

Quebec Language Requirements in the Workplace

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This Practice Note reviews language requirements for workplaces operating in the province of Québec.

Since 1977, the *Charter of the French Language*, CQLR, c. C-11 (CFL) provides that French is the official language in the province of Québec and protects the linguistic rights of Québec citizens.

On May 24, 2022, the National Assembly of Québec enacted Bill 96, *An Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14 (Bill 96), which amended the CFL and, among other elements, introduced new measures to enhance the predominance of French in the workplace. Note that most of the Bill-96-related amendments came into force on June 1, 2022, the date Bill 96 received assent.

This Practice Note provides an overview of the key obligations under the CFL as amended by Bill 96 that affect businesses with employees in Québec. This Practice Note also discusses the powers of the *Office Québécois de la langue française* (the Office) with respect to investigations and inspections, as well as the potential consequences in case of non-compliance with the CFL.

Communications to Employees

The CFL requires employers:

- To ensure that any offer of employment, transfer, or promotion is published in French (as further detailed in Job Offers).
- To ensure that any individual employment contract is drafted in French, unless both of the following conditions are met:
 - the employment contract is not considered an adhesion contract; and
 - the employee expressly consents to the employment contract being drafted in a language other than French.

Note that, in Québec, an adhesion contract is a contract in which the essential stipulations are imposed or unilaterally drawn up by one of the parties and are not negotiable. Therefore, if the employment contract is deemed an adhesion contract, the employee must examine the French version of the contract before they can expressly consent to be bound by the non-French version of the contract in order for the contract to be enforceable.

- To use French in written communications with all or part of the staff, or with an individual employee, including those communications following the termination of the employment relationship. Note that an employer may communicate in writing with an employee exclusively in a language other than French only if the employee made a specific request to that effect.
- To ensure that the documents below are drafted in French and, if also available in another language, to ensure that the French version is available to the Québec employees on terms that are at least as favorable:
 - employment application forms;
 - documents relating to conditions of employment; and
 - training documents created for the employees.

See CFL, CQLR, c. C-11, section 41.

Job Offers

The CFL provides that when a job offer is posted by an employer in a language other than French for the purpose of filling a position (including by recruitment, hiring, transfer, or promotion), the employer must

ensure that both the French and English versions of the offer are published simultaneously using the same means of transmission and reaching a target audience of comparable size.

Furthermore, if the employer requires knowledge or a specific level of knowledge of a language other than French to be eligible for a position, the employer must indicate the reasons justifying this requirement at the time of the publication of the job offer.

See CFL, CQLR, c. C-11, sections 42 and 46.

Specific Knowledge of a Language Other Than French

The CFL provides that an employer cannot require specific knowledge of a language other than French, unless such knowledge is necessary for the performance of the duties of the position and the employer has taken all reasonable steps beforehand to avoid imposing such a requirement.

An employer will be deemed not to have taken all reasonable steps if it has not met one or more of the following three conditions before imposing such a requirement:

- Conducted an assessment to determine the language needs associated with the duties to be performed.
- Ensured that the knowledge of another language already required from other employees was insufficient for the performance of this employee's duties.
- 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 French.

Should an employer not be able to demonstrate this, the requirement to have knowledge of a language other than French will be considered a prohibited practice under the CFL.

However, an employer does not have to conduct an unreasonable reorganization of its business to meet these three conditions.

On this point, in the case of *Kim c. Ultium Cam, 2024 CarswellQue 11773 (T.A.T.D.R.T.)*, the Administrative Labour Tribunal (ALT) addressed a complaint by Byung Chan Kim, who claimed he was denied a position due to language requirements that violated

the Charter of the French Language (CFL). Ultium Cam had posted a job advertisement exclusively in Korean, requiring proficiency in both English and Korean without justification. Mr. Kim applied with a French-language résumé but was asked to submit an English version and converse in English and Korean during the interview. After not being selected, Mr. Kim filed a complaint, asserting the language requirements were unjustified and discriminatory. The ALT found that the conditions for a presumption of prohibited practice under sections 45 and 46 of the CFL were met, shifting the burden to Ultium Cam to prove the language requirements were essential and that reasonable measures were taken to avoid them. The Tribunal concluded that Ultium Cam failed to provide sufficient evidence that the job duties required knowledge of English and Korean and did not minimize the number of positions requiring such languages. Additionally, the employer violated section 46 of the CFL by not including justifications for the language requirements in the job posting. Ultium Cam's defense that the language requirements were necessary for the job was rejected because they did not provide adequate evidence to support this claim. In paragraphs 46 and 47 of the decision, the Tribunal addressed Ultium Cam's argument that Mr. Kim did not possess the necessary skills for the position, regardless of the language issue. The employer presented evidence to support this claim. However, the judge deemed this evidence irrelevant and inadmissible, stating that the primary issue was the unjustified language requirements, not Mr. Kim's qualifications. The Tribunal concluded that the interpretation of the relevant articles of the CFL does not allow for an additional defense, such as another just and sufficient cause, completely unrelated to the requirement of knowledge of a language other than French to exempt from the application of the presumption. Consequently, the ALT upheld Mr. Kim's complaint in the decision rendered on September 16, 2024, emphasizing the importance of adhering to the CFL's provisions to protect the right to work in French in Québec. This is the first case on this issue, and it will be interesting to see how case law develops around it.

