

# SOCIAL MEDIA AND WEBSITES AS NATIONAL COMMUNICATION PLATFORMS IN CANADA IN LIGHT OF FRENCH LANGUAGE REQUIREMENTS

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Social media is now an integral part of most communications strategies. In addition to websites, organizations embrace these dynamic platforms to communicate with their key target audiences in a more personalized way and are moving towards what is now referred to as Web 3.0, where semantics and the precision of language becomes essential. In a bilingual country such as Canada, harnessing the full potential of this trend requires organizations to understand and master language requirements applicable to their online presence. This bulletin clarifies linguistic legal requirements applicable to content posted by organizations with a national presence on these various platforms.

## **English only except when "commercial activities" are carried on in Quebec**

Generally speaking, private organizations operating in Canada have no obligation to serve their customers in another language than English except in the province of Quebec, where Article 5 of the Charter of the French Language (the "Charter") provides that "Consumers of goods and services have a right to be informed and served in French." In the online environment, where content is made virtually available to any individual with an Internet connection, Article 52 of the Charter requires that the online content be drafted in French when it is made available to Quebec residents and aims at entering into a "commercial act" within the territory of Quebec.

Charter's requirements apply of course to organizations with a physical presence (an establishment) in Quebec but also to any organization as soon as it has "commercial activities in Quebec" (irrespective of whether or not it has an establishment in the Belle Province). Applied to the online environment, this criterion means that: (a) the online content has to be *used as a vehicle to publish commercial advertisements or otherwise be aimed at entering into a commercial act* (e.g. an offer for sale). Conversely, non-commercial messages published online will not be subject to French language requirements and could be published in another language; and (b) the target audience of the commercial message should include residents of the province of Quebec, such that *Quebec residents should be able to conclude a commercial act* (e.g. to purchase, to lease etc.) pertaining

to the products or services advertised online. Accordingly, the fact that the entity operating the website/social media platform (or their hosting server) is located outside of Quebec is irrelevant for the purpose of assessing the geographical scope of the Charter.

## **What Does this Mean for National Digital Communications Strategies?**

### **1. Bilingual Website(s)**

Pursuant to the Charter, two separate versions of a website are permitted, one exclusively in French and the other exclusively in another language. However, the French version must be made available under no less favourable conditions of accessibility and quality than the other version.

This requirement means in practice that the online content of an organization's website carrying on business throughout Canada should be as developed in French as it is in English. A website would not pass the Charter's test with moribund French content, not mirroring its English one. Visitors should be able to toggle between the French and the English versions of a website easily, through a functional and well-marked link.

### **2. Bilingual Corporate Social Media Page(s)**

Corporate social media pages are now a common component of digital strategies and enable organizations to directly publish, in real-time, messages aimed at their community of users/followers to advertise their activities, products and services.

Pursuant to the *Good linguistic practices for enterprises*<sup>[1]</sup> (the "GLP") adopted in June 2013 by, the *Office québécois de la langue française* (the "Office", which is the government agency charged with enforcing the Charter) the content of a corporate social media page targeting Quebec consumers should be drawn up in French.

Following adoption of the GLP, the Office publicly took the position that a business' Facebook and Twitter pages will be subject to Article 52 of the Charter and initiated enforcement actions to the effect that social media pages targeting Quebec consumers must be available in French.

In light of the GLP and of the Office's recent enforcement initiatives, it is therefore likely that, for instance, commercial tweets or posts of an organization, which originate with its corporate social media page(s) and target Quebec consumers, are subject to the Charter. National merchants with a social media presence should therefore aim at maintaining English and French social media profiles, whether such profiles are published on the same corporate page or on an English-only and a French-only page, with easily accessible cross-linking between them.

### **3. No Language Requirements for Retweets, Shares and Comments of Users**

Because the essence of a social media strategy for an organization is to engage its target audience in a bilateral and dynamic communications relationship, it is expected that users/followers will share and comment the online content posted by the organization on its corporate social media page with members of his/her network. Similarly, the organization may share on its corporate social media page(s) some non-commercial content originating from third parties such as reviews or news article.

Although the Office has not issued official guidance on "retweets" (on Twitter) or "shares" (on Facebook) of content published by members of the organization's social media audience or third parties, it is likely that such content, not originating with the organization, would not be considered commercial content subject to French language requirements.

In the same vein, "comments" pertaining to corporate content published by an organization, posted by members of the organization's social media audience, would not require translation into French since they do not originate with the organization and are not of a commercial nature.

by Elisa Henry and Peter Giddens

<sup>1</sup> *Bonnes pratiques linguistiques dans les entreprises*, available in French only.

### **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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