

Francization
Bill No 14
Amending the Charter of the French language

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LAW ▶ BUSINESS

FRENCH AT WORK, AT SCHOOL AND IN THE CIVIL ADMINISTRATION – PROTECTION AND BOLSTERING OF THE OFFICIAL LANGUAGE

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THE TITLE OF THIS NEWSLETTER GIVES A GOOD SUMMARY OF THE EXPLANATORY NOTES THAT SERVE AS AN INTRODUCTION TO BILL 14, ENTITLED "AN ACT TO AMEND THE CHARTER OF THE FRENCH LANGUAGE, THE CHARTER OF HUMAN RIGHTS AND FREEDOMS AND OTHER LEGISLATIVE PROVISIONS" (THE "BILL"). THE LEGISLATOR IS CONCERNED THAT ENGLISH IS BEING USED SYSTEMATICALLY IN CERTAIN WORKPLACES. THE BILL WAS TABLED ON DECEMBER 5, 2012 AND THE PROPOSED AMENDMENTS ARE DESIGNED TO REAFFIRM THE PRIMACY OF FRENCH AS THE OFFICIAL AND COMMON LANGUAGE OF QUEBEC.

A reminder: the guiding principles of the *Charter of the French language* (the "**Charter**") are set out in sections 1 to 6 of Title I entitled "*Status of the French Language*". French is the official language of Quebec and every person has a fundamental right to speak French. The *Charter* gives workers the right to carry on their activities in French and gives consumers the right to be informed and served in French. The *Charter* also recognizes the right to receive instruction in French.

This newsletter examines the provisions of the Bill which may affect businesses and their mode of operation.

THE OFFICIAL LANGUAGE OF LABOUR RELATIONS

The Bill would completely overhaul Chapter VI of Title I of the *Charter*, entitled "*The Language of Labour Relations*". The spirit of the current provisions would be maintained but more requirements would be imposed on employers. As in the past, these provisions would be deemed to form part of every collective agreement. In addition, juridical acts, decisions and other documents which do not comply with Chapter VI will be null, except as regards the vested rights of employees and their associations. For example, the new section 42 will require employers to post certain provisions of the *Charter* in a conspicuous place in their establishment, a requirement which does not currently exist.

The requirement that collective agreements be filed in French would remain in the new section 44 but an agreement negotiated by an association or group that is recognized under an Act relating to conditions of employment, conditions of remuneration or compensation for services may be drafted in another language if the French version is available upon its signature.

Under the new section 46, before requiring knowledge, or a specific level of knowledge, of a language other than French for a position, an employer will have to thoroughly evaluate the actual linguistic needs relating to that position and subsequently review such needs periodically. Although the Bill does not mention it explicitly, such evaluations must clearly be documented. The subsequent use of these evaluations is provided for in other provisions of the Bill, such as the new sections 50.2 and 151.1.

These evaluations must consider, among other factors, the linguistic skills already required of other personnel members to satisfy the needs of the enterprise and the actual linguistic needs relating to that position. Necessity is not explicitly mentioned as a factor but it must clearly be considered since an employer will still be prohibited under the new section 47 from requiring that a person have linguistic skills in a language other than French unless the nature of the person's duties requires such knowledge. The same prohibition will apply for the purposes of hiring, transfers and promotions, which will constitute a novelty in the Act.

Section 48 will introduce workers' right to work in an environment that is free from vexatious behaviour, discrimination or harassment based on the employee's not having sufficient command of a language other than French or having asserted a right arising from the provisions of Chapter IV of the Charter. Employers will be required to take reasonable steps to prevent such situations and, on learning of such behaviour, to put a stop to it. It could be asserted that these obligations already exist under the *Charter of human rights and freedoms*, but these are new, specific provisions which, if adopted, will nonetheless impose new legal requirements on employers.

The new section 49 will reiterate the prohibition against dismissing, laying off, demoting or transferring a person, or taking reprisals against them because the person does not have a sufficient command of a language other than French, or because the person has asserted a right arising from the provisions of this chapter.

