Official languages and Bill C-13: our analysis for federally regulated private businesses

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Bill C-13 plans to introduce obligations on the use of French by federally regulated private businesses and to create new rights for consumers and workers.

Summary

On March 1, 2022, the federal minister of official languages presented Bill C-13 to the House of Commons. If adopted, Bill C-13 would notably amend the *Official Languages Act* and enact the *Use of French in Federally Regulated Private Businesses Act* (the Act). The Act would create new obligations related to the use of French for federally regulated private businesses operating workplaces in Québec or doing business in Québec. It would also create new rights for consumers and workers regarding the use of French.

The Act aims to foster and protect the use of French by federally regulated private businesses in Québec and other regions with a strong francophone presence. At first, the Act would apply exclusively to Québec, as the provisions to designate regions "with a strong francophone presence" would only come into force two years after the Act's initial coming into effect.

The Act's potential scope notably includes banks, airlines and maritime companies, as it would apply to federally regulated private businesses engaged in a federal undertaking or business. Some businesses would be exempt from its application, for example if they have fewer employees than determined by regulations. The Act would allow regulations to prescribe a different minimum number of employees for businesses that have a workplace in Québec and those that do not but carry on business in the province. Activities and workplaces in the broadcasting sector are outside the scope of the Act. Corporations that are subject to the *Official Languages Act* would also be exempt and regulations could further exempt other private businesses from the Act.

Consumers' rights

The Act would give Québec consumers the right to communicate in French with a business subject to the Act that carries on business in Québec, including oral and

written communications. This would include the right to obtain available services in French, and to obtain documents and conduct service-related activities in French. This means, among other things, that contracts and other documents would have to be available in French. A business would be allowed to serve a customer or provide services and documents in a language other than French, if a customer wants it.

Bill C-13 does not provide a definition for some of the key terms that will have a significant impact on the application of the Act, such as “consumer”, “employee” and “treat adversely.” These terms, which are central to the Act’s scope and future impact in practice, will be defined by regulations at a later date.

Québec’s Charter of the French Language

Bill C-13 would not make the *Charter of the French Language* applicable to federally regulated private businesses. However, a federally regulated private business could voluntarily make itself subject to the Charter by giving notice of its intent, in accordance with a mechanism to be prescribed by regulations. A decision to subject itself to the Charter would not be irreversible and the Act mentions the possibility of an entity ceasing to be subject to the Charter, by giving notice to that effect.

Remedies for breach of consumers’ rights

Consumers and groups of individuals would have the possibility of making a complaint to the Commissioner of Official Languages of Canada if they believe that an entity has failed to comply with the consumers' rights created by the Act. The Commissioner would have broad powers to investigate and could also investigate on its own initiative. After completing its investigation, if the Commissioner is of the opinion that a complaint is founded, it would then have the possibility of making recommendations to a private business and to request to be informed of the actions that the private business intends to take in response to the recommendations.

The Act would also give the Commissioner the power to enter into compliance agreements and to order any action that it considers appropriate to rectify the contravention. However, these powers would not necessarily be effective on the day of the Act’s coming into effect, as the Act provides for the possibility of specifying a different effective date for each of these additional enforcement tools.

Under certain circumstances, for instance if the Commissioner refuses to investigate the complaint or if the appropriate actions recommended by the Commissioner are not taken, the plaintiff, as well as the Commissioner, would have the right to apply to the Federal Court for remedy. The court would have the power to grant such remedy as it considers appropriate and just in the circumstances, including ordering compliance with the Act.

The Commissioner would not have the power to impose administrative monetary penalties under the Act[1].

Workers' rights

Employees of a federally regulated private business who occupy or are assigned to positions in a workplace in Québec would have the following rights:

- To carry out their work and be supervised in French;
- To receive all communications and documents from their employer in French, including all offers of employment, promotions, etc. Additionally, if a document is written in French and English, the use of French will have to be equivalent to the use of English, and;
- To have access to regularly and widely used work instruments and computer systems in French.

Due to the prevalence of remote work in some industries, it will be interesting to see how the expression “occupy or are assigned to positions in a workplace in Québec” is interpreted.

Duty to foster use of French

The entities subject to the Act who operate workplaces in Québec would have to foster the use of French in their Québec workplaces. This would include taking measures to notify employees that the Act applies, and informing them of their rights and remedies under the Act.

A private business subject to the Act would also have to create a committee responsible for supporting the executive committee in fostering French language and its use within the company.

Right to require a language other than French

The Act would also include exceptions to fostering the use of French by workers. For example, it would allow an employer to require the knowledge of a language other than French from an employee who occupies or is assigned to a position in Québec, if the employer can demonstrate that the knowledge of this other language is objectively required due to the nature of the work to be performed. For instance, that may be the case if the employee’s work involves regular communications with clients located in the United States.

An employee who already occupies a position in a Québec workplace the day before the Act comes into force would benefit from acquired rights. Therefore, it would be prohibited to treat this employee adversely for not having sufficient knowledge of French in their current position.

The Act would also prescribe that it must not be interpreted in a manner that is inconsistent with the maintenance and enhancement of languages other than English or French, or inconsistent with the reclamation, revitalization and strengthening of Indigenous languages. Interestingly, the Act would also prescribe that language rights (not specifically French language rights) are to be given a large, liberal and purposive interpretation and that they must be interpreted in light of their remedial character. Therefore, the protection of languages other than French and English would have to be taken into account in the application of the Act.

Remedies for workers

The Commissioner would not have the right to conduct an investigation on its own initiative with respect to workers' rights.

On the other hand, employees would have the right to make a complaint to the Commissioner. This complaint would have to be made within 90 days of the employee becoming aware of a failure to comply with the Act or within 90 days of the day on which the employee ought to have become aware of the failure to comply. This delay could be extended in some circumstances, including by regulations or if the employee made their complaint by mistake to another government official than the Commissioner.

The Commissioner may also defer a complaint to the Canada Industrial Relations Board for decision, under certain circumstances and after attempting to resolve a complaint. The Board has broad powers, including reinstating the complainant and ordering any other remedy or action that it considers equitable to remedy or counteract any consequence of a failure to comply with the workers' rights. Workers' civil remedies would not be affected or suspended by the Act.

[1] The monetary administrative penalty power that would be included by Bill C-13 to the Official Languages Act would not be applicable to the Act (see Bill C-13, section 69).

By

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