

# Government of Québec proposes stricter French language law: what franchisors need to know

SEPTEMBER 9, 2021 7 MIN READ

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On May 13, 2021, the Government of Québec presented *An Act Respecting French, the Official and Common Language of Québec* [PDF] (the Act), which proposes significant amendments to the *Charter of the French Language* (the Charter).

On May 17, 2021, Osler published an article concerning the new requirements that would arise for those who carry out business in Québec if the amendments were adopted, which can be found [here](#).

The purpose of this Update is to go deeper into the impacts of the amendments with respect to standard form contracts and the use of non-French trademarks and signage, two topics of particular importance to franchisors.

## Adhesion contracts and/or contracts containing standard clauses

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 whereby certain businesses, rather than developing a French version of their standard form contracts, simply insert a clause stating that it is the express wish of the parties that the contract be in English.

Under the Act, while it would remain possible for counterparties (including franchisees) to specifically request to contract in English, whenever the contract in question is one of adhesion (i.e., a contract in which the essential stipulations are imposed or drawn up by the franchisor and are not negotiable) or contains standard clauses, businesses would be required to present the counterparty (including franchisees) with a French version before the counterparty makes an election to contract in English.

It is worth emphasizing that it is not just adhesion contracts that would be affected by this change, but any contract that contains standard clauses. As franchise agreements, even those that are extensively negotiated usually contain or refer to standard clauses or non-negotiable operating standards/guidelines. Most franchise agreements will be caught by this new requirement.

Franchisors will have to implement processes to ensure that French versions of their standard form agreements are systematically made available to counterparties, including franchisees, and should consider what process to implement to document and demonstrate compliance with this requirement. Failure to do so could result in the agreement in question being unenforceable against the counterparty and could also give rise to damages under the new private right of action stipulated in the Act (discussed in further detail below).

Moreover, documents relating to a contract, like a receipt or an invoice, could only be sent in a language other than French if a French version is available on terms that are at least as favourable. As such, businesses should consider implementing bilingual receipts or invoices, or provide links to a French version if they are sent out in English only.

## Renewal of contracts

There are no transitional provisions regarding contracts of adhesion and standard form contracts. Therefore, the principle of non-retroactive application is effective in this case, meaning that existing contracts should not be affected since the amendments will only apply on a going-forward basis.

Nevertheless, the renewal of any existing contracts would place companies at risk since a renewal is considered a new contract. Moreover, companies would have to pay particular attention to references to external clauses, as changes to such clauses could also constitute a risk. Thus, as contracts are renewed, franchisors should plan to comply with the new requirements to avoid litigation and enforceability risks.

## Private rights of action

As the law currently stands, a complaint to the Office Québécois de la langue française (OQLF) is the only recourse for a person whose French language rights have been violated. Indeed, the Charter does not currently provide for any private rights of action in respect of its provisions. This was a major source of comfort for businesses considering there are in Québec many language activists who are very active in filing complaints under the Charter. These issues could be addressed directly with the OQLF, without facing the risk of private litigation. Contracts entered into in English could be found not to comply with the Charter, but they were nevertheless enforceable. With the Act, that comfort would disappear.

Failure to comply with these requirements could result in the annulment of the contract at issue or any document not in compliance with the Charter, a reduction of the co-contracting party's obligations, or may even result in damages, at the election of the individuals or businesses concerned. Indeed, new private rights of action would be granted to individuals and businesses, allowing them to seek injunctive relief, annulment of standard form contracts, and damages in the event of a Charter violation. Moreover, documents not in compliance with the Charter, as amended by the Act, would be deemed unenforceable by the business that prepared them, but could at the same time be enforced as against that business. English adhesion contracts that were not first presented in French could be deemed "incomprehensible" and null as a result upon the application of the adhering party.

In addition, the Act would inscribe in the Québec Charter of Human Rights and Freedoms a new "right to live in French to the extent provided for in the Charter of the French Language", opening the door to Charter claims, which could give rise to injunctive relief, damages and punitive damages, based on provisions of the Charter, as amended. This entails that individuals and businesses would have a right of action before the Courts in respect of Charter violations, which includes the right to claim punitive damages in instances of "unlawful and intentional interference". Such punitive damages, as well as the annulment of adhesion contracts not in compliance with the Charter, could be awarded in the absence of any injury or compensable harm.

If adopted, the Act could provoke a wave of private language rights litigation, including class action litigation.

## Use of non-French trademarks in signage and commercial advertising

The Charter currently allows the use of non-French trademarks, provided such trademarks are *recognized* under the federal Trade Marks 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 on signage and commercial advertising if it has been *registered* under the federal Trade Marks Act. This has been the OQLF's enforcement position for some time, without statutory backing, a situation the Act seeks to address. As a result, businesses should assess what trade marks they are using in their signage and advertising in Québec, whether those trade marks contain language that is not in French and, if so, apply for registration of the trade mark if feasible.

In respect of signage, significant changes were adopted in 2016 that required businesses that used a non-French trademark in their exterior signage to deploy additional signage that would ensure the presence of French in the same visual field as the trademark, without a prescribed size requirement (other than in respect of legibility).

In the Act, and despite the fact that the 2016 changes fully came into force less than two years ago, the government indicates a willingness to force further changes to signage so that French text accompanying a non-French trademark would now have to be "markedly predominant" in relation to the trademark, which under the Charter is essentially defined as French text that is twice the size of the non-French text.

As this is fundamentally different from the 2016 amendments that have now been implemented in the market, this could require businesses to once again implement changes to their signage. This requirement is subject to a three-year implementation period.

The Superior Court will be empowered to order the removal or destruction of non-compliant advertising on an application by the OQLF. In addition, as mentioned above, any person would be able to seek injunctive measures or damages regarding a company's failure to implement adequate signage, without the need to prove any compensable harm.

Osler is sponsoring two webinars on this topic. [Part 1](#) is on Monday September 13 at 12:30 p.m. and [Part 2](#) is on Thursday September 23 at 12:30 pm. You are invited to register for these.