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New draft regulation clarifies certain provisions of the *Charter of the French Language* for businesses

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On January 10, 2024, Québec's Minister of the French Language, Jean-François Roberge, published a draft *Regulation to amend mainly the Regulation respecting the language of commerce and business* (the Draft Regulation) in the Gazette officielle du Québec.

This Draft Regulation aims to clarify certain amendments made under *An Act respecting French, the official and common language of Québec* (often referred to as Bill 96) to the *Charter of the French Language* (the Charter) (see our previous bulletin) and to facilitate the implementation of the Charter.

What you need to know

- **Exceptions to the use of French on products and packaging.** The Draft Regulation further addresses where product and packaging information can be provided exclusively in a language other than French—for example, a two-year extension to comply for products *manufactured* before June 1, 2025 is available in certain circumstances, and the definition of a "registered trademark" has been *broadened* to include *applications pending* at the Canadian Intellectual Property Office (CIPO).
- **Requirements outlined for the predominance of French for products and availability of related contracts in French.** The Draft Regulation also simplifies the application of certain Charter provisions related to packaging information and contracts of adhesion, and introduces new rules for public signage bearing trademarks and company names—for example, the Draft Regulation clarifies the "markedly predominant" requirement for French and thus, repeals the *Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French language.*
- **Comment period is open until February 26**. Written comments on the Draft Regulation may be submitted to the Minister of the French Language until February 26, 2024 (45 days from the publication of the Gazette).
- **Timeline for provisions coming into force.** While the majority of the provisions will come into force on June 1, 2025, some will come into force 15 days after they are published in the Gazette, including provisions that 1) have been reworded for consistency with the Charter; 2) define the scope of the term "inscription on a product" for the purposes of section 51 of the Charter; 3) clarify that documents covered by section 52 of the Charter include information published on websites and social media; and 4) are related to contracts of adhesion.

Overview of the amendments to the *Regulation respecting the language of commerce and business*

Registered trademark exception

As mentioned in our bulletin about the impact of Bill 96 on packaging, signage and commercial advertising, the "recognized trademark" exception will be replaced by a "registered trademark" exception on June 1, 2025. This change is reflected in the Draft Regulation.

The Draft Regulation provides a welcome clarification: for the purposes of the Charter, a pending trademark application will be considered as a registered trademark as of the date of the application for its registration to the Registrar of Trademarks and will be allowed to appear exclusively in a language other than French as long as no corresponding French version has been registered. Given lengthy examination delays at CIPO, this provision is very helpful to brand owners. (Notably, the "registered trademark" exemption was *not* similarly broadened for trademarks on signage/commercial advertising.)

Even then, as of June 1, 2025, if a generic term or a description of the product is included in a registered mark, it must appear in French on the product or on a medium that is permanently attached to the product.

In this regard, the Draft Regulation provides further and much-anticipated clarification since the expressions "generic term" and "description" have raised many interpretive questions. The Draft Regulation states that "a *description* refers to one or more words describing the characteristics of a product" and "a *generic term* refers to one or more words describing the nature of a product". That said, the Draft Regulation does not provide specific guidance about how this will be interpreted.

Moreover, it clarifies that under no circumstances should a generic term or a description of a product included in a trademark written in other languages be given greater prominence than that in French or be available on more favourable terms.

The Draft Regulation also provides that "a product" includes its container, wrapping and any other document or object supplied with it.

Finally, the Draft Regulation provides that if a product was manufactured before June 1, 2025, and no French version of its recognized trademark was registered on the date of publication of the regulation in the Gazette, any product that does not comply with the "registered trademark" exception provided for in section 51.1 of the Charter that will come into force on June 1, 2025, may, until **June 1, 2027**, still be distributed, sold at retail, rented, offered for sale or rental or otherwise marketed. This provision, therefore, provides a welcome additional adjustment period, given the length of time consumer products can remain in retail channels before sale.

Inscription on a product and documents available to the public

The Draft Regulation clarifies that the inscription on a product, which must be in French in accordance with section 51 of the Charter (and may be accompanied by a translation provided that this translation is not given greater prominence than the French version), extends to "the inscription displayed for the user using an integrated software".

The regulation confirms the position already taken by the Office de la langue française, namely that the requirement for documents referred to in section 52 of the Charter (catalogues, brochures, folders, etc.) to be drawn up in French and to make the French version available on terms that are as favourable as those in another language, includes information published on websites and social media platforms.

These clarifications are among those that will come into force before June 1, 2025.

Contracts of adhesion

In accordance with the provisions of the Charter in force since June 1, 2023, contracts of adhesion must be drawn up in French. A party cannot explicitly choose to adhere to a contract of adhesion drawn up in a language other than French unless it has first examined the French version. The documents related to the contract may then be drawn up exclusively in that other language. The Draft Regulation specifies that the documents related to a contract of adhesion include documents attesting to the existence of the contract, such as a certificate of insurance, documents whose attachment to the contract are required by law (such as a resolution or resiliation form) and documents that otherwise constitute an ancillary document. This list is non-exhaustive given the wording of the provision.

The legislator also clarified how to satisfy the requirement to provide the French version of a contract of adhesion before a party could choose to adhere to the version in another language when the contract is made by telephone or digitally, which had also raised many questions. In the first case, the requirement is satisfied if the adhering party has had the opportunity to consult a French version of the applicable standard clauses digitally or if the contract is to take effect immediately and the adhering party does not have the technological means to access the applicable standard clauses. In the second case, the requirement is satisfied if a French version of the applicable standard clauses has been provided to the adhering party.

Public signage

The Draft Regulation clarifies certain provisions of the Charter regarding public signage. In particular, it addresses the scope of the "markedly predominant" requirement for French in public signage and commercial advertisements. In view of these new rules, the *Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French language* is repealed.

Pursuant to the Draft Regulation, "markedly predominant" is where "the text in French has a much greater visual impact than the text in the other language". Furthermore, greater visual impact is deemed to occur when 1) the French text is at least twice as large as the text in the other language, and 2) the legibility and permanent visibility of the French text are equivalent to the text of the other language. However, the Draft Regulation does not provide specific guidance about how this second criterion, which is new, will be interpreted. The Draft Regulation also lists factors that should not be considered when assessing the marked predominance of French (business hours, addresses, etc.) and visual impact.

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

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