



LAPOINTE ROSENSTEIN
MARCHAND MELANÇON
S.E.N.C.R.L. Avocats

IMPACT OF THE AMENDMENTS TO THE CHARTER OF THE FRENCH LANGUAGE WITH RESPECT TO THE WORK ENVIRONMENT - BILL 96

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M^e Mathilde Delorme
Lawyer
Litigation team



Christophe El-Hamaoui
Student at Law



M^e Nancy Cleman
Associate
Intellectual Property Group



Carla Maria Avelar-Alexiou
Student at Law

On May 24, 2022, the Quebec National Assembly adopted Bill 96, *An Act respecting French, the official and common language of Québec*¹ ("**Bill 96**"), which makes significant amendments to the *Charter of the French Language*² (the "**Charter**") by introducing new measures to, among many other elements, ensure the predominance of French in the workplace. This is the most significant reform to language legislation in the province of Quebec since the Charter was adopted in 1977. The amendments to the Charter set out in this article came into force on June 1, 2022. It is also important to note that in the coming months, other provisions of Bill 96 will come into force - please consult us for more details.

In addition to the changes discussed below, it should be noted that Quebec companies with 25 to 49 employees will be subject to the same francization rules as were applicable to companies with 50 to 99 employees. These companies must ensure that the use of French is widespread at all levels of their business and will henceforth be subject to the requirements of the Charter with respect to the francization of businesses, including the obligation to produce an analysis of their linguistic status. They may also be ordered by the *Office québécois de la langue française* (the "**Office**") to set up a francization committee and adopt a francization program. Unlike the other changes discussed in this article, this obligation will come into force three (3) years following Royal Assent to Bill 96, i.e., June 1, 2025³.

¹ Bill 96, *An Act respecting French, the official and common language of Québec*.

² *Charter of the French Language*, CQLR c C-11.

³ S. 81 of Bill 96 amending s. 139 of the Charter.

This article will discuss key changes to the employment law related provisions of the Charter, in order to ensure that employers are aware of the key obligations that may affect the workplace, not all the changes are addressed, and this article is not intended to be exhaustive.

ADDED REQUIREMENTS FOR HIRING

Employers are now prohibited from requiring a person to have a specific knowledge or level of knowledge of English (or any language other than French) in order to remain in or enter a position, including through recruitment, hiring, transfer or promotion, unless the nature of the job requires it. Even then, and this is a new rule, employers must have taken all reasonable steps in advance to avoid imposing such a requirement⁴.

An employer is deemed not to have taken all reasonable steps to avoid requiring knowledge or a specific level of knowledge of English (or any language other than French) where, before requiring such knowledge or level of knowledge, the employer failed to meet any one of the following three conditions⁵:

- the employer assessed the actual language needs associated with the duties to be performed;
- the employer made sure that the language knowledge already required from other staff members was insufficient for the performance of those duties; or
- the employer restricted as much as possible the number of positions involving duties whose performance requires knowledge or a specific level of knowledge of a language other than the official language.

WORKPLACE COMMUNICATIONS

The Charter already provides that employers must draft communications to their employees, as well as offers of employment or promotion, in French. However, Bill 96 explicitly extends this obligation to the following⁶:

- offers of employment, transfer or promotion;
- individual employment contracts. However, the contract may be written in another language if the parties expressly agree, except in the case of a contract of adhesion. In that case, for the contract to be binding, the parties must first read the French version of the contract and expressly agree to be bound by the non-French version of the contract;
- written communications, even those after termination of the employment relationship, with all or part of the staff, a worker in particular or an association of workers representing all or part of the staff. However, the employer may communicate in writing with an employee in a language other than French if the employee has specifically requested it;
- employment application forms;
- documents relating to conditions of employment; and

⁴ S. 35 of Bill 96 amending s. 46 of the Charter.

⁵ S. 35 and 36 of Bill 96 amending s. 46 and adding s. 46.1 to the Charter.

⁶ S. 29 of Bill 96 amending s. 41 of the Charter.

- training documents produced for the staff.

In the event that an employee specifically wishes to have his employment contract in English (or in another language of his choice), the employer may provide a version in such language.

STAFFING AND RECRUITMENT

Bill 96 adds new requirements for job postings. If the employer publishes a job offer in English (or in a language other than French), whether internally or externally (by recruitment, hiring, transfer or promotion), the employer must simultaneously publish it in French by similar means of transmission (on the same or a similar platform) and reach a target audience of comparable size⁷.

