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MARCHAND MELANÇON
L.L.P. Attorneys

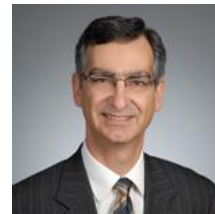
Local Counsel Canada & Quebec

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French Language Concerns Related to Doing Business in Quebec



Marissa Carnevale, Attorney



Bruno Floriani, Attorney

It is important to note that outside the City of Montreal, there are very few residents of Quebec who understand English. For example, in dealing with employees, customers and suppliers, and in choosing whether a French trademark will be used to identify stores and products in Quebec, the French language issue is a very important consideration. In fact, more than 80% of the population of Quebec is French-speaking.

All French language requirements described herein apply in the case of any organization operating in Quebec, with the exception of the “*francization certificate*” and “*francization committee*” described in Section 1 below.

1. General Operations

Organizations which have at least 50 employees in the Province of Quebec must file an application with the French Language Bureau for a certificate attesting to the generalized use of French as the language of the workplace and the implementation of related measures. Such measures would include, *inter alia*, knowledge of French by management and other personnel of the organization, the use of French as the language of work and as the language of internal communication, and the use of French in information technology. When a business organization’s compliance with this mandatory program is achieved (i.e., when the organization’s overall francization program is properly applied and implemented at every level of the organization), a “francization certificate” is issued by the French Language Bureau. If a business has at least 100 employees in Quebec, it must also establish a “francization committee”, composed of at least six members, to oversee the organization’s generalized use of French at all levels of the organization.

Contracts between private parties must be drawn up in French, except where the parties agree otherwise. Where the content of a contract is predetermined or where contracts contain printed standard clauses (such as an employment agreement, a membership contract, etc.), such contracts must be drawn up in French - this requirement would apply to the dealings of franchisees with its employees and members.

2. Name

A recognized trademark within the meaning of the Canadian *Trade-marks Act* may appear in English in an organization’s catalogues, brochures, public signs, posters and commercial advertising, unless a French version has been registered, in which case the French version must be used.

The Quebec Government has introduced new regulations amending *Quebec’s Charter of the French Language* (the “**Charter**”) that came into force on **November 24, 2016**. The amendments require businesses using trademarks in a language other than French in their public signage in Quebec to include a French-language description or other “sufficient presence of French”.

The Quebec Government’s amendments will permit businesses to continue using their non-French trademarks to identify their business on public signage (provided that a French version of the trademark has not been registered in Canada), subject to certain new requirements.

Businesses displaying a trademark on exterior signage (“outside an immovable”) only in a language other than French will be required to include a “sufficient presence”

of French accompanying the trademark. The requirement of a “sufficient presence of French” can be satisfied by including one of the following in French:

- 1) a generic term of a description of the products or services;
- 2) a slogan; or
- 3) any other term or indication favouring the display of information pertaining to the products or services.

The amendments specify that there is a “sufficient presence of French” where French is given permanent visibility and is legible in the same visual field as the principal signs displaying the trademark. As an example, if a sign bearing an English trademark is illuminated at night, the French addition must also be illuminated. Moreover, where trademark posters or signs are visible from a highway, the French addition must also be visible from the highway.

❖ “Language other than French”

The statement “*any trademark in a language other than French*” referred to in the new amendments suggests that trademarks that contain any dictionary term (or combinations thereof) found in a language other than French, and displayed on public signs, will be subject to the new requirements. Trademarks that are not composed of dictionary terms and that include any artificial combination of letters, syllables, figures, initials or are place names, given names or family names fall under an exemption and are not subject to the new requirements. It is likely the Office will take the stance that businesses displaying trademarks on public signs that are not French “sounding” and that do not fall in a clear exception, will be required to comply with the new requirements.

❖ “Outside an immovable”

For the purposes of the new requirements, the following signs and posters are considered to be “*outside an immovable*” and therefore subject to the new requirements:

- those outside premises situated in an immovable or a larger property complex including, namely, those situated in a mall or shopping centre, underground or not; and
- those inside an immovable or premises if their installation is intended to be seen from the outside.

Trademarks appearing on a bollard (vertical post) or other independent structure or totem type structure near an immovable or premises are also subject to the new requirements only if there is no other outside sign or poster with the trademark and if two or less trademarks appear on the structure.

