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BRANDING IN QUÉBEC.

How to navigate the Bill 96 recent amendments to the *Charter of the French Language* and their impact on trademarks used in Québec

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Our speakers



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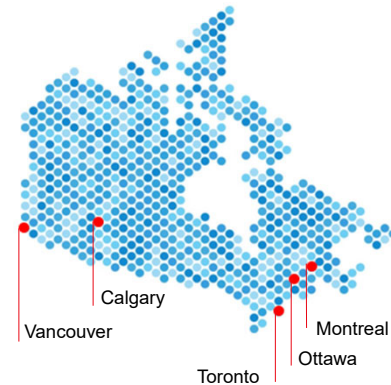
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Who we are

Canada's **leading IP law firm** with expertise at the interface of **technology** and **business** law

- Expertise in all areas of IP
- 130+ years serving clients
- 125+ lawyers, agents and technical consultants
- 10,000+ patents & trademarks filed annually
- Litigation bench strength and record of success



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Overview

1. The *Charter of the French Language* ("French Charter") and Bill 96
2. The recognized TM exception
3. Changes to come under Bill 96 affecting the TM exception
4. How to prepare
5. Q&A

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1. The French Charter and Bill 96

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The French Charter: What it is

- Statute adopted by the government of Québec in 1977 to protect the French language in all spheres of public life



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Bill 96 : Key impacts on Québec French language law

- Statute sanctioned by the Québec government on June 1, 2022
- Introduction of a new “right to live in French”
- Major revisions, *inter alia*, to the French Charter impacting, *inter alia*, work, education, business and commerce, including contracts, the courts, etc.
- Complaint process revised
- Increased powers for the Office québécois de la langue française (OQLF)
- Increased fines
- Claw back on the trademark exception

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Territorial application



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Our focus

- Language of commerce and business



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General rule: Product markings and accompanying documentation

Must be in FRENCH



Other languages may be used

- **No greater prominence** requirement
- **Available on terms as favourable** requirement

Accompanying documentation

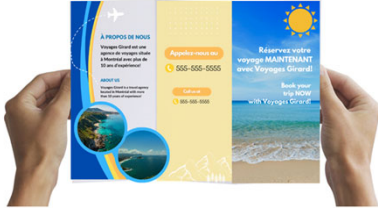
- Certificates of warranty / authenticity
- User manuals
- Brochures / promotional materials
- Registration cards
- Discount coupons

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General rule: Commercial publications

Must be in **FRENCH**



Other languages may be used

- **No greater prominence** requirement
- **Available on terms as favourable** requirement

Commercial publications

- Websites and social media
- Brochures
- Flyers
- Catalogues
- Commercial directories

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General rule: Public signage and advertising

Must be in **FRENCH**



When other languages may be used alongside French

- **Markedly predominant** requirement

Public signage and commercial advertising

- Messages displayed in a place accessible to the public
- On any medium whatsoever such as signs, posters, billboards, storefronts

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2. The Recognized Trademark Exception

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Key Point

A recognized TM does **not** need to be translated into French **provided** that no French version of the TM has been (previously) registered in Canada

TAKE AWAY:

Do not register a French version of the TM

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A recognized TM: What it is

Registered TM

- CIPO has issued a certificate of registration for the TM

Benefits

- Matter is generally resolved before the OQLF

Common law TM

- TM used, promoted and advertised in Canada to the point where it has acquired some level of recognition in the market

