Cassels

An Update on Bill 96, Quebec's New French Language Law, and its Impact on Quebec Franchising

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05/12/2022

Following our previous article on Québec's new Bill 96, there have been some key developments in the ways this new forthcoming French language law may impact your Québec operations.

The Bill Has Landed

Following months of debate, the legislative committee responsible for reviewing and proposing amendments to Bill 96 has concluded its reading and adopted the text of the Bill with some modifications. This sets up the imminent passage of Bill 96 in the Québec legislature, which is likely to occur prior to June 10, 2022 (the last day before the legislature breaks for the summer).

Key Updates

Bill 96 brings about significant changes regarding the use of French in commercial contracts, specifically those (like franchise agreements) generally deemed to be "contract of adhesion" or containing "standard clauses". Additionally, Bill 96 brings updates to Québec's trademark regime regarding public signage and product packaging. While the general restrictions remain intact from our previous article, some key amendments were made that may further impact your business' (or franchisee's) Québec operations.

- **Contracts of adhesion[1] are still captured by Bill 96's French translation requirements**. Québec courts have historically found standard franchise agreement to be contracts of adhesion.[2] This means the safest way to proceed will be for franchisors to undertake to translate their franchise agreements, as Bill 96 requires that such agreements must be provided in French, and only then can the parties mutually agree to be bound by an English version. However, if a franchisor can establish that it offers a true and genuine opportunity to their prospective franchisees to negotiate essential provisions of the franchise agreement, there is the possibility that the contract might not be deemed a contract of adhesion under the *Civil Code of Québec*[3] and the translation requirements of Section 55 of the *Charter of the French Language*[4] (Charter) would most likely not apply (assuming both parties express their desire to have the franchise agreement drawn up in English). This strategy does carry some risk considering the consequences of having the franchise agreement being characterized as a contract of adhesion and not providing a translation.

- **A new exemption has been provided to the translation requirement for contracts of adhesion "used in relations outside Quebec"** (our translation). As 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 Québec may avail themselves of this exemption when contracting with their Québec franchisees. Hypothetically, this exemption could capture contracts of adhesion where one party based in Québec is entering into an agreement with another party outside of Québec—the thought being that relationship constitutes a contract "used in relations outside of Québec". In such a case, a French version of the franchise agreement would not be required to be provided so long as the parties indicate their express written consent to be bound by an English version in the body of the contract. Of course, there is no guaranty that a Québec court will share this interpretation. Potentially, a franchise agreement that requires an entity within Québec to pay a royalty to a franchisor outside of the province could be deemed to be a contract used in relations *within* Québec, resulting in the franchise agreement being subject to the translation requirements of the Charter. In summary, without further clarification being provided on this exemption (such clarification could come in the form of the legislative committee providing further guidance, comments by the minister responsible for the Bill, regulation or future litigation), it will remain unclear if franchise agreements between a Québec franchisee and an 'external' franchisor will have this exemption available to them.
- **Any trademark appearing on product packaging in English must be a registered mark**. Under the old trademark regime, common law trademarks were permitted to be displayed on product packaging. In contrast, Bill 96 is proposing a new article under the Charter[5] that will require that an English trademark relating to a product must be duly registered under the federal *Trademark Act* if that trademark is to be used on that product without an accompanying French translation. Further, if such English trademark includes generic or descriptive terms, such terms must appear in French on the product. As a result, any business currently relying on common law protections for trademarks used on product packaging must take swift action to have such marks duly registered.

This new legislation may represent a significant change to your agreements and intellectual property process in Quebec. Simply put, if you operate in Québec, Bill 96 will *most likely* impact you and your franchise business in some form or another. We will continue to monitor for any further developments to Bill 96, and provide updates as new information becomes available. As always, please feel free to contact us to learn how we can help prepare your business for Bill 96's impending arrival.

Cassels wishes to acknowledge and thank the article's co-author, Stéphanie Destrempes**, *of Cain Lamarre*.**

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[1] See the previous article for a short discussion on these contracts and their frequent association with franchise agreements.

[2] 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.

[3] *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)).

[4] Chapter C-11.

[5] Art. 42 of Bill 96 is proposing the new Art. 51.1 of the Charter.

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