required to be proficient in English could not carry out the duties of the position that require the knowledge of English
- the duties requiring English proficiency have been concentrated as much as possible within certain positions, so as to restrict as much as possible the number of positions that require such proficiency

## Communications with clients

The Act introduces a new mandatory requirement for businesses to “inform and serve” clients in French, regardless of whether they are consumers. While clients can opt to be served in another language, this must be initiated by the client and in certain situations, notably in respect of contracts, French documents must be presented to clients before they are able to elect to proceed in another language.

## Standard form contracts

The Charter already requires standard form contracts to be available in French, unless it is the express wish of the parties that the contract be in another language. A practice exists for many commercial standard form contracts to include a clause confirming it is the express wish of the parties that the contract be in English, rather than developing a French version of the standard form contracts. Under the Act, this practice would be curtailed by requiring a business to first present the standard form contract in French. Only if the client requests an English version could it then be made available. Moreover, the new private right of action could render unenforceable standard form contracts entered into in English in violation of these new requirements, and give rise to damages, including punitive damages.

## Use of non-French trademarks and signage

The Charter currently allows the use of non-French trademarks, provided such trademarks are recognized under the federal *Trademarks Act* and no French version has been registered. The Act would limit this exemption somewhat by specifying that the non-French trademark can only be used in signage and advertising if it has been formally registered (i.e., not just recognized) under the federal *Trademarks Act*.

In respect of signage on the exterior of business premises, French text accompanying a non-French trademark will continue to be mandated, but will now be required to be “markedly predominant” in relation to the trademark. Under the Charter, this is essentially defined to require the use of French text that is twice the size of the non-French text.

## New order-making powers for the OQLF

The Act would give the Office québécois de la langue française (OQLF) new powers to issue orders, as well as the right to directly seek the enforcement of those orders before the Superior Court of Québec. In addition, although the Charter currently provides for injunctions in respect of advertising, the Act would extend the availability of injunctions to most violations of the Charter, including in respect of product packaging and communications with clients.

Finally, in cases of repeated contravention of the Charter, the Act proposes to grant the OQLF the ability to apply to the new Minister of the French Language to have the Minister suspend or revoke any government-issued permit or authorization provided to a business.

## Private rights of action

Currently, recourse for violations of the Charter is limited to complaints to the OQLF for an individual. An employee has the right to bring certain workplace violations to a specialized

labour standards tribunal.

The Act introduces a private right of action, enabling individuals to seek injunctive relief in respect of a failure to have been provided services in French or a failure by an employer to honour their right to work in French. Under this new right, a claimant (which could be an individual or a business) could seek the annulment of standard form contracts entered into in English, or damages, at their election. Similarly, standard form contracts or any document that does not comply with the Charter, as amended by the Act, could be deemed unenforceable by the business that prepared them, but could nonetheless, be enforced against that business.

Finally, the Act would inscribe in the Québec *Charter of Human Rights and Freedoms* (the "Québec Charter of Rights") a new "right to live in French to the extent provided for in the Charter of the French Language". This could open the door to claims under the Québec Charter of Rights for violation of the Charter. Such claims, if proven, could give rise to injunctive relief, damages and punitive damages.

If adopted, the Act will surely provoke a wave of private language rights litigation, including class actions.

Public consultations regarding the Act were completed in October and the Act will likely be passed in the coming months, given that an election is scheduled for October 2022. Businesses should review their commercial and employment practices in Québec, not only to prepare for the new requirements but also to identify compliance gaps in respect of existing requirements. This will be particularly important given that the new private rights of action materially increase the risks associated with non-compliance.