Limited and burdensome

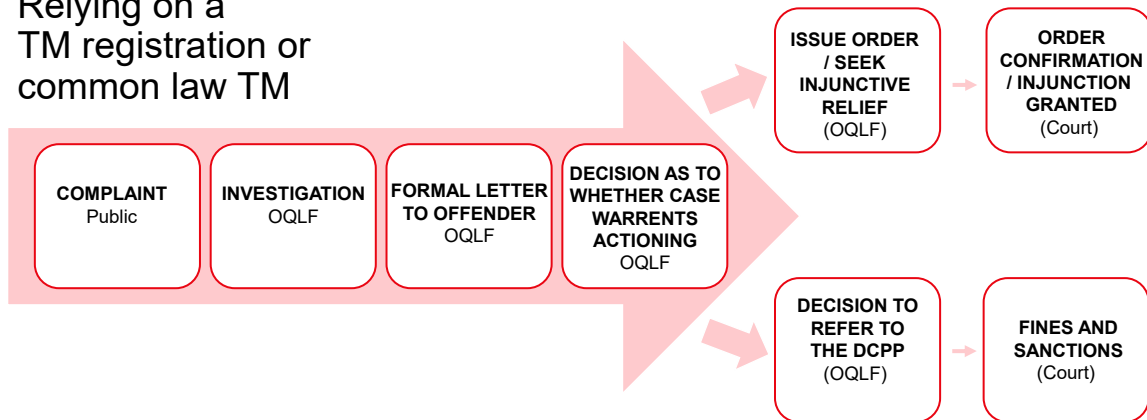
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Complaint Process

Relying on a TM registration or common law TM



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A recognized TM outside a building

- Recognized TM displayed outside a building must be accompanied by French inscriptions as per the “**sufficient presence of French**” requirement
- **Solution:** Add descriptive language, a slogan or an indication as to the nature of the business.



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3. Bill 96 and the recognize TM exception

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Markings on products

Currently

- Registered or common law
- No French version registered

As of June 1, 2025

- Restricted to ® TMs
- No French version appears on the register
- **Generic term/description** in a ® mark must be translated to French and appear on the product or on a medium permanently attached to the product

sec. 51.1 French Charter

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New requirement for markings on products: generic term / description of the product



Interpretation of the OQLF?

When the language serves to inform the consumers about

- the products itself
- its characteristics
- its features ?

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New requirement for markings on products: Other outstanding issues

- applies only to markings on the product as opposed to its container or packaging?
- what qualifies as a “medium permanently attached to the product”?
- will the “no greater prominence requirement” apply to the French translation of the generic and descriptive terms?



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Public sign and commercial advertising

Currently

- Registered or common law
- No French version registered
- If displayed outside an immovable (i.e. a building): “sufficient presence of French” requirement (on the sign or elsewhere)

As of June 1, 2025

- Restricted to ® TMs
- No French version appears in the register
- If **visible from outside premises**: “markedly predominant” requirement (on the sign)
sec. 58.1 French Charter

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Public sign and commercial advertising



“displayed outside an immovable” VS “visible from outside premises”



“immovable” : means a building and any structure intended to receive at least 1 person for the carrying on of activities, regardless of the materials used, excluding a temporary or seasonal facility.



“premises” : means a space, closed or not, devoted to an activity, in particular a stand or counter intended for the sale of products in a mall, excluding a temporary or seasonal facility



Regulation respecting the language of commerce and business, c. C-11, r. 9

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Public sign visible from outside premises

- Sufficient presence of French will no longer be accepted



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Public sign visible from outside premises

- French must be **markedly predominant**
 - Greater visual impact
 - Twice as large



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Commercial publications

- Bill 96 is silent as to whether the new restricted recognized TM exception applies to **commercial publications**
 - it is safe to assume it will

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What about federally regulated entities?

- **89.1** *No provision of this Act may be interpreted in such a way as to prevent its application to any enterprise or employer carrying on its activities in Québec.*

- “the purpose of section 89.1 of the Charter of the French Language [...] is to ensure that the provisions of the Charter apply to companies and employers operating in Quebec, regardless of whether they fall under the jurisdiction of the Parliament of Canada or the Parliament of Quebec [...] the Quebec government is very clear that it is sovereign in its areas of jurisdiction, and will exercise them to the full extent of its jurisdiction, and we will be extremely firm on these points”
- Excerpts of the debates of the Bill 96 Commission (our translation).

