

Questions & Answers: Changing French Language Laws for Franchisors in Quebec

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An Act respecting French, the official and common language of Québec (commonly referred to as Bill 96) is here, and you have questions. For those of you just joining the conversation, the Bill 96 amendments to Quebec's *Charter of French Language* (the Charter) bring about significant changes regarding the use of French in commercial contracts in Quebec, specifically those (like franchise agreements) generally deemed to be "contracts of adhesion" or containing "standard clauses." Additionally, the Bill 96 amendments to the Charter impact the display of non-French trademarks on public signage and product packaging, and a plethora of other new requirements regarding the use of French by businesses operating in Quebec.

Because of the number of significant changes, Cassels has assembled a list of questions and answers for foreign and Canadian franchisors alike who are currently operating or franchising in the province of Quebec, or planning to do so.

Translation

1. Do I need to translate my Franchise Agreement into French?

Short answer: Yes, unless you are confident that your franchise agreement does not constitute a "contract of adhesion."

What's a contract of adhesion? A contract of adhesion is any form of agreement where the following two elements are met: (i) the drafting of the essential stipulations or clauses is done by one party and they are imposed on the other contracting party, and (ii) the inability of that other contracting party to freely discuss or negotiate those essential stipulations. Relevantly, 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). While much debate has ensued as to whether franchise agreements are in fact always contracts of adhesion, Quebec courts have, on many occasions, found this to be the case.¹

Given the trend of Quebec case law, the severe risks of non-compliance, and a general consensus in the franchise community, franchisors should be prepared to translate their franchise agreement and related documents by June 1, 2023.

2. Can I simply provide a template version of the agreement in French without any of the specific commercial terms included?

No. Bill 96 is quite clear that this is not permitted. Specifically, Bill 96 states that “the French version must be understandable without having to refer to a version in another language.” As such, the French version of the franchise agreement (and ancillary agreements) provided to the franchisee must be completed with all relevant commercial terms (i.e., not a template or form document), to allow the parties thereafter to expressly agree to enter into either the French or English version of the agreement.

3. Can I use Google Translate or does translation need to be done by a “professional”?

Practically speaking, Google Translate (or the like) won't cut it. Translation almost certainly needs to be done by a professional service or French speaking lawyer, as the French translation needs to be of “equal quality” to the original English contract. What about “smart” translating software? Cassels can work with you to arrange this, and so we recommend getting in touch with us to consider your options and ensure the translation services being considered will be sufficient.

4. Can I pass the cost of translation onto the franchisee?

No. Pursuant to Bill 96, the party providing the adhesion contract may not charge a fee or pass along to the recipient any cost incurred from drawing up the French version of the contract or the related documents.

5. Should I wait until a franchisee requests a French version or makes a complaint?

Waiting around for a request or complaint carries a lot of risk given the consequences for non-compliance (discussed below). Our recommendation is to begin the translation process as soon as you can, or at the very least within enough time so you can begin providing French agreements by the June 1, 2023, deadline, at which time this requirement comes into effect.

6. How long does it take for a franchise agreement to be translated?

This will depend on the service or legal professional used, but so far, we have seen quotes from anywhere between 3-8 weeks. Of course, as the June 1, 2023 deadline approaches, demand for translations may extend wait times (for more details on the deadlines, see Question 17).

7. Do I have to translate my Franchise Disclosure Document (FDD) into French too if I provide a copy to prospective franchisees in Quebec?

There is no FDD requirement in Quebec. As a result, an FDD does not technically need to be provided. It is not uncommon, however, for franchisors to deliver an FDD to prospective franchisees in the province of

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Quebec for “informational purposes.” While not a contract (and therefore not captured by Bill 96’s requirement to translate ‘contracts of adhesion’ (i.e., franchise agreements) into French), some commentators have suggested that an FDD can be deemed “marketing” or “promotional” material which nevertheless requires translation.

Depending on the manner of its use, and subject to there being some uncertainty at the present time, we believe that by making certain changes to the FDD, an FDD is less likely to be considered marketing or promotional material and therefore would not be captured by Bill 96’s translation requirements.

Due to the cost involved in first translating and then maintaining a translation, we do not expect that many franchisors will be translating their FDDs. And because there is no franchise law in Quebec, more likely franchisors will not hand out an FDD in Quebec at all and/or resort to preparation of a short form French language Quebec specific disclosure statement to use in that province. If you would like to discuss this simpler and cheaper option further, please feel free to reach out.

8. What about all my supplementary materials, such as training documents, manuals, or intranet system? Do I have an obligation to provide them in French?

For documentation or materials provided by the franchisor to a franchisee for use only by the franchisee, there is no obligation to translate. Specifically, this analysis applies if the material is not a document available to the public or general commercial documentation. However, if the training material or manuals are used (in whole or in part) for the training of the franchisee’s employees, the franchisee will need to provide such materials (in whole or in part) in a French version and the franchisor may opt to provide such translation to ensure consistency and uniformity across the network.

