



*AN ACT RESPECTING FRENCH, THE OFFICIAL AND COMMON
LANGUAGE OF QUÉBEC — DOING BUSINESS IN QUÉBEC?*

French is at the Heart of Your Business

Business Impacts and Legal Solutions

MAY 2022

FASKEN

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You do business
or have employees
in Quebec?

You serve customers
in Quebec, but
your company is
outside Quebec?

You have heard
about Bill 96 or the
Act and want to
know what impact
it will have for your
company?

Project

As of May 2022, Bill 96 officially became *An Act respecting French, the official and common language of Québec* (the “Act”). For the past year, the Act has been raising doubts and concerns. To make things clear, the Fasken team has created a five-point document that will enable you to easily adapt your business practices and understand the main consequences and sanctions you face if you fail to comply with your obligations. Our professionals also provide you with a range of resources explaining the key elements of the reform.

Themes

For ease of reference, we address the Act under five major themes:

1. At work, Only in French? ¿Sólo en francés?
 - What rules apply when you require knowledge of a language other than French in your job offers?
 - How should you interact with your employees?
2. Public posting
3. Advertising, websites and social media
4. Contracts and securities
5. Francization of businesses and relations with the Office québécois de la langue française (“OQLF”)

If you would like to see the effective dates of the provisions of the Act, please consult our [Resource Center](#).



For the record: what is the *Act respecting French, the official and common language of Québec*

One year ago, the Legault government tabled Bill 96, *An Act respecting French, the official and common language of Québec*, in the Quebec National Assembly. In addition to carrying out a major reform of the Charter of the French Language (the “Charter”), commonly known as Bill 101, the Act also amends the *Constitution Act, 1867*, the Charter of Human Rights and Freedoms and the *Civil Code of Québec*. Critiqued by some, praised by others, Bill 101 has been much talked and written about since it was passed in 1977. But what does Bill 96, namely *An Act respecting French, the official and common language of Québec*, change?

According to the government, the reform is intended to strengthen and affirm the status of French in all spheres of society. Specifically, the Act tightens the rules governing the use of the French language within organizations operating in Quebec.

Key Aspects of the Act

01.

At Work, Only in French? ¿Sólo en francés?

The Act states that the only official language of Quebec is French. This also applies to the workplace. Companies will therefore need to adapt their employment practices to ensure compliance.

What rules apply when you require knowledge of a language other than French in your job offers?

Currently, an employer may require knowledge of a language other than French in a job offer when such knowledge is necessary for the performance of the job. Under the Act, such a requirement can still be imposed, but it is subject to additional conditions.

Therefore, before requiring knowledge of a language other than French, you must meet the following three conditions:

- ✓ Conduct an assessment to determine the actual language needs associated with the tasks to be performed;
- ✓ Ensure that the language needs identified in the assessment could not be met by existing staff members who are required to speak the other language;
- ✓ Limit to the extent possible the number of positions requiring knowledge of a language other than French.



Actual needs are defined by everything that appears to be absolutely necessary to the activities of an organization. For example, if a call centre receives 25% of its calls in English, the company cannot ask 100% of its employees to speak English. It must analyze the actual needs and consider redirecting these calls to a minority of English-speaking employees.

Employers must therefore take **all reasonable steps** to avoid imposing such a requirement. In essence, this means that employers must carry out a contextual analysis that takes into account all of the positions related to the position to be filled to ensure that mastery of a language other than French is absolutely necessary.

From now on, an employer who requires knowledge of another language must also state the reasons justifying this requirement in a job offer.

Let's take the example of a company that is looking for English-speaking applicants to serve an international clientele. The company will have to demonstrate that it offers a significant proportion of its services to English-speaking clients. It will then have to demonstrate that the employees already in place, who are required to know English, are not able to adequately serve this English-speaking clientele. Finally, it will have to demonstrate that the number of positions for which English is required is the minimum number needed to serve this clientele.

How should you interact with your employees?

En français, svp!

Some documents will have to be **written** in French and others will also need to be **accessible** in French on terms that are at least as favourable as those for any other language version.

The following documents and transactions must be **written** in French (another language may be used in addition):

- ✓ Individual employment contracts;



However, a contract may be drafted exclusively in another language if the parties expressly agree, **EXCEPT** when the contract is a contract of adhesion. In the case of an employment contract of adhesion, the parties must examine its French version before expressly deciding to be bound only by the version in another language.

