

# DOING BUSINESS IN QUÉBEC



DAVIES



# Doing Business in Québec

5<sup>th</sup> edition

## ABOUT THIS GUIDE

The major legal and practical considerations relevant to doing business in the Province of Québec are covered in our Doing Business in Canada guide. This guide serves as a supplement to our Doing Business in Canada guide by providing those interested in doing business in Québec with some additional details that may affect their operations in that province.

Note that this guide, together with our Doing Business in Canada guide, provides information on laws and regulations that affect the conduct of business in the Province of Québec but is not an exhaustive treatment of those laws and regulations or the issues that may arise when doing business in Québec. Accordingly, before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

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### TORONTO

155 Wellington Street West  
Toronto, ON M5V 3J7  
TEL 416.863.0900

### MONTRÉAL

1501 McGill College Avenue  
26th Floor  
Montréal, QC H3A 3N9  
TEL 514.841.6400

### NEW YORK

900 Third Avenue  
24th Floor  
New York, NY USA 10022  
TEL 212.588.5500

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# 01

## Introduction

# 01

## Introduction





The Province of Québec is Canada's second largest and second most populated province. Its distinct culture, language and legal system present unique opportunities and challenges for those considering doing business there. Québec's history is rooted in its French origins from which it has retained not only the French language but also a legal system based on the French civil law, rather than the British common law. Today, Québec is predominantly French-speaking and has a distinct European flair unique in North America. Although a civil law jurisdiction in which private law matters, such as contract and property, are governed by a Civil Code, Québec's legal system is in effect a mix of civil law and common law, strongly influenced by Canada's North American location and orientation.



# 02

## Corporate Registration Requirements

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## Corporate Registration Requirements



Businesses operating in Québec are required to file and update certain information with a governmental authority called the Enterprise Registrar (the “Registrar”). This information is then included in a public register. The initial filing of information is done by way of registration with the Registrar. Corporations constituted under the laws of a jurisdiction other than Québec are required to register within 60 days of the date at which they begin to carry on an activity, including the operation of an enterprise, in Québec. The concept of carrying on an activity or operating an enterprise in Québec is very broad, and includes having an address, establishment, post office box or the use of a telephone line in Québec, or merely performing any act for profit in Québec.

The declaration of registration must contain, among other things, the registrant’s name and any other name used by it in Québec to carry on its business, although a registrant is prohibited from declaring or using in Québec a name that is not in conformity with the *Charter of the French Language*.



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## Labour Law Requirements

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## Labour Law Requirements





## Employer Contributions

### **COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL DU QUÉBEC**

Every employer having an establishment in Québec and at least one employee at his or her employ, working full time or not, must register with the *Commission de la santé et de la sécurité du travail du Québec* (“CSST”) and must provide the CSST, within 60 days following the date on which the employer commences carrying on business in Québec (which usually corresponds to the hiring date of the first employee), the prescribed information, failing which late fees, plus interests, will be imposed upon the employer.

### **EMPLOYER HEALTH TAX**

Under *An Act respecting the Régie de l'assurance maladie du Québec*, except for a few employers, every employer in Québec must pay to the Québec tax authority, Revenu Québec, a contribution ranging from 2.7% to 4.26% of the wages paid to its employees in the province to finance the health plan.

### **QUÉBEC PENSION PLAN**

The employer will have to make a contribution to the provincial pension plan equal to 5.175% of the amount by which the pensionable salary exceeds the exemption for the pay period (the basic exemption is equal to \$3,500 per year) under the *Act respecting the Québec Pension Plan*.

### **VOLUNTARY RETIREMENT SAVINGS PLAN**

In December 2013, the Québec National Assembly enacted the *Voluntary Retirement Savings Plan Act*, which creates voluntary retirement savings plans (“VRSP”s), the provincial equivalent of the “pooled registered pension plans” or “PRPPs” initiative announced by the federal government, but with a number of distinct features.

A VRSP is a new kind of deferred income plan designed to provide retirement income for employees and self-employed individuals who do not have access to a workplace pension. Businesses in Québec with five or more employees aged 18 years or older and with at least one year of uninterrupted service will be required to offer the VRSP to their employees, unless a registered pension plan, group registered retirement savings plan or group tax-free savings account is in place. Businesses with four or fewer employees will not be required to set up a VRSP, although they can if they wish. Self-employed individuals can also join a VRSP on their own. It bears noting that under the federal PRPP rules (which apply to federally-regulated industries) and provincial rules currently

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## Labour Law Requirements

contemplated in other jurisdictions, employers will not be required to enroll their employees in a plan.