The requirement to translate an intranet or computer software is likely to depend on whether or not these systems are used by the franchisee’s employees. And even then, the legal requirement to translate will very likely fall on the franchisee.² But for the sake of consistency, a franchisor may feel the need to assume these obligations, unless they can be downloaded to a multi-unit or master franchisee for the entire province.

Note, however, that Bill 96 does specifically require documents of the same nature as an invoice, receipt, or release be translated by the person issuing them.

9. What about ancillary agreements (such as software licenses, service agreements, etc.) that are to be signed after the FA?

As most of these ancillary agreements are standard form and generally not negotiated, it is most likely that these too may be deemed contracts of adhesion and will therefore require translation. As such, for the most part, the same “contract of adhesion” analysis as laid out in Question 1 should apply.

10. Are there any exceptions to the rule? For example, I heard there's an exception in Bill 96 for contracts used in relations with persons "outside Quebec." Does this apply to a franchisor based outside of the province?

As little or no context has been provided by the legislative committee nor the responsible minister as to what "used in relations outside Québec" entails, it is difficult to say with any certainty whether franchisors outside of Quebec may avail themselves of this exemption when contracting with their Quebec franchisees.

Because one of Bill 96's stated objectives is to enhance the use of French in business and commerce, many assume that if the "adhering party" (i.e., the franchisee) is a business established in Quebec, this exception will not apply.

11. Which version of the contract will govern if the French version is provided but the English version is signed?

Bill 96 does provide that while a French language version of the contract of adhesion must be provided, the parties may thereafter agree to sign and make binding the English language version. However, on the question posed, Bill 96 is quite clear: where there is a discrepancy between the French version and a version in another language, the "adhering party" (i.e., the franchisee) may invoke either version, according to their interests. So, despite the French version not needing to be executed (Bill 96 indicates that this version need only be "remitted" to the adhering party (i.e., the franchisee)), it may nevertheless be the version that ultimately governs the relationship if that is in the interest of the franchisee.

Other Requirements

Aside from translations, the following additional requirements are noteworthy:

12. In my ongoing dealings with my franchisee, do I need to speak and communicate in French?

The short answer: yes, however, this obligation can be waived until the franchisee asserts a right to be served in French. And, in fact, there exists a basis to believe that this waiver can occur implicitly simply by a franchisee continuing to accept communications and services in a language other than French.

Bill 96 adds language that, on its face, requires businesses offering goods and services "to a public other than consumers" (i.e., other businesses/enterprises) to "inform and serve" in French. It is understood, however, that this obligation is not as definitive as the similarly worded requirement for businesses to service *consumers exclusively* in French. It is this omission of "exclusively" that was referenced in the responsible Minister's comments when he suggested that businesses engaging with other businesses will be free to conduct themselves in a language other than French if desired. The Minister even goes so far as

to suggest that if one does not invoke a right to be served and informed in French, by continuing to accept services in another language, that person has implicitly waived such right.

Importantly, it appears that even if a franchisee explicitly or impliedly waives the right to be served in French or signs an updated agreement with the waiver and acceptance language, the franchisee will most likely remain able to request to be dealt with in French at any future time, at which point the franchisor may be required to satisfy this request. Nevertheless, we are recommending certain additions be made to franchise agreements used in Quebec to address this point.

13. Can I distribute my private brand products in Quebec? Are there specific requirements (packaging, trademarks, etc.)?

Yes, you may distribute private brand products in Quebec, keeping in mind the following guidance.

The Charter requires any inscription on a product, its container or wrapping (or a document supplied with the product such as instruction manuals) must be drafted in French (this applies to menus and wine lists as well). French inscriptions may be accompanied by translations in another language, but no inscription in another language may have greater prominence than French.

There was a significant exception to the requirement to translate to French for non-French trademarks. Businesses could display their trademark in a language other than French on their packages and labels without having to translate, as long as a French version of the trademark was not registered. This trademark exception was interpreted over the years as applying to both registered and non-registered trademarks (i.e., those marks with ‘common law’ protection).

Bill 96 has amended the Charter by removing all doubt as to whether the trademark exception applies to unregistered trademarks. Effective June 1, 2025, the exception will only apply to registered trademarks that do not have a registered corresponding French version. Further, even if a trademark is registered, any generic or descriptive part of the trademark must be translated into French³ on the product or on a “medium permanently attached to a product.”

These amendments beg many questions about how they will be implemented practically. Various brand owners and industry associations have been meeting with the OQLF, the government agency responsible for enforcing the Charter, to express their concerns and seek guidance in the form of regulations to explain what constitutes a generic/descriptive element and a permanent medium attached to a product.