Prohibited Sanctions and Other Retaliatory Measures

The CFL expressly indicates that an employer is prohibited from imposing sanctions or reprisals against an employee for any of the following reasons:

- The employee has demanded that a right under the CFL relating to language of work be respected.
- To deter the employee from exercising a right under the CFL relating to language of work.
- The employee is exclusively French speaking, or does not have knowledge or a specific level of knowledge of a language other than French, where the performance of their duties does not require knowledge of another language.
- The employee has taken part in meetings of, or carried out tasks for, a francization committee or a subcommittee of that committee (see Francization of Companies).
- To induce an employee member of a francization committee to endorse, or to dissuade them from doing so, the company's linguistic analysis, francization program, or three-year report to be submitted to the Office.
- The employee has, in good faith, communicated information to the Office or cooperated in an investigation in connection with an alleged breach of the CFL.

The CFL also provides for a complaint process against employers under the authority of the Québec Employment Standards Board called the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (the CNESST). Any person who believes that they have been the victim of a prohibited practice can file a complaint with the CNESST within 45 days of the event.

The CNESST may then, with the agreement of the parties, appoint a person who will endeavour to settle the complaint. If no settlement is reached, the complaint will be referred to the ALT.

See CFL, CQLR, c. C-11, sections 45, 47, 47.1, 47.2 and 47.3.

Workplace Free of Discrimination or Harassment

The CFL explicitly provides that employees have the right to work in an environment free of discrimination or harassment with respect to the use of French. Employers are required to take reasonable steps to prevent such discrimination or harassment and, if such conduct is brought to their attention, to make it cease.

Employees who believe they have been victims of such discrimination or harassment can file a complaint with the CNESST within two years of the date of the last incidence of the offending behaviour.

See CFL, CQLR, c. C-11, sections 45.1 and 47.4.

Francization of Companies

Under the CFL, it is mandatory for companies with a certain number of employees in Québec to obtain a francization certificate with respect to their Québec operations attesting to the fact that the use of French is generalized at all levels of the company. Francization refers to the process of enhancing the status of French as the everyday language of the workplace.

Until June 1, 2025, francization requirements only apply to companies who employ 50 or more employees in Québec for a period of six months. As of June 1, 2025, these requirements will apply to all companies employing 25 or more employees in Québec.

See CFL, CQLR, c. C-11, section 139.

Registering with the Office

The CFL provides that companies who become subject to the francization requirement are required to register with the Office within six months.

See CFL, CQLR, c. C-11, section 139.

Analysis of the Employer's Language Situation

The CFL provides that within three months following the date of issuance of the registration certificate, companies must submit an analysis of their language situation to the Office.

See CFL, CQLR, c. C-11, section 139.

Developing a Francization Program

The CFL provides that, if the Office is satisfied that the use of French is generalized at all levels of the company in Québec, it will directly issue the company its francization certificate. If not, the Office will notify the company that it must implement a francization program to generalize the use of French throughout

the company. Such a francization program must be submitted within three months following receipt of such notice from the Office.

Once submitted, the Office will issue an implementation certificate to the company if the Office approves the francization program. The company must then submit reports to the Office on the implementation of its francization program every 12 months. The company must also circulate its francization program and the report(s) on its implementation to its employees.

Once the Office is satisfied that the company has fully implemented the francization program, it will issue a francization certificate to the company.

See CFL, CQLR, c. C-11, sections 140, 143 and 145.

Permanence of the Francization

The CFL provides that a company holding a francization certificate must submit reports to the Office every three years on the progress of the use of French within the company.

If the Office considers, after examining the three-year report, that the use of French is no longer generalized at all levels of the company, it may order the company to develop and implement an action plan to remedy the situation, which must be submitted to the Office for approval within two months of the date the company received the order.

See CFL, CQLR, c. C-11, sections 146, 146.1 and 146.2.

Francization Committee

The CFL requires that companies employing 100 or more Québec employees must form a francization committee. It also provides that companies employing fewer than 100 persons in Québec who are subject to the francization requirement will not be required to form such a committee unless the Office orders them to do so.

See CFL, CQLR, c. C-11, section 136.

Francization Committee Requirements

The francization committee is composed of six or more persons: half of the committee's members must be representatives of the employees and the other half of the committee's members must be designated by the company's management.

The francization committee is required to meet at least once every six months. Minutes must be taken at each meeting, which must then be transmitted to the company's management and to the Office. The CFL further requires companies to provide a list of the francization committee members to the Office and that this list be circulated among the company's staff, through signs and posters or by any other means deemed appropriate by the company.

See CFL, CQLR, c. C-11, section 136, 137, 138 and 138.3.