Employers will have few administrative tasks beyond selecting the plan administrator, enrolling eligible employees, arranging for automatic payroll deductions and remitting amounts to the administrator, and notifying the administrator if an employee terminates employment, dies or retires. Moreover, employers are not required to contribute to the VRSP, although they may choose to do so (in which case such contributions are not subject to payroll taxes and will be deductible to the employer for income tax purposes).

Affected employers will be required to automatically enrol their employees into VRSPs according to the following timetable:

- businesses with at least 20 eligible employees on June 30, 2016, will have until December 31, 2016, to subscribe to a VRSP and automatically enroll their employees in the plan;
- businesses with 10 to 19 eligible employees on June 30, 2017, will have until December 31, 2017, to subscribe to a VRSP and automatically enroll their employees; and
- businesses with five to nine eligible employees on June 30, 2018, will have until December 31, 2018, to subscribe to a VRSP and automatically enroll their employees.

Once enrolled, employees may “opt out” of the plan by giving their employer a notice to that effect within 60 days. Not opting out will mean the start of payroll deductions.

### **EMPLOYMENT INSURANCE**

Employers and employees in Canada are required by the *Employment Insurance Act* to contribute to the employment insurance account administered by the federal government. Employee premiums are calculated each year. For 2014, the employee premium is 1.53% of insurable earnings up to a maximum of \$48,600 (so that the maximum employee premium in 2014 is \$743.58). The employer must pay a premium equivalent to 1.4 times the employee's premium. The employer's contributions are deductible for tax purposes as a normal business expense and may be reduced if the employer supplies a salary insurance scheme to its employees.

Employment insurance benefits are paid to employees who lose their jobs due to a layoff or termination. Employees on maternity leave, parental leave, or absent due to illness are also covered. Self-employed persons are ineligible. Also, no benefits are paid to those who quit a job without cause or who are fired for misconduct.

In Québec, the provisions of the *Act respecting parental insurance* provide a parental insurance plan that grants benefits to the parents upon the birth of a child or the adoption of a minor. Every employee resident in Québec and every Québec employer is required to pay a premium. The 2014 employee contribution is 0.559% and 0.782% for the employer of earnings up to a maximum of \$69,000. The maximum contribution payable in 2014 by the employee is \$385.71 and by the employer is \$539.58.

## **OCCUPATIONAL HEALTH & SAFETY AND WORKERS' COMPENSATION**

In Québec, *An Act respecting occupational health and safety* is intended to eliminate dangers to the health, safety and physical well-being of workers. It grants an employee the right to refuse to perform work if there is reasonable cause to believe that the work would expose him or her to risks to health, safety or physical well-being or expose an unborn or breast-fed child to such risks, in the case of a pregnant or breast-feeding worker. Employees cannot contract out of the statute, although employees may agree with employers upon more favourable working conditions than the minimum standards required by law.

Québec's *Act respecting industrial accidents and occupational diseases* provides for compensation for injuries arising from employment and may include income replacement, compensation for bodily injuries, treatment, rehabilitation, and death benefits. Compensation is based on a no-fault system. Workers injured by accidents arising from employment or suffering from an industrial disease may receive compensation from the fund established for such purposes; they cannot, however, sue the employer for damages. In certain circumstances, the Act may apply to employers who do not have an establishment in Québec at the time when the accident occurs or the disease is contracted.

## **PROMOTION OF WORKFORCE QUALIFICATIONS AND SKILLS**

The *Act to promote workforce skills development and recognition* requires most employers with a payroll in excess of \$1 million to spend an amount representing at least 1% of their total payroll on eligible training expenditures. Employers who do not spend the minimum amount fixed by law are required to pay to the Québec tax authority, *Revenu Québec*, the difference between the statutory amount and the amount actually spent.

## **➔ Minimum Standards**

- Employment minimum standards are set by the *Act respecting labour standards*. This legislation generally does not apply to senior managerial personnel, which has been interpreted as applying only to a limited group

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## Labour Law Requirements

of individuals who participate in the decision-making process with respect to the policies and strategies of the organization. The *Act respecting labour standards* and its regulations provide, *inter alia*:

- a minimum wage, as of May 1, 2014, of \$10.35/hour for normal employees (\$8.90/hour for employees who receive tips);
- a recourse for employees who are victims of specified prohibited practices, including psychological harassment;
- a remedy to employees who have more than two years of service and who believe they were dismissed without cause. An employee who is successful in challenging the employer's conduct may request to be reinstated in his or her employment, in addition to being awarded any lost wages;
- the possibility for an employee to be absent from work for an extended period of time for reasons related to his or her health or the health of his or her family. For example, an employee can be absent for as much as 104 weeks if his or her minor child has a serious and potentially fatal illness. Moreover, the employer has the obligation, at the end of the leave of absence, to reinstate the employee in his or her former position with the same benefits, including the wages to which the employee would have been entitled had the employee remained at work; and
- the right for all employees, in the absence of just cause for termination, to a notice of termination. The notice may be by way of "working notice" or pay in lieu of such notice.

