

BILL 96 - TOP 10 IMPACTS OF THE REVISED CHARTER OF THE FRENCH LANGUAGE ON YOUR BUSINESS AND WHEN TO EXPECT IMPLEMENTATION OF SUCH REVISIONS

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Changes to the Charter of the French Language are coming. It is not a question of “if” but “when”- Although not yet adopted, the proposed reform to Québec’s language laws is sure to impact the day-to-day operations for many companies doing business in Québec or otherwise, interacting with Québec counterparties. Here is a curated top ten list of such potential impacts, followed by McMillan Vantage’s perspective on the likely timeline and process of adoption.

On May 13, 2021, Québec’s CAQ Government tabled *An Act respecting French, the official and common language of Québec* (“**Bill 96**”), a proposed reform of the *Charter of the French Language* (the “**CFL**”, also commonly known as Bill 101. In this bulletin, we refer to the CFL, as amended by Bill 96, as the “**MCFL**”) and other legislation dealing with the use of the French language in the province. Bill 96 seeks, among other things, to re-emphasize the formal recognition of French as the only official language of Québec and promote the presence of the French language in Québec, including in the fields of education, public administration, and business. Businesses should most particularly be aware of the following:

Impact when dealing with the public and the Government

1. Your public signs need to include (much) more French content

There is currently a requirement for French to be markedly predominant on public signs, posters and in commercial advertising.^[1] Despite this requirement and following a few years of litigation,^[2] companies were allowed to publicly display content in another language, such as their name, where such content was a recognized trademark and was accompanied by “sufficient” French content.^[3] This was typically done by including a French descriptor to accompany the name of the storefront (e.g. café XYZ, électronique ABC, etc.)

The MCFL now specifies that this French presence is not enough on its own, but also needs to be “markedly predominant” when a trademark appears in a language other than French and is visible from outside a business’ premises. The expression “markedly predominant” is defined by regulation and typically means twice

as large or otherwise carrying more of a visual impact.^[4]

2. **Your customers' rights to be served in French now comes with teeth**

Although the CFL always provided for a consumer's "*right to be informed and served in French*,"^[5] the MCFL now also states that companies must inform and serve their non-consumer clients in French as well.^[6]

In order to enforce this, any aggrieved party could notably seek injunctive relief (except against companies with 5 employees or less).^[7] The OQLF (the regulatory authority in Québec authorized to oversee compliance with the CFL) would also be put in charge of a complaint mechanism to address any failure to comply with the provisions of the MCFL, including the above. In some cases, the OQLF has been given the right to open a complaint record, notify the complainant accordingly and, at the complainant's request, inform him of the processing of the complaint and, if applicable, of the compliance measures to be taken.

3. **Your Company's Pleadings before Québec Courts should now be in French or be translated into French**

Any legal person that finds itself a party to legal proceedings should now either draft their pleadings in French or accompany them with a certified translation (at their own cost).^[8] International Businesses engaged in litigation in Québec might have to increasingly rely on their Québec counsel's French draft of the pleading without being able to directly review and comment on the pleading, or even review for accuracy to ensure minimization of miscommunications, or bear the cost of a translation. As currently drafted, Bill 96 does not provide for any exception to this rule, even where all parties to a proceeding would prefer to proceed in English.

In addition, whereas any party can currently request that any judgment rendered by a court of law (or decision rendered by a body exercising quasi-judicial functions) be translated into French or English,^[9] any judgment rendered in English by a court of law will now be automatically translated, where that judgment concludes a proceeding or where it is of public interest. Any other judgment rendered in English is also translated into French at the request of any person. Any other judgment rendered in French can also be translated into English at the request of a party.^[10] The cost of translating such judgments will be borne by the State.

4. **You will need French-speaking staff (or counsel) when interacting with or acting as service provider for the Government or its agencies**

Bill 96 introduces a renewed drive for the Government and its various arms to "*use the French language, promote its quality, ensure its development in Québec and protect it in an exemplary manner*."^[11] This generally means a greater emphasis on using only French within the Government and in contractual dealings with the Government.

Specific new contexts where French must exclusively be used include in respect of (i) any application by a legal

person to obtain a permit or other authorization, including the accompanying documentation,^[12] and (ii) the request and rendering of services by a legal person to the Government.^[13]

Furthermore, repeated contravention of the MCFL could result in suspension or revocation of a permit or other authorization issued by the Government.

Impact on your contracts and transactions

5. Your choice of language provisions will no longer be sufficient in many cases

Under current legislation, there is an obligation to draft certain contracts in French, particularly those imposed by one party or containing standard clauses. Counterparties could however expressly elect to draft them in another language, instead of French.^[14] This has resulted in a practise whereby some companies never produce a French version of their contracts, but rely instead on a “choice of language” provision, stating that both parties expressly chose English.

This will no longer be possible, as the choice of a language other than French will now only be valid where the signatory was presented with a French version and given the opportunity to examine it, but nonetheless chose another language. Where a party chose the French version, it is also prohibited to send such party a document related to the contract in a language other than French.^[15] It will not be permitted to charge a party for the French version of the contracts either.

