

# BILL 96 - DATES TO REMEMBER AND TOP FIVE (5) TAKE-AWAYS FROM THE AMENDMENT PROCESS

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***Changes aren't near, they are here. On May 24, 2022, a majority of the National Assembly of Québec adopted Bill 96, a reform of Québec's language laws in the province. After more than a year of revisions and amendments, here is a timeline of the entry into force of the new provisions following its assent at a ceremony to be held at the Lieutenant-Governor's office on June 1.***

***We also highlight five amendments and take-aways that caught our attention from the originally tabled Bill, which may bring relief to some, but disappointment for others!***

## **Timeline**

Bill 96, an Act respecting French, the official and common language of Québec was first introduced on May 13, 2021 ([see our note on the initial Bill, offering a general overview of its impacts](#)), seeking to reform Québec's language laws, notably the *Charter of the French Language* (also know as Bill 101) [1]. After significant debate and less significant amendments, Bill 96 has now been adopted and the new requirements it creates will gradually come into force over the next few months. Businesses based or operating in Québec should keep this timeline in mind.

## Entry into force

## Relevant requirements

June 1, 2022

- Restrictions are added on the right to require knowledge of a language other than French at the time of hiring or promotion[2];
- Employers have to post job offerings in French, and, to the extent that this advertisement is published in another language, to ensure that it uses the same means of transmission and reaches the same target public of a proportionally comparable size[3];
- In addition to written communications with the staff, employers must provide training documents as well as employment application forms in French[4]. Rights and obligations of companies and individuals to serve or be served in French are further amplified[5]. Employment contracts may still be in a language other than French where the parties so request[6].
- The right to be served in French by businesses is clarified, and an aggrieved party may now seek injunctive relief (except against companies with 5 employees or less) if their right to be served in French is violated[7];
- New sanctions, notably including increased fines are effective immediately[8].

September 1, 2022

- When emanating from a legal person, all pleadings in legal proceedings must either be drafted in French or be accompanied by a certified translation[9];
- Parties seeking to register security on movable (personal) property in Québec or enforce such security will have to use French, including for any documents accompanying the registration forms[10].



## Entry into force

## Relevant requirements

June 1, 2023

- In most cases, a party wishing to impose a standard form contract (i.e. a contract of adhesion) in a language other than French must now have a French version on hand and provide the other party with a chance to examine it (along with the version in the other language), so that they can choose to contract either in French or such other language [\[11\]](#);
- The regulator may identify businesses with as few as 5 employees in certain key sectors, to which it would offer French language learning services provided by Francisation Québec [\[12\]](#).
- French-speaking staff (or counsel) is required when interacting with or acting as service provider for the Government or its agencies, as those entities will be even more limited in their right to operate in languages other than French [\[13\]](#);

June 1, 2024

- Any judgment rendered in English by a court of law will automatically be translated, where that judgment concludes a proceeding or where it is of public interest, or at the request of a party, in all cases at the State's cost [\[14\]](#).

June 1, 2025

- Threshold triggering Francization obligation reduced from 50 to 25 employees. The Francization requirement includes the requirements to have a francization committee and complete an analysis of the linguistic situation of the Company, ultimately leading to obtaining of a certificate, which is then renewed periodically [\[15\]](#).
- Requirement to register your trademark with CIPO, in order to be exempt from having to translate it on your public signs, product or packaging [\[16\]](#). Even so, on public signage, these trademarks will need to be accompanied by “markedly predominant” French wording.

## Top 5 Changes From Original Bill 96

### **1. Companies with limited operations and presence in Québec may be able to avoid developing French versions of their standard Terms and Contracts.**

Bill 96, as originally drafted, would have required all contracts of adhesion (i.e. contracts whose terms are imposed by one party) and contracts containing standard clauses (with no minimum number of such clauses) to be provided in French. In fact, where a version in French can not be provided along with the version in another language at the time the contract is concluded, it risked being voided<sup>[17]</sup>. This was a marked departure from the CFL, where parties could expressly choose a language other than French, often resulting in a simple choice of language clause in the contract to that effect<sup>[18]</sup>.

This far reaching change was curtailed in a two significant ways, perhaps owing to the significant backlash to the original wording:

- This obligation no longer applies to contracts “*used in relationships outside of Québec / with parties outside Québec*”<sup>[19]</sup>. Those can still be drafted in a language other than French. Interestingly, this was an exemption that the Québec government previously kept for itself only<sup>[20]</sup>. This may be useful for entities based in another country or Canadian Province, where they have a Québec clientele, but no establishment there yet (although it is not yet clear which parties will be considered as being “outside” Québec);
- The application of translation requirements for contracts containing standard clauses has been removed altogether. Narrowing the obligation to contracts of adhesion only gives some much needed clarity and removes antiquated references going forward.

In these situations, parties will maintain their right to use a contract in a language other than French, provided they expressly choose to do so.