- ✓ Offers of transfer, employment or promotion;
- ✓ All written communications to staff or an employee, e.g., internal communications



Exception: the employer may communicate in writing exclusively in another language with an employee who so requests.

🌀 On the Horizon - Accessibility

In addition, the French version of the following three documents must be **available** on terms at least as favourable as those for any other version:

- Employment application forms;
- Documents related to working conditions;
- Training materials produced for your staff.



02. Public Posting

The first question that a company posting public signs in Quebec needs to ask itself is whether this signage complies with the Charter.

In short

Can you keep your signage as it was before the Act?

Response: if your public posting is not in French, it will most likely have to be modified.

The general rule under the Act is simple:

If public signage is visible from outside the premises, French must be clearly predominant.

What if your trademark is registered in English only?¹

Before the Act: If your trademark was registered only in English (with no French version filed in the Federal Register), it could be displayed in English only, as long as the French version maintained a “sufficient” presence. This sufficiency criterion was generally met by adding a generic or descriptive name to the trade name.

Since the Act: with respect to public signage visible from outside the premises, French must now appear in a “clearly predominant” manner, i.e., French must have a much greater visual impact:

- ✓ Space devoted to the French text must be at least twice as large;
- ✓ Characters used in the French text must be at least twice as large;
- ✓ Other display features must not reduce the visual impact of the French text.



If the mark displayed inside the premises is visible from the outside, this new requirement will continue to apply.

¹ We are referring here to registered trademarks within the meaning of the *Trademarks Act*, where there is no corresponding French version on the register maintained under that Act.

On the Horizon - Consequences

Failure to comply with these requirements will result in the following consequences:

- The OQLF could give you formal notice to comply with the Charter, and if you fail to do so, it could order compliance.
- If you contravene an order issued by the OQLF, you may be subject to penal sanctions.
- The Superior Court of Quebec may order the removal or destruction, at your expense, of any billboard, poster, advertisement or illuminated sign that contravenes the provisions of this Act.



03. Advertising, Websites and Social Media

Bonjour/Hi? In a business setting, clients must be informed and served in French, whether they are consumers or not.



In short

What about the various commercial documents available to the public?

Response: a French version is mandatory “regardless of the medium”.

What does “regardless of the medium” mean?

Catalogues, brochures, pamphlets, business directories, purchase orders and any other documents or publications of a commercial nature that are accessible to the public will have to be written in French. In addition, it will still be possible to use another language provided that the French version is accessible on terms at least as favourable and provided that the presentation of the French version is at least as prominently as a version in another language.

This obligation will apply to publicly available commercial content:

- ✓ On a website or other digital platform offering goods or services in Quebec;
- ✓ On social media.

On the Horizon - Remedies in case of non-compliance

A breach of this obligation could result in a complaint or whistleblowing to the OQLF by clients or any other person. A complaint to the OQLF could subsequently lead to penal or civil sanctions or injunctive measures.



What about the extraterritorial application of this obligation to e-commerce businesses without an establishment in Quebec?

For example, a company located in the United States might ask: do my website and its content need to be translated into French if they can be accessed in Quebec?

This obligation to translate commercial content on a website applies to companies that target the Quebec market and have an establishment in Quebec. If a company does not have an establishment in Quebec, the OQLF favours an incentive approach.

04. Contracts and Securities

Contracts are the basis of our business relationships. As such, the changes introduced by the Act could have a significant impact on the course of business.

Contracts of adhesion and consumption

Before the Act:

- ✓ It was possible to draft a contract exclusively in a language other than French if the parties expressly agreed to this. In practice, this consent resulted in the insertion of a clause indicating that such was the parties' wish.

Since the Act:

- ✓ Inserting such a clause is **no longer sufficient**;
- ✓ The parties must **receive the French version** before entering into a contract in a language other than French. Otherwise, the consent or acceptance of the contract will not be valid;
- ✓ Unless a contract of adhesion has been drafted in another language at the adhering party's request, this party will be presumed to be unaware of any external clause drafted in a language other than French. Moreover, a clause in a contract of adhesion written in a language other than French will be deemed to be unintelligible.

On the Horizon - Contract of adhesion

A contract of adhesion entered into in a language other than French with no French version having been made available may be **annulled at the request of the adhering party with no requirement to prove injury**.

