NORTON ROSE FULBRIGHT

Doing business in Quebec

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Introduction

In Canada, governmental and legislative jurisdiction is divided between the federal and provincial governments. The jurisdiction of the ten provinces, including Quebec, includes the power to legislate over property and civil rights, healthcare, education and intra-provincial trade. The federal jurisdiction includes interprovincial trade, currency, banks, criminal law, intellectual property, bankruptcy and insolvency and national defence.

Unlike other provinces, Quebec's legal system is based on civil rather than common law. Quebec has also adopted the *Civil Code of Quebec* (*Civil Code*), which governs property and civil rights. Given the wide variety of topics governed by the *Civil Code*, we have not dealt with it as a specific chapter heading, but rather have made reference to it whenever its provisions affect the subject matter addressed within the chapter headings that follow.

Language legislation

The vast majority of the Quebec population speaks French as its first language. The Quebec government has enacted legislation that aims at ensuring the Quebec population may work and transact business in the French language.

Generally speaking, since 1977 the *Charter of the French Language*[1] (***Language Charter***) has recognized that French is the official language in the Province of Quebec and states that every person has the right to be communicated to in French by all civil administration, health services, public utility firms, professional corporations, associations of employees and businesses operating in Quebec. It also creates the *Office québécois de la langue française* (**French Language Office**), which is responsible for defining and conducting Quebec policy on linguistic officialization, terminology and the francization of the civil administration and enterprises. The French Language Office is also responsible for ensuring compliance with the *Language Charter*. Moreover, it must assess Quebec's linguistic situation and submit a report to the government at least once every five years.

In 2022, the provincial government enacted an important reform to the *Language Charter* through *Bill 96, An Act respecting French, the official and common language of Quebec* (**Bill 96**).[2] In 2024, the provincial government made certain changes to the Regulation respecting the language of commerce and business adopted under the *Language Charter*.[3]

I. The language of commerce and business

a) Servicing and informing clients

Section 5 of the *Language Charter* states that consumers of goods and services have a right to be informed and served in French. Any enterprise that offers goods or services to consumers must respect that right.

Section 50.2 adds that an enterprise that offers goods or services to a public other than consumers must inform and serve it in French. By virtue of sections 89 and 91 of the *Language Charter*, French and another language may be used together when servicing and informing such clients. When this is done through written means, the French version must be displayed at least as prominently as every other language.

Section 21.11 specifies that services rendered by a legal person or an enterprise for an agency of the civil administration must be in French. Additionally, if the services obtained by the agency are intended for the public, the agency shall require the service provider to comply with the provisions of the *Language Charter* applicable to the agency itself.[4]

Section 57 specifically provides that invoices, receipts, acquittances and other documents of the same nature must be in French. By virtue of sections 89 and 91 of the *Language Charter*, they may be in French and in another language as well, provided that the French version is displayed at least as prominently as every other language and that the terms of the French version are at least as favourable as those of the other versions.

b) Contracts

The *Language Charter* requires certain contracts to be in French only; others may be in French and in another language; some may be in another language only.

1 C.Q.L.R., c. C-11, r 9

2 While many amendments to the *Language Charter* introduced by Bill 96 have come into force already, certain amendments are not scheduled to come into force until June 1, 2025, while others have been suspended pending final judgement of the Superior Court of Quebec.

3 Some of these changes came into force on July 11, 2024, while the balance will come into force as of June 1, 2025, along with the corresponding sections of the *Language Charter* amended by Bill 96.

4 C.Q.L.R., c. C-11, s. 21.11

By virtue of section 21, any contract (including related sub-contracts) entered into with the civil administration, i.e. the government, government departments and agencies, municipal and school bodies (metropolitan communities, transit authorities, municipalities, municipal boroughs, school service centres, etc.) and health and social services,[5] must be exclusively in French. Related written documents must also be in the French language.[6] Exceptionally, loan contracts may be drawn up both in French and in another language. The same applies to financial instruments and contracts whose object is the management of financial risks, including currency exchange or interest rate exchange agreements, contracts for the purchase or sale of options, or futures contracts.

