FRANCHISING IN QUEBEC

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When seeking to expand their network in Quebec, Canadian and foreign franchisors may be overwhelmed by the uniqueness of Quebec due to the predominance of the French language, the differences of the province's legal system compared to the rest of Canada's, and the absence of specific franchise legislation. Nevertheless, these challenges can be overcome and when done so, Quebec will offer new business opportunities. As such, this article intends to demystify certain legal aspects of franchising in Quebec.

A. Overview of Quebec's Profile

Quebec is the country's largest province in terms of area and the second-most populous province in Canada[1]. Most of Quebec's population lives in the province's five largest metropolitan areas (Montreal, Quebec City, Gatineau, Sherbrooke, Trois-Rivières), making them prime locations to establish franchised businesses. In addition, Quebec welcomes 32.6 million visitors every year, who spend nearly $8.8 billion in the province[2].

A recent study on the economic impact of the franchise industry in Quebec[3] reports the presence of 457 different brands in the province, operating in various sectors of activity (many of which are renowned brands). The franchise industry also generates revenues of approximately $59.4 billion annually, which represents 5.6 per cent of Quebec's Gross Domestic Product ("GDP") and 9.8 per cent of direct and indirect employment. Therefore, the franchise industry is an important driver of economic growth in Quebec.

B. Language Requirements

Quebec is the only Canadian province where French is the primary official language. The provincial government adopted, in 1977, the *Charter of the French Language*[4] (the "**Charter**"). The Charter seeks to protect the quality and influence of the French language, and to make it the official language of government and the law. In Quebec, French is the everyday language of work, commerce, and business.

The Charter applies to all sectors of activity, including the franchise industry. That being said, the application of the French language into the franchise sector raises several questions as to the possibility of doing business in Quebec without translating every agreement, document, and manual into French, or to use the same trademark and brand in Quebec as they would in other Canadian provinces.

Language of Contracts

It is usually required in Quebec that certain types of contracts be drafted in French. This is the case with adhesion contracts[5], and most likely franchise agreements. However, both parties may agree to have the contract written in another language. As such, it is a good practice to include in the agreement a specific statement that the parties *expressly* required that the agreement and all related documents be entered into, drawn up, executed, and distributed in a language other than French.

Nevertheless, there is a recurring question concerning the language to be used in contracts: Who bears the costs associated with providing a French version? If a franchisor is contracting directly with a Quebec franchisee, most likely, the franchisor will bear the cost of any required translation. If a Canadian or foreign franchisor enters into a Master Franchise Agreement, for example, to develop the Quebec market (which is a common practice), the parties shall determine who will bear the cost to provide a franchise agreement in French as well as any documents pertaining to said agreement. Generally, the franchisor will insist that the master franchisee bears the costs of such translation.

Name of Enterprise

Essentially, the name under which an enterprise does business in Quebec must be in French[6]. However, an enterprise may use its name in another language, as long as a French version exists and this version of the name is used in a prominent manner in Quebec[7]. More specifically, at the time of incorporation in Quebec, a

[1] "Québec Handy Numbers", Institut de la statistique du Québec, March 28, 2018, p. 7 et 10, online : <http://www.stat.gouv.qc.ca/quebec-chiffre-main/pdf/qcm2018_fr.pdf>
[2] *Supra* note 1, at p. 32.
[3] Rapport – Analyse économique de l'industrie de la franchise au Québec, June 2018, prepared for the Conseil Québécois de la franchise, in collaboration with Raymond Chabot Grant Thornton, Quebec Government, Fasken and National Bank of Canada
[4] 1977, c.5
[5] Contract in which the essential stipulations were imposed or drawn up by one of the parties and were not negotiable, art. 1379 CCQ.
[6] Art. 63 of the Charter
[7] Art. 68 of the Charter

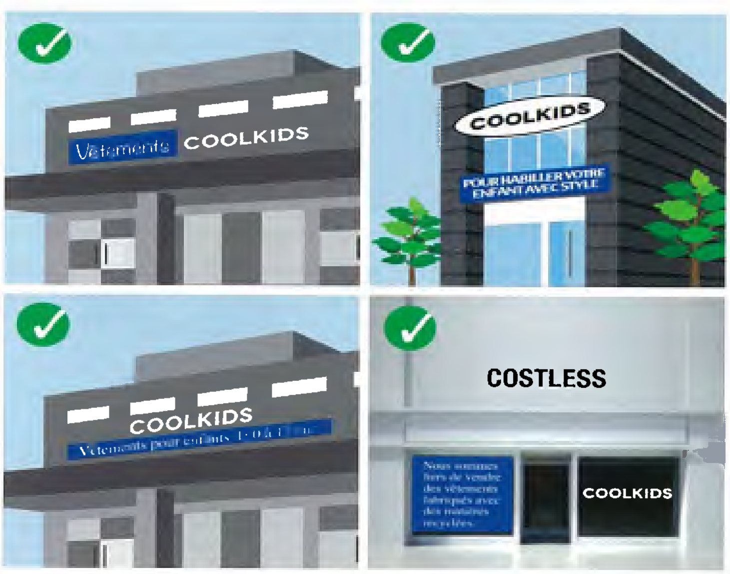
company must provide a French name in order to be granted legal personality[8]. For example, if a corporation is using the name Cost-less Inc. in another province, it should register in Quebec a French name such as *BasPrix*[9].

