

## The Impact of Quebec's New French Language Law, Bill 96, On Your Franchise Business

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In 2021, the Québec government introduced Bill 96, *An Act respecting French, the official and common language of Québec*<sup>1</sup> (Bill 96), a concerted effort by the current government to significantly strengthen French language laws in the province.<sup>2</sup> The current legislative framework surrounding the required use of French in Québec is primarily found in the province's *Charter of the French Language*<sup>3</sup> (the Charter), which, subject to permitted exceptions, generally requires commercial contracts, product packaging, advertisements, public signs and other corporate branding used in the province to be in French. Most relevant, as the law currently stands, commercial contracts — such as franchise agreements — may be drawn up in a language other than French with both parties' express consent.<sup>4</sup>

After months of debate, Bill 96 is well on its way to receiving the requisite passage in the Québec legislature that would enact it into law. While a definitive timeline cannot be known with certainty, our best guess is that the law will come into force sometime by the middle of 2022.

The big question: what does this mean for you and your franchise business in Québec?

### Bill 96's Application to Franchise Agreements

As it is currently drafted, Bill 96 brings about significant changes regarding the use of French in commercial contracts, specifically those (like franchise agreements) containing "standard-clauses" or which are deemed to be "contracts of adhesion". While much debate has ensued as to whether franchise agreements are in fact always contracts of adhesion, Québec courts have historically found this to be the case.<sup>5</sup> To qualify a franchise agreement as a "contract of adhesion", two elements must be considered by the courts: (i) the drafting of essential stipulations by one party and the imposition of those stipulations on the other contracting party, and (ii) the inability of that other contracting party to freely discuss or negotiate those stipulations. This inability to negotiate must be real, and a real attempt to negotiate is necessary (generally, if a party fails to take positive actions to negotiate, it will be considered as not having made a genuine effort to negotiate the contract). This must be assessed on a case-by-case basis. If Québec courts do not find that these two criteria are met, the franchise agreement will not be considered a contract of adhesion under the *Civil Code of Québec*.<sup>6</sup>

### French Language Requirements

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Assuming the provincial trend of finding franchise agreements to be contracts of adhesion continues, they are almost certainly to be captured by Bill 96's enhanced French language requirements. The implications of such requirements are as follows:

- **Franchise agreements and all related documents will need to be drawn up in French.** Once provided in French, only then can the parties mutually agree to be bound by the English version, and related documents may be drawn-up in English.
- **Translation will almost certainly need to be done by a professional service or French speaking lawyer to provide a French translation of equal quality to the original English contract.** Using an online method like Google Translate will not be sufficient. The cost for such translations cannot be passed off to the other party, this being expressly prohibited by Bill 96.

Failure to comply with these requirements will carry severe penalties. Specifically, a first offence can carry a fine up to \$30,000 (and every day an agreement is non-compliant constitutes a separate offence, so the total liability is nearly indefinite). As well, agreements can be rendered void by a court without the contracting party having to prove that the contravention to the Charter caused any prejudices. Damages can also be awarded, and directors may incur personal liability.

## Public Signage Requirements

Bill 96 also amends the Charter's provision regarding a business' public signage and commercial advertisements in two significant ways. First, Bill 96 removes the Charter's current "recognized trademark" exception, which permits use of non-French marks, regardless of their status (registered, applied for, or simply in use, i.e., common law marks) as long as the French version is not registered. Under Bill 96, only duly registered non-French trademarks may be used on their own (provided that no corresponding French version is filed with the Trademarks Office). This means marks pending registration or those that are only protected under the common law can no longer be used absent a markedly predominant French language equivalent. Secondly, French will be required in a markedly predominant manner on public signs visible outside a premise where trademarks in a language other than French are displayed, even if duly registered. In practice, this would mean that when a non-French trademark is displayed on the exterior of a building, it must be accompanied by inscriptions in French of greater visual impact. This new requirement is much more significant than the current obligation of "*sufficient presence of French*." These new provisions, if adopted without modification, will come into effect three years after Bill 96 receives approval. Knowing that the trademark registration process currently takes about three years, trademark owners should hurry to register their non-French trademarks.

## Looking Ahead

While some of Bill 96's provisions are subject to an express "transitional period" (as mentioned above for trademarks), in which their coming into force is delayed following the passing of the legislation, the

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provisions impacting commercial contracts (i.e., those most likely relevant to your franchise) are not subject to an express transitional period, and so are likely to come into force immediately upon the Québec government's decision to implement the law after the Bill passes. In other words, the requirement to provide French language copies of your franchise agreements and ancillary documents could become effective immediately or very soon upon Bill 96 being signed into law.

While it is possible that Bill 96 will pass in substantially the same or similar form as it is currently drafted, in a recent interview with a French-language media outlet in Canada, the Québec Minister of Justice, Mtre Simon Jolin Barrette, suggested that he is well aware of concerns raised by the business community regarding Bill 96, specifically with respect to the proposed translation requirements for commercial contracts. The Minister declared that he is “*going to clarify it*” (our translation) (referring to the bill's translation requirements) and indicated that it is his intention that private sector corporations doing business with other private sector corporations will be permitted to draft contracts in the language of their choice.<sup>7</sup> Obviously, this statement is not a confirmation of formal modification to Bill 96, but allows us to believe that it could be subject to further amendments in the coming weeks. In other words, the situation is fluid.

## Conclusion

If you operate in Québec, Bill 96 will *most likely* impact you and your franchise business unless amendments or exclusion are made concerning commercial contracts. In addition to the translation and public signage requirements mentioned here, there are various other provisions relating to employment contracts, communication in the workplace, and much more. Yes – there is a lot to take in. And the clock is ticking. So, as the saying goes, there is no time like the present (to start preparing for Bill 96's impending arrival)!

***Cassels wishes to acknowledge and thank the article's co-author, Stéphanie Destrempes of Lavery De Billy LLP in Montreal.***

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<sup>1</sup> <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-96-42-1.html>.

<sup>2</sup> As a brief background, Canada is home to two national languages: English and French (per the Federal *Official Languages Act*). Quebec, however, due to its unique historical context and deep roots of French nationalism, has for decades actively legislated to entrench the French language in all facets of society—especially commercially—in the name of cultural continuity and preservation.

<sup>3</sup> <http://www.legisquebec.gouv.qc.ca/en/document/cs/c-11>.

<sup>4</sup> Section 55 of the Charter.

<sup>5</sup> See *Bel-Gaufre inc. v. 159174 Canada inc.*, 1998 CanLII 12914 (QC CA), 2632-7502 *Québec inc. v. Pizza Canada inc.*, J.E. 95-1568 (C.S.), at para. 58 (mod. by B.E. 2000BE-399 (C.A.)); *Sachian inc. v. Treats inc.*, 1997 CanLII 8474 (QC CS), conf. by 1998 CanLII 12848 (QC CA); *Distribution stéréo plus inc. v. Télévision J.M. Beaudoin inc.*, 2007 QCCS 5105.

<sup>6</sup> *Distribution Stéréo Plus inc. c. 140 Gréber Holding Inc.*, 2012 QCCS 33 (CanLII). The appeal formed on the basis that the judged erred in law by not declaring that the franchise agreement was a contract of adhesion was dismissed by Quebec's Court of Appel (2014 QCCA 111 (CanLII)).

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<sup>7</sup> *Projet de loi 96 sur le français – Le monde des affaires sur ses gardes*, *Projet de loi 96 sur le français | Le monde des affaires sur ses gardes | La Presse* (January 2022).

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