In the case of a collective dismissal (i.e. the termination of 10 employees or more within two consecutive months), a notice must be sent to the Minister of Employment and Social Solidarity to ensure that a reclassification assistance committee is created within the organization.

## → Labour Relations

Labour relations in Québec are subject to the Québec *Labour Code*. The Québec *Labour Code* prohibits an employer from hiring anyone to replace striking or locked-out employees unless the replacement is a management employee who works in the establishment affected by the strike or lock-out. A new employer will be bound by a certification or a collective agreement, except in certain cases where there is a transfer of only part of the operation of an undertaking (enterprise) and such transfer does not entail the transfer of most of the elements that characterize the part of the undertaking (enterprise) involved.

## → *Civil Code of Québec*

Contracts of employment are also governed by the *Civil Code of Québec*. The following are some of its important employment provisions to keep in mind:

- the employer has to take measures consistent with the nature of the work to protect the health, safety and dignity of the employee;
- parties may stipulate in writing and in express terms a non-competition covenant, provided it is limited as to time, place and type of employment to what is necessary for the protection of the legitimate interest of the employer;
- employment contracts will not be terminated by a sale of the business or any change in its legal structure by way of amalgamation or otherwise, and will be binding on any successor employer;
- either party to an employment contract with an indeterminate term may terminate the contract, subject to reasonable prior notice; one of the parties may always terminate the contract, without prior notice, for a serious reason; and
- a “choice of law” clause in an employment contract may be unenforceable if it deprives the worker of the protection to which he or she is entitled under the mandatory provisions of the law of the country where the worker habitually carries on his or her work. The “choice of law” cannot be forced upon a worker.

## → **Pay Equity**

It is illegal in every province in Canada to pay a woman less for doing the same job as a man. In Québec, this principle is enshrined in the *Pay Equity Act* which applies to private and public sector employers with 10 employees or more. Employer obligations vary depending on the number of employees and include devising a pay equity plan if the employer employs 50 or more employees, and setting up a pay equity committee if it employs 100 or more employees.



# 04

## Privacy Law

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## Privacy Law





Privacy is protected in Québec pursuant to the Québec *Charter of Human Rights and Freedoms*, the *Civil Code of Québec* which addresses privacy rights in respect of personal information held by persons generally, and the *Act respecting the protection of personal information in the private sector* (the “Privacy Act”) which regulates commercial uses of personal information by private sector enterprises.

The Privacy Act imposes on employers around Québec a wide array of different obligations with respect to information held about both employees and customers.

In essence, pursuant to the Privacy Act, the collection and use of personal information is based on consent. Subject to a few exceptions, anybody who collects, uses or transmits information on another person must do so with that person’s consent. Thus, individuals have a “right to know” what enterprises know about them, and have the right to access such information and have it corrected if need be. In the event of a disagreement relating to the access or correction of personal information or the deletion thereof, individuals can apply to the Québec Access to Information Commission (*Commission de l'accès à l'information du Québec*), which is an independent administrative body that has adjudicative, investigative, and advisory powers.

The following rules set out in the Privacy Act are worth noting:

- only information about a natural, as opposed to a legal, person is subject to the Privacy Act. The Privacy Act is not intended to protect corporate or other legal persons. For example, information regarding an enterprise’s corporate clients is not information about the clients as individuals and, therefore, is not personal information within the meaning of the Privacy Act;
- the Privacy Act is technologically neutral and applies to written, graphic, taped, filmed, computerized or other forms of personal information;
- information is “personal” if it allows an individual to be identified;
- the Privacy Act provides that “any person carrying on an enterprise who may, for a serious and legitimate reason, establish a file on another person must, when establishing the file, enter its object”. The definition of the “object” is crucial because pursuant to the Privacy Act, personal information cannot be used for purposes not relevant to the object of the file;
- furthermore, only information necessary for the object of the file may be collected. The term “necessary” has been interpreted as meaning anything that is absolutely indispensable to the attainment of the “object” of the file. The enterprise should therefore take all the steps possible to ensure that “unnecessary” information not be collected;

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## Privacy Law

- an employer also has a notification obligation towards the person on whom a file has been opened to inform him or her, at the time of the establishment of the file, of the object of the file, the use which will be made of the information, the categories of persons who will have access to it within the enterprise, the place where the file will be kept and of the rights of access and rectification;
- the personal information contained in the file cannot be communicated to a third person, or be used for purposes not relevant to the object of the file, unless the person concerned consents thereto;
- consent will not be required from the person concerned where the information is communicated to an attorney, the attorney general, a person responsible for the prevention, detection or repression of crime etc.

