

Charter of the French language: Changes affecting trademarks in Québec

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The Québec legislature recently adopted Bill 96, which amends several provisions of the *Charter of the French Language* (the Charter). This article summarizes the various significant changes applicable to the use of trademarks in a language other than French, including their registration, inscription on products and public display. Under Québec's Bill 96, these new requirements will come into force on June 1, 2025.

Trademark registration

Trademarks that are only in a language other than French will have to be registered with the Canadian Intellectual Property Office (CIPO) in order to benefit from the trademark exception provided in the Charter.

Notably, all trademarks that are currently unregistered, including those that are the subject of an application for registration with the Trademarks Office, will no longer benefit from the trademark exception. Indeed, the new requirement for a trademark to be “registered” and not only “recognized” within the meaning of the *Trademarks Act* removes from the exception all trademarks that are not registered with CIPO.

These changes to the Charter mean that a trademark only in a language other than French can be used on products, without a French version, if:

- the trademark is registered under the *Trademarks Act*; and
- there is no corresponding French version in the Trademark Register.

If these requirements are not met, the trademark will have to be accompanied by a French version, but no inscription in another language may be given greater prominence than that in French or be available on more favourable terms.

If your company relies on trademarks that are affected by this change, we suggest gathering a list of the company's unregistered trademarks that are not in the French language and evaluating the possibility of (i) filing trademark registrations for such marks; or (ii) using the marks with a French version. It is important to begin the registration process with CIPO as soon as possible since applications can take up to 36 months to reach registration.

Generic and descriptive terms

The new section 51.1 of the Charter provides that if the registered trademark contains generic or descriptive terms in a language other than French, these must be translated into French.

The change prohibits the use of generic and descriptive terms that appear on products if they are not translated into French. Thus, even if a trademark is registered with CIPO, companies will now have to translate any generic and descriptive terms contained in the trademark. However, there seems to be some flexibility in the manner the French translation of generic and descriptive terms may appear on the product, as the Charter only provides that such translation may appear on the product or on a medium permanently attached to the product.

Section 51.1 does not specify whether generic and descriptive terms that are part of a registered trademark in another language can be given greater prominence over their French translation. We will have to await new regulations from the government and see whether they will bring any changes or specifications to this requirement.

We therefore recommend companies that are currently relying on the trademark exception to review their trademarks (registered or in the process of registration) that include generic or descriptive terms, and evaluate if any of these terms would need to be translated.

Public signs, posters and commercial advertising

Québec's Bill 96 introduces a new section 58.1 regarding the exception for public signs, posters and commercial advertising. A trademark may be displayed only in a language other than French in public signs, posters and commercial advertising, without a French version, as long as the following conditions are met:

- the trademark is registered under the *Trademarks Act*; and
- there is no corresponding French version in the Trademark Register.

If the trademark does not meet these two conditions, it must contain a French version that appears in the public sign, poster and/or commercial advertising in a "markedly predominant" manner.

Public signs and posters visible from outside premises

Specific rules apply to any "public signs and posters visible from outside premises," currently defined as any signage outside a "space, closed or not, devoted to an activity" as well as any signage placed inside a premise if its installation or characteristics are intended to be seen from the outside. On such signs and posters, even if the trademark displayed is duly registered, French must appear in a "markedly predominant" manner (this modifies the previous requirement of "sufficient presence of French"). This applies to both registered trademarks that are only in a language other than French and business names that include an expression taken from a language other than French.

As currently defined in the *Regulation defining the scope of the expression “markedly predominant” for the purposes of the Charter of the French language*, the “marked predominance” of French is satisfied if the text written in French “has a much greater visual impact than the text written in the other language.”

That being said, if your company's public signs or posters visible from outside premises are not only in French, they will most likely have to be modified. However, before changing such public signs or posters, it is recommended to wait to see if new regulations will provide further specifications in order to comply with this rule. These could have an impact on how French should appear, including the location and lighting of public signs and posters.

Sanctions

The Office québécois de la langue française (OQLF) is the entity that oversees the application of the Charter and its regulations. As a new power, if the OQLF becomes aware of a failure to comply with the Charter or a regulation, the OQLF may issue an order to the offender, including to anyone who distributes or sells a product with non-compliant inscriptions, either to comply with it or to cease contravening it. In addition, other types of sanctions may be applicable, such as the following:

i. Civil sanctions

The court may, on an application by the OQLF, order the removal or destruction of any poster, sign, advertisement, billboard or illuminated sign that contravenes the Charter, at the expense of the offender.

ii. Administrative sanctions

The minister of the French Language may suspend or revoke a permit or authorization for contravention of the Charter. In other words, the minister will have the power to suspend or revoke a permit delivered by another authority in Québec.

iii. Penal sanctions

The fines for contravening the Charter now range between \$700 and \$7,000 for individuals, and between \$3,000 and \$30,000 in other cases. These amounts are doubled for a second offence and tripled for any additional offence. For each day that the offence continues, fines are applied. In addition, directors and officers of a company will see their fines doubled in comparison to the fines applicable to other individuals.

Furthermore, the judge may impose on the offender, in addition to any other penalty, a further fine not exceeding the financial benefit realized by the offender as a result of the offence, even if the maximum fine has been imposed.

Conclusion

These new requirements will bring significant changes to the way businesses solidify their presence in Québec. The government has fixed the coming into force of these

provisions for three years, that is on June 1, 2025, to give businesses sufficient time to comply.

Despite this delay, it is important to start preparing for the changes and to review your trademarks, the generic and descriptive terms found on products, and outdoor public signs and posters. These steps will allow you to be prepared when the government issues directives and will ensure the continuity of your commercial activities in Québec.

If you have any questions regarding the *Charter of the French Language* and the new Québec Bill 96, do not hesitate to contact one of our team's experts or any of the contacts listed below. We are committed to providing our clients with the latest Bill 96 developments in order to propose strategies to guide your businesses through the new regulatory requirements on the subject.

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