The requirements of section 21 apply equally to all written documents sent to enter into or related to contracts with the civil administration.[7] However, written documents sent to an agency of the civil administration by a legal person or enterprise to obtain a permit, authorization, subsidy or other form of financial assistance that is not listed in section 21, must be drawn up exclusively in French.[8]

Section 55 states that contracts of adhesion (i.e. contracts pre-determined by one party) must first be provided to the adhering party in French.[9] The parties to such a contract may subsequently elect to be bound only by a version drawn up in another language if such is the express wish of the adhering party.[10] Section 27.3 of the *Regulation respecting the language of commerce and business*, which came into force on July 11, 2024, clarifies, for the purposes of Section 55 of the *Language Charter*, which documents are considered "documents related to a contract of adhesion", how to meet the requirement to issue a French version of a contract of adhesion that is entered into by telephone, an or by a technological means, and which version prevails in the case of discrepancies between the French-language contract and the version in another language.

Individual employment contracts must be drawn up in French. However, they may be drafted exclusively in a language other than French at the express wish of the parties. If an employment contract is a contract of adhesion, the employee will only be bound by a version in another language if, after examining the French version, that is the express wish of the parties.

Any party which suffers from the fact that a contract or contractual provision contravenes the *Language Charter* may apply for the contract or contractual provision to be annulled. Provisions of a contract that contravene the *Language Charter* may only be invoked against the author, but not by the author.

c) Commercial advertising

Section 58 of the *Language Charter* provides that, subject to the exceptions provided for by the regulations, public signs and posters and commercial advertising must be in French. They may also be in French and in another language provided that French is markedly predominant.

The expression "markedly predominant" is currently defined by the *Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French Language.*[11] However, certain amendments to the *Regulation respecting the language of commerce and business* coming into force on June 1, 2025 will replace the *Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French Language*, which will be revoked at that time.

In public signs and posters and in posted commercial advertising that are both in French and in another language, French is markedly predominant where the text in French has a much greater visual impact than the text in the other language. The regulation goes on to provide where the text in French will be deemed to have a much greater visual impact:

> ***2.*** *Where texts appear both in French and in another language on the same sign or poster, the text in French is deemed to have a much greater visual impact if the following conditions are met:*
>
> *1) the space allotted to the text in French is at least twice as large as the space allotted to the text in the other language,*
>
> *2) the characters used in the text in French are at least twice as large as those used in the text in the other language, and*
>
> *3) the other characteristics of the sign or poster do not have the effect of reducing the visual impact of the text in French.*
>
> ***3.*** *Where texts both in French and in another language appear on separate signs or posters of the same size, the text in French is deemed to have a much greater visual impact if the following*

4 C.Q.L.R., c. C-11, s. 21.11
5 See Schedule I to the *Language Charter*
6 C.Q.L.R., c. C-11, s. 21.3
7 C.Q.L.R., c. C-11, s. 21.3
8 C.Q.L.R., c. C-11, s. 21.9
9 *Section 55 of Bill 96 will come into force on June 1, 2023.*
10 Certain exceptions exist with respect to these requirements, notably with respect to contracts used in relations with persons outside Quebec. In addition, these requirements apply only to contracts of adhesion, and not to contracts entered into by mutual agreement (even if they contain printed standard clauses).
11 C.Q.L.R., c. C-11, r 11

conditions are met:

1) *the signs and posters bearing the text in French are at least twice as numerous as those bearing the text in the other language,*

2) *the characters used in the text in French are at least as large as those used in the text in the other language, and*

3) *the other characteristics of the signs or posters do not have the effect of reducing the visual impact of the text in French.*

4. *Where texts both in French and in another language appear on separate signs or posters of a different size, the text in French is deemed to have a much greater visual impact if the following conditions are met:*

1) *the signs and posters bearing the text in French are at least as numerous as those bearing the text in the other language,*

2) *the signs or posters bearing the text in French are at least twice as large as those bearing the text in the other language,*

3) *the characters used in the text in French are at least twice as large as those used in the text in the other language, and*

4) *the other characteristics of the signs or posters do not have the effect of reducing the visual impact of the text in French.*

The *Regulation respecting the language of commerce and business*[12] provides for certain cases or circumstances where public signs and posters and commercial advertising must be in French only, where French need not be predominant or where such signs, posters and advertising may be in another language only. The most relevant examples of these exceptions are the following:

- A firm's commercial advertising, displayed on billboards, on signs or posters, or on any other medium having an area of 16 square meters or more and visible from any public highway, must be exclusively in French unless the advertising is displayed on the very premises of an establishment of the firm.
- A firm's commercial advertising on or in any public means of transportation and on or in the accesses thereto, including bus shelters, must be exclusively in French.
- Public signs and posters displayed on or in a vehicle regularly used to transport passengers or merchandise, both in Quebec and outside of Quebec, may be both in French and in another language provided that French appears at least as prominently.
- Public signs and posters and commercial advertising concerning an event intended for an international audience or an event in which the majority of the participants come from outside Quebec, where directly related to the nature and recognized purpose of the event, may be both in French and in another language provided that French appears at least as prominently.
- Public signs and posters and commercial advertising concerning a convention, conference, fair or exhibition intended solely for a specialized or limited audience may, during the event, be exclusively in the language other than French.
- A public sign or poster bearing directions for the use of a device permanently installed in a public place may be both in French and in another language provided that French appears at least as prominently.
- On public signs and posters and in commercial advertising, the name of a firm established exclusively outside Quebec as well as a registered trademark under the *Trademarks Act*[13] (unless a French version has been registered), may appear exclusively in a language other than French. However, where such a trademark is displayed only in a language other than French on public signs and posters visible from outside the premises, French must be markedly predominant elsewhere on the sign.[14]

It is to be noted that section 58 (which requires public signs and posters and commercial advertising to be in French) does not apply to advertising carried in news media that publish in a language other than French.

Furthermore, section 58.1 of the *Language Charter*, which will come into force on June 1, 2025, provides that despite section 58, on public signs and posters and in commercial advertising, a trademark may be drawn up, even partially, only in a language other than French, provided the trademark is registered within the meaning of the *Trademarks Act* (R.S.C. 1985, c. T-13) and no corresponding French version appears in the register kept according to that Act. However, on public signs and posters visible from outside premises, French must be markedly predominant where such a trademark appears in a language other than French.

12 C.Q.L.R., c. C-11, r. 9

13 RSC 1985, c. T-13. Bill 96 tightened the requirement in this respect, restricting the existing exception to registered trademarks. This requirement will come into force on June 1, 2025. Until then, under the current regime, a recognized trademark (whether registered or unregistered) may only appear on a product in a language other than French if there is no registered French version of the same trademark.

14 This requirement, provided for in section 68.1 of Bill 96, will come into force on June 1, 2025.

d) Commercial publications
Section 52 of the *Language Charter* provides that catalogues, brochures, folders, commercial directories and other publications of the same nature, regardless of the medium used, must be in French. By virtue of sections 89 and 91 of the *Language Charter*, they may also be bilingual, provided that the French version is displayed at least as prominently and provides for terms at least as favourable as the other language.

The *Regulation respecting the language of commerce and business* permits catalogues, brochures, folders, commercial directories, and other like publications to be exclusively in a language other than French, provided that the material presentation of the French version is available under no less favourable conditions of accessibility and quality as the version in the other language.

The *Regulation respecting the language of commerce and business* also permits the firm name of a business established exclusively outside Quebec as well as a registered[15] trademark under the *Trademarks Act* (unless a French version has been registered) to appear in a language other than French in catalogues, brochures, folders, commercial directories, and other like publications.

Other exceptions are provided in this regulation, which concern, for example, cultural or educational products, as well as catalogues, brochures, etc., relating to a convention, conference, fair or exhibition intended solely for a specialized or limited audience.

e) Websites, social media, online advertising and e-commerce
The aforementioned obligations also apply to online activities and publications. However, not all websites and social media pages accessible in the province of Quebec need to follow the requirements of the *Language Charter*. Only businesses which i) have an establishment in Quebec and ii) offer products and services to Quebec consumers must ensure that their online commercial content follows the requirements of the *Language Charter*.

In practice, this means that such a business must ensure that:

- French must be predominant in any social media posts or advertising which may be directed at Quebec consumers, except where exceptions permit otherwise (see the previous section on commercial advertising).
- A French version of any official website must be available, the content of which must be no less complete or favourable than what is provided in any other language. However, the website of the French Language Office specifies that only the products and services that are sold to consumers in Quebec need to be announced in French.
- Where consumers may communicate directly with the business, Quebec consumers must have the option to do so in French. Any consumer which communicates in French must be answered in French. An answer may be provided in another language, only where the consumer first communicated with the business in another language.

f) Inscriptions on products
Section 51 of the *Language Charter* provides that every inscription on a product, on its container, on its wrapping or on any document or object supplied with the product, including directions for use and warranty certificates, must be in French. Translation of the inscription in one or more languages is permitted provided that the translation is not given greater prominence and does not provide more favourable terms than the French version. If the documents referred to in section 51 are required by any act, order-in-council or government regulation, they may be excepted from the rule enunciated in that section, provided that the languages in which they are drafted are the subject of a federal-provincial, interprovincial or international agreement (section 56).

The *Regulation respecting the language of commerce and business* provides for certain exceptions to the application of section 51. For example, section 3 of this regulation provides that an inscription on a product (including an inscription on its container or wrapping or on a leaflet, brochure or card supplied with it, including the directions for use and the warranty certificates) may be exclusively in a language other than French in the following cases:

15 N.B. The *Regulation respecting the language of commerce and business* has yet to be updated since major reforms to the *Language Charter* (Bill 96) were adopted in May 2022. As of July 2022, this regulation still permits for trademarks to appear in a language other than French provided that it is a "recognized trademark". However, we anticipate that this provision will be amended such that only "registered trademarks" will be able to appear in a language other than French, following the adoption of the same change in the *Language Charter* (s. 51.1 & 58.1).

- the product is intended for a market outside Quebec;
- the inscription appears on a container used in interprovincial or international transportation of merchandise;
- the product is from outside Quebec, has not yet been marketed in Quebec and is being exhibited at a convention, conference, fair or exhibition;
- the product is from outside Quebec, is intended for incorporation into a finished product or for use in a manufacturing, processing or repair operation and is not offered in Quebec for retail sale;
- the product is from outside Quebec and is in limited use in Quebec and no equivalent substitute presented in French is available in Quebec; or
- the product is from outside Quebec and the inscription is engraved, baked or inlaid in the product itself, riveted or welded to it or embossed on it, in a permanent manner. However, inscriptions concerning safety must be written in French and appear on the product or accompany it in a permanent manner.

Section 7 of this regulation also provides that the name of a firm established exclusively outside Quebec and a registered trademark under the *Trademarks Act* (unless a French version has been registered) may be inscribed on a product exclusively in a language other than French. The provision regarding trademarks will be replaced as of June 1, 2025 with a new section 7.1 providing that if no corresponding French version appears in the register kept under the *Trademarks Act*, a recognized trademark within the meaning of that Act may be drawn up, even partially, on a product only in a language other than French. However, if a generic term or description of the product is included in the trademark, it must appear in French on the product or on a medium permanently attached to the product.

The regulation also provides for certain exceptions concerning, for example, inscriptions on cultural or educational products, products from outside Quebec to be used for medical, pharmaceutical or scientific purposes, and other types of products, such as tires, toys and games, non-promotional greeting cards, appointment books or calendars.

g) Firm names

Sections 63 and 64 of the *Language Charter* provide that the name of an enterprise must be in French and that, to obtain juridical personality, it is necessary to have a name in French. These sections also apply to names entered by way of declaration in the register instituted in accordance with the *Act respecting the legal publicity of enterprises*.[16]

Businesses incorporated outside Quebec without a French name which register to do business in Quebec must register another name in French. However, section 67 provides that "[f]amily names, place names, expressions formed by the artificial combination of letters, syllables or figures and expressions taken from other languages may appear in the names of enterprises to specify them". Therefore, such words are permitted to be used as part of a business name and do not disqualify them from being considered French. However, section 27 of the *Regulation respecting the language of commerce and business* adds that where a business name includes an expression taken from a language other than French which is a specific term (i.e. the term used to distinguish the business from other businesses), that expression must be accompanied by a generic term in French. The example frequently given is "Les Cafés Second Cup", where "Second Cup" is the specific term and "Les Cafés" is the generic term. Such a name is considered to be a French business name.

Section 68 of the *Language Charter* further states that the French name of an enterprise may be accompanied with a version of the name in a language other than French provided that the French version of the name appears at least as prominently. The *Language Charter* further provides that in public signs and posters and in commercial advertising, using only a version of the name in a language other than French is permitted to the extent that section 58 of the *Language Charter* and the regulations enacted thereunder permit the using of only another language in such signs and posters and in such advertising. In addition, the *Language Charter* permits the use of a version of the name in a language other than French in texts or documents drafted only in such language.

16 C.Q.L.R., c. P-44.1

II. The language of labour relations

a) General principles

Section 4 of the *Language Charter* states that workers have a right to carry on their activities in French. This is a fundamental language right. The *Language Charter* imposes obligations and prohibitions on all employers, regardless of the size of their business.

b) Written communications and documentation

Written communications with all or part of the staff, a worker in particular or an association of workers representing all or part of the staff must be in French. However, the employer may communicate in writing with a worker exclusively in a language other than French if the latter has so requested. This obligation applies even after termination of the employment relationship.

The following documents must also be in French:

- published offers of employment, transfer or promotion;
- employment application forms;
- documents relating to conditions of employment;
- training documents; and
- employment contracts that are not adhesion contracts (see section I b) above for further details on contracts).

By virtue of sections 89 and 91 of the *Language Charter*, the previous documents may also be bilingual, provided that the French version is displayed at least as prominently and provides for terms at least as favourable.

Furthermore, offers of employment that are published both in French in and in other languages must be published simultaneously and using transmission means of the same nature and reaching a target public of a proportionally comparable size.

c) Requiring knowledge of a language other than French

Section 46 of the *Language Charter* prohibits employers from requiring knowledge of a language other than French as a condition for the obtaining or keeping a position, unless they can demonstrate that the duties of this position require that knowledge and that all reasonable means to avoid imposing that requirement have been taken.

Specifically, before imposing such a requirement, employers are required to:

- assess the actual language needs associated with the duties to be performed;
- make sure that the language knowledge of other staff members are insufficient to permit performance of those duties; and
- restrict as much as possible the number of positions involving duties whose performance requires knowledge or a specific level of knowledge of a language other than French.

Employers who decide to impose such a language requirement must, when posting an offer to fill the position, indicate the reasons for the requirement.

d) Harassment

Employers are required to take reasonable means to prevent and put an end to discrimination or harassment of an employee because that employee has no or little command of a language other than French or because the employee has demanded that their right to work in French be respected.

III. Francization of business firms

The *Language Charter* contains, in Chapter V of Title II (sections 135 to 154), a series of provisions dealing with francization of businesses that vary depending on the number of employees in the firm within the province of Quebec.

a) Francization committee and program

Section 139 of the *Language Charter* provides that an enterprise which employs 25 persons or more for a period of six months must register with the French Language Office within six months of the end of that period.[17] For that purpose, the enterprise shall inform the French Language Office of the number of persons it employs and provide it with general information on its legal status and its functional structure and on the nature of its activities. The French Language Office shall then issue a certificate of registration to the enterprise. Within three months of the date on which the certificate of registration is issued, the enterprise shall transmit an analysis of its linguistic situation to the French Language Office.

17 Bill 96 amended the threshold for registration with the Office from 50 persons to 25 persons. This requirement will come into force on June 1, 2025.

If the French Language Office considers, after examining the analysis of the enterprise's linguistic situation, that the use of French is generalized at all levels of the enterprise in accordance with the terms of section 141 (cited below), it shall issue a francization certificate. If, however, the French Language Office considers that the use of French is not generalized at all levels of the enterprise, it shall notify the enterprise that it must adopt a francization program. It can also order the establishment of a francization committee of four or six members; in that case, the sections discussed below pertaining to francization programs would be applicable with the necessary modifications. Enterprises employing more than 100 persons must always have a francization committee which will be responsible for drafting the aforementioned linguistic analysis.

Half of the members of the francization committee and of every subcommittee shall be representatives of the workers of the enterprise. The other half of the committee shall be designated by management. Workers' representatives on the francization committee may, without loss of pay, absent themselves from work for the time required to attend meetings of the committee and to perform any committee task.

The enterprise shall provide its staff and the French Language Office with a list of the members of the francization committee and every subcommittee, and any changes to such list. The management of the enterprise shall also allow the committee to participate in the activities intended to inform the personnel on the implementation of any francization program or on the progression of the use of French in the enterprise.

The francization committee must meet at least once every six months and shall see to the drafting of the minutes for each of its meetings. Every member of the committee who endorses the minutes shall sign them; the minutes shall then be sent to the management of the enterprise and to the French Language Office. A member of the French Language Office's staff may attend any meeting of the committee.

The francization committee has the mandate to analyze the language situation in the firm and report on it to management. Said linguistic analysis is then transmitted to the French Language Office. Upon review of the linguistic analysis prepared by the francization committee, if the French Language Office is of the opinion that the use of French language is generalized at all levels of the firm according to section 141 of the *Language Charter*, it will issue a francization certificate (section 140). Where a francization certificate is issued to the enterprise, the committee must ensure that the use of French remains generalized at all levels of the enterprise according to the terms of section 141.

If however, the French Language Office considers that the use of French is not generalized at all levels of the firm, it will notify the firm that it must adopt a francization program as prescribed by section 141. This program has to be developed by the francization committee, where one exists, and must be submitted to the French Language Office within three months of receipt of the notification and must be approved by the French Language Office.

Section 141 of the *Language Charter* reads as follows:

> ***141**. The francization program is intended to generalize the use of French at all levels of the enterprise through*
>
> 1) *a good knowledge of the official language on the part of the senior officers, the other officers, the members of the professional orders and the other members of the personnel;*
> 2) *an increase, where necessary, at all levels of the enterprise, including the board of directors, in the number of persons having a good knowledge of the French language so as to generalize its use;*
> 3) *the use of French as the language of work and as the language of internal communication;*
> 4) *the use of French in the work documents and tools used in the enterprise;*
> 5) *the use of French in communications with the civil administration, clients, suppliers, the public and shareholders except, in the latter case, if the enterprise is a closed company within the meaning of the Securities Act (chapter V-1.1);*
> 6) *the use of French terminology;*
> 7) *the use of French in public signs and posters and commercial advertising;*
> 8) *appropriate policies for hiring, promotion and transfer; and*
> 9) *the use of French in information technologies.*

After having approved the francization program of an enterprise, the French Language Office shall issue an attestation of implementation in respect of the program. The enterprise must comply with the elements and stages of its program and keep its personnel informed of the

implementation thereof. In addition, the enterprise must submit reports on the implementation of its program to the French Language Office every 12 months. The enterprise must also disseminate information about its francization program and the reports on its implementation among its personnel.

Once the implementation is complete and the French Language Office considers that the use of French is generalized at all levels of the firm, it will issue a francization certificate (section 145).

When a firm has been granted a francization certificate, it is required to ensure that the use of French remains generalized at all levels according to the terms of section 141 of the *Language Charter*. This obligation is a continuous one and businesses must submit a report on the progress of their use of French to the French Language Office every three years (section 146). The francization committee shall see to the drafting of the three-year report. Where the French Language Office considers that the use of French is no longer generalized at all levels of the enterprise, it shall order the enterprise to develop and implement an action plan to remedy the situation.

Finally, it is important to note that if an enterprise employing 25 or more persons does not have a certificate of registration, has not provided an analysis of the language situation or has no attestation of implementation of a francization program or certificate, then the civil administration cannot enter into a contract with such enterprise or grant it a subsidy[18].

b) Exceptions allowing the use of another language

Section 142 of the *Language Charter* provides that a francization program must take into account the situation of persons who are near retirement or of persons who have long records of service with the firm, the relations of the firm outside Quebec, the particular case of head offices and research centres established in Quebec by enterprises whose activities extend outside Quebec, and the line