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Right to live in French and be informed and served in French

- Important amendments introduced by Bill 96
 - could give rise to a class action by consumers

Charter of human rights and freedoms

3.1. *Every person has a right to live in French to the extent provided for in the Charter of the French language (chapter C-11).*

French Charter

50.2. *An enterprise that offers goods or services to consumers must respect their right to be informed and served in French. An enterprise that offers goods or services to a public other than consumers must inform and serve it in French.*

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4. How to prepare

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Challenges for businesses

- Current delays for examination at CIPO
 - As of November 1, 2023
 - More than 4 years for applications not using the pre-approved descriptions from the Goods and Services Manual
- Obtaining a registration to comply with the French Charter → not a basis for accelerating examination
- Translating registered TMs → **may jeopardize trademark rights!**



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Get your TMs registered

TMs need NOT be registered for all the goods/services offered in Quebec

USE pre-approved descriptions from the Goods and Services Manual

- Currently: 20 months compared to 54 months
- **File** TM applications with the pre-approved descriptions from the Goods and Services Manual
- **Amend** products and services of pending TM applications to replace with the pre-approved descriptions from the Goods and Services Manual

REQUEST Expedited prosecution

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Get your TMs registered (cont.)

- What will happen if you do not get a registration by June 1, 2025?



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Risk of not complying with the *French Charter*

Increased fines

- from \$700 up to \$7,000 (individuals)
- from \$3,000 up to \$30,000 (legal person)
- doubled for a second offence and tripled for a subsequent offence
- doubled if the offence is committed by a director or officer of a legal person
- if the offence continues for longer than one day, it will constitute a separate offence for each day it continues

Greater enforcement powers for the OQLF

- issue orders for failure to comply with the French Charter.
- seek injunctive relief before the Quebec courts.

Reputational risk

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OQLF : Approach



Usually reasonable when willingness to cooperate and remedy the situation



Tries to resolve most complaints amicably (in 85% of the cases according to the OQLF 2022-2023 Annual Report)

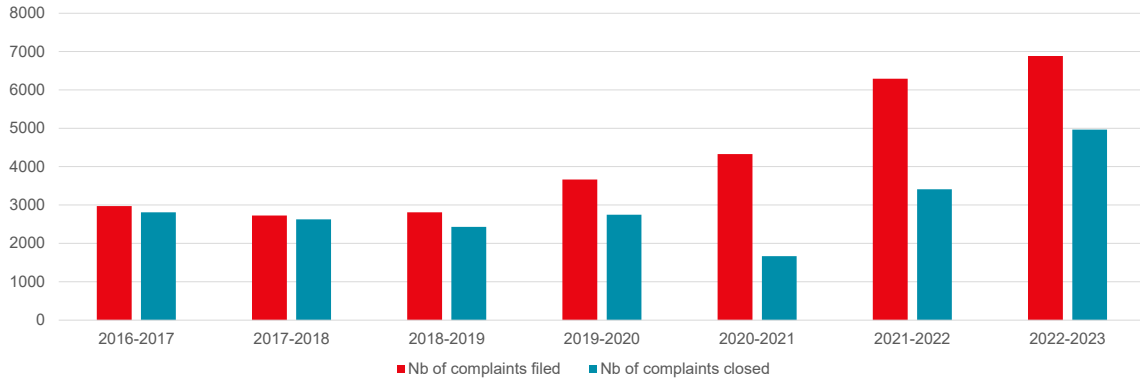


May be incline to allow phase-out periods

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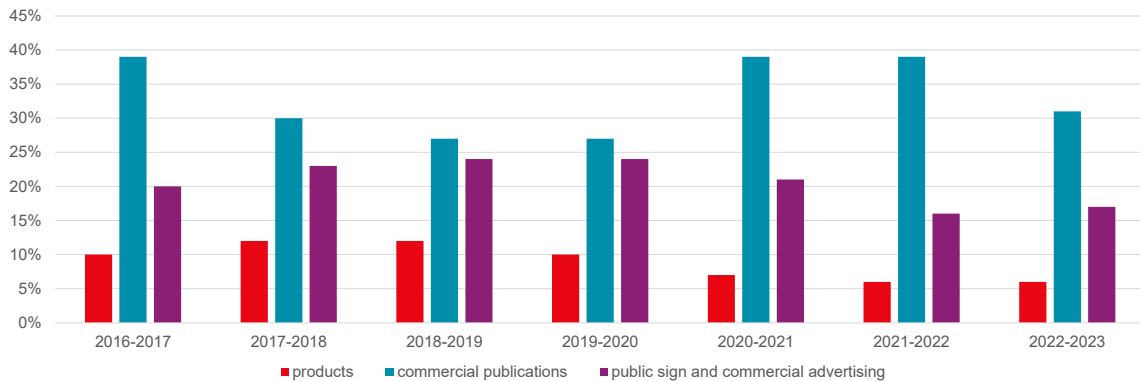
OQLF statistics: Complaints



