



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 191

**An Act to amend the Charter of the
French language and other
legislation**

Introduction

**Introduced by
Mr Claude Filion
Member for Taillon**

**Québec Official Publisher
1988**

EXPLANATORY NOTES

The object of this bill is to reinvigorate the Charter of the French language by updating and strengthening its provisions for the protection and promotion of the French language, especially with regard to the language of work.

The bill therefore introduces, in connection with the language of work, a civil remedy for persons having suffered damage relating to the use of French or to the ignorance of a language other than French. It also reinforces the legal status of French in various sectors connected with labour relations.

In addition, where an employer makes the knowledge of a language other than French a requirement for a certain employment or position, the Commission des relations du travail is granted exclusive jurisdiction to decide, on the basis of standards prescribed by the Office de la langue française, as to the appropriateness of that requirement.

The bill provides that, henceforth, business firms employing ten persons or more will be subject to the rules of the Charter respecting the obtaining of a francization certificate. The establishment of a francization committee will be required in every firm with twenty-five employees or more. The Office will also be authorized to require any firm engaged in high technology and employing ten or more persons to set up a francization program.

New rules are introduced respecting francization programs, particularly regarding their implementation schedule, in order to ensure that business firms actually apply them. The bill also specifically states that the existence of a francization program is incompatible with certain other linguistic activities within the same business firm.

Lastly, the bill introduces a provision whereunder the civil administration will be prohibited from awarding contracts or

subsidies or otherwise dealing with any firm or subcontractor that is defaulting on its obligation to hold a francization certificate or to apply a francization program under the rules in the Charter. It also gives new powers and duties to the Office de la langue française and to the Minister of Higher Education and Science for the promotion of French in fields of activity related to computer sciences, technology and science.

As to the rules for interpreting the Charter in the general context of Québec law, the bill reinforces the legal scope of the fundamental language rights mentioned in the Charter, and lays down that the provisions of the Charter prevail over any inconsistent provisions of any Act subsequent to them. A presumption is created that a person required to read an inscription on a commercial product cannot understand it if the inscription is in contravention of the Charter. A fundamental language right is added, namely, the right of an immigrant or a refugee to receive instruction in French language and to request such instruction from the civil administration in order to be able to integrate into Québec society.

The provisions respecting the institutional framework in which the Office de la langue française, the Conseil de la langue française and the Commission de protection de la langue française operate are also amended so as to make the president or chairman of each of these bodies and the secretary of the Conseil subject henceforth to appointment by the National Assembly. Specific channels of consultation, information and communication between the Conseil and the National Assembly are also provided.

The Commission de protection is empowered to institute penal proceedings for offences under the Charter. The Commission and the Attorney General will also be empowered to apply for an injunction in order to cause a situation which is in violation of the Charter to cease. The Commission will also be authorized to intervene before the Commission des relations du travail. The bill further provides that an application to the Commission for an inquiry interrupts the prescription of any civil recourse or penal prosecution for a period of six months.

Regarding the language of the civil administration, the bill amends the Charter in order to reinforce the obligations of the civil administration with respect to the exclusive use of French. An amendment in this regard introduces the concept of specific programs of access to health services and social services in the French language. Such programs must be submitted to the Office no later than

31 December 1989 for approval. The Act respecting health services and social services is amended accordingly, incorporating the right of every person to receive health services and social services in French.

The Charter is amended further in order to clarify certain powers of the Office de la langue française respecting recognition of bodies, services and departments using a language other than French. Also, the Minister of Justice is given the duty of providing for the translation into French of a judgment rendered in a court in Québec but not rendered in French.

Last of all, the bill provides for the insertion of express provisions in the Charter of the French language that will give effect to sections 58 and 69 regardless of section 3 of the Charter of human rights and freedoms or of section 2b of the Constitution Act, 1982, which deal with freedom of expression, for the object of maintaining the existing provisions of the Charter to the effect that the language of public signs and posters, commercial advertising and firm names is French.

ACTS AMENDED BY THIS BILL

- Charter of the French language (R.S.Q., chapter C-11);
- Act respecting the Ministère de l'Enseignement supérieur, de la Science et de la Technologie (R.S.Q., chapter M-15.1.1);
- Act respecting health services and social services (R.S.Q., chapter S-5).

