

Quebec proposes new French language requirements for public signage

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On May 4, 2016, the Quebec government introduced draft regulations proposing amendments to Quebec's *Charter of the French Language* that would require public signage that displays English trade-marks to also include a French-language description of the business or other "sufficient presence of French."

Key events leading up to the proposed amendments

The proposed amendments come after many years of attempts by the *Office québécois de la langue française* (the **Office**) to require retailers to use French on exterior store signage. Most recently, in 2011, the Office attempted to impose an interpretation of the Charter requiring that a generic term in French accompany their English trade-mark on their public signs, posters and commercial advertising. In response, a number of retailers challenged the Office's interpretation in court and were ultimately successful with the Quebec Superior Court siding with the retailers. The Attorney General of Québec appealed the decision, which was dismissed in April, 2015. The Attorney General decided against seeking leave to appeal to the Supreme Court of Canada.

Essentially, the court's ruling meant that retailers operating in Québec under a non-French name did not have to amend their store signage to include a generic French descriptor.

As such, the proposed amendments are in large part a response to the court's ruling and an implicit acknowledgement by the Quebec government that it does not view the protection currently provided by Charter as sufficient for the protection of the French language in the province.

Overview of proposed amendments

Under the proposed amendments, businesses will continue to be able to use and display recognized trade-marks in a language other than French (provided that a French version of the mark has not been registered in Canada). Businesses will, however, be subject to the following new requirements:

- Where a trade-mark is displayed "outside an immovable" only in a language other than French, a "*sufficient presence of French*" must accompany the trade-mark. A "sufficient presence of French" can be satisfied in one of three ways: 1) a generic term or a description of the products or services concerned; 2) a slogan or 3) any other term or

indication deemed sufficient. The term “outside an immovable” could refer to several situations. The proposed amendments suggest that signs or posters outside premises situated in an immovable or a larger property complex are considered to be outside an immovable, including those situated in a mall or a shopping centre, underground or not. Signs or posters inside an immovable, if they are intended to be seen from the outside, are also considered to be outside an immovable.

- The presence of French must have permanent (meaning the materials or the manner in which the sign or poster is attached cannot be easily removed or torn off) visibility, similar to that of the principal signs displaying the trade-mark, and must also have legibility in the same visual field as the principal signs displaying the trade-mark. For example, if the latter is illuminated at night, the French addition must also be illuminated at the same time.
- In assessing whether the French content has “sufficient presence”, the proposed amendments contemplate that the position from which the signage will be viewed will be a relevant factor. For example, for a location which is located on a street with a sidewalk, the assessment will be made from the perspective of an individual standing on the sidewalk. By contrast, in the case of a sign or poster visible from the highway, the French content must be sufficiently legible from the highway.

While the proposed amendments will result in increased French language content on signage and posters, it may also increase the amount of advertising content to which consumers will be subject. In particular, as many businesses will already have French versions of their slogans in order to comply with other requirements of the Charter, they may be most inclined to comply with the new signage requirements by including the French version of their corporate slogan.

Based on the current draft of the proposed amendments, there would appear to be some questions as to what will fall within the scope of “a language other than French”. In particular, the question of coined words are not addressed and could leave some room for interpretation and work-arounds.

The proposed amendments, if they come into force, will apply to the installation of new trade-mark signs or posters and to the replacement of existing signs or posters. However, signs and posters existing as of the date on which the amendments come into force would have 3 years to comply. This 3-year period also applies to a trade-mark that is already used on signs or posters as part of a franchise system or otherwise, as well as if the sign or poster has been the subject of the issue of or an application for a municipal permit or a similar government authorization in the 6 months preceding May 4, 2016.

Any person wishing to comment on the draft regulations must submit written comments by June 18, 2016 to the Minister of Culture and Communications and Minister responsible for the Protection and Promotion of the French Language.