Obligations of the Francization Committee

The CFL sets out the role and responsibilities of the francization committee by listing the various obligations it must meet. These include the following obligations:

- Designate an employee representative to the Office.
- Ensure that the analysis of the linguistic situation is carried out, including the drafting of a report setting it out.
- See to the development of the francization program, supervise its implementation and, where necessary, see to the preparation of the implementation report(s) on it.
- When the company holds a francization certificate, ensure that the use of French remains generalized within the company and see to the drafting of the three-year report.
- At the request of the company's management, give its opinion on the employer's practice of requiring a person to have knowledge or a specific level of knowledge of a language other than French in order to keep or obtain a position, and on the steps taken to avoid imposing such a requirement.

See CFL, CQLR, c. C-11, section 138.1.

Office Investigative Powers

For the purposes of the CFL, the Office may make inspections and inquiries.

In doing so, the CFL grants the Office the powers and immunity of commissioners appointed under the *Act respecting public inquiry commissions*, CQLR, c. C-37

(except the power to order imprisonment). The CFL also provides the following specific powers to the person making an inspection:

- The power to enter at any reasonable hour any place, other than a dwelling, where an activity governed by the CFL is carried on, or any other place where documents or other property to which the CFL applies may be held.
- Take photographs of the place and the property therein.
- Cause any person present who has access to any computer, material, or other equipment on the premises to use it to access data relevant to the application of the CFL contained in any electronic device, computer system, or other media or to verify, examine, process, copy or print such data.
- Require any information relating to the application of the CFL or its regulations and the communication, for examination or reproduction, of any document relating thereto.
- Require any person to communicate any information or document relating to the carrying out of the CFL.

See CFL, CQLR, c. C-11, sections 166, 172, 174, and 175.

Penalties

Natural and Legal Persons

The penal provisions in case of offences to the CFL are, for both natural and legal persons:

- **Natural persons:** \$700 to \$7,000.
- **Legal persons:** \$3,000 to \$30,000.

These minimum and maximum fines are doubled for a second offence and tripled for a subsequent offence. The CFL also provides that directors and officers are subject to fines of between \$1,400 and \$14,000 for offences under the CFL.

In addition, where a legal person or an agent, mandatary or employee of a legal person commits an offence under the CFL, the director of the legal person is presumed to have committed the offence unless such director establishes that they exercised due diligence by taking all necessary precautions to prevent the offence.

See CFL, CQLR, c. C-11, sections 205, 207, and 208.

Disclosure of False Information to the Office and Reprisals for Reporting or Cooperating in an Investigation

The CFL also provides that a person is subject, in the case of a natural person, to a fine of between \$2,000 to \$20,000, or in any other cases, to a fine of between \$10,000 to \$250,000, that either:

- Willfully discloses false or misleading information to the Office.
- Retaliates or threatens to retaliate against a person who, in good faith, discloses information to the Office or cooperates in one of its investigations.

See CFL, CQLR, c. C-11, section 206.

Repeated Offences

The minimum and maximum fines are doubled for a second offence and tripled for any additional subsequent offence. In addition, if the offence continues for more than one day, each day will be considered as a separate offence, which will have a multiplying effect on the amount of the fine.

See CFL, CQLR, c. C-11, sections 207 and 208.01.

Other Non-Compliance Risks

In addition to the above penalties, the CFL provides for the following sanctions for non-compliance:

- **Non-enforceability of an agreement.** The provisions of a contract (including an employment agreement) that contravene the provisions of the CFL may be, in certain circumstances, annulled or its obligations reduced on the application of the person who suffers a prejudice. Where the provisions are those of an adhesion contract (including an employment agreement for which an employee could not negotiate the essential terms and conditions), the adhering party can challenge the enforceability of the agreement as a whole, even without having to prove that the breach of the CFL caused a prejudice.
- **Contracts with Québec Civil Administration.** The Québec civil administration cannot enter into a contract with a company, nor can it grant subsidies to any such company, where the company has not respected the applicable francization process requirements.

Québec Language Requirements in the Workplace

- **Civil remedies.** Where an employer breaches the CFL, an employee may file a claim in a Québec civil court to obtain the cessation of the violation (injunction) and/or to obtain any damages suffered.
 - **Administrative sanctions.** The Office may refuse, suspend, or cancel the attestation of implementation of a francization program or the francization certificate of a company that is not or is no longer complying with its obligations under the CFL.
 - **Non-Compliance List.** The Office publishes on its website a list of enterprises which are non-compliant with the francization requirements of the CFL. Appearing on this list may negatively impact a company's reputation and corporate image within the province of Québec.
- See CFL, CQLR, c. C-11, sections 204.17, 204.18, 204.21, 147, 204.28, and 152.1.

Practical Recommendations

In order to comply with the requirements set forth in the CFL as amended by Bill 96, employers should, in particular:

- Review their hiring process and job postings to ensure that they meet the new requirements of the CFL regarding the need for an employee to know a language other than French.
- Ensure that the French and English versions of their job offers are published simultaneously and through the same means of transmission and reach a targeted audience of comparable size.
- Ensure that they communicate in writing with their employees in French and provide them with all documentation related to their employment in French.
- Translate their employment contracts into French (if they are adhesion contracts) and insert a clause indicating that the employee has received the French version of the contract and wishes to be bound by the English version of the contract (if applicable).

Respect the requirements of the francization process, including the relevant deadlines.

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