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OQLF statistics: Complaints (cont.)



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OQLF statistics: Fines

2022

Contrevenant	Date de la condamnation par le Cour du Québec	Montant	Article
1359470 Ontario inc. (StenTech)	2022-12-16	1 500 \$	52
Annexair inc.	2022-11-17	1 500 \$	52
6448420 Canada inc. (Ramada Plaza le Manoir du Casino)	2022-11-09	1 500 \$	58 (et 25-1 RLCA)
Worldcom Produits de beauté inc.	2022-11-01	1 500 \$	58
Industries Allerair inc.	2022-06-09	1 500 \$	52
Quality Belt maintenance ltée	2022-05-12	1 500 \$	52 (et 10 RLCA)
9301.5350 Québec inc. (Shop santé)	2022-01-28	1 500 \$	51

2023

Contrevenant	Date de la condamnation par le Cour du Québec	Montant	Article
Consultation Globale H & M (Sport Haloween)	2023-07-25	1 500 \$	57
Consultation Globale H & M (Sport Haloween)	2023-07-25	1 500 \$ (1)	51
Consultation Globale H & M (Sport Haloween)	2023-07-25	1 500 \$ (2)	51
Fabrications Femos inc. (Femos inc.)	2023-04-19	1 500 \$	52
9379-4774 Québec inc. (Kamela Popcorn)	2023-04-13	2 500 \$	52
9225-7419 Québec inc. (Second Cup)	2023-04-06	1 500 \$	58 (et 25-1 RLCA)
MDR Aéro inc.	2023-03-31	3 000 \$	52
Fontaine Hermes inc.	2023-02-28	3 000 \$	52
3849520 Canada inc. (Epicure Kim Plat)	2023-01-24	1 500 \$	51
9167-9134 Québec inc. (Gardara)	2023-01-23	1 500 \$	58

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Revise your TM portfolio (for products)

Step 1

Identify TM registrations incorporating non-French wording that the OQLF may potentially consider generic or descriptive of the product

- Do a second review when Regulations are revised, and practical guides, published

Step 2

Consider modifying potentially problematic TMs and apply to register them to rely on the TM exception with products from Goods and Services Manual to expedite prosecution

Step 3

Consider translating generic terms or description for the Québec market

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Evaluate the risks (for products)



If a complaint is filed

- Delays to replace labels / packaging
 - phase-out period
 - product life on the market
- Delays to rebrand

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Revise your signage visible from outside premises (Building?)

- For compliance with → “markedly predominant” requirement
- Alternatively, consider replacing non-French TMs
 - Logo TMs without wordings
 - TMs that are invented terms

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Other measures

- Assume that the new restricted recognized TM exception will also apply to commercial publications



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5. Q&A

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Useful resources

French Charter

www.legisquebec.gouv.qc.ca/en/showdoc/cs/c-11

Regulation respecting the language of commerce and business

www.legisquebec.gouv.qc.ca/en/showdoc/cr/C-11,%20r.%209

Regulation defining the scope of the expression "markedly predominant"

www.legisquebec.gouv.qc.ca/en/ShowDoc/cr/C-11,%20r.%2011%20/

Bill 96

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2022C14A.PDF>

OQLF website

www.oqlf.gouv.qc.ca/accueil.aspx

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Thank you!

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