## **2. Certain types of contracts typically entered into between sophisticated business actors will be exempted from translation requirements.**

Certain types of contracts were also exempted from the blanket translation requirements, even where those contracts are contracts of adhesion and where the above exemption is not available. These can generally be characterized as contracts associated with sophisticated financial products, where Québec companies would have been excluded from participation in the niche markets targeted had the requirements not been lifted.

They are<sup>[21]</sup>:

- Loan agreements;
- Financial instruments and contracts whose object is the management of financial risks, including currency exchange or interest rate exchange agreements, contracts for the purchase or sale of options, or futures contracts;
- Contracts entered into with a person or company that carries on the activities of a clearing house;

- Contracts entered into on a platform for trading a derivative instrument referred to in the *Derivatives Act* (chapter I-14.01), a security referred to in the *Securities Act* (chapter V-1.1) or other movable property, provided, in the latter case, that the contract is not a consumer contract;
- Insurance policies, where there is no French-language equivalent in Québec *and* the policy originates from outside of Québec *or* it is not widely used in Québec.

### **3. CIPO trademark applications should be prioritized.**

The CFL and associated Regulations contained certain exemptions, such that trademarks, even those in a language other than French, could be used in Québec without being altered, for instance on a product and its packaging, or on public signage or advertising [22]. This was available to all “recognized” trademarks, including common law trademarks (i.e. created through public use of the term) [23].

Under the MCFL, trademarks now have to be formally registered with CIPO in order to qualify for exemptions and to be partly or fully in a language other than French. From a practical standpoint, this means acting now to finalize trademark applications, although the requirement will only come into force in three years. CIPO built a significant backlog in its review of trademark applications during covid, such that the registration process currently also takes 3+ years to complete.

Moreover, if a generic description of the product is included in the trademark, it must be present in French as well [24].

### **4. Professionals may be required to translate their opinion, but no longer for free.**

Bill 96 introduces a requirement for members of professional orders to translate their opinions, reports, expert reports or other documents upon request from “any person authorized to obtain them and who so requests” (vs. the professional’s client, as was previously the case under the CFL).

That request could be made at any time, and without translation fees where the client for whom the original documents were produced is an individual. Under the final MCFL, where the original client was a legal person, the person requesting the translation shall pay the translation fees should it require a French version of any of the aforementioned documents [25].

This applies to all professional orders in Québec, such as the *Collège des médecins du Québec*, the *Barreau du Québec* or the *Ordre des Comptables professionnels agréés du Québec*.

### **5. The McMillan Vantage Perspective : Bill 96 is largely here to stay.**

While there has been some backlash to the Bill within the English community and the business world, the Bill is generally very popular with a majority of Québécois. The Government plans to use its passage to highlight its

success in protecting the French language to the general electorate ahead of October elections. The Bill will become law without any further changes on June 1 with the official assent, and while there certainly will be a number of lawsuits on specific provisions within the law, businesses should understand that the large majority of the changes in the law are here to stay for the foreseeable future.

[1][ps2id id='1' target=''] In this note we refer to (i) the Charter of the French Language prior to its amendment by Bill 96 as the “**CFL**”, (ii) the amendment package that was originally proposed as “**Bill 96**”, and (iii) the CFL, as amended by Bill 96 is the “**MCFL**”.

[2][ps2id id='2' target=''] MCFL, s. 46.1.

[3][ps2id id='3' target=''] MCFL, s. 41.

[4][ps2id id='4' target=''] MCFL, s. 41.

[5][ps2id id='5' target=''] MCFL, s. 50.2.

[6][ps2id id='6' target=''] MCFL, s. 41, 55.

[7][ps2id id='7' target=''] MCFL, s. 204.16.

[8][ps2id id='8' target=''] MCFL, ss. 205-206.

[9][ps2id id='9' target=''] MCFL, s. 9.

[10][ps2id id='10' target=''] Bill 96, ss. 125-126.

[11][ps2id id='11' target=''] MCFL, s. 55.

[12][ps2id id='12' target=''] MCFL, s. 149.

[13][ps2id id='13' target=''] MCFL, s. 13.1.

[14][ps2id id='14' target=''] MCFL, s. 10.

[15][ps2id id='15' target=''] MCFL, s. 139.

[16][ps2id id='16' target=''] MCFL, ss. 51.1 and 58.1.

[17][ps2id id='17' target=''] MCFL, s. 55.

[18][ps2id id='18' target=''] CFL, s. 55.

[19][ps2id id='19' target=''] MCFL, s. 55. The eventual translation of this sentence is not clear yet.

[20][ps2id id='20' target=''] CFL, s. 21.

[21][ps2id id='21' target=''] MCFL, s. 21, 21.5, 41 and 55.

[22][ps2id id='22' target=''] CFL, s. 51.

[23][ps2id id='23' target=''] *Québec (Attorney General) c. 156158 Canada Inc. (Boulangerie Maxie's)*, 2015 QCCQ 354.

[24][ps2id id='24' target=''] MCFL, s. 51.1.

[25][ps2id id='25' target=''] MCFL, s. 30.1.

by [Enda Wong](#), [Emile Catimel-Marchand](#), [Jonathan Kalles](#), and [Cathy Tran](#) (Summer Law Student)

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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