PROHIBITION OF SANCTIONS AND OTHER RETALIATORY MEASURES

An employer may not retaliate against, penalize, terminate, demote, or transfer an employee solely because the employee speaks only French or has insufficient knowledge of English (or any other language) for any of the following reasons⁸:

- the staff member has demanded that a language of work right be respected;
- to deter the staff member from exercising such a right;
- because the staff member does not have knowledge or a specific level of knowledge of a language other than the official language, where the performance of the duty does not require it;
- because the staff member has taken part in meetings of, or carried out tasks for, a francization committee or a subcommittee created by that committee;
- to induce the staff member to endorse, under the first paragraph of section 138.2 of the Charter, a document referred to in section 138.1, or to dissuade him from doing so; or
- because the staff member has, in good faith, communicated information to the Office or cooperated in an investigation conducted because of such a communication.

Bill 96 introduces a new complaints process against employers under the jurisdiction of the local health, safety and labour standards authority, the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (hereafter "**CNESST**"). Any person who believes that he or she has been the victim of a prohibited practice under the Charter may file a complaint with the CNESST within 45 days of the event⁹.

PROHIBITION OF DISCRIMINATION AND HARASSMENT

Every employee has the right to a work environment free from discrimination or harassment, particularly because he exercises his right to express himself in French, because he has little or no command of English (or any other language), or because he has demanded the respect of a language right. In addition,

⁷ S. 32 of Bill 96 amending s. 42 of the Charter.

⁸ S. 33 of Bill 96 amending s. 45 of the Charter.

⁹ S. 37 of Bill 96 amending s. 47 of the Charter.

employers will have a duty to take reasonable steps to prevent and stop such conduct as soon as it is brought to their attention¹⁰.

A new recourse is put in place by the adoption of Bill 96 allowing employees who believe they are victims of such conduct to file a complaint with the CNESST within two (2) years from the date of the last manifestation of harassment¹¹.

FEDERALLY REGULATED COMPANIES

It would appear that Bill 96 seeks to cast its purview as widely as possible, including by introducing section 89.1 to the Charter¹²:

"89.1. No provision of this Act may be interpreted in such a way as to prevent its application to any enterprise or employer carrying on its activities in Québec."

Parliamentary debate has been divided on this issue, as only the federal government has jurisdiction over federal corporations¹³. The application of the Charter, as amended by Bill 96, to federal corporations would require confirmation from the federal government, as the Quebec government has no jurisdiction to impose such obligations on such industries or enterprises¹⁴. At this time, it is not clear how federal corporations will be affected by the amendments to the Charter.

The language of employment is a very hot topic, and the federal government has sought to reinforce the use of French in federal companies by adopting Bill C-13¹⁵, amending the *Official Languages Act*¹⁶, which we will monitor closely. Bill C-13 will create new obligations that enhance the use of French in federal companies conducting business in Quebec.

In light of the above, businesses under federal jurisdiction whose employees work in Quebec can expect a strengthening of the rules applicable to them with respect to the French language at work, whether through the application of the Charter or Bill C-13.

CONCLUSION

Bill 96 introduces significant changes to the Charter, including the review of language requirements in job advertisements and job descriptions. In order to comply with the new obligations of the Charter, do not hesitate to contact a lawyer in our Employment and Labour Relations Group who will be pleased to advise you and answer your questions to help you navigate this new legal framework.

¹⁰ S. 34 of Bill 96 amending s. 45.1 of the Charter.

¹¹ S. 37 of Bill 96 amending s. 47 of the Charter.

¹² S. 65 of Bill 96 inserting s. 89.1 into the Charter.

¹³ Québec, National Assembly, *Journal des débats (Hansard) of the Committee on Culture and Education*, 2nd sess., 42nd legis., April 14, 2022, "Committee stage", 17h50 (M. Simon Jolin-Barrette); Québec, National Assembly, *Journal des débats (Hansard) of the National Assembly*, 2nd sess., 42nd legis., May 24, 2022, "Adoption", 11h (M. Martin Ouellet); Québec, National Assembly, *Journal des débats (Hansard) of the National Assembly*, 2nd sess., 42nd legis., May 12, 2022, "Adoption", 12h20 (M. Simon Jolin-Barrette); Québec, National Assembly, *Journal des débats (Hansard) of the National Assembly*, 2nd sess., 42nd legis., May 12, 2022, "Adoption", 15h40 (M. Pascal Bérubé); Québec, National Assembly, *Journal des débats (Hansard) of the National Assembly*, 2nd sess., 42nd legis., May 11, 2022, "Consideration of the committee report", 18h10 (M. Pascal Bérubé).

¹⁴ *The Constitution Acts, 1867 to 1982*, s. 91 and 92.

¹⁵ *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*, Bill n° C-13 (first reading – March 1, 2022).

¹⁶ *Official Languages Act*, R.S.C. 1985, c. 31, (4th supp.).

** The use of the masculine gender has been adopted to facilitate reading and has no discriminatory intent.*

** The contents of this document provide only an overview of the subject matter and should not be construed as legal advice. The reader should not rely solely on this document to make a decision but should consult his own legal advisors.*