

# BILL C-13: THE FEDERAL GOVERNMENT'S ANSWER TO BILL 96, NOTABLY IMPOSES NEW OBLIGATIONS TO USE FRENCH IN WORKPLACES FOR FEDERAL EMPLOYERS

Posted on May 24, 2023

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On May 15, 2023, the House of Commons adopted Bill C-13<sup>[1]</sup> by a vote of 301-1, which will notably enact the *Use of French in Federally Regulated Private Businesses Act* (the "**Proposed Act**"), aimed at protecting the French language across federally regulated private businesses operating in Quebec and regions with a strong francophone presence. Upon coming into force, federally regulated private businesses operating in Quebec will be governed by the provisions of the *Proposed Act*, with other regions with a strong francophone presence to follow two years later.<sup>[2]</sup>

Interestingly, the final version of Bill C-13 which passed in the House came on the heels of discussions between Quebec Minister of the French Language and Minister Responsible for Canadian Relations and the Canadian Francophonie Jean-François Roberge and the Federal Minister of Official Languages Ginette Petitpas Taylor resulted in major amendments strengthening an initial version of the Bill. The Quebec government is pleased with the resulting legislation<sup>[3]</sup>. The legislation is now at the Senate and the government is hopeful that the bill will be passed by the end of June and before the Parliament recesses for the summer.

## Services to Consumers

The *Proposed Act* would impose obligations on companies concerning the use of the French language in business interactions with consumers, employees, and potential employees, and would apply to federal entities that employ a number of employees above a certain threshold to be defined via regulation<sup>[4]</sup>, such as banks, airlines, telephone and cable companies, rail and marine transportation companies, among others. However, it does not extend to activities or workplaces related to the broadcasting sector.<sup>[5]</sup> In addition, Bill C-13 provides companies with the possibility of choosing between being subject to the Quebec Charter of the French Language (the "**Charter**") or to the *Proposed Act*.<sup>[6]</sup>

The Bill would give Quebec consumers the right to be served and to communicate, both orally and in writing, in French when doing business with businesses captured under the *Proposed Act*.<sup>[7]</sup> The obligation to be served in French extends to all related documentation received from a company, including contracts.<sup>[8]</sup>

However, businesses are permitted to serve consumers in a different language, if requested.<sup>[9]</sup>

## **Workplace Impact**

The *Proposed Act* would have effects on language rights at work that are quite similar to those imposed by the Charter to entities under provincial jurisdiction.

In particular, employees would have the right to:

- a. carry out their work and be supervised in French;
- b. receive all communications and documents from a business captured under the *Proposed Act*, including employment application forms, offers of employment or promotion, employment contracts, documents related to the conditions of employment, training documents produced for employees, notices of termination of employment, collective agreements and grievances, in French; and
- c. use regularly and widely used work instruments and computer systems in French.<sup>[10]</sup>

These obligations do not preclude communication and documents from being in English, but do require that there is an equivalent level of French in the case of widely distributed communications, and any documents.<sup>[11]</sup>

Employer obligations regarding workplace communication and document language entitlement also extend to former employees<sup>[12]</sup> and trade unions representing federally regulated employees.<sup>[13]</sup>

In addition, the *Proposed Act* provides for exemptions to the above general obligation to receive all communications and documents from a business in French. Specifically:

- an individual employment contract that is a contract of adhesion (i.e. a non-negotiable contract) with an employee can be entered into exclusively in English or another language other than French, if the business and employee so agree and the business has already provided the contract to the employee in French<sup>[14]</sup>;
- an individual employment contract — other than a contract of adhesion — with an employee can be entered into exclusively in English or another language other than French, if the business and employee so agree<sup>[15]</sup>; and
- an employee communications and documents can be provided exclusively in English or another language other than French, if the business and employee so agree, even after the employee ceases to be employed by the business<sup>[16]</sup>.

While these exemptions are similar to those in the Charter<sup>[17]</sup>, the last exemption dealing with communications and documents addressed to an employee is broader in scope than the Charter<sup>[18]</sup>, which requires the employee to request the exemption (as opposed to an agreement between the parties as under

the *Proposed Act*) and certain documents cannot be exempted under Bill 96, such as employment application forms, documents related to the conditions of employment and training documents produced for employees.

Under the *Proposed Act*, if an advertisement to fill a position is posted in a language other than French, it must also be posted in French and with the ability to reach an audience of a proportionate size.<sup>[19]</sup>

For unionized workplaces, arbitral awards resulting from the arbitration of a grievance or dispute regarding the negotiation, renewal or review of a collective agreement respecting employees of a business captured under the *Proposed Act* must be issued or translated into French. If the award was issued exclusively in French, it must be translated into English or a language other than French if requested by a party to the arbitration.<sup>[20]</sup>

Employers would also be required to inform their employees that their workplace is subject to the provisions of the *Proposed Act*, and their corresponding rights and remedies. The *Proposed Act* would require that a committee be established to develop programs with the intention of generalizing the use of French at all levels of business in the workplace. To adequately achieve this goal, businesses may be required to increase the number of persons who have a good knowledge of French to ensure that it can be used generally.<sup>[21]</sup> This process reminds us of the francization process imposed on certain companies under provincial jurisdiction by the Charter.