### → Nominative Lists

A nominative list is a list of the names, addresses or telephone numbers of natural persons. If the list contains any other personal information about the individuals, it no longer qualifies as a nominative list. An enterprise can communicate a nominative list to third parties for commercial purposes without the consent of the individuals on that list if the following three conditions are met: (1) the disclosure is made pursuant to a contract prohibiting the third party recipient from using or communicating the list for purposes other than commercial or philanthropic solicitation; (2) if the list consists of the enterprise's clients, members or employees, they must be given a valid opportunity to "opt out" and refuse to have their personal information used by the third party recipient for such solicitations; and (3) the disclosure cannot infringe on individuals' privacy by identifying them as belonging to a particular category of persons.

Although the Privacy Act provides as a general rule that nominative information can be disclosed without consent, its opt-out condition essentially requires that consent to the disclosure be obtained where the list consists of the enterprise's clients, members or employees.

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## French Language Requirements

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## French Language Requirements



Québec is predominantly French-speaking and is concerned about protecting its language and unique culture, which has led to the adoption of certain “language laws” including the *Charter of the French Language* (the “Charter”). The Charter affects the conduct of business in Québec at all levels, from a company’s name to its interaction with its consumers and employees.

## → French Name

The Charter specifically provides that the name of an enterprise and names declared to the Enterprise Registrar must be in French. These names may be used concurrently with their original English version, provided that the French version of the name appears at least as prominently. However, in texts or documents drafted only in English, the name may appear in English only.

The French version of a name may contain family names, place names and expressions formed by the artificial combination of letters, syllables or figures. Expressions taken from other languages may also appear in a firm name, provided that a “generic” French language term is used in conjunction with the non-French expression. “Generic” refers to a term that is used to describe the type of business or products offered. For example, the name “Quickfix” by itself would not be acceptable. However, the name “Quincaillerie Quickfix” would meet the requirements of the Charter given the use of the generic term “Quincaillerie” (meaning “hardware store”). To the extent that the expression taken from another language, including English, is a recognized trade-mark under the Canadian *Trade-Marks Act* and that no French version of such trade-mark has been registered, it may appear exclusively, without any accompanying generic French term or expression, on a product or commercial publication. However, the *Office québécois de la langue française* (the “OLF”) has recently taken the position that when such non-French registered trade-mark is used as a business’ name, it must either be accompanied by a generic French term or expression or a French slogan, displayed with a French version that is markedly predominant, or translated to French and displayed exclusively in French, although this position is currently being challenged in court.

## → Necessity to Provide Service in French

The Charter provides that “consumers of goods and services have a right to be informed and served in French”. By implication, persons doing business in Québec must be capable of providing their services in French to consumers who so request it.

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## French Language Requirements

### → Packaging and Labelling

The Charter provides that “[e]very inscription on a product, on its container or on its wrapping, or on a document or object supplied with it, including the directions for use and the warranty certificates, must be drafted in French”. A translation is permitted, but the inscription in another language may not be given greater prominence than that in French.

There are, however, certain exceptions to this rule. For example, the law allows for the exclusive use of a language other than French in the case of inscriptions on a cultural or educational product such as a book or magazine to the extent that the content is in a language other than French. In addition, a recognized trade-mark within the meaning of the *Trade-Marks Act* may appear exclusively in a language other than French on packaging and labelling, unless a French version has been registered.

### → Commercial Publication

The Charter provides that “[c]atalogues, brochures, folders, commercial directories and any similar publications must be drawn up in French”. This provision has been broadly interpreted as applying to “commercial publications” in general, whether distributed in person or by mail, or appearing on a website.

Commercial publications may use both French and another language together, so long as the French version is displayed at least as prominently as the other language. A commercial publication may also be in two separate versions, one exclusively in French, the other exclusively in another language, provided that the material presentation of the French version is available under no less favourable conditions of accessibility and quality than the version in the other language. The version exclusively in a language other than French may be sent only to persons who have made a written request to receive such documents in that other language.

