

Doing Business in Québec

Québec's distinct language, culture and legal system present unique challenges for extra-provincial or foreign entities considering doing business in Canada's second largest province (hereinafter: foreign entity). A foreign entity interested in the Québec marketplace shall be considered, among other things, this basic legal issue: the applicability of Québec law.

This publication describes such legal issue in considering, more particularly, the Québec's Charter of the French Language and Legal Publicity Act (B). However, before doing so, this publication describes its use of certain expressions and abbreviations (A). Since such publication constitutes an introductory summary on a matter (Doing Business in Québec) raising major issues, specific advice should be sought in connection with particular situations such as in the IT & Telecoms sector.

A- Expressions / Abbreviations

This publication uses the following expressions and abbreviations:

- ▶ *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* (R.S.Q., chapter P-45 / hereinafter: *Legal Publicity Act*. This act sets forth registration requirements applicable to sole proprietorships, partnerships and legal persons).
- ▶ *Charter of the French Language* (R.S.Q., chapter C-11 / hereinafter: *Charter*. This act sets forth French requirements applicable to all entities doing business in Québec).
- ▶ *Registraire des entreprises du Québec* / Québec Enterprise Registrar (hereinafter: *REQ*. A government agency maintaining a public register to record, to process, to store and to distribute key identification data on associations and enterprises incorporated or operating in Québec).
- ▶ *Office québécois de la langue française* / Québec Office of the French language (hereinafter: *OFL*. A government agency responsible for administering the *Charter* including the use of French in commerce and business).
- ▶ *Commission d'accès à l'information du Québec* / Québec Commission on Access to Information (hereinafter: *CAI*. A government agency responsible for administering, among other things, *the Act respecting the protection of personal information in the private sector*, R.S.Q., chapter P-39.1).

- ▶ *Régie des alcools, des courses et des jeux* / Québec Board of alcohol, races and gambling (hereinafter: BARG. A government agency responsible for administering, among other things, the *Act respecting lotteries, publicity contests and amusement machines*, R.S.Q., chapter L-6).
- ▶ *Office de la protection du consommateur* / Québec office on consumer protection (hereinafter : OCP. A government agency responsible for administering, among other things, the *Consumer Protection Act*, R.S.Q., chapter P-41).

B- Applicability of Québec Law

- ▶ Generally, the applicability of Québec Law to a foreign entity operating in Québec raises this legal issue: Whether Québec legislation should apply to such an entity? Such issue is basic in that it determines whether or not an entity must comply with certain legal requirements while doing business in Québec.
- ▶ More particularly, any foreign entity operating in Québec shall comply with not only the *Charter* or the *Legal Publicity Act* but also to the *Consumer Protection Act*, the *Act respecting the protection of personal information in the private sector*, the *Act respecting lotteries, publicity contests and amusement machines* and other general acts. In determining such issues on a case basis, many facts should be considered such as:
 - ▶ The entity's business activities in Québec, if any (e.g. Web site);
 - ▶ The entity's business place (or establishment) in Québec, if any (e.g. corporate stores);
 - ▶ The entity's structure / operation / organization in Québec, if any (e.g.: The entity's material links such as a post office box, a telephone line or a server in Québec).
- ▶ In short, a typical "doing business in Québec" analysis would independently determine the applicability of the act (e.g. *Charter* or *Legal Publicity Act*) on its own respective merit. For instance, *carrying on an activity in Québec* for the purpose of the *Legal Publicity Act* do not equate to *doing business in Québec* for the purpose of the *Charter*, and vice versa.
- ▶ In fact, subject to the following comments with respect to the *Charter*, there is a certain consensus in the legal sector that not registering under the *Legal Publicity Act* carries certain risks for a foreign entity doing business in Québec. Such risks included the possibility of fines being imposed as well as possible delays in the event that court proceedings had to be instituted in the province.

Legal Publicity Act

- ▶ Sections 5 and 6 of the *Legal Publicity Act* require the registration of any foreign entity that carries on an activity in Québec. Until recently, the generally accepted view in Québec of these provisions was that there was little or no downside for most of the foreign entities

(e.g. franchisors with franchised stores but no corporate stores or establishments) operating in Québec to register under the *Legal Publicity Act*.

- ▶ Therefore, most foreign entities should file a declaration of registration to the REQ in which they shall be (at least) registered as a legal person not incorporated in Québec. In doing so, the entities shall, among other things : a) fill out all applicable sections of the registration form including its section related to its “fondé de pouvoir” (power of attorney) and b) provide all names declared and used in Québec in French or accompanied by a French version, except for trademarks registered in English only.

Charter of French Language (Charter)

- ▶ Under Section 2 of the *Charter*, all entities doing business in Québec must communicate with Québec residents in French. In recent years, the generally accepted view of the meaning of this provision in the cross-border business context has been that it should apply to any foreign entity operating in Québec (e.g. a franchisor with franchised stores but no corporate stores or establishments). Therefore, such entity had to comply with the French language requirements flowing from the applicability of Section 2 of the *Charter*.
- ▶ In fact, the OFL, particularly its legal staff, seriously considers that, where a foreign entity is required to register under the *Legal Publicity Act*, the OFL will generally take the view that this section of the Charter should also apply to such business. In other words, it seems that, in the OFL’s view, *carrying on an activity* in Québec for the purposes of the *Legal Publicity Act* now equates to *doing business* in Québec for the purpose of the *Charter*.
- ▶ While such an internal policy or opinion may be questionable, strictly speaking, it is not binding and does not have the force of law. However, it provides a useful indication of possible enforcement actions by the OFL in the future.
- ▶ Until this uncertainty is sorted out, a foreign entity operating (or planning to operate) in Québec may want to reconsider any prior decision or contemplated plans to register under the *Legal Publicity Act*, particularly given the possible repercussions concerning the applicability of the *Charter* to its operations in Québec.
- ▶ In complying with the *Charter*, a foreign entity shall comply with French language requirements such as its business name and / or business documentation (e.g. product inscriptions, directions for use, warranty certificates, catalogues, brochures, folders, commercial directories, advertising documentation, employment forms, order forms, invoices, receipts and releases). (Section 52 of the *Charter*).

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