Bill 191

An Act to amend the Charter of the French language and other legislation

WHEREAS the National Assembly, in adopting the Charter of the French language, has recognized that Québécois wish to see the status, quality and influence of the French language assured;

Whereas the National Assembly, in adopting the said Charter, has affirmed its wish to make of French the normal and everyday language of the civil administration, work, instruction, communication, commerce and business;

Whereas the National Assembly desires to reaffirm that wish by adopting new legislative measures favourable to the attainment of that objective, particularly with regard to the language of work;

Whereas it is expedient to ensure the precedence of the Charter over certain initiatives taken by the federal government and federal Parliament with regard to language, in which the objectives are contrary to those being pursued by the National Assembly, particularly Bill C-72 respecting the status and use of the official languages of Canada; and

Whereas, following court decisions concerning the effects of certain sections of the Charter on freedom of expression, it is expedient to reconcile the judicial interpretation of rights and freedoms with the legitimate objectives of a sovereign parliament;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The preamble of the Charter of the French language (R.S.Q., chapter C-11) is amended by inserting the words “, computer sciences” after the word “communication” in the fifth line of the second paragraph.

2. The said Charter is amended by inserting, after section 6, the following section:

“6.1 Every immigrant or refugee has a right to receive instruction in French language, and to request such instruction from the civil administration, in order to allow him to integrate into Québec society.”

3. Section 20 of the said Charter is amended by replacing the words “third paragraph” in the third line of the third paragraph by the words “third, fourth and fifth paragraphs”.

4. Section 22 of the said Charter is replaced by the following section:

“22. Subject to section 23, the civil administration shall use only French in its advertisements and communications intended for the general public and in signs and posters, except where reasons of public health or safety require the use of another language as well.”

5. Section 23 of the said Charter is amended by inserting, after the third paragraph, the following paragraphs:

“In the case of bodies, services and departments engaged in the field of health and social services, the measures, criteria and procedures shall be in the form of a specific program of access to health services and social services in the official language.

Each body, service or department shall submit its program of access to the Office, for approval, on or before 31 December 1989.”

6. Section 41 of the said Charter is replaced by the following section:

“41. Every employer shall draw up his written communications to the whole or a part of his staff, to an individual employee, or to an association of employees representing the whole or a part of his staff, in the official language. He may, however, use the language of an

individual employee, with his consent, in communications addressed to him.

Notification of any disciplinary measure must be drawn up in French or both in French and in the language of the person to whom it is addressed, failing which it is null and void.”

7. Section 45 of the said Charter is amended by replacing the word “sole” in the second line by the word “principal”.

8. Section 46 of the said Charter is amended by replacing the second paragraph by the following paragraphs:

“The burden of proof that the knowledge of the other language is necessary is on the employer, at the demand of the person or the association of employees concerned or, as the case may be, the Commission des relations du travail referred to in section 47.

The Commission des relations du travail has the power to decide any dispute.”

9. The said Charter is amended by inserting, after section 46, the following section:

“**46.1** For the purposes of sections 45, 46 and 47, the Office de la langue française shall, by regulation, prescribe standards respecting circumstances which justify requiring the knowledge of a language other than the official language for certain duties, and respecting the degree of such knowledge that may be required. It may, by regulation, establish classes of duties to which such standards apply.”

10. Section 47 of the said Charter, amended by section 55 of chapter 85 of the statutes of 1987, is again amended by adding, after the second paragraph, the following paragraph:

“The Commission de protection may intervene before the Commission des relations du travail.”

11. Section 49 of the said Charter is amended by adding the following paragraph:

“The constitution and by-laws of every association of employees must be drawn up in the official language.”

12. The said Charter is amended by inserting, after section 51, the following section:

“51.1 No person may manufacture, distribute, lease, sell or make any other disposition of a product, its container, its wrapper, or a leaflet, brochure or card supplied with it, if the inscriptions thereon are contrary to the rules enacted in section 51.”

13. The heading of Chapter IX of the said Charter is replaced by the following heading:

“SPECIAL AND INTERPRETATIVE PROVISIONS”.

14. The said Charter is amended by inserting, after section 89, the following sections:

“89.1 The unlawful violation of a right recognized by sections 41 to 50 of this Charter entitles the victim to apply to the court for cessation of the violation and damages.