### → Signs and Posters

Subject to certain exceptions, public signs and posters and commercial advertising that is publicly displayed must be in French. They may also be both in French and in another language provided that the French text is “markedly predominant”. The determination of whether French is markedly predominant requires that the French has a much greater visual impact than the other language. This impact depends on a number of factors as outlined in the

*Regulation defining the scope of the expression “markedly predominant” for the purposes of the Charter of the French Language.*

For example, this Regulation provides that if both English and French appear on the same sign, French will be considered to have a greater visual impact if: (1) the space allotted to the text in French is at least twice as large as the space allotted to English; (2) the French characters are at least twice as large as the English characters; and (3) there are no other characteristics of the sign that reduce the visual impact of the French text.

In the case of separate posters of the same size, one in French and one in English, the French will have a greater visual impact if: (1) the French signs and posters are at least twice as numerous as those in English; (2) the French characters are at least twice as large as the English ones; and (3) there are no other characteristics of the sign that reduce the visual impact of the French text.

Finally, in the case of separate posters of different size, one in French and one in English, the French will have a greater visual impact if: (1) the French signs and posters are at least twice as numerous as those in English; (2) the French signs and posters are at least twice as large as the English signs and posters; (3) the French characters are at least twice as large as the English ones; and (4) there are no other characteristics of the sign that reduce the visual impact of the French text.

## **Predetermined Contract**

The Charter also requires that “[c]ontracts pre-determined by one party, contracts containing printed standard clauses, and the related documents” be drawn up in French. Examples of “related documents” that must be drafted in French in accordance with this rule include credit card billing statements, invoices and receipts that are provided in connection with such contracts.

There are two exceptions to this general rule. First, a contract and its related documents may be drafted both in French and in another language together, so long as the French version is displayed at least as prominently as that in the other language.

Second, a contract and its related documents may be drafted exclusively in a language other than French *at the express wish of the parties*. Thus, an English-only contract should include an express choice of language clause in the contract. An example of such a clause would be: “The parties have requested that this Agreement and all related documents be drawn up in English only. *Les parties ont exigé que le présent contrat et tous les documents qui s’y rapportent soient rédigés en anglais seulement.*” Notwithstanding the foregoing, it is strongly recommended to have a contract drafted in French available at the

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## French Language Requirements

moment of signature because a court might find that a contract only available in English is incomprehensible to a unilingual Francophone and thus unenforceable.

### ➔ Order Forms and Invoices

The Charter specifically provides that order forms, invoices, receipts and releases must be drafted in French. The implication is that although a bilingual version of these documents is permissible under the Charter, the parties may not choose that they be drafted exclusively in a language other than French. By contrast, if an order form, invoice, receipt or release is the accessory of a contract drafted in English and containing a choice of language clause such as the one in the preceding paragraph, such documents could be drafted exclusively in English.

### ➔ Offers of Employment

The Charter provides that: “[e]very employer [...] shall draw up and publish his/her offers of employment or promotion in French.”

### ➔ Website Issues

The Charter does not specifically regulate Internet-related technologies, such as websites and e-mail. However, the courts and the OLF have taken the position that the provision of the Charter regarding commercial publications applies to all commercial publications, regardless of their medium of distribution. As such, catalogues, brochures, commercial directories and similar publications must be in French whether they are in paper or electronic format, including those posted on websites, or transmitted via e-mail or fax. The same reasoning applies to the Charter requirements regarding offers of employment, contracts, order forms, invoices and receipts. As a result, it would seem that all such items must be in French, even if they appear on a website.

However, the Charter allows the use both of French and another language together, so long as the French version is displayed at least as prominently as that in the other language. In the case of websites, this could be done through a separate French version of the site.

Furthermore, the Charter requirements do not apply to all websites. In particular, an enterprise that does not have its head office, an address or an establishment in Québec will not be forced to use French on its website.



It should be noted that the Charter states that “[c]onsumers of goods and services have a right to be informed and served in French”. By implication, persons doing business in Québec must be capable of providing their products and services via a website in French to consumers who so request it.

## **Francization of Enterprises**

The Charter creates an obligation to promote the use of French within an enterprise situated in Québec. This obligation intensifies with the size of the business. Enterprises with 50 employees or more are required to register with the OLF and report on the situation of the use of French within the enterprise. Additionally, enterprises with 100 employees or more are required to form a francization committee with certain additional obligations.

### **REQUIREMENTS FOR ENTERPRISES WITH 50 OR MORE EMPLOYEES**

The first obligation imposed upon an enterprise with 50 or more employees for a period of six months is to register with the OLF within six months of the end of that period.

Subsequent to this registration, the OLF should issue to the enterprise a certificate of registration. Within six months of the date of issue of this certificate, the enterprise must transmit to the OLF an analysis of its linguistic situation.