Trademarks and Commercial Signs

A trademark (within the meaning of the *Trade-marks Act*[10]) may be registered in a language other than French. However, the use of such trademark in Quebec is subject to some restrictions concerning signage, advertising, products, and labels.

Once established in Quebec, a company must comply with the rules related to public signage and commercial advertising. Thus, public signage and commercial advertising must be in French. A language other than French may be present, provided the French is clearly predominant. There are exceptions to this general rule. It is indeed possible to display a trademark in other languages, but only if a French version of the trademark has not been registered, and that it was already displayed prior to November 24, 2016[11].

However, as of November 24, 2019, any enterprise already established in Quebec will be required to comply with the general rule: any signage, posting, and advertising may not continue to be exclusively in a language other than French (even if there is no French version of the trademark that has been registered) and signs, posting or commercial advertising will need to include a sufficient presence of French, in most cases. Sufficient presence may be ensured by means of a generic term, a description, a slogan or any sufficient information. For example, if "Coolkids" is a retail clothing company, it will be necessary for the company to display "Vêtements Coolkids" on the frontage of the store[12] in order to comply with the new rules. Here are some examples where the signage and advertising would be permissible[13]:



The use of non-francophone last names, surnames or locations into public signage or commercial advertising (ie. "McDonald's" or "Tim Hortons") would be exceptions to the requirements of French predominance.

Of course, the Charter and its regulations provide other rules and exceptions. It is therefore recommended that franchises be adequately advised of these rules and exceptions in order to overcome the obstacles that the French language may pose when franchising in Quebec.

C. The Absence of a Specific Franchise Legislation

Unlike the six other Canadian provinces[14] governed by common law jurisdiction, Quebec is governed by a civil law system and does not have specific franchise legislation. As such, there is no mandatory disclosure process and a franchisor does not have to provide a Franchise Disclosure Document (**"FDD"**) at any time prior to the signing of the franchise agreement.

The contractual relationship between a franchisor and its franchisee in Quebec is governed by the general rules of contracts provided in the Civil Code of Québec[15], which sets out the contractual obligations of the parties. As such, the parties must be adequately informed to form valid consent to the contract and must act in good faith[16].

The obligation of good faith is manifested in a franchise context as a positive duty to inform. This duty translates into an obligation for the franchisor to provide the information that may influence the franchisee's decision to enter (or not) into a contractual relationship, and not knowingly withhold or hide information that would prevent a franchisee from making such an informed decision. On the other hand, the franchisee has a duty to "inquire", meaning that the onus is on the franchisee to proceed with concise due diligence before entering into a contract and obtain adequate assistance to assess the risks and implications of the proposed contract.

Another important aspect of not having any disclosure obligation imposed by law in Quebec is that there is no right of rescission for franchisees. Therefore, if a franchisee was seeking to obtain the "rescission" of the contract, it shall prove to a Court an error or fraud committed by the franchisor that vitiated its consent[17], which is a significant burden of proof.

Considering that franchisors have an obligation to provide a FDD in other provinces in Canada (or other countries), when expanding into Quebec, they may be inclined to give a copy of their current FDD to a potential franchisee to ensure that sufficient information is disclosed. This is indeed a good practice. However, the franchisor shall perform a rigorous review of the FDD with its legal and financial advisors based in Quebec, so that all the information provided in the FDD is adequate and accurate in the province and shall not constitute misrepresentations. In the end, the franchisee will rely on such information to make a decision to enter into the franchise agreement.

[8] Art. 64 of the Charter
[9] Translation of "Costless"
[10] R.S.C., 1985, c. T-13
[11] Since November 24th, 2016, all new display must comply with the general rule of the predominance of French in public signage and commercial advertising
[12] Translation of " Coolkids Clothing "
[13] Examples from the office Québécois de la langue français « Affichage des marques de commerce », October 2016
[14] Ontario, Alberta, Manitoba, Prince Edward Island, New Brunswick and British Columbia
[15] Civil Code of Quebec, 1991, c. 64 ("CCQ")
[16] Art. 1375 CCQ
[17] Art. 1407 CCQ

Ultimately, the differences between common law and civil law systems can be overcome, and understanding those differences allows for better preparation and a more harmonious entry into the Quebec market.

D. Conclusion

There are other legal particularities that distinguish Quebec from other Canadian provinces. Nevertheless, here are some of the reasons why Canadian or foreign franchisors should expand their franchise network into Quebec: no financial disclosure document to provide to potential franchisees, no statutory rescission, the province's welcoming attitude towards entrepreneurship, limited brand competition, growth opportunity in an underrepresented franchise industry, and a stepping stone toward world expansion in countries where the French language is predominant. It remains that a first incursion into the Quebec market should be facilitated by entering into a master franchise agreement, an area developer agreement, or an area representative agreement with parties that have a great knowledge of the Quebec market and economy. Quebec is undoubtedly offering great opportunities for Canadian or foreign franchisors. Once properly guided and surrounded by qualified consultants, the expansion of a franchise network into Quebec will certainly be a more seamless experience.

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