Any person who feels aggrieved by an alleged contravention of these new sections 47 to 49 may file a complaint with the Commission des normes du travail [Labour Standards Commission], unless the parties are covered by a collective agreement. The complaint and dispute settlement process will be provided for in the new sections 50.1 and following. The Commission des normes du travail [Labour Standards Commission] may attempt to have the complaint settled through a mediator or may refer the complaint to the Commission des relations du travail (Quebec's equivalent to the Labour Relations Board), which already has jurisdiction under the current section 46 of the *Charter*.

Where knowledge of a language other than French is required for a position, section 50.2 will still impose on the employer the burden of proving that the evaluation conducted under the new section 46 (see above) justifies this requirement relating to the position. As in the past, under the future section 50.3 decisions rendered by the Commission des relations du travail (Quebec's equivalent to the Labour Relations Board), may include an order to stop the undesirable behaviour, to perform an act or to pay an indemnity or punitive damages.

The new section 50.5 provides for substantially the same thing as the current section 49 in that an association or group accredited under the *Labour Code* or recognized under another act will still be required to use French in written communications with its members, but it will still be possible to use the language of an individual member in its communications with that member. Under the new section 50.6, at the request of a member these organizations will be required to provide a French version of their constitution and financial statements. The same rule applies to the parity committee.

THE LANGUAGE OF COMMERCE AND BUSINESS

Sections 51 to 71 currently make up Chapter VII of Title 1 of the *Charter* entitled "*The Language of Commerce and Business*". The *Regulation respecting the language of commerce and business* (the "**Regulation**") completes these provisions. The Bill would make the following changes.

The new section 50.8 would require a merchant who sells goods or services to the public to take reasonable steps to ensure that the consumer's right to be informed and served in French is respected. As mentioned above, this right is already set out in section 5 of the *Charter*.

Section 52 of the *Charter* currently provides that catalogues, brochures, folders, commercial directories and any similar publications must be drawn up in French. The Bill would add the words "*and be available in sufficient number to meet the demand*". The *Regulation* provides for several derogations from section 52 of the *Charter*. No new regulation draft has been tabled so far.

FRANCIZATION PROGRAMS AND MEASURES FOR ENTERPRISES

The proposed changes to Chapter V of Title 2 of the *Charter* are designed to extend the obligation for any enterprise to adopt francization programs or measures, in certain cases with the support of the Office de la langue française (the "**Office**"). The future section 135.3 will provide that such programs or measures must be publicized by the employer through the posting of signs and any other method the employer considers appropriate. Under this section, the employer will also be required to publicize the name of the person responsible for francization within the enterprise as well as the complaints-processing mechanism. Under the new section 135.4, the Office will provide the forms on which the information, linguistic situation analyses and reports required under this chapter must be submitted.

For enterprises with 100 or more employees, section 136 still requires that a francization committee composed of six or more persons be set up but the new section 138.2 would allow the Office, at the enterprise's request, to replace it with another mechanism for consulting and involving its staff. If workers within the enterprise are represented by an association, the enterprise must include the association's opinion on the alternative mechanism in its application for approval.

These provisions will also apply to enterprises with between 50 and 99 employees when they are required to implement a francization program. In addition, the proposed new paragraph 141(10) of the Bill will require that any francization program include the obligation to implement work schedules or other means to ensure that the consumers' right to be informed and served in French is respected.

The new sections 151 to 151.6 will govern enterprises with between 26 and 49 employees that maintain that number for more than six months during two consecutive years.

Under the new section 151.1, such enterprises will have to verify their mode of operation to ensure that the following objectives are pursued: (1) making French the normal and everyday language of work and (2) in the case of an enterprise that sells goods or services or makes goods or services otherwise available to the public, ensuring that the consumer's right to be served in the French language, as provided under section 5 of the *Charter*, is respected. We can draw an analogy with the new section 50.8, which requires that such enterprises take reasonable steps to ensure that the consumer's right to be informed and served in French is respected.

If correctives would help an enterprise better achieve the objectives set out in the new section 151.1, the new section 151.2 provides that the enterprise must implement francization measures which pertain to one or more of the following:

- ▶ the list of positions that require knowledge of a language other than French, specifying the date of the evaluation and the level of knowledge required for each;
- ▶ the transfer and promotion policy;
- ▶ the use of French in meetings and internal communications;
- ▶ the training the persons in its employ need because of the implementation by the enterprise of changes to enable them to work in French, including training relating to new software or other work tools;
- ▶ the complaints-processing mechanism within the enterprise and the name of the person responsible for francization; and
- ▶ any other means taken by the enterprise to make French the normal and everyday language of work.