“89.2 Any doubt as to the interpretation of a provision of the Charter shall be resolved in favour of respect for the fundamental language rights mentioned in Chapter II.

“89.3 No person may renounce or be presumed to have renounced protection and rights conferred by this Charter unless his intention is manifest and clear. Any person alleging the existence of such an intention has the burden of proving it.

“89.4 In civil proceedings, the adduction of proof of conviction for an offence under sections 51 and 51.1 creates a presumption that the person reading an inscription did not understand it. Any person alleging the contrary has the burden of proving it.”

15. The said Charter is amended by inserting, after section 90, the following section:

“90.1 The Minister of Justice shall see that a judgment rendered by a court in Québec but not rendered in French is, at the request of any party to the proceedings, translated into French and made available to him.”

16. The said Charter is amended by inserting, after section 98, the following section:

“98.1 The provisions of this Charter prevail over any contrary provisions of any general law or special Act subsequent to them,

unless that law or Act expressly states that it applies notwithstanding this Charter.”

17. Sections 101 to 106 of the said Charter are replaced by the following sections:

“101. The Office is composed of five members, including a president appointed, on a motion by the Prime Minister, by a resolution of the National Assembly approved by not less than two-thirds of the Members.

The Assembly shall, in the same manner, fix the remuneration, social benefits and other conditions of employment of the president.

The other members shall be appointed by the Government, which shall also fix their remuneration, social benefits and other conditions of employment.

“102. The term of office of the members of the Office is not over five years.

A member remains in office at the expiry of his term, however, until he is reappointed or replaced.

“103. The president of the Office holds office on a full-time basis. His duties as president are incompatible with any other duties.

“104. The president shall exercise in regard to the members of the staff of the Office the powers vested by the Public Service Act (R.S.Q., chapter F-3.1.1) in the chief executive officer of an agency.

“105. The president may resign at any time by giving notice in writing to that effect to the President of the National Assembly.

He cannot be removed except by a resolution of the National Assembly approved by two-thirds of the Members.

The president remains in office at the expiry of his term until he is reappointed or replaced in the manner provided in section 101.

“106. If the president is temporarily absent or incapacitated, the President of the National Assembly, with the consent of the Prime Minister and of the Leader of the Official Opposition, may designate one of the other members of the Office as president for the time being.

“106.1 The staff of the Office shall be appointed and remunerated under the Public Service Act (R.S.Q., chapter F-3.1.1).”

18. Section 109 of the said Charter is repealed.

19. Section 113 of the said Charter is amended

(1) by replacing paragraph *b* by the following paragraph:

“(b) establish the research and subsidy programs necessary for the application of this Charter, particularly programs designed to increase and generalize the use of French in computer sciences, technology and science;”;

(2) by inserting, after paragraph *c*, the following paragraphs:

“(c.1) prescribe, by regulation, standards respecting circumstances which justify requiring the knowledge of a language other than the official language for certain duties;

“(c.2) prescribe, by regulation, standards respecting the degree of knowledge of a language other than the official language necessary for certain duties;

“(c.3) establish, by regulation, classes of duties to which the standards prescribed under paragraphs *c.1* and *c.2* apply;”.

20. The said Charter is amended by inserting, after section 113, the following section:

“**113.1** The Office may make an investigation to verify whether the criteria on which it recognized a body, service or department under paragraph *f* of section 113 are still being observed.

If the Office concludes from its verification that the criteria are no longer being observed, it may withdraw recognition given under that paragraph from the body, service or department.”

21. Section 114 of the said Charter is amended by inserting, after paragraph *g*, the following paragraph:

“(h) in cooperation with the Ministère de l’Enseignement supérieur et de la Science, assist agencies and bodies of the civil administration, semipublic agencies and educational institutions of the college or university level, as well as business firms, in translating, adapting, producing and distributing manuals and text-books, reference works, instruction books and computer software into or in French.”

22. Section 136 of the said Charter is replaced by the following section:

“136. Business firms employing ten or more employees must, from the date determined under section 152, hold a francization certificate issued by the Office.”