The analysis must be submitted in the form specified by the OLF, namely a form available from the OLF that addresses the issues outlined in the Charter to determine whether the use of French is generalized at all levels of the enterprise within the meaning of the Charter. Summarily, these issues concern the knowledge of French of the enterprise’s personnel, the use of French as the language of work and internal communication within the enterprise, the availability of French versions of the information technologies used by the enterprise, and the use of French in its communications with the civil administration, clients, suppliers, and the public.

The object of this analysis is to convince the OLF that the use of French is generalized at all levels of the enterprise so that it may issue a “francization certificate” pursuant to the Charter. The OLF has some discretion as to whether it will issue the certificate. If a “francization certificate” is issued, the enterprise is required to ensure that the use of French remains generalized at all levels of the enterprise and must report to the OLF every three years on the status of the use of French within the enterprise.

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## French Language Requirements

If, pursuant to the analysis submitted, the OLF is not satisfied that the use of French is generalized at all levels of the enterprise, it shall notify the enterprise that it must adopt a “francization programme”. This programme must be submitted to the OLF by the enterprise within six months of the OLF’s notice. The object of the “francization programme” is to generalize the use of French at all levels of the enterprise as summarized above (i.e. the knowledge of French of the enterprise’s personnel, the use of French as the language of work and internal communication within the enterprise, the use of French versions of the information technologies used by the enterprise, and the use of French in its communications with the civil administration, clients, suppliers, and the public). Template models of a francization programme may be obtained from the OLF.

If the OLF approves the francization programme submitted by the enterprise, it will then issue an “attestation of implementation”. The enterprise must then comply with the programme and keep its personnel informed of its implementation. The enterprise must report periodically to the OLF on the implementation of the programme. Enterprises employing fewer than 100 persons must do so every 24 months whereas those employing 100 persons or more must do so every year. Once the implementation of the francization programme is completed and the OLF is satisfied that the use of French is generalized at all levels of the enterprise, the OLF will issue a “francization certificate” to the enterprise.

It must be noted that the OLF is empowered to refuse, suspend or cancel an “attestation of implementation” or a “francization certificate” if the enterprise does not comply or ceases to comply with the obligations imposed by the Charter or its regulations.

### **REQUIREMENTS FOR ENTERPRISES WITH 100 OR MORE EMPLOYEES**

If the enterprise has 100 or more employees in Québec, in addition to the obligations applicable to any enterprise of 50 employees or more described above, it is required to establish a francization committee composed of six or more persons. At least half of the members of the francization committee and every sub-committee established by it must be representatives of the employees of the enterprise. Assuming the enterprise is not unionized, these representatives must be elected by the employees of the enterprise in the manner and on the conditions determined by its management. Employees’ representatives are elected for a term of two years, which may be renewed. The enterprise is required to provide the OLF with a list of the members of the francization committee and every subcommittee, and any changes to that list.

The francization committee is responsible for ensuring the generalized use of French at all levels of the enterprise. The committee must meet at least once

every six months and must analyse the linguistic situation of the enterprise and report to the management of the enterprise. If a francization programme is required of the enterprise, the committee must devise the programme and supervise its implementation.



# 06

## Tax

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**Tax**



With respect to tax imposed by the provincial government, a corporation is subject, *inter alia*, to:

- a rate of 11.90% if carrying on an active business and having an establishment in Québec (the basic combined federal and Québec rate of tax for a corporation carrying on an active business in Québec, including non-resident corporations, being 26.9%); and
- a goods and services tax which closely parallels the Canadian (federal) goods and services tax ("GST"), known as the Québec Sales Tax ("QST"), if the corporation carries on a commercial activity in Québec. The corporation is required to register for the QST and, generally speaking, will be required to account for both the GST and QST by filing a combined GST/QST information return with the Québec tax authorities. The QST has a small supplier rule similar to the rule used for GST purposes. In 2014, the QST applies at the rate of 9.975% to the pre-tax price of goods and services, for a combined GST/QST rate of 14.975%. The QST provides for an input tax refund (ITR), which is similar to the input tax credits (ITC) mechanism provided under the GST. As in the GST, the QST is ultimately paid by the end-consumer since suppliers will generally be entitled to ITRs for the QST they pay or will pass the cost of non-recoverable QST on the consumer. The Québec tax authority, *Revenu Québec*, is responsible for the collection and administration of both the GST and the QST.

## ➔ Tax and Gift Certificates

Generally, GST/QST is not applicable on the sale of a gift certificate. The merchant will calculate the GST/QST on the price of the item being purchased by way of a gift certificate.

A gift certificate is generally a voucher, receipt or ticket:

- that has a stated monetary value;
- that can be redeemed on the purchase price of a good or service from a specific supplier (the supplier agrees to accept the gift certificate as money for the purchase);
- for which money or other consideration in the amount of the certificate's face value is given to the issuer of the certificate; and
- that has no intrinsic value. As opposed, for example, to commemorative gold or silver coins that have an intrinsic value.