The new section 151.3 will require that enterprises with 26 to 49 employees that sell goods or services to consumers implement francization measures that pertain to any of the following, as applicable:

- ▶ the implementation of work schedules or other means to ensure that persons are present during usual business hours to offer consumers quality information and service in French;
- ▶ the evaluation of the level of knowledge of French of the persons in their employ and the related training needs to ensure that quality information and service are offered;
- ▶ the use of French in communications with customers, whatever the medium used; and
- ▶ the means of supplying French-language folders, catalogues and other documents in sufficient number to satisfy the needs of the French-speaking clientele, as required by the new section 52.

In order to help enterprises implement these measures, specialized business associations, sectoral workforce committees or any other similar body may, according to their specific mandate, develop model francization measures and request the support of the Office in the development of such model measures.

Under the new section 151.5, at the request of the Office, an enterprise with 26 to 49 employees must report on the soundness of the analysis of its linguistic situation, the relevance of the francization measures identified, their implementation and the related follow-up within the enterprise.

Lastly, under the new section 151.6, the government may, by regulation, determine as of what date or according to what timetable and, where necessary, with what modifications one or more provisions applicable to businesses with 50 employees or more will apply to businesses with between 26 and 49 employees. The obligations may vary according to the sector of activity or the payroll of the enterprise.

SANCTIONS

The current section 151.1 will be found in section 151.7 and any failure to comply with the obligations imposed on businesses in Chapter V of Title 2 of the *Charter* will constitute an offence punishable by the penalties provided for in section 205, namely, a fine of \$600 to \$6,000 in the case of a natural person and a fine of \$1,500 to \$20,000 in the case of a legal person. The fines will be doubled for a subsequent offence.

POWERS OF THE OFFICE DE LA LANGUE FRANÇAISE

The Bill proposes giving increased powers to the Office and its representatives. If the new section 174 is adopted, visits by representatives of the Office will no longer have to take place during business hours and may take place "at any reasonable time". The new section 175.2 would also require the operator of a place undergoing an inspection to give the person authorized by the Office reasonable assistance in carrying out the inspection. Under the current section 175 and section 175.1 of the Bill, the Office may and will still be able to require that any person produce any relevant document or information within the time it specifies.

The new requirements are found in the new section 175, pursuant to which the Office may, for the purpose of inspections conducted by its representatives:

- examine any products or goods in the place visited and any thing used in relation to the labelling, display, promotion or sale of products or goods;
- verify whether signs are in compliance with requirements;
- take measurements;
- require the production of any book, account, record, file or other document for examination or for the purpose of making copies or extracts, if the Office has reasonable grounds to believe that they contain information relating to the carrying out of the Act or the regulations;
- take photographs of the place visited and the equipment, goods or products on the premises, or make recordings.

Under the new section 175.3, during the course of an inspection, the person authorized by the Office to act as an inspector may also seize any thing which he or she believes on reasonable grounds may prove the commission of an offence under the *Charter* or the *Regulation*. Lastly, the new section 177 would no longer require that the Office give the offender formal notice to comply with the Charter within a specified time. If it determines that the Act or a regulation has been contravened, the Office may refer the matter to the Director of Criminal and Penal Prosecutions directly so that appropriate penal proceedings may be instituted where required.

COMMENTS

The Minister of Immigration and Cultural Communities and Minister responsible for the Charter of the French language, Diane de Courcy, tabled the Bill on December 5, 2012.

The Committee on Culture and Education will hold public hearings beginning on March 12, 2013 and any individual or organization wishing to express an opinion on the Bill should submit a brief or a request to be heard without a brief by February 11, 2013. The Commission will choose the individuals or organizations it will hear from among those who have responded. It will also be possible to participate in an on-line consultation beginning on February 12, 2013.

It is likely that several groups and associations, including businesses and cultural communities, will make representations about the Bill. We will keep you informed of any developments.

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