23. The said Charter is amended by inserting, after section 137, the following section:

“137.1 The civil administration shall not grant any subsidy, premium or concession to or confer any advantage on a business firm required to hold a francization certificate which does not hold one, whose francization certificate has been cancelled or suspended under section 154 or which fails to apply a francization program.

Such a business firm shall not be a party to any contract with the civil administration nor to any sub-contract under such a contract.”

24. Section 138.1 of the said Charter is amended by adding the following paragraphs:

“Where the Office approves a francization program, it may establish an implementation schedule and require the business firm to submit a report to it at each stage showing that the schedule is being observed.

The failure of a business firm to observe a schedule or to produce a report at any stage constitutes a failure to apply a francization program within the meaning of this Charter.”

25. The said Charter is amended by inserting, after section 138.1, the following sections:

“138.2 No francization program may have an implementation period of over three years from the date of its approval by the Office.

“138.3 A business firm which does not apply a francization program approved by the Office is guilty of an offence.”

26. Section 141 of the said Charter is amended

(1) by inserting, after paragraph c, the following paragraph:

“(c.1) the use of French in computer operations;”;

(2) by adding the following paragraph:

“The existence of a francization program is incompatible with that of a program, plan or measure designed to confer official status on a language other than French within the business firm and to promote that language.”

27. Section 146 of the said Charter is amended by replacing the words “one hundred” in the first line by the word “twenty-five”.

28. Section 151 of the said Charter is replaced by the following section:

“**151.** The Office may, with the approval of the Minister, and on condition of a notice in the *Gazette officielle du Québec*, require a business firm employing fewer than ten persons and engaged in a high technology sector to analyse its language situation and to prepare and implement a francization program.

The Office must make a return to the Minister every year of the representations it has made in this regard and of the measures taken by the business firms.”

29. Section 152 of the said Charter is amended by replacing the second paragraph by the following paragraph:

“The Office may, in the same manner, establish criteria for recognizing firms as belonging to the class of business firms employing ten or more persons or to that of business firms employing twenty-five or more persons and for the purposes of this chapter define the expressions “business firm” and “high technology sector”.”

30. Section 160 of the said Charter is replaced by the following section:

“**160.** The chairman of the Commission de protection shall be appointed, on a motion by the Prime Minister, by a resolution of the National Assembly approved by not less than two-thirds of the Members.

The Assembly shall, in the same manner, fix the remuneration, social benefits and other conditions of employment of the chairman.”

31. The said Charter is amended by inserting, after section 160, the following section:

“**160.1** The rules governing the term of office, availability, incompatible duties, removal and temporary replacement of the

chairman of the Commission de protection are the same as those contained in sections 102, 103, 105 and 106, adapted as required.”

32. Sections 163 to 166 of the said Charter are repealed.

33. The said Charter is amended by inserting, after section 181, the following section:

“**181.1** The presentation of a petition for an inquiry to the Commission de protection suspends the prescription of any civil recourse or penal proceeding regarding the same object for six months or until the Commission notifies the petitioner of its refusal, pursuant to sections 177 and 178, to make an inquiry or, again, until it puts an offender in default under section 182.”

34. Section 182 of the said Charter is amended by adding, after the second paragraph, the following paragraph:

“The Commission de protection itself may also institute penal proceedings.”

35. The said Charter is amended by inserting, after section 182, the following section:

“**182.1** No person may take or attempt to take reprisals against a person, a group of persons or a body who or which, in good faith, has made a petition for an inquiry, given testimony or otherwise participated in an inquiry undertaken by or for the Commission de protection.”

36. The said Charter is amended by inserting, after section 186, the following section:

“**186.1** The Conseil shall be directed by a chairman, who shall be assisted in his duties by a secretary. The chairman and the secretary shall be members of the Conseil and shall be appointed, on a motion by the Prime Minister, by a resolution of the National Assembly approved by not less than two-thirds of the Members.”

37. Section 187 of the said Charter is amended

(1) by replacing what precedes paragraph *a* by the following:

“**187.** The Conseil shall also be composed of ten other members, appointed by the Government, namely:”;

(2) by striking out paragraph *a*.

38. The said Charter is amended by inserting, after section 187, the following section:

“**187.1** The rules governing the fixing of remuneration and the conditions of employment, availability, removal and temporary replacement are the same as in sections 101, 103, 105 and 106, adapted as required.”