Similar obligations for contracts to be drafted in French will also apply in a consumer context^[16] and regarding certain real estate contracts.^[17]

Finally, where previous contravention to such French availability rules could only result in a fine, the MCFL now includes specific rights to have the contract voided for infractions to the above. The aggrieved party may also elect to maintain the contract but seek damages.^[18] If this change is adopted, Businesses will need to be particularly careful to adhere to the above rules, as there is a significant risk that their contracts may be deemed unenforceable otherwise.

6. You will have to register security in French and enforce it in the same language

Bill 96 contains proposed changes to the Civil Code of Québec, such that parties seeking to register security on movable (personal) property in Québec or enforce such security would have to use French.^[19]

Indeed, under Québec law, security (typically in the form of a hypothec) must be registered in certain public registries in order to become valid (opposable against third parties). In the case of movable (personal) property, this registry is the Register of Personal and Movable Real Rights (“**RPMRR**”). Contrary to the Personal Property Security Registries existing in Canada’s other provinces, registration at the RPMRR is done via a form requiring

a full description of the assets to be charged in order to be valid, as opposed to checking a box with a general description of the category of assets being charged. This description is typically taken directly from the security document. As it is currently drafted, Bill 96 would require such forms (and the resulting registrations) to be drawn up in French only.

Québec entities operating in more than one jurisdiction, or multinationals operating in Québec, and seeking to obtain financing will typically negotiate such financing documents in English, including a mutually agreed upon description of the assets on which they grant security. The new requirements under Bill 96, if adopted might cause additional delays and costs to Québec entities seeking to access the world's financing market. Extra care will have to be taken to ensure that nothing is “lost in translation”, to avoid exposing creditors to any potential risk of a miss-match between their financing documents and their registration.

Finally, any documents that must accompany the registration forms discussed above must also be drawn up in French or accompanied by a translation. This could notably include hypothecary notices required in order to enforce security (or appoint a receiver in Québec).^[20]

Impact on your labor relations

7. You will now be required to provide (much) more employment related documentation in French and (much) less emphasis on knowledge of a language other than French as a requirement for employment

Under its current terms, the CFL^[21] already provides that written communications with staff are to be in French, specifically, those related to the employee's employment conditions. The MCFL will broaden the scope of this requirement to include training documents as well as employment application forms.

With respect to job offers, the MCFL requires employers who intend to post a job offering to do so 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 public target of a proportionally comparable size. In contrast, the CFL^[22] only provides that employers publishing advertisements in a daily newspaper in a language other than French had to simultaneously publish those advertisements in a daily newspaper in French, with at least equivalent display.

Regarding knowledge of a language other than French as a requirement for employment, the MCFL provides, as does the CFL, that employers cannot rely on knowledge of a language other than French in hiring employees, unless the nature of the duties requires such knowledge. Where the MCFL breaks new ground is in the reasonable means that an employer will have to justify knowledge of another language as a hiring criterion. The MCFL^[23] will require every employer to demonstrate that it has assessed the actual language needs associated with the duties to be performed for a certain position, ensured that the language knowledge

already required from other staff members was insufficient for the performance of those duties; or restricted to the maximum extent, the number of positions involving duties whose performance requires knowledge or a specific level of knowledge of a language other than French.

8. You will now be subject to Francization obligations where you have 25 employees or more (down from 50) and sometimes as few as 5 employees

Francization is an existing process imposed on Businesses with the aim of ensuring sufficient French presence in the workplace. It notably requires certain actions such as administrative and management processes, committees and reports to ensure such presence in many spheres, like internal communications, work tools, hiring, etc. Enterprises with 25 to 49 employees will now be subject to Francization obligations under the MCFL and will be required to have a Francization Certificate at the same level as companies with 50 to 99 employees (as is currently the case under the CFL).^[24]

The OQLF may also 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.^[25]

These measures will result in a stricter framework for the hiring and training of employees so that it is more focused on the use of the French language in the workplace. Employees will therefore have to comply with these measures not only to obtain a position within a company, but also to maintain it.

It should also be noted that enterprises under federal jurisdiction, such as banks, airports, and marine and rail transportation companies, would be subject to the application of Bill 96. Although Québec’s constitutional authority to impose this is uncertain, the federal government has showed some openness to the proposal.

Other Impacts

9. You will be subject to increased penalties for non-compliance

Fines for legal persons who commit infractions to the MCFL have been amplified as follows.^[26]

	CFL	MCFL
First offence	\$1,500 - 20,000	\$3,000 - 30,000
Second Offence	\$3,000 - 40,000	\$6,000 – 60,000
Subsequent Offences		\$9,000 - 90,000

In addition, where an offence under the MCFL continues for more than one day, it constitutes a separate offence for each day it continues.^[27] Directors are also presumed to have knowledge of the offence and could incur personal liability accordingly.

