

Blakes Bulletin

Business Law

Quebec Bill to Modify Provisions of Charter of the French Language

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On December 5, 2012, Quebec's Parti Québécois minority government introduced Bill 14 entitled "*An Act to amend the Charter of the French language, the Charter of human rights and freedoms and other legislative provisions*" in the provincial legislature. Bill 14 amends the *Charter of the French Language* (the Language Charter) and several other laws currently in force in Quebec.

As with all other bills, Bill 14 must pass a formal vetting process before being adopted by the Quebec government. As of the date of publication of this bulletin, however, Bill 14 has only been "introduced" at first reading. It may therefore be subject to various changes in the coming months before it is enacted.

Businesses will be interested in the following highlights of Bill 14.

FRANCIZATION OBLIGATIONS

Currently, under the Language Charter, businesses reaching the 50-employee threshold in Quebec are subject to certain francization obligations such as the obligation to register, obtain and maintain certification from the Office québécois de la langue française (the OQLF). Bill 14 does not change these requirements. However, a new obligation – that a business complies with the consumer's right to be informed and served in French – would now be added to the elements considered by the OQLF to determine whether certification must be granted to or maintained by a business, that is, whether the use of French is generalized at all levels of such business.

The proposed amendments provide that businesses must, where necessary, adopt a francization program or francization measures, in order to make French the normal and everyday language of work. They create francization obligations specific to businesses having between 26 and 49 employees which differ from those applicable to businesses that meet the current

50-employee threshold. Businesses having between 26 and 50 employees would now be obligated to make and, upon request by the OQLF, report on the assessment of their linguistic situation, identify any issues with such situation and implement corrective measures to address the issues identified. This self-assessment would have to be conducted based on specific elements listed in the Language Charter. The government would have the power to add to this list additional evaluation elements that are applicable for certification purposes.

Bill 14 further provides that, once a business has met the 50- or 26-employee threshold, it would be subject to the relevant francization obligations regardless of any fluctuation in employee count. The government would also have the power to determine by regulation the method used to calculate the number of employees for the purpose of determining if a given business meets any of the above thresholds.

THE LANGUAGE OF WORK

Bill 14 introduces amendments to promote the rights recognized under the Language Charter relating to the language of work. Sections 41 to 50 of the Language Charter, relating to the language of work, would be replaced with new sections. Noteworthy changes include provisions which clarify an employer's obligations to use French in the workplace to ensure compliance with a worker's right to work in French including listing details about the use of French in written communications, job offers, employment agreements and policies and procedures.

In addition, employers with 10 or more employees would be subject to the new obligation to post in their establishments a sign informing workers of the main provisions regarding the right to work in French and the Minister will make available a model sign that employers can reproduce.

The amendments also codify the trend in existing decisions finding that before an employer can require knowledge, or a specific level of knowledge, of a language other than French for a position, it must thoroughly evaluate the actual linguistic needs relating to the position and must periodically review those needs.

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The amendments describe a worker's right to work in an environment that is free from vexatious behaviour, discrimination or harassment based on the person's not having sufficient knowledge of a language other than French or asserting a right to work in French.

The amendments provide that an employer must take reasonable steps to prevent this type of behaviour and also provide for the worker's right to launch a complaint under the *Act respecting labour standards*; unionized workers may access arbitration procedures.

THE LANGUAGE OF BUSINESS

Bill 14 states that a business that sells goods or services or makes goods or services otherwise available to the public must take reasonable steps to ensure that the consumer's right to be informed and served in French is respected.

In addition, a sufficient number of French versions of catalogues, brochures and similar forms of commercial advertising must be available to meet consumer demand.

Furthermore, if a business files documents required to obtain permits, authorizations or benefits from the Quebec government or public bodies (or reports or documents in compliance with regulatory requirements) in a language other than French, a French version must be made available upon request by such bodies. This request is subject to review if it imposes an excessive or disproportionate time-frame or burden. If the business does not comply with the request, the documents may be translated at the expense of the business.

Contracts and subcontracts with the Quebec government or public bodies must also be drafted in French, unless the contracting party does not have an establishment in Quebec and is not required to register in the Quebec enterprise register in order to perform the contract.

OTHER ISSUES

Bill 14 proposes changes to the current preamble of the Language Charter, including a mention that a common language constitutes a strong vector for social cohesion in a diversified society. Pursuant to Bill 14, section 1 of

the Language Charter would also state that the French language "constitutes the foundation of Québec's identity and of a distinct culture that is open to the world." Similar changes are proposed to the Quebec *Charter of Human Rights and Freedoms*.

The bill also details the functions of the Minister in charge of applying the Language Charter and gives such Minister certain powers of enquiry. The powers of inspection and enquiry of the OQLF are also extended.

Other notable provisions of Bill 14 relate to the language of education, municipal bodies and government institutions, and propose changes to other laws, including the Quebec *Immigration Act*.

ISSUES NOT INCLUDED IN BILL 14

The OQLF has conducted an aggressive campaign over the last few years to impose its controversial new interpretation of certain provisions of the Language Charter as they relate to public signage, by requesting that a generic French word or expression accompany the use of trade-marks in a language other than French on storefront signs. However, Bill 14 is silent on this issue.

REGULATIONS

It is also important to note that current regulations may be amended and new regulations enacted in light of Bill 14. These changes may have a significant impact on the practical, day-to-day operations of a business and require businesses to implement new policies to ensure their compliance with the law. To date, however, no information has been made publicly available on the content of such amended or new regulations.

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