The other party may, however, demonstrate the absence of injury to save the contract. Alternatively, the adhering party may claim damages.

What about business interactions with the civil administration?

The watchword: en français!

- ✓ Services rendered to the civil administration must be in accordance with the Charter;
- ✓ All applications submitted to the civil administration, including applications for grants or any other form of financial assistance, will have to be submitted in French;
- ✓ Subject to certain exceptions, most contracts with the civil administration will need to be in French.

**Do you contract with the civil administration?
Failure to comply with the requirements of the Charter could result in the absolute nullity of the contract.**

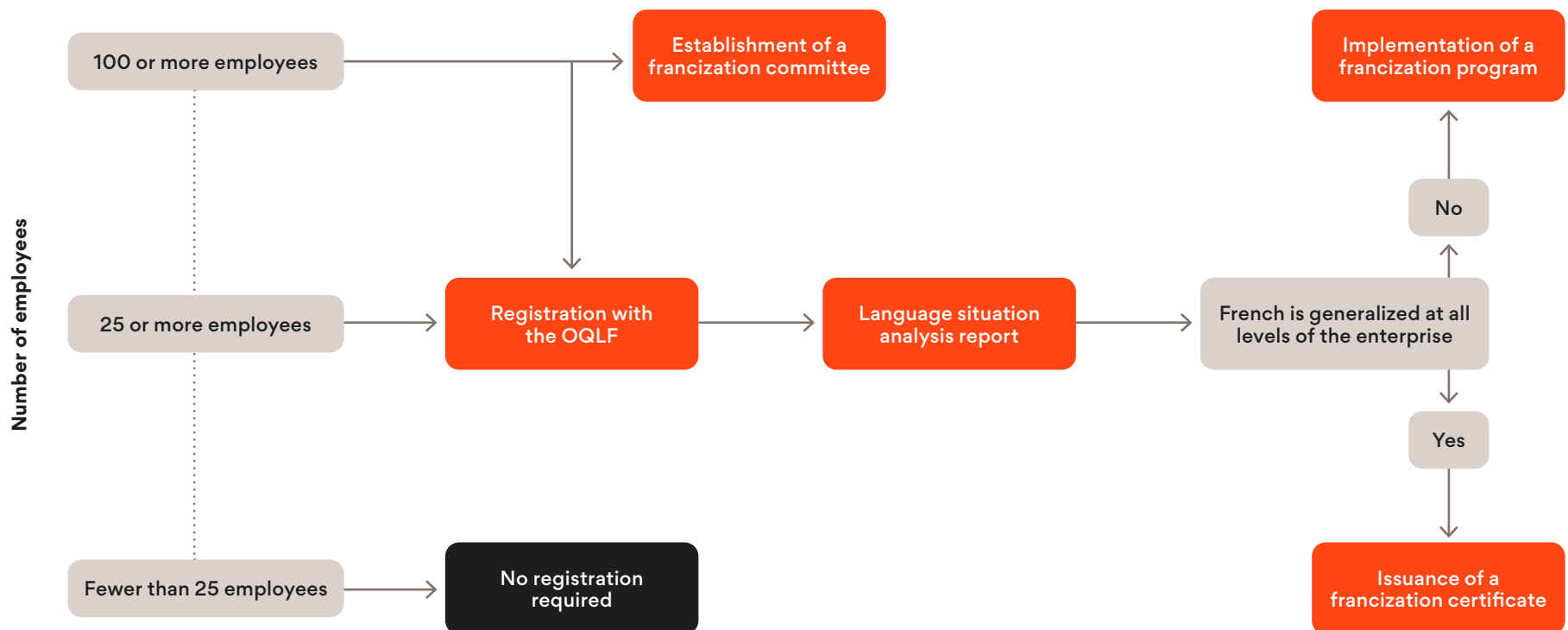
The civil administration includes the Quebec government, its departments and its agencies. For a complete list, you can consult our [Resource Center](#) (Schedule of our Annotated Charter).

What about security interests?

- ✓ Security interests (e.g., mortgages) must be registered in public registries using the prescribed forms;
- ✓ With the Act, requisitions of registrations will have to be written exclusively in French.

05. Francization of Companies and Relations with the OQLF

What does the francization of businesses mean under the Act?



When does the francization process in partnership with the OQLF become mandatory?

When there are more than 25 employees in Quebec.

