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Amendments to the Charter of the French Language: Impacts on the Insurance Sector

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Bill 96 – *An Act respecting French, the official and common language of Québec* (the "**Act**") - was adopted on May 12, 2022 and assented to on June 1, 2022, its effective date. Certain provisions are already in force; for other provisions, a transitional period ranging from several months to three years will apply.

This document provides an overview of the modifications included in the reform of the *Charter of the French Language* (the "Charter") that will have an impact on various aspects relevant to insurance sector stakeholders doing business in Québec.

Forming the centrepiece of the announced changes, the reform of the Charter includes strengthened oversight mechanisms governing the use of French as the language of commerce and business, as well as linguistic rights in the areas of employment and communications with agents of the State.

Overseeing the language of commerce and business

The reform of Section 55 of the Charter stipulates that contracts of adhesion and related documents must be drawn up in French. However, effective June 1, 2023, a French-language version of these contracts and documents must be provided to participants First Alinea of this amended section reads as follows:

> 55. Contracts pre-determined by one party and the related documents, must be drawn up in French. The parties to such a contract may be bound only by its version in a language other than French if, after its French version has been remitted to the adhering party, such is their express wish. The documents related to the contract may then be drawn up exclusively in that other language.[1]

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Therefore, contractual clauses in which the parties simply indicate that they agree to be bound by a contract drawn up in a language other than French are no longer sufficient.

The *Civil Code of Québec* stipulates that “A contract of adhesion is a contract in which the essential stipulations were imposed or drawn up by one of the parties, on his behalf or upon his instructions, and were not negotiable.”[2]

To qualify a contract, the importance of the negotiated terms and conditions and their connection with the contract must be analyzed. It is generally recognized that if the essential stipulations are not negotiable, the contract is a contract of adhesion, even though some less important terms and conditions may have been negotiated by the parties.

This amendment codifies the interpretation adopted by the Office québecois de la langue française (“OQLF”) and the courts,[3] particularly given that negotiated contracts were not covered by this provision. To remove any doubt concerning this interpretation, Bill 96 was amended so as not to extend the scope of this requirement to include contracts containing “printed standard clauses”.

The insurance contract

Since their essential stipulations are typically drawn up by the insurer, insurance contracts and their endorsements are contracts of adhesion, as a general rule. Therefore, the French-language version of all related documents — notices, letters, insurance product summaries — must be provided to clients before they can decide whether they will be bound by a version drawn up in another language.

During the parliamentary debates, Minister Jolin-Barette commented that Section 55 of the Charter only referred to consumers and that contracts between two companies could be drawn up in the language of their choice if that was the express wish of both parties. The term “consumer”, however, is not defined in the Charter. Ambiguity remains as to whether the Minister’s comment only referred to contracts containing standard clauses or whether contracts of adhesion were included. We will have to wait for the publication of the interpretation bulletins and the annotated edition of the act to determine whether Section 55 of the Charter applies to commercial insurance policies. In the meantime, we are of the opinion that if Québec lawmakers had wanted to exclude commercial contracts of adhesion, they would have expressly done so by means of an amendment.

Insurance contracts in effect before June 1, 2023 will not have to be translated, nor will insurance contracts renewed without modifications since under those circumstances, the contract would not be regarded as a new contract.[4] However, if an existing insurance contract is renewed with significant modifications, it will be regarded as a new contract and the French-language version thereof must be provided to clients so they may validly express their wish to be bound by a contract drawn up in a language other than French.

Given that in most cases, insurance contracts are sent out to policyholders by regular mail or email, effective June 1, 2023, insurers, agents or brokers, as applicable, will have to send both the French-language and English-language versions of the contract in the same mailing or simply send the French-language version thereof.

It is important to note that the Act provides for an exception to the requirement to provide the French-language version if:

> The insurance policy has no equivalent in French in Québec; and
> The insurance policy is originates from outside Québec or is not widely available in Québec.[5] *[unofficial translation]*

In all likelihood, this exception will only apply to highly specialized insurance products and will be interpreted restrictively given the Act’s primary objective.

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Unlike insurance contracts and related documents, invoices, receipts, discharge notices and other similar documents may be sent out in English if the French-language version remains available on terms that are at least as favourable.[6]

Services and marketing in French

The Act introduces the Charter's new Section 50.2, which states that businesses must respect consumers' fundamental linguistic right to be informed and served in French. The same section reiterates this requirement with respect to "a public other than consumers" to whom are offered goods and services and who must henceforth be informed and served in French by businesses. Unlike consumers, however, clients who are businesses do not enjoy a fundamental linguistic right protected by the Charter.

