

Québec adopts changes to the Charter of the French Language

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The *Act respecting French, the official and common language of Québec*, known as Bill 96 (the Act), that will modify the *Québec Charter of the French Language* (the Charter) was adopted yesterday by the National Assembly. Since the Act was first presented in May 2021, our [dedicated resource page](#) has housed a number of articles and webinars that detail the measures contained in the Act.

This update reiterates the key changes to the Charter and also highlights some of the amendments made to the Act during the National Assembly's study of the Act over the past several months that are relevant to businesses operating in Québec. We will be holding a live session in our Montréal office on June 20 to discuss the implications of the adoption of the Act, including recent amendments, which will also be accessible online. You can [register for this session](#) on our website.

Key changes to the Charter

As detailed in our previous publications, the key changes to the Charter set out in the Act are as follows:

1. Broader requirements for all businesses to communicate with their Québec employees in French, and in particular a new requirement for all businesses with Québec employees to provide written training materials in French.
2. Stricter requirements in respect of the publication of job offers in French, by requiring businesses to publish the French version of job offers for Québec positions in a comparable manner to the publication of the English version.
3. New limits on the ability of businesses to require the knowledge of a language other than French for Québec positions: businesses will now be required to carry out an assessment of the actual language needs associated with the duties of the position, examine whether existing employees who already have knowledge of the other language could perform those duties that require knowledge of the other language and generally concentrate the duties requiring knowledge of another language in the fewest possible number of positions.
4. A new requirement for all businesses to inform and serve their Québec clients (both consumers and non-consumers) in French.
5. Requiring, as a condition of validity that all adhesion contracts (contracts that are non-negotiable) and consumer contracts be systematically provided in French to

- counterparties in Québec.
6. Limiting the use of trademarks that contain text in a language other than French in commercial advertising by requiring that such trademarks be registered under the *Trademarks Act* in order to be used in Québec. This effectively puts an end to the ability of businesses to use common law (i.e., unregistered) trademarks containing text in a language other than French in their commercial advertising in Québec.
 7. Modifying signage standards for premises by requiring that the French text that accompanies a trademark containing text in a language that is not in French be “markedly predominant” in relation to the non-French text. This essentially requires the size of the French signage that must already accompany any non-French trademark on premises to be increased to twice the size of the non-French trademark.
 8. Reducing the threshold at which businesses become subject to the obligation to undergo a “francization program” seeking to generalize the use of French within the businesses’ Québec operations from 50 to 25 employees in Québec.
 9. Increasing the enforcement powers of the regulator charged with the application of the Charter, the *Office Québécois de la langue française* (OQLF), including broader inspection powers, new order-making powers and the standing to seek the assistance of the Courts directly for the enforcement of the Charter.
 10. Instituting 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.

Notable amendments to the Act since it was first presented

“French first” contracting rules

One of the most concerning changes in the Act for businesses was the initial formulation of the new “French first” contracting rules for both employment agreements and contracts generally. In its first iteration, the Act proposed that all adhesion contracts, (i.e., contracts that are not negotiable) and all contracts containing standard clauses had to be provided to the counterparty in Québec in French before that person could even consent to executing the agreement in another language. Moreover, the Act made compliance with this requirement a condition of validity of the agreement, such that if the “French first” contracting process was not followed, the counterparty could seek the annulment of the contract, or a reduction of their obligations under the contract, on that ground alone.

Thankfully, the scope of this requirement has been reduced and will now apply only to adhesion contracts and consumer contracts; non-consumer contracts that are negotiable but contain standard clauses will no longer be subject to the new “French first” contracting rule. Further, contracts used “in relations with persons outside Québec” will also be exempted, which was not the case in the initial version of the Act. This means that businesses who do not operate an establishment in Québec and are therefore “extraprovincial” entities will be able to avoid the application of the “French first” contracting rule, even for adhesion contracts (though the “French first” contracting rule will always apply for consumer contracts).

Despite these changes to the “French first” contracting rule, businesses who contract with Québec counterparties are still obliged in principle to contract in French in all other cases, unless it is the express wish of the parties to contract in another language. The difference is

that if the parties wish to contract in another language, there is no obligation to prepare and provide a French version of the agreement first like there is for adhesion contracts that are not “extraprovincial” or for consumer contracts. Moreover, the contracts that are not subject to the “French first” contracting rule cannot be attacked by the counterparty through the new private right of action on the basis that they would have preferred to contract in French (though a fine could still be imposed by the Courts under the Charter’s penal provisions if a complaint was made to the OQLF and it decided to commence a prosecution).

Finally, the application of the “French first” contracting rule, which was initially immediate, has been suspended for one year to allow businesses to adapt to the new requirement.

Additional requirements for job postings

In addition to the new requirements on the way the French version of a job posting must be advertised and the new restrictions on requiring knowledge of a language other than French, the Act has been amended to specify that where a business does require the knowledge of a language other than French for a position, the justification for this requirement must be indicated in the job posting itself.

Further restrictions on the use of common law trademarks that contain language other than French

Beyond restricting the use of non-French trademarks in commercial advertising to registered trademarks only (thus excluding common law trademarks), an amendment was introduced to the Act to extend this limitation to product inscriptions as well. As such, common law trademarks that contain text in a language that is not French will no longer be allowed on products. Moreover, if a registered trademark displayed on a product contains a generic term or a description of the product in a language other than French, that generic term or description must also appear in French on the product or on a medium permanently attached to the product.

Consistent with the other changes in respect of the use of non-French trademarks in commercial advertising and in signage, these changes to product inscription standards will only come into force in three years to allow businesses to implement these changes to their products, their advertising and the signage of their premises.

“Good” knowledge of the French language on the part of senior officers

In what is clearly a response to recent controversies in respect of certain Montréal-based companies being led by persons who do not speak French, the Act has been amended to make “good knowledge of the official language on the part of the senior officers” one of the criteria to be considered by the OQLF when determining whether to issue a francization certificate to a business, which will be required for any business having more than 25 employees in Québec (compared to 50 employees currently).