39. Section 188 of the said Charter is amended by adding, after paragraph *d*, the following paragraph:

“(e) establish a public information program concerning the object and provisions of this Charter.”

40. The said Charter is amended by striking out the words “with the approval of the Minister” and “with the prior approval of the Minister” wherever they appear in sections 189, 198 and 199.

41. The said Charter is amended by inserting, after section 189, the following section:

“**189.1** The Conseil may apprise the National Assembly of any question it deems appropriate regarding the situation of the French language in Québec and the interpretation or application of this Charter.

It may also fulfil any request of the National Assembly regarding those matters.

The Conseil may also apprise the National Assembly of any opinion, advice, report or communication forwarded to the Minister pursuant to paragraph *b*, *c* or *d* of section 188.”

42. Section 192 of the said Charter is replaced by the following section:

“**192.** In the case where a member does not complete his term, the Government or the National Assembly, as the case may be, shall replace him, in the mode prescribed in section 186.1 or 187, for the remainder of his term.”

43. Section 195 of the said Charter is repealed.

44. Section 205 of the said Charter is amended by replacing the word and figure “section 136” in the second line by the words and figures “sections 136, 137 and 138.3”.

45. Section 206 of the said Charter is amended

(1) by replacing the word and figure “section 136” in the first and second lines by the words and figures “sections 136, 137 and 138.3”;

(2) by adding, after the word “certificate” at the end, the words “or without applying a francization program”.

46. Section 207 of the said Charter is replaced by the following section:

“207. The Commission de protection, the Attorney General or the person authorized by him to that effect may institute the prosecutions provided for by this Charter and shall exercise the recourses necessary for its application.”

47. The said Charter is amended by inserting, after section 207, the following section:

“207.1 Where a person has been found guilty of an offence under this Charter, the Commission de protection or the Attorney General may apply to the Superior Court for an injunction enjoining that person and the directors, representatives or employees of that person to comply with the law.

Where an injunction issued by virtue of this section is not obeyed, an application for a ruling of contempt of court may be presented before the court of the district where the contempt was committed.”

48. The said Charter is amended by inserting, after section 213, the following sections:

“213.1 Sections 58 and 69, so far as they violate freedom of expression, apply notwithstanding section 3 of the Charter of human rights and freedoms (R.S.Q., chapter C-12).

“213.2 Sections 58 and 69, so far as they abrogate or derogate from freedom of expression, shall operate notwithstanding the provisions of paragraph *b* of section 2 of the Constitution Act, 1982 (Schedule B to the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).”

49. Section 3 of the Act respecting health services and social services (R.S.Q., chapter S-5) is amended by inserting, after paragraph *c*, the following paragraph:

“(c.1) make accessible to every person health services and social services in the French language;”.

50. The said Act is amended by inserting, after section 4, the following sections:

4.1 Every person is entitled to receive health services and social services in the French language.

In the case of establishments recognized pursuant to paragraph *f* of section 113 of the Charter of the French language (R.S.Q., chapter C-11), the terms and conditions of access to such services shall be specified in the program of access prepared pursuant to section 23 of that Charter and approved by the Office de la langue française.

4.2 The failure by an establishment recognized pursuant to paragraph *f* of section 113 of the Charter of the French language (R.S.Q., chapter C-11) to prepare, present for approval and apply the program of access described in section 4.1 may, for the purposes of administrative sanctions, be considered by the Minister to be an offence under this Act or a failure, within the meaning of section 146, of its obligation to ensure adequate health services and social services.”

51. Section 18 of the said Act is amended by inserting, after paragraph *d*, the following paragraph:

“(d.1) to advise and assist the establishments in the preparation of the programs of access contemplated in section 4.1;”.

52. Section 9 of the Act respecting the Ministère de l'Enseignement supérieur, de la Science et de la Technologie (R.S.Q., chapter M-15.1.1) is amended by inserting, after paragraph 3, the following paragraphs:

“(3.1) develop and promote French instruction of computer technology;

“(3.2) in cooperation with the Office de la langue française and in the fields of science and technology, promote the translation, adaptation, production and distribution of manuals and text-books, reference works, instruction books and software into and in French;”.

53. This Act comes into force on (*insert here the date of assent to this Act*).