The *Proposed Act* also prohibits the adverse treatment, including dismissing, laying off, demoting, transferring or suspending, of any employee for choosing to speak French, not having sufficient knowledge of a language other than French, or exercising a right under the *Proposed Act*.<sup>[22]</sup> Should adverse treatment towards an employee arise, employers will have an obligation to prevent and ensure the treatment ceases.<sup>[23]</sup> An employer must be able to adequately demonstrate that a language other than French is objectively necessary before they are able to require an employee to have a knowledge of such language, and for it not to constitute adverse treatment, and the business must set out the reasons that justify the requirement in any advertisement to fill a position that requires such knowledge.<sup>[24]</sup>

Departing from the Charter however, the *Proposed Act* provides protection from adverse treatment for an employee that does not have a sufficient knowledge of French and who occupied or was assigned to a position before the *Proposed Act* came into force.<sup>[25]</sup>

### **Implementation Mechanisms and Remedies for Breaches**

If a consumer, former employee, or potential employee believes that an entity has violated the *Proposed Act*'s provisions, they will be able to file a complaint with the Commissioner of Official Languages of Canada.<sup>[26]</sup> Although the Commissioner remains the competent authority for consumer and employee complaints, it does not possess the power to investigate on its own initiative.<sup>[27]</sup> If the Commissioner believes it is unable to

resolve the complaint within a reasonable timeframe, they may delegate the complaint to the Canada Industrial Relations Board (the “**Board**”) with the consent of the complainant.<sup>[28]</sup> The Board may order the employer to comply with the provisions and to take any of the following measures:

- permit the complainant to return to the duties of their employment;
- reinstate the complainant;
- pay to the complainant compensation not exceeding the sum that, in the Board’s opinion, is equivalent to the remuneration that would, but for the failure to comply, have been paid to the complainant;
- pay to the complainant compensation not exceeding the sum that, in the Board’s opinion, is equivalent to any financial or other penalty imposed on the complainant by the federally regulated private business; and
- do any other thing that the Board considers equitable for the federally regulated private business to do to remedy or counteract any consequence of the failure to comply.<sup>[29]</sup>

It is interesting to note that on the 10<sup>th</sup> anniversary of the day on which the *Proposed Act* comes into force and every 10 years after that anniversary, the Minister must undertake a review of the provisions and operation of the *Proposed Act*<sup>[30]</sup>.

## Conclusion

The *Proposed Act* will result in significant and long term changes for federally regulated private businesses in Quebec and regions with a strong francophone presence that may not have had to comply with French language requirements in the past. Although some of its scope remains to be defined by future regulations, there seems to finally be a clear answer as to what French language requirements will apply to federally regulated businesses.

[1] Bill C-13, *An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts*, 44th Leg., 1st Sess., 70-71 Elizabeth II, 2021-2022 (First Reading) [C-13].

[2] *Ibid.*, clause 71(5).

[3] There has long been a debate as to whether Quebec’s language laws could apply to entities in federally governed fields, from a constitutional standpoint. This process seems to demonstrate a new level of alignment and coordination.

[4] *Ibid.*, clause 54, s. 2(1)(a).

[5] *Ibid.*, clause 54, s. 5.

[6] *Ibid.*, clause 54, s. 6(1).

[7] *Ibid.*, clause 54, s. 8.

- [8] *Ibid.*
- [9] *Ibid.*, clause 54, s. 7(3).
- [10] *Ibid.*, clause 54, s. 9(1).
- [11] *Ibid.*, clause 54, s. 9(3).
- [12] *Ibid.*, clause 54, s.9(1.1),(2).
- [13] *Ibid.*, clause 54, s.9.2(1),(3).
- [14] *Ibid.*, clause 54, s.9(4).
- [15] *Ibid.*, clause 54, s.9(5).
- [16] *Ibid.*, clause 54, s.9(6).
- [17] *Charter of the French Language*, s. 41 al.2.
- [18] *Ibid.*, s. 41 a. 3.
- [19] Bill C-13, clause 54, s.9(2.1).
- [20] *Ibid.*, clause 54, s.9.1.
- [21] *Ibid.*, clause 54, s. 10(1),(1.1).
- [22] *Ibid.*, clause 54, s.11(1),(8).
- [23] *Ibid.*, clause 54, s.11(6),(7).
- [24] *Ibid.*, clause 54, s.11(3),(4).
- [25] *Ibid.*, clause 54, s.11(2).
- [26] *Ibid.*, clause 54, s. 15, 18(1),(1.1)(1.2).
- [27] *Ibid.*, clause 54; s. 19(2).
- [28] *Ibid.*, clause 54; s. 21(1).
- [29] *Ibid.*, clause 54; s. 28.
- [30] *Ibid.*, clause 54; s. 42(1).

by [Mireille Germain](#), [Émile Catimel-Marchand](#), [Jonathan Kalles](#) and [Gemma Walsh](#) (Articled Student)

### **A Cautionary Note**

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