07

*Consumer  
Protection Act*

# 07

## *Consumer Protection Act*

In Québec, consumer protection is governed principally by the *Consumer Protection Act* (the “CPA”), which applies to various contracts and transactions between merchants and consumers. The CPA offers a number of protections to Québec consumers. General points of interest of the CPA and the *Regulation respecting the application of the Consumer Protection Act* (the “CPA Regulation”) are listed below:

## ➔ Conformity to Advertisements

Goods or services provided must conform to the statements or advertisements regarding them made by the merchant or the manufacturer. The statements or advertisements are binding on that merchant or that manufacturer and their responsibility extends to all information contained in declarations, public messages and brochures.

## ➔ Sale Price Must Be Indicated

A merchant must indicate the sale price clearly and legibly on all the goods or, if the goods are wrapped, on the wrapping of all the goods offered for sale in its establishment subject to the CPA Regulation. However, there are several exemptions to the aforementioned rule in the CPA Regulation whereby the price of an article need not be clearly and legibly displayed on the good, but must be displayed near the place where the good is sold, such as in the case of:

- goods for sale at a price not exceeding \$0.60;
- goods sold in automatic vending machines;
- goods that are part of a package, where the price of the package is indicated on it or where the wrapper of the package is to be reused by the manufacturer;
- goods marked with a sale price that the merchant does not intend to change;
- goods that are so small that it would be impossible to indicate the price on them legibly;
- goods that are not packaged and are usually sold in bulk, unless they are clothing items;
- trees, plants and flowers; and
- goods sold in a returnable container.

### OPTICAL SCAN EXEMPTION

There is also an exemption from the rule requiring that a merchant indicate the sale price clearly and legibly on all the goods where the merchant uses *universal product code* (“UPC”) *optical scanning technology* in its establishment, where the conditions set out in the CPA are met.

Every merchant availing itself of the UPC optical scanning technology exemption under the CPA Regulation is required to adopt an “*Accurate Pricing Policy*” in every establishment where it wishes to take advantage of this exemption. The minimum requirements for this policy are as follows:

- should the price at the cash register be higher than the advertised price, the lower price will prevail;
- should the error pertain to an article costing exactly \$10 or less, the article in question will be given to the customer free of charge;
- if the error pertains to an article costing more than \$10, the merchant will correct the error and give \$10 to the consumer;
- should the same error reoccur for identical goods in the same transaction, the price of each item will be corrected but the compensation policy will only apply to one article;
- the compensation policy will not be applicable if it violates existing laws or regulations, meaning that it cannot allow a merchant to sell an article at a price lower than the minimum price set by law or regulation and does not apply to articles for which discounts are prohibited;
- the policy is applicable immediately upon discovery and recording of the error at the cash register, even if the transaction at the cash register has not been completed, provided the consumer purchases the goods.

Merchants who take advantage of the UPC optical scanning technology exemption must also inform their customers of this *Accurate Price Policy* by posting notices near the cash registers and in the case of large establishments, by posting large signs. In addition, they will be required to periodically publish their *Accurate Price Policy* in their circulars.

### ➔ Issuance of Credit Cards

The CPA regulates “contracts extending variable credits” which include contracts made for the use of what are commonly referred to as “credit cards”. The term “credit” is defined in the CPA as the “right granted by a merchant to a consumer to perform an obligation within a term in consideration of *certain*

*charges*". The CPA provides that penalties imposed for non-payment at the expiry of a term constitute *credit charges*.

The contract between a merchant and a consumer for the issuance of a credit card is, in most cases, a bilateral contract known under Québec law as a contract of adhesion. The contract between the parties will usually set out the maximum credit allotted, under what conditions a credit card will be issued, and the cost of using the credit card. There is also usually a clause dealing with the term of the contract.

The merchant may not issue or send a credit card to a consumer unless the consumer has applied for it in writing. When the card has been issued, the CPA extends to the cardholder a great deal of protection against theft and/or loss. For example, a consumer incurs no liability for a debt resulting from the use of a credit card by a third person after the issuer has been notified of the loss. However, even if the issuer has not been notified, the liability of the consumer whose credit card is lost or stolen is limited to the sum of \$50.

The CPA sets out rules of contract formation that merchants must abide by in order to issue credit cards. Once the contract has been entered into, the merchant may not increase the maximum amount of credit available to the consumer without first being asked to do so by said consumer. If the parties do wish to amend certain provisions of the contract, and if the credit rate or the credit charges are thereby increased, the parties must execute a new contract in accordance with the rules set out at section 98 of the CPA. The merchant may, however, amend the contract extending variable credit to increase the amount chargeable as membership or renewal fees or the credit rate by sending a 30-day notice to the consumer setting out the amended clauses and the date of coming into force of the increase.

The merchant must also furnish the consumer who owes a debt with a statement of account, mailed not less than 21 days before the date on which the creditor may impose credit charges, if the consumer does not discharge his or her obligation in full.

## **Prepaid Cards**

The CPA also regulates prepaid gift certificates, gift cards, and similar media of exchange that are paid for in advance (a "Prepaid Card"). Any stipulation providing for an expiry date on a Prepaid Card is prohibited unless the contract provides for the unlimited use of a service or is for mobile telephone services. Moreover, no charge may be levied against a consumer for the issue or use of a Prepaid Card, except in certain specific cases such as the customization of the card, the replacement of a damaged, lost or stolen card, a Prepaid Card that

# 07

## *Consumer Protection Act*

allows the purchase of goods or services from several independent merchants who do not carry on business under the same name (in which case an activation fee of up to \$3.50 and fees for non-use up to a maximum of \$2.50 per month may be charged, provided that the merchant includes certain information on the card), and a Prepaid Card issued by a financial institution to acquire goods or services from any merchant using the international payment system identified on the card. The rules applicable to Prepaid Cards do not apply however to certain types of services, subscriptions and memberships that involve sequential performance, such as health club memberships and various types of courses and classes. These types of services are subject to other CPA rules.

It is important to note that merchants have an obligation to disclose in writing to the consumer the terms and conditions of use of the Prepaid Card, as well as how the consumer may check the balance remaining on the Prepaid Card.

Finally, a merchant must refund to the consumer, upon request, an amount equal to the balance of the Prepaid Card when said balance is lower than \$5.00, except in the case of a Prepaid Card for mobile telephone services. The refund obligation is designed to prevent consumers from having to choose between losing the balance on their Prepaid Card and overspending.

# 08

## Public Contracts

**08**

**Public  
Contracts**





Pursuant to the *Act respecting contracting by public bodies*, as amended by the *Integrity in Public Contracts Act*, any enterprise that wishes to enter into a contract subject to the Act with a Québec public body, including government departments, government-controlled entities, municipalities and most healthcare and educational institutions, or a subcontract directly or indirectly related to such a contract, must obtain a prior authorization from the *Autorité des marchés financiers* (the "AMF"). The Act currently applies to construction and services contracts, including subcontracts, as well as public private partnership contracts, involving in both cases an expenditure of at least \$10,000,000, as well as to contracts for the construction, reconstruction, demolition, repair or renovation of roads, waterworks and sewer services of Ville de Montréal involving an expenditure of at least \$100,000 and to subcontracts of the same nature directly or indirectly related to such contracts and involving an expenditure of at least \$25,000. The authorization is not required however if the enterprise does not have an establishment in Québec and the contract is to be performed outside Québec.

The criteria for obtaining, maintaining and renewing the relevant authorization include, among others, that the enterprise meet the high standards of integrity the public is entitled to expect from a party to a public contract or subcontract. To this end, the AMF may examine the integrity of the enterprise and that of its directors, partners, officers and shareholders, as well as that of other persons or entities that have direct or indirect legal or de facto control over the enterprise.



# 09

## *Québec Charter of Human Rights and Freedoms*

# 09

## *Québec Charter of Human Rights and Freedom*



The Québec *Charter of Human Rights and Freedoms* provides that no one may discriminate on prohibited grounds in respect of the hiring, apprenticeship, duration of probationary period, vocational training, promotion, transfer displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment. The prohibited grounds are race, colour, sex, pregnancy, sexual orientation, civil status, age (except as provided by law), religion, political convictions, language, ethnic or national origin, social condition, handicap, or the use of devices to palliate a handicap. However, the *Charter of Human Rights and Freedoms* specifies that distinction, exclusion or preference based on the aptitudes or qualifications required for employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or an institution devoted exclusively to the well-being of an ethnic group is deemed nondiscriminatory. It also provides that every employer must pay equal wages to every employee performing equivalent work at the same place without discrimination on prohibited grounds.



## **Toronto**

155 Wellington Street West  
Toronto, ON M5V 3J7  
TEL 416.863.0900

## **Montréal**

1501 McGill College Avenue  
26th Floor  
Montréal, QC H3A 3N9  
TEL 514.841.6400

## **New York**

900 Third Avenue  
24th Floor  
New York, NY USA 10022  
TEL 212.588.5500