



DOING BUSINESS IN THE CANADIAN PROVINCE OF QUEBEC: WHAT IS BILL 96 AND WHAT YOU NEED TO KNOW ABOUT AMENDMENTS TO THE CHARTER OF THE FRENCH LANGUAGE

Caroline Guy Therrien Couture Joli-Coeur LLP

Bill 96, adopted by the Quebec government on June 1, 2022, to combat the declining use of the French language in the province, has and will continue to have a significant impact on companies doing business in Quebec, as more of its provisions come into effect over a three-year period. This bill amends the Charter of the French Language (the “French Charter”), a law adopted in 1977 to protect the French language. The purpose of this short article is to present certain changes affecting Quebec businesses and to give you some insight into how to deal with them.

Bill 96 also affects other aspects that we will not address in this article, such as communications with the public administration, and the language of work and education.

CONTRACT OF ADHESION

As of June 1, 2023, most contracts pre-determined by one party (adhesion contracts), or contracts containing printed standard clauses used in Quebec (form contracts), will have to exist in French. It will no longer be sufficient to add a clause stating that the parties had agreed that the contract be drawn up in English, or in any other language.

With the reform of the French Charter, the parties to such a contract will only be bound by the version of the contract in another language after having been provided a copy of the French version. Thereafter, if the adhering party expressly requests to have the contract drafted in another language, then the contract and documents related to that contract may be exclusively in such other language.

While it is sometimes difficult to determine whether a contract is a contract of adhesion, generally, if the essential terms of the contract are non-negotiable, it will be considered a contract of adhesion. It should be noted that exceptions apply for certain types of non-negotiated contracts, such as loan contracts, and contracts used “in dealings outside Quebec.”

For companies that enter into adhesion contracts with Quebec clients, it is necessary to have a French version of the contract available and to present that version first, thus ensuring that a contracting party’s express request to have the contract in another language. Examples include a franchisor located in the United States that has franchises in Quebec or a supplier that distributes its products in Quebec. In case of non-compliance, a fine can be imposed on the party that

drew up the contract, and more importantly, the contract may be declared null and void.

CUSTOMER SERVICE IN FRENCH

The right to be served in French in Quebec already exists, but since June of 2022, the French Charter specifies that businesses that offer goods and services to clients in Quebec (both consumers and non-consumers) must inform and serve them in French.

Businesses offering customer service in Quebec must be able to inform their customers in French, whether in person, by telephone or via an Internet site, even for business-to-business services.

PUBLIC SIGNAGE AND COMMERCIAL ADVERTISING

The general rule is that public signs and commercial advertising in Quebec must be in French. Bilingual signage, in French and in another language, is permitted, provided that French is markedly predominant. Some exceptions exist, particularly with respect to trademarks. However, as of June 1, 2025, the exception will only apply if the non-French trademark is registered in Canada and provided that no corresponding French version appears on the Canadian trademark register.

Furthermore, if a public sign containing a trademark is visible from the exterior of a business, the trademark in a language other than French must be accompanied by words in French that are markedly predominant. For the French terms to be “markedly predominant,” they must have a much greater visual impact than the text in another language. This generally means that the French text must be twice as large or that the space allocated to the French text must be twice as large as that for the text in another language.

Since the Canadian Trademarks Office is experiencing a significant backlog of applications, we recommend that you file your applications for non-French trademarks without delay if you intend to use them in Canada, including Quebec.

INSCRIPTIONS ON LABELS AND PRODUCTS

The basic rule is that any inscription on a product, its container or its packaging must be written in French and may be accompanied by one or more translations. However, the text in another language must not prevail over the text in French. Since the assent of Bill 96 last June, the text in another language must not be accessible under more favorable conditions.

Until now, a trademark (registered

or not) was a recognized exception with regard to labels, and a trademark could be displayed on products regardless of its language. Beginning June 1, 2025, a non-French trademark must be translated if it is not registered in Canada. Furthermore, if a French version has been filed with the Canadian Intellectual Property Office, this version must be used.

This new provision is a topic of ongoing discussion. Although the French Charter only applies to Quebec, its impacts are Canada-wide. Indeed, trademark owners who sell their products in Canada generally use the same trademark and packaging in all provinces. Furthermore, distributors and wholesalers can sell in any province, and the goods can subsequently travel into Quebec.

The new legislation goes even further, by providing that if a registered trademark contains descriptive or generic terms such as “moisturizing soap” or “sugar-free” that are not in French, they must be translated. This rule is intended to prevent trademark owners from registering their trademarks with descriptive terms in another language to avoid the obligation to translate these terms. During the study of the bill, the example of the registered trademark SOFTSOAP was given. The SOFTSOAP registered mark is the design of a product label that contains descriptive elements such as “lavender and shea butter,” “refill 50 ounces” and “washes away bacteria.” The new legislation will ensure that these descriptive elements, that are part of registered trademarks, will have to be translated into French.

New regulations, which will contain more specific guidelines, will eventually be adopted by the government. The International Trademark Association (INTA) and the Intellectual Property Institute of Canada have built a coalition to work on different aspects of Bill 96 to ensure that the regulations being implemented consider brand owner’s interests.

The current delay to obtain a trademark registration in Canada is approximately two to three years. It is, therefore, high time for trademark owners to file their applications for non-French trademarks.

WEBSITE AND COMMERCIAL DOCUMENTS

The French Charter already provided that websites, and most commercial documents, must be written in French but may be accompanied by a translation. Under Bill 96, the French version must be accessible under at least equally favorable conditions. Websites aimed at Quebec customers must therefore be in French, and as of June 1, 2025, non-French trademarks displayed

on such websites must be translated if they are not registered in Canada, or if a corresponding French version of the mark has been filed, it must be used.

APPLICABLE SANCTIONS

Until now, the government organization tasked with oversight of the French Charter, the Office Québécois de la langue française (hereinafter “OQLF”), usually intervened only when an offending business had an establishment in Quebec. It is expected that with the amendments made, particularly with respect to product labeling, the OQLF will also intervene when a business located outside Quebec offers offending products or services in the province.

The fines for non-compliance are substantial, ranging from \$700 to \$30,000 for a first offense, and each day that the offense continues is considered a separate offense. It is also important to note that Bill 96 provides that directors of a corporation may be held personally liable if they commit an offense under the Act. They will be presumed to have committed the offense themselves if they are not able to demonstrate that they exercised due diligence. In addition, the OQLF will now be able to seek an injunction to ensure that the requirements of the French Charter are respected.

CONCLUSION

This article is only an overview of certain notable changes to the French Charter’s more commercial provisions. The regulations that will clarify the rules have not yet been adopted. Our team will be pleased to answer any questions you may have.

The content of this article is informational only and does not constitute legal advice.

The bill and its amendments are available here: <https://m.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-96-42-1.html>



Caroline Guy is a Canadian attorney and a trademark agent at Therrien Couture Joli-Coeur LLP in Quebec, Canada. She has been working in the intellectual property field for 20 years. Her practice is focused on trademark prosecution. She also represents her clients in trademark opposition and expungement proceedings. She is a member of the Intellectual Property Institute of Canada (IPIC), and of the International Trademark Association (INTA), where she currently sits on the Harmonization of Trademark Law and Practice committee.