10. If you were looking for guidance in the MCFL regarding language obligations in respect of websites,

social media and other 21st Century innovations, you will be sorely disappointed

Given the nearly 100 pages occupied by Bill 96, and given that this is the first major update of the CFL in nearly two decades, one would think that the opportunity to modernize the legislation and clarify obligations with respect to 21st century innovations and technology would be of some relevance, however, the MCFL largely fails to provide any further clarifications with respect to French language requirements in respect to these aspects. Rather, Bill 96 enshrines the previous “medium agnostic” approach currently in use.^[28] For example, (i) websites must have French versions because they are considered to be similar to catalogues under the CFL (despite the limitations of such an analogy), and (ii) advertising on social media is still considered as advertising and must be in French. Nowhere in the MCFL is this made explicit; however and as such, the status quo of using the OQLF’s guidelines to “read into” the legislation remains.

With that said, you are likely wondering, when will the MCFL come into force and what will be the scope of amendments made prior to adoption?

The McMillan Vantage Perspective

The Legislative Process

Bill 96 is currently in its initial phase and will next be referred to a parliamentary committee for consultation, where witnesses will be invited. The parties will negotiate the number and types of witnesses to call. Following conclusion, the Government will move to the “Passage in Principle”, or the second reading, where Members of the National Assembly of Québec (“**MNA**”) will debate the spirit and principle of Bill 96 before the National Assembly. This will be followed by the “Committee Stage”, where the bill is studied by the committee, who will examine each clause of Bill 96. At this point, Government or opposition MNAs will propose amendments to Bill 96, which are voted on by committee members. Finally, the updated and amended bill will be returned to the National Assembly, which votes on the committee’s report and moves to pass the bill.

Political Analysis

It is possible but unlikely that committee hearings will begin before the end of the session (June 11, 2021). More likely, we expect hearings in the fall, with Bill 96 becoming law sometime before the end of the year. The CAQ has a majority in the National Assembly and there is no question on whether Bill 96 will pass. All three opposition parties will offer a number of amendments; the Government may be open to negotiating on some specific articles but the main components of Bill 96 are likely to remain substantially the same.

The opposition Québec Liberal Party (LPQ) and its new leader Dominique Anglade are struggling with francophone voters, especially outside of Montreal, and will need to demonstrate support for the strengthening of the French language. Look for them to try to make constructive proposals and amendments while also

trying to reassure their Anglophone voter-base. Québec Solidaire can be expected to try to find ways to support the spirit of Bill 96 and work to improve certain elements. The Parti Québécois is in the most precarious position; they have always seen themselves as the only true defenders of the French language, and they will try to demonstrate that the CAQ's bill is too weak to protect the Québec's French majority. However, they currently sit 4th in the polls and their leader Paul St-Pierre Plamondon has 4% support for best future Premier.

The CAQ is currently leading by more than double on their closest opponents, the QLP, in the most recent polling, with an election less than 18 months away. Their objective is to strengthen the perception of them as the party most able to secure Québec identity, and much as they did with Bill 21 on religious symbols, they have proposed measures that place them between the Liberals and the Parti Québécois. With a positive employment and economic forecast coming out of the pandemic and public finances in relatively stable position (a return to a balanced budget should not be far away), the CAQ is hoping to put these issues behind them and plan for an election campaign with a number of successes on its resumé.

[1][ps2id id='1' target=''] CFL, s. 58.

[2][ps2id id='2' target=''] *Magasins Best Buy Itée v. Québec (Procureur général)*, 2015 QCCA 747

[3][ps2id id='3' target=''] *Regulation respecting the language of commerce and business*, CQLR c C-11, r 9, s. 25 ff.

[4][ps2id id='4' target=''] *Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French language*, CQLR c C-11, r 11

[5][ps2id id='5' target=''] CFL, s. 5.

[6][ps2id id='6' target=''] MCFL, s. 50.2.

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

[8][ps2id id='8' target=''] MCFL, s. 9.

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

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

[11][ps2id id='11' target=''] MCFL, s. 13.1

[12][ps2id id='12' target=''] MCFL, s. 21.9.

[13][ps2id id='13' target=''] MCFL, s. 21.11

[14][ps2id id='14' target=''] CFL, s. 55

[15][ps2id id='15' target=''] MCFL, s. 55.

[16][ps2id id='16' target=''] Bill 96, s. 151

[17][ps2id id='17' target=''] MCFL, s. 55.1

[18][ps2id id='18' target=''] MCFL, ss. 204.15 ff.

[19][ps2id id='19' target=''] Bill 96, ss 125-126.

[20][ps2id id='20' target=''] [Hypothecary Notices](#)

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

[22][ps2id id='22' target=''] CFL, s. 42

[23][ps2id id='23' target=''] MCFL, s.46.1

[24][ps2id id='24' target=''] MCFL, ss. 136 ff.

[25][ps2id id='25' target=''] MCFL, s. 149.

[26][ps2id id='26' target=''] CFL, s. 205 and MCFL, ss. 205-206

[27][ps2id id='27' target=''] MCFL, s. 208

[28][ps2id id='28' target=''] MCFL, s.52

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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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