As regards marketing, the addition of the words "regardless of the medium used" to Section 52 of the Charter confirms that marketing documents in "hard copy" format must be in French, as must websites. If a version is available to the public in a language other than French, the French-language version must be available on terms that are at least as favourable. This provision took effect on June 1, 2022.

Chat-type platforms or those facilitating direct communications with the insurer should make it possible for members of the public to communicate with the insurer's representatives in French at all times.

Communications with insurance agents and brokers

Effective June 1, 2022, insurers are required to communicate in French with insurance agents and brokers who express the desire to do so.[7]

In addition, all information documents sent to insurance agents and brokers regarding underwriting or claims must be in French if they so wish.

As regards contractual agreements between insurers, insurance agents and brokers, the need to provide a French-language version depends on the nature of the contract, i.e. whether it can be qualified as a contract of adhesion.

French in the workplace

Effective June 1, 2022, all companies doing business in Québec must comply with the following requirements in the area of employment rights:

Respect employees' right to work in French[8];
Use French in all written communications sent to employees;
Ensure that all offers of employment, promotion or transfer; individual employment contracts; employment application forms; and documents concerning employment conditions and training sent to employees are drawn up in French;[9]
Take all reasonable means to avoid requiring employees to have knowledge or a specific level of knowledge of a language other than French for employees to obtain employment or to maintain their position, including in particular:

Assess the actual needs associated with the duties to be performed;
Make sure that the language knowledge already required from other staff members was insufficient for the performance of those duties;
Restrict as much as possible the number of positions involving duties whose performance requires knowledge of or a specific level of acknowledge of a language other than French.[10]

It should be noted that individuals whose employment contracts are currently drawn up in English

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have until June 1, 2023, to ask their employer to translate their contract.

Effective June 1, 2025, businesses with 25 employees or more in Québec must meet additional francization requirements for their Québec employees to obtain a francization certificate, including:

Registering with the OQLF;
Submitting an analysis of the status of the French language within the business;
Putting in place a francization program within three months following an OQLF request to that effect.

The above requirements were already in effect for businesses with more than 50 employees in Québec.

French as the language of the civil administration

The Act includes various modifications with respect to French as the language of the civil administration. The Québec government will be required to make exemplary and exclusive use of French, with certain exceptions.

Effective June 1, 2023, all agents of the State and provincial government bodies will be required to communicate in French with all persons, including business representatives. All documents exchanged with the civil authorities, as well as all contracts and permits, must be drawn up in French.

Insurance sector stakeholders outside Québec should expect to receive more communications in French from the Autorité des marchés financiers ("AMF") given that the AMF is a body of the "civil administration".

Penalties

It should be noted that new powers will be granted to the OQLF enabling it to conduct investigations and impose administrative and disciplinary penalties.

As regards infractions of the Charter's provisions, the Act provides for fines ranging from $3,000 to $30,000 for businesses and from $700 to $7,000 for individuals. These fines are doubled for a second offence and tripled for further offences.

In addition, if an infraction continues for more than one day, each day constitutes a separate infraction.

If an infraction is committed by a corporate director or officer, the Act provides for fines ranging from $1,400 to $14,000.

Questions of interpretation

Various provisions have raised questions of interpretation that are still difficult to resolve at the time of writing. Interpretation bulletins and an annotated edition of the act will be published by the provincial government with a view to guiding businesses in the application of the Act; they will also help to clarify certain provisions that remain ambiguous for the time being.

For further information on changes concerning trademarks, please consult a recent publication by our colleagues specializing in intellectual property.

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1. Sec. 55, Para. 1 of the Charter.
2. *Civil Code of Québec*, CQLR ch. CCQ-1991, Sec. 1379, Para. 1.
3. *Westboro Mortgage Investment vs. 9080-9013 Québec inc.*, 2018 Superior Court of Québec 1. Leave to appeal dismissed 2019 Court of Appeal of Québec 1599.
4. Didier LLUELLES, *Droit des assurances terrestres*, 6th ed., Montréal, Éditions Thémis, 2017, Para. 186.

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5. Sec. 21.5 and Sec. 55 of the Charter.
6. Sec. 57 of the Charter.
7. Sec. 50.2 of the Charter.
8. Sec. 5 and Sec. 50.2 of the Charter.
9. Sec. 41 of the Charter.
10. Sec. 46 of the Charter.

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