Key elements of the francization process:

- ✓ Registration with the OQLF by providing general information on the legal and functional structure of the company and the nature of its activities;
- ✓ Creation of a francization committee for companies with 100 or more employees or if required by the OQLF;
- ✓ Designation of a company representative(s) to the OQLF;
- ✓ Submission of an analysis report on the company's linguistic situation within three months of receiving its certificate of registration;
- ✓ Implementation of a francization program if the use of French is not widespread at all levels of the enterprise. Otherwise, issuance of a certificate of francization;
- ✓ Annual report on the implementation of the francization program, if applicable;
- ✓ For enterprises holding a francization certificate, a three-year report on the evolution of the use of French. Following submission of the report, if the OQLF considers that the use of French is no longer widespread at all levels of the enterprise, an action plan will be implemented.



Will many businesses be affected by these new specific requirements?

Given that the current threshold is 50 employees, this means that less than 10% of additional companies that will be affected by affected by these new provisions of the Act.

What is the francization committee and what is its role?

If you have 100 or more employees, **the establishment of a committee is mandatory.**

If you have between 25 and 99 employees, the OQLF may order you to create a committee, depending on the results of the linguistic situation analysis report.

The committee is responsible for drafting the various reports required as part of the francization process, for designating a company representative to the OQLF and for developing the francization program, if applicable.

Is there a “blacklist” of companies that are not compliant with the francization requirements?

Yes.



Businesses to which the OQLF has refused to issue a francization certificate or for which it has suspended or cancelled an attestation or certificate are included on a list published on the OQLF website.

In addition to the reputational impact they may suffer, enterprises on this list or otherwise failing to comply with francization requirements will not be able to contract with or receive grants from the civil administration.



What is the Office québécois de la langue française ?

In general, the OQLF is responsible for ensuring compliance with the Charter. In particular, it ensures that French is the normal and usual language of work, communications, commerce and business in Quebec.

A person who wishes to file a complaint or blow the whistle on a business that does not comply with the Charter must contact the OQLF. However, if this person is an employee, he or she may have to go to the Commission des normes, de l'équité, de la santé et de la sécurité du travail instead, depending on the facts.

The OQLF can then conduct investigations and inspections. If the OQLF finds a breach of the Charter, it may order the company in default to correct the situation.

Fasken, at the Heart of the Act

On the cutting edge of legal developments

Our team has closely followed all the new provisions related to the evolution of the Act, from its introduction in the National Assembly to its adoption.

That means that we are in a position to assist you with all of your questions. In addition, the Fasken team provides you with numerous resources to help you better understand the upcoming changes in the legislation.

As leaders in their field, Fasken's lawyers publish articles, podcasts, and organize numerous talks and webinars on current issues.

Fasken can also provide training on the Act directly to your officers and directors.



Fasken has centralized all documentation relating to the Act. Access the Resource Center [here](#).



Translation: an experienced, certified team

Fasken's Linguistic Services team provides translation and legal review of your documents in English and French (and other languages, if applicable). The team is composed of nearly 20 legal translators with law and translation degrees and lawyer-revisers who are members of the Quebec Bar and who have also obtained their professional translator certification.

The use of innovative tools allows Fasken to offer you a turnkey, efficient and quality service to handle your requests.

Your Fasken team

Don't wait until the last minute to comply with the law. Fasken can provide the help you need.

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Stay connected. Move forward together.



APPENDIX Sanctions

What type of penal sanctions do I face in the event of non-compliance with the Charter, and what will my liability be as a director or officer?

Following passage of the Act, the criminal sanctions for a Charter violation will be increased.

An enterprise will now be subject to the following fines:

First offence*	\$3,000 to \$30,000
Second offence	\$6,000 to \$60,000
Subsequent offences	\$9,000 to \$90,000

NOTE - It should be noted that reprisals or the threat of reprisals against a person who makes a report to the OQLF or cooperates in one of its investigations is also punishable by a fine of up to \$250,000 (or \$500,000 or \$750,000 in the case of a repeat offence).

A specific provision now governs offences committed by **directors** and **officers**. If they commit a violation, they are liable to the following fines, subject to proof of due diligence:

First offence	\$1,400 to \$14,000
Second offence	\$2,800 to \$28,000
Subsequent offences	\$4,200 to \$42,000

* Each day of violation constitutes a separate offence.