❖ Transition Period

Quebec businesses with existing public signs will have until **November 24, 2019** in order to add the required “sufficient presence of French” to accompany the trademark that only appears in English or any language other than French. Any new public signage that have gone up or are going up after **November 24, 2016** will have to adhere to the new regulations.

3. Advertising

Catalogues, brochures, folders, commercial directories, coupons, sweepstakes, and any similar advertising publications, as well as order forms, invoices, receipts and discharges must be drawn up in French. A translation may accompany the French version of the text, but it may not be given greater prominence than the French text. Such documents may also be provided in two separate versions (i.e., one in French and one in another language), as long as the French version is available under no less favorable conditions than any other version.

Posters and posted commercial advertising must be in French. They may also be both in French and in another language provided that French is markedly predominant. For the purposes of the applicable legislation, “markedly predominant” means that the text in French is at least twice as large (where both versions of the text appear on the same sign or poster) or that there are at least twice as many signs in French (where the text in each language appears on separate signs or posters of the same size). Finally, where there are separate signs of different sizes, the French signs must be at least as numerous as the ones in the other language, and the signs and characters must both be at least twice as large as those in the other language.

An important exception applies to advertisements published in certain news media:¹ where a certain form of news media is published exclusively in a language other than French, advertisements therein may be in a language other than French (for example, an advertisement published in an English newspaper may be only in English). Advertising published in bilingual news media must be in French only or in both languages.

4. Packaging

Every inscription on a retail product, its container or its wrapping, or upon a document or object supplied with it (including any leaflet, brochure, card, directions for use or warranty certificate), must be drafted in French. The French inscription may be accompanied by one or many translations, but the non-French inscription(s) must not be of greater prominence than the French inscription.²

5. Employment

Written communications emanating from an employer to its employees in Quebec (including offers of employment and promotion, employee training materials, internal memoranda and office bulletins) must be in French. Additionally, collective agreements must be in French. The legislation does not require the exclusive use of French; therefore, an employer may address employees in Quebec in bilingual written communications and offers of employment or promotion.

Generally, employment cannot be refused to individuals in Quebec who do not know a language other than French. Employers are prohibited from dismissing, laying off, demoting or transferring an employee in Quebec for the sole reason that such employee is exclusively French-speaking or has insufficient knowledge of a particular language other than French. Employers are also prohibited from making access to a position contingent upon a candidate's knowledge of a language other than French, unless the nature of the duties related thereto requires the knowledge of that other language. Where knowledge of a language other than French is a requirement for employment in a certain position, an employer must be able to demonstrate that knowledge of such language is a specific requirement for tasks to be completed by the individual occupying the position.

It may be useful to note that if an individual employed by the franchisor outside of Quebec visits a Quebec location (for example, an individual from the corporate office), they would not be required to speak or understand French. It is necessary, however, for the use of French to be generally integrated throughout any organization operating in Quebec, at all levels, including "upper management" (whether store managers, regional supervisors, etc.). In practice, it is important to ensure there is an individual who is able to transmit information into Quebec and out of Quebec (i.e., a bilingual employee, whether in Quebec or elsewhere).

6. Technology and Websites

All computer software, including operating systems, whether installed or uninstalled, must be made available in French unless no French version exists. Software can also be made available in languages other than French, provided that the French version can be obtained on terms that are no less favorable and that the French version has technical characteristics that are at least equivalent to the other version. (For instance, offering the French version of a software that is slower, has less functionality or is less powerful than its English counterpart would not be in compliance with the law.) As for computer keyboards, the French Language Bureau encourages compliance by businesses with Canadian

standard *CAN/CSA Z243.200.92*. French language versions of software, manuals and hardware that comply with the legislative requirements are readily available.

French language legislation as well as consumer protection law require that websites be made available in French in Quebec if they are destined to users in Quebec. Websites may also be available in another language, as long as the French version is displayed in at least an equally prominent manner.³

1. Note that "news media" does not include media whose content is primarily focused on advertising, such as brochures.
2. Certain exceptions apply to this rule, such as, inter alia, listing cosmetic ingredients and inscriptions on certain toys, games and calendars.
3. If a Quebec business with at least 50 employees fails to create a French-language version of its website, its francization certificate could be revoked or suspended.

The content of this publication is intended to provide general commentary only and should not be relied upon as legal advice.

For more information, please contact:

Marissa Carnevale

514 925-6324
marissa.carnevale@lrm.com

Bruno Floriani

514 925-6310
bruno.floriani@lrm.com