As mentioned above, menus and wine lists must be in French. The French inscription may be accompanied by a translation in another language, but no inscription in the other language may be given greater prominence than the French one or, according to an amendment that came into force immediately on the passage of Bill 96, be available on more favourable terms. This means, for example, that you could not have

a physical English menu but a QR code for the French menu.

14. Do customer-facing features at franchised outlets, such as signage, menus and collateral materials need to change?

Public signs, posters and commercial advertising must be in French. Some may be both in French and English provided that the French is “markedly predominant,” and some must be exclusively in French (i.e., transit ads). These rules were already in force in Quebec pursuant to the previous version of the Charter and remain unchanged. The definition of “marked predominance” is defined by regulations but generally means that the text in French must have a significantly greater visual impact than the text in the other language. Like inscriptions on products, etc., there was a trademark exception that was generally understood to apply to both registered and unregistered trademarks.

Starting June 1, 2025, a non-French trademark must be registered to be entitled to the exception to translate to French on a public sign, poster, or commercial advertisement, provided no corresponding French version has been registered. If a French version is registered, then it must appear on the public sign, poster, or commercial advertising. In any case, as of June 1, 2025, if a poster, sign, or advertisement is visible outside of a business premises, even if the non-French trademark is registered, French must be markedly predominant on such signage. This amendment appears to be more onerous than the previous regulations that required a “sufficient presence of French” on outdoor signage. Again, industry associations are meeting with the OQLF concerning the practical implementation of these amendments.

15. As a franchisor, am I responsible for my franchisee not complying with the Charter (i.e., service of clients in another language other than French)?

Technically, the requirements regarding the day-to-day operations of the franchise are those of the franchisee. So, the franchisor is not directly responsible if the franchisee fails to comply. However, a review of the franchise agreement and practices by franchisors is a good idea now in light of upcoming changes to ensure that contractual obligations placed on franchisees are drafted appropriately and that policies and implementation are aligned with best practices.

Risks and Outlook

16. What is the risk of non-compliance?

Failure to comply with requirements imposed by Bill 96 will carry severe penalties. Specifically, with respect to the translation requirements, a first offence can carry a fine of 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 of the Charter caused any prejudices. Damages can also be awarded, and directors may incur personal liability.

Notably, depending on the nature of the violation, the French Language Office of Quebec (the overseeing government body for the Charter and Bill 96) will most likely issue a notice following any complaint and give the contravening party an opportunity to rectify the non-compliance before a penalty is imposed.

17. When does this all take effect?

The French language requirements for contracts of adhesion are subject to a transitional period. As such, this requirement will come into force on June 1, 2023, one year after Bill 96 became a law.

The transitional period for updated trademark and public signage requirements found in article 42.1 of Bill 96 is three years (coming into force June 1, 2025).

18. Is there any more guidance to come from the government of Quebec?

It's possible, but as of today's date, there is no clear indication as to when this might occur or in what form it may come. It is expected that much of the uncertainty over how Bill 96 is to be interpreted will only be clarified upon Regulations being enacted or once certain components of the law are litigated in the Quebec courts.

19. What should my next steps be?

If you're already in Quebec or have active plans to enter the province, we should perform a review of your franchise documents, franchise relationships and practices to determine what, if any, changes will be required in order to comply with Bill 96. Of course, translating your franchise agreement should be top of mind.

Given the scope and burden of many of these requirements, as well as the severity of the consequences for non-compliance, we do recommend reaching out to us in advance of June 1, 2023, to ensure you and your system are ready for all the upcoming changes.

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¹ *Provigo Distribution inc. c. Supermarché A.R.G. inc.*, J.E. 98-39, REJB 1997-03777 (C.A.); *Ashan v. Second Cup Ltd.*, J.E. 2003-736, REJB 2003-39565 (C.A.); *Régie d'assainissement des eaux du bassin de Laprairie c. Janin Construction (1983) ltée*, REJB 1999-11611 (C.A.).

² In Quebec, there exists a concept called "francization" whereby businesses operating in the province must "generalize the use of French within the business."

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This requirement, however, is only placed on organizations of a certain size. Currently, the threshold is 50 or more employees. Bill 96 amends this threshold to 25 or more employees, with such an amendment coming into force June 1, 2025. A business subject to *francization* will, among other things, need to provide its employees with working documents and tools (such as information technologies) in French.

³ The Quebec Minister of Justice gave the example of SOFTSOAP brand hand soap. That company could have a registered trademark that included both the name and the description of its product: "*Softsoap Brand, Lavender and Shea Butter, washes away bacteria, deeply moisturize to hydrate skin, refill 50 ounces, 1.56 QT, 1.47 liters, refill over 673 ounces, use 48 less plastic per ounces, 7.5 ounces pumps.*" With the new article of Bill 96 (art. 51.1), the description part of that trademark will have to be translated into French on the product.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.