

# Government of Québec proposes stricter French language law



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## Introduction

- **May 13, 2021:** presentation of *An Act Respecting French, the Official and Common Language of Québec*.
- Significant amendments to the *Charter of the French Language*.
- New requirements and new risks for companies operating in Québec.
- Special consultations on the Act start on September 21<sup>st</sup>, before the National Assembly's Committee on Culture and Education.

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## 1. Exercise of legal rights by corporations

- **Currently:** corporations can file legal proceedings in either French or English.
- **Proposed change:** companies wishing to file proceedings in English would have to attach a certified French translation at their own expense.

However, it would be possible to request an English translation of a judgment or decision in French, at the government's expense.

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## 2. Communications with employees

- **Currently:** written communications to employees must be in French.
  - This has been consistently interpreted as covering only communications relating to terms and conditions of employment.
- **Proposed change:** employers shall “respect the worker’s right to carry on his activities in French”, *in particular* by using French in written communications.
  - **Training documents** that currently do not have to be written in French (at least for employers of less than 50 people in Québec) would have to be made available to Québec employees in French.

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### 3. Job offers

- **Currently:** job postings associated with positions in Québec must be published in French, but employers have significant latitude on how to do this.
- **Proposed change :** where an advertisement for a job is published in English, it would simultaneously have to be published in French *“using transmission means of the same nature and reaching a target public of proportionally comparable size.”*

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## 4. Stricter test for making knowledge of English a condition of employment

- **Currently:** knowledge of English can only be a condition of employment if it is operationally necessary, but there is no set criteria for determining this.
- **Proposed change:** before making knowledge of English a condition of employment, the employer would be required to demonstrate that :
  1. An assessment of the actual language needs associated with the duties to be performed was carried out;
  2. Other employees who are already required to be proficient in English could not carry out the duties of the position that require the knowledge of English; and
  3. The duties requiring English proficiency have been concentrated as much as possible within certain positions, so as to restrict as much as possible the number of positions that require such proficiency.

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## 5. Communications with clients

- **Currently:** the right of "consumers of goods or services [...] to be informed and served in French" is purely declaratory.
  - If a customer files a complaint, the *Office québécois de la langue française* (OQLF) sends a letter encouraging the company to comply with the Charter, without coercive measures.
- **Proposed change:** it would become mandatory to respect **the right of all** "to be informed and served" in French.
  - Therefore: not only consumers who make a purchase;
  - Particularly important in view of the private right of action introduced in the Act (to be discussed later).

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## 6. Standard form contracts

- **Currently:** standard form contracts must be available in French, unless the parties expressly state their wish to have them in another language.
  - In practice, many companies simply insert a clause stating that the parties have expressly chosen to establish the contract in English.
- **Proposed change:** the Act would require the company to submit the French version of the standard contract first.

The new private right of action would render unenforceable a standard form contract made in violation of these requirements and **expose the company to damages, including punitive damages.**

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## 7. Use of non-French trade marks

- **Currently:** the use of a non-French trademark is permitted, provided that the mark has been **recognized** under the federal *Trade Marks Act* and that no French version of the mark has been registered.
- **Proposed change:** a non-French trademark could only be used in signage and advertising if it has been **registered** under the federal *Trade Marks Act*.

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## 8. Use of non-French signage

- **Currently:** corporations that use a non-French trademark in their exterior signage must add *“legible signs”* to ensure the presence of French in the same visual field as the trademark, without specifications regarding font size.
- **Proposed change:** the French text accompanying a non-French trademark would have to be *“markedly predominant”* in relation to the trademark.
  - The French text would have to be **twice the size** of the non-French text, or same size font size but twice the content in French than in another language.

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## 9. Francization program and certification

- **Currently:** the Charter contains obligations of general application (in hiring, advertising, signage, etc.) and corporations with more than 50 employees in Québec must obtain a "francization certificate" to ensure that French is the language of work.
- **Proposed changes:**
  1. All businesses employing more than 25 people in Québec over a continuous six-month period would have to obtain this certificate;
  2. Some steps in the process would have their implementation time reduced by half.

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## 9. Francization program and certification (Continued)

3. A company with 100+ employees in Québec would be represented at the OQLF by a management designated person **and** by a worker representative.
  - **Currently:** the only representative is the management designated person.
4. Once a francization program has been implemented, the Act would impose an **annual reporting requirement**.
  - **Currently:** the annual requirement applies only to businesses with 100+ employees, those with fewer employees reporting every two years.

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## 9. Francization program and certification (Continued)

5. Any company required to implement a francization program that fails to do so would become **ineligible for public contracts or government grants and subsidies.**
  - This is already an existing administrative practice.

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## 10. New order-making powers for the OQLF

- **Currently:** to impose a fine, the OQLF must refer the file to the Director of Criminal and Penal Prosecutions (DCPP). To issue an injunction, the OQLF must refer the file to the Attorney General.
- **Proposed changes:**
  1. The OQLF would be able to issue orders and apply directly to the Superior Court for enforcement of those orders;
  2. The scope of the injunction would be expanded to cover most Charter violations.
    - Currently, the Charter only provides for injunctive relief in the area of advertising.

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## 10. New order-making powers for the OQLF (Continued)

3. The OQLF could ask the Minister of the French Language to suspend or revoke any government-issued permit or authorization provided to a business in the event of repeated contravention of the Charter.

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## 11. Private rights of action

- **Currently:** the Charter does not prescribe a private right of action - a complaint to the OQLF is the only recourse.
  - The main exception is for labour standards, where employees can argue before the Labour Tribunal that a dismissal, or even the decision not to hire, was caused by the fact that the employee had insufficient knowledge of a language other than French.
- **Proposed changes:**
  1. An individual could obtain an **injunction** following a violation of the Charter;
  2. An individual or even a company could ask for the **annulment** of a standard form contract concluded in English, and/or **damages**;
  3. Any non-conforming document could be deemed **unenforceable** by the company that stipulated it, but could at the same time be enforced against that company;

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## 11. Private rights of action (Continued)

4. A standard form contract concluded in English without first being made available in French would be deemed "**incomprehensible**" and null as a result;
5. The Québec *Charter of Human Rights and Freedoms* would contain a new "right to live in French to the extent provided for in the *Charter of the French Language*", which could lead to interim and conservatory measures, as well as an award of damages (even **punitive**) based on the amended Charter provisions.

The Act could trigger a **new trend of private language litigation, including class actions.**

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## 12. Suspension of fundamental freedoms and rights, political rights, legal/judicial rights and equality rights

- To shield the Charter from legal challenges, the government proposes invoking **the notwithstanding clause** provided for in section 33 of *The Constitution Act, 1982*.
- This would shield the Charter from challenges based on the provisions of the Constitution guaranteeing fundamental freedoms, legal rights and equality rights, as well as those based on provisions of the Québec *Charter of Human Rights and Freedoms* that guarantee fundamental freedoms and rights, right to equal recognition and exercise of rights and freedoms, political rights and judicial rights.

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## How to make submissions to the National Assembly

- While the government selected the individuals and organizations who will be heard by the Committee in the upcoming Special Consultations, anyone can submit a comment in writing for consideration by the Committee.

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