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Recently, the Government of Québec adopted *An Act respecting French, the official and common language of Québec* (“**Bill 96**”), which is intended to progressively amend the *Charter of the French Language* (“**Charter**”). This gives rise to legislative changes impacting trademarks, product packaging, commercial advertising and public signs. Moreover, we anticipate that there will be modifications to the current *Regulations respecting the language of commerce and business* which complement the Charter.

The bulletin will focus on the impact of Bill 96 on the use of trademarks, product packaging, commercial advertising, and public signs, including websites and social media and the additional requirements that promote the use of the French language on product packaging and all commercial advertising thereunder. The effective date of these amendments varies from June 1st, 2022 to June 1st, 2025.

The objective of the Charter’s amendment is to increase the use of the French language in the Province of Québec. The Charter now explicitly declares that the public has the right to be informed and served in French, including communication in French between businesses.

Display and Registration of Trademarks — June 1st, 2025

There will be important changes on how trademarks are displayed and used when the amendments come into force. As of June 1st, 2025, the Charter provides that all trademarks must be displayed in French. For a trademark to be displayed in a language other than French, the trademark: (1) must be registered under the *Trademarks Act*, and (2) must not have a French version of the trademark appearing on the Canadian register. Since the Canadian trademarks register displays both trademark applications and registered trademarks, this may narrow the exception allowing trademarks to appear in a language other than French. It is important to note that the current administrative delay to register a trademark in Canada can be as long as three (3) years.

The amendments to the Charter will end the exception permitting common law marks to be displayed in their original non-French version if there is no corresponding registered trademark in French. As such, the owner of a common law trademark should consider registering its non-French mark promptly (and refrain from registering a French version of the trademark) if they intend on using exclusively the non-French trademark in the Province of Québec. For instance, a company that owns both the French and English registered versions of a trademark, they can only display the French version of the registered

trademark. For registered non-French trademarks, there will be additional obligations if the registered trademark contains generic and descriptive words in a language other than French.

Another important change will be the requirement to translate parts of a non-French registered trademarks that contain generic or descriptive terms as part of the trademark. Where a product distributed in Québec is marketed with a trademark that contains a generic term or descriptive word in a language other than French, such term or word must be accompanied by a French version. The legislation does not state if the French terms must appear in at least as equivalent conditions. The generic or descriptive terms included with the core mark that are not in French should be accompanied by a French translation. Consequently, when a product displays such a trademark, the descriptive words in English should be accompanied by a French equivalent. This could be something other than the requirements of the federal *Consumer Packaging and Labelling Act* which already provides for bilingual packaging. We will have to monitor the regulations and see how this new requirement may be enforced.

Product Packaging — June 1st, 2022

All inscriptions on product packaging and accompanying documents must be in French. A non-French translation can be present on product packaging or in an accompanying document provided that it is: (1) of less predominance than the French content, and (2) not available on more favourable terms than the French version. By way of example, the exterior packaging cannot be exclusively in English, with the French translation located inside the product box. In such a case, the French packaging would arguably be said to be available on less favourable terms.

The Québec government will decide, through regulations, which products (if any), will be exempt from these requirements. For instance, as currently provided by the regulation, products intended for a market outside of Québec may have a label exclusively in a language other than French.

Commercial Advertising, including Websites and Social Media — June 1st, 2022

Currently, catalogues, brochures, folders, and commercial directories are required to be in French. Bill 96 also adds the following to this list: order forms and other documents of the same nature. Therefore, all pre-purchase and promotional documents (including websites, flyers, and others), and post-purchase documents (including invoices, receipts, and others) must be available in French. If these documents are available in a language other than French, the French version must be available on equal or more favourable terms. For instance, if a paper copy of an English document is available, but the French document is only available online, then the French version of the document may be determined to not be available on equal or more favourable terms. Exceptionally, we expect the Québec government to decide through regulations which documents are not required to follow such provisions.

These requirements apply to all materials offered to the public, regardless of the medium used. The Charter will now expressly state that websites, social media pages, newsletters and other digital media are also required to follow this regulation, thus confirming the interpretation of the Office Québécois de la langue française (“OQLF”) of the Charter. The amendments seek to codify existing practices. As such, all publications and online advertising that are available to the public must not be offered on more favourable conditions in a language other than French.

With increased digitization and new technological changes (particularly following the onset of the COVID-19 pandemic), many businesses have moved online and may not have a physical presence. It is essential for businesses to pay particular attention to these new requirements. All businesses with an online presence must ensure that their websites have a French version, which includes descriptions, terms and conditions, privacy policies and all other documentation found on their primary non-French website. Additionally, a business using a social media page to sell goods and services in Québec must also

translate that social media page into French. We suspect there will be increased scrutiny and surveillance on websites and social media sites, which are easily accessible to the public. Businesses should have a plan in place to bring their websites and social media pages up to date in French as quickly as possible.

