

# QUÉBEC: BILL 96'S IMPACT ON FRANCHISE BUSINESSES

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## Introduction

Bill 96, *An Act respecting French, the official and common language of Québec* [1], became law on June 1st 2022, aimed at strengthening French language protection within the province of Québec. It builds on - and amends - previous legislation in such fields, notably the Charter of the French Language (the “**Charter**”) [2], which had first introduced French language requirements for commercial contracts, advertisements, public signage and other branding in the 1970s.

Various requirements under Bill 96 are sure to affect businesses operating under a franchise model, where either the franchisor or franchisee is located in Québec. This article particularly addresses changes regarding the translation of commercial contracts, new language rules applicable in the workplace, trademarks and public signage as well as complaints and penalties in the case of non-compliance.

It should be noted that while important for the franchise industry, requirements for websites, catalogues, brochures, commercial directories and other commercial documents will not be covered in this article given that the French language requirements for this category of items have largely remained the same (in that they need to be available in French) but with the clarification that the French version must be on terms that are at least as favourable as the “other” language version.

## Commercial Contracts and Contracts of Adhesion

Starting June 1st 2023, a party may only be asked to sign a standard contract, or contract of adhesion, in a language other than French where it was first also presented with a French version of the contract before consenting to contract in any other language. [3] This departs from an often used current practice, where franchisors were able to prepare the agreement in English-only, provided that they insert a clause stipulating that it was the express wish of the contracting parties that the agreement and all related documentation be drawn up in English only. Inserting such a clause to express the parties' choice of a language other than French is still a possibility for agreements that are not contracts of adhesion.

A contract will be qualified as a contract of adhesion if 1) the essential stipulations were drafted or imposed by only one of the parties and 2) the other party was unable to freely negotiate its terms. [4] Therefore, unless the

franchisor is able to prove that the franchisee had the ability to freely negotiate the terms of a franchise agreement, Québec courts will qualify the franchise agreement as a contract of adhesion, as they have in the past.<sup>[5]</sup>

Moreover, any translation fees are to be paid by the author of the contract and cannot be charged to the franchisee.

A similar rule to the one applicable to adhesion contracts also applies to many consumer contracts. When a franchisee or franchisor provides services to consumers, whether it is within the context of an adhesion contract or not, the contract must first be drafted in French, and then the consumer can subsequently request to have the contract translated to another language before signing.<sup>[6]</sup>

Should the franchisor fail to comply with these rules, the signatory can demand that the contract be voided without proof of prejudice or seek damages even if the contract is maintained. Bill 96 also increases the fines for non-compliance (as discussed below).<sup>[7]</sup>

### **French in the Workplace**

A number of written employer communications in the workplace, such as offers of employment and promotions, have long been required to be in French. Bill 96 however further increased the number of such French requirements, which now include employment transfer offers, individual employment contracts, written communications addressed to an individual worker or an association of workers, application forms, documentation relating to work conditions, training documents and more.<sup>[8]</sup>

Bill 96 also affects hiring processes, as an employer can no longer require an employee to have a specific level of knowledge of a language other than French, unless they: 1) indicate the reasons for this requirement in their posting of the job offer; 2) demonstrate that this knowledge is necessary for the performance of their duties; and 3) demonstrate that the company took all reasonable steps beforehand to avoid imposing such a requirement. Such reasonable steps include trying to assign tasks requiring English knowledge to existing staff, before seeking new staff with English proficiency.

The new legislation also introduces various measures to extend francization, a review of workplaces by the relevant regulator to ensure sufficient French presence in the workplace, for instances as regards work tools or IT infrastructure. Thus, starting in June 2025, franchises with as few as 25 employees (down from 50) will now have to ensure that they comply with obligations by forming a francization committee and by abiding by other obligations that promote the use of French in the workplace if it is ordered by the *Office québécois de la langue française* (the "Office"). If the Office believes that the use of French is not or no longer widespread, it may order the franchise to adopt and implement an action plan.<sup>[9]</sup>

## Public Signage and Trademarks

Public signs, posters and commercial advertising are already required to be in French. Content may also appear in another language, but even then, French is generally required to be markedly predominant in comparison. The expression “markedly predominant” is defined in a regulation under the Charter and typically refers to the French text being twice as large or otherwise carrying more of a visual impact.

Under Bill 96, this marked predominance requirement will now even apply when displaying trademarked content, which could previously be accompanied by “sufficient” presence of French (e.g. a descriptor, like magasin XYZ - where XYZ was a trademark – had to be present, but “magasin” did not need to be predominant).

In addition, Bill 96 removed the Charter’s “recognized trademark” exception, which permitted the use of non-French marks, regardless of their registration status, as long as the French version was not registered. Under Bill 96, franchisors with unregistered trademarks who would like to use a non-French name must file an application for registration with the Canadian Intellectual Property Office (“CIPO”) to register their trademark before 2025. It is strongly recommended that these franchisors apply as quickly as possible seeing as the registration process can currently take up to three years to complete.

## Complaints and Penalties for Non-Compliance

In order to ensure a consumer’s “right to be informed and served in French”, Bill 96 entrenches a formal complaints process for the public. In addition to allowing for complainants to seek injunctive relief or other remedies under the *Civil Code of Quebec*,<sup>[10]</sup> the Charter now provides the Office with authority to oversee complaints brought forward by the public. In some cases, the Office has the right to open a complaint record, notify the complainant accordingly and, at the complainant’s request, inform the complainant of the processing of the complaint and, if applicable, of the compliance measures to be taken.<sup>[11]</sup>

Bill 96 further increases the penalties associated for non-compliance. Fines for legal persons have been increased as follows:<sup>[12]</sup>

	Previously	Currently
First Offence	\$1,500	\$3,000 - \$30,000
Second Offence	\$3,000 - \$40,000	\$6,000 - \$60,000
Subsequent Offence	Same as for second offence	\$9,000 - \$90,000

In addition, where an offence under Bill 96 continues for more than one day, it constitutes a separate offence for each day it continues.<sup>[13]</sup> Directors are also presumed to have knowledge of the offence and could incur

personal liability accordingly.<sup>[14]</sup> Prior to issuing any penalties, however, the Office does have a positive obligation to inform an “offending party” of its failure to comply with the Charter or its regulations and provide for an opportunity for the “offending party” to comply.<sup>[15]</sup>

[1] SQ 2022, c 14

[2] CQLR c C-11.

[3] Art. 44 of Bill 96.

[4] Art. 1379 CCQ; *Mancilla c. Franchises Coq & Rico inc.*, 2018 QCCS 1014, at para. 97.

[5] *Distribution stéréo plus inc. v. Télévision J.M. Beaudoin inc.*, 2007 QCCS 5105.

[6] Art. 156 of Bill 96.

[7] Charter, Art. 204.21 and 205, as amended by Bill 96.

[8] Art. 29 of Bill 96.

[9] Art. 88 of Bill 96.

[10] Charter, Art. 204.16

[11] Charter, Art. 165.15 and ff.

[12] Charter, Art. 205 and 207

[13] Charter, Art. 208.0.1

[14] Charter, Art 208.4.2

[15] Charter, Art. 177

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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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