Public Signs — Change from “sufficient” to “markedly predominant” — June 1st, 2025

Currently, public signs and commercial advertising must be displayed in French. This includes billboards and illuminated signs. Previously, the standard was generally (billboards excluded) that a “sufficient” French presence was adequate, but Bill 96 now requires that the French content must be “markedly predominant” to the non-French content. This indicates that the French content must have a greater visual impact than the non-French content. Consequently, French wording must be twice as large as the non-French wording and other elements on the sign must not distract from the visual impact of the French content. There is an additional requirement for circumstances where the content in different language appears on separate signs, in that there must be at least as many signs in French as there are in other languages.

It remains unchanged that the signage requirements do not apply to news media that publish in a language other than French, or for messages conveying a religious, political, ideological, or humanitarian messages with a non-profit motive. Current regulations provide that when a cultural or educational product is offered in a language other than French, the public signs or commercial advertising relating to such product may be in another language. The same is true for advertising news media where the underlying content is in another language.

As for public signs that contain a non-French trademark and are visible from the outside (for instance, a sign placed inside a store that is visible from the window), a markedly predominant French presence will also be required. Consequently, the French content must be markedly predominant alongside the non-French trademark. The Charter states that there may be exceptions to the markedly predominant rule, which will be determined by the government through regulations.

Similarly, the Charter still requires that the name of a company that appears in a language other than French be accompanied by a French version that is at least as prominent. However, if the name of the company contains an expression in a language other than French (including invented words) and is displayed on a public sign visible from outside the premises, the sign must also display French content that is markedly predominant to the non-French company name. The previous exception for documents drafted solely in another language remains unchanged. As such, the company name may still appear in that language only; a French equivalent is not required to appear on such documents.

Sanctions

The OQLF now has increased powers of search and seizure, allowing it to enter premises, access data or require any information for the purpose of ensuring compliance with the Charter.

Following a failure to comply with the linguistic requirements, the OQLF will first notify the offender and provide a minimum delay of fifteen (15) days to correct such offence. Following this, the OQLF may issue an order for failure to comply with the linguistic requirements. Additionally, following the fifteen (15) day delay, the Minister of the French Language has the power to suspend or revoke a permit or authorization, following numerous offenses.

For a product distributed online by a company that does not have an establishment in Québec, violating product packaging requirements may lead to an order from the OQLF for the company to cease “to allow any person situated in Québec to enter into a contract in respect of the property”. The scope of this restriction was previously limited to companies established in Québec. Bill 96 seeks to extend these

requirements for product packaging to all companies offering goods and services in Québec. This may have significant impacts on companies that are not established in Québec, as the OQLF now seems to have power to issue orders against such companies when they are in violation of product packaging requirements. Considering the absence of further explanations, we expect that the Québec government will provide further guidance as to how such section will be enforced.

Contravening the Charter's requirements may also lead to fines. In the case of a company, fines vary between \$3,000 and \$30,000; while in the case of a natural person, fines vary between \$700 and \$7,000. Bill 96 establishes progressive sanctioning; for subsequent offences, the fines are doubled or tripled. For an offence that continues for more than one day, every day constitutes a separate day of offence. Additionally, if the offense is committed by a director or officer of a legal entity, the fines applicable to a natural person for such an offense will be doubled. Moreover, future court proceedings will clarify the scope of the OQLF's powers in this regard.

The OQLF may also request an injunction from the Superior Court to order the cessation of the offender's actions. For public signs contravening the Charter, the Court may order the removal or destruction of such signs, at the expense of the offender.

Conclusion

Bill 96 increases the use of French in the language of business and commerce by reducing the exceptions allowing trademarks, product packaging, public signs, and commercial advertising to contain elements or text in a language other than French. Consequently, the use of another language in such circumstances now entails increased requirements.

Common law marks in a language other than French can no longer be displayed alone, all non-French trademarks must be registered in order to exempt them from trademark related exceptions. Similarly, public signs visible from the outside that include non-French content (including those displaying non-French registered trademarks) are required to have markedly predominant French content. Furthermore, for a language other than French to appear on product packaging, French content must appear on comparable or more favourable conditions on such packaging. Packaging displaying generic or descriptive words found within non-French registered trademarks must also be accompanied by a French translation.

Given the lengthy delays to obtain trademark registration and public accessibility of websites and social media, it is critical for business owners to prepare for these new requirements. Although some new sections come into force June 1st, 2025, there may be lengthy procedures involved to implement the necessary changes. Due to the increased fines and the new ability of search and seizure of the OQLF, plans and strategies must be put in place to ensure that all commercial advertising (including websites and social media) conforms to the new rules. Although the requirements for trademarks and public signage allow more time to prepare, three (3) years is a short delay for the new registration requirements.

To help you navigate through the changes and impacts that Bill 96 has or will have on your business, do not hesitate to contact one of our professionals who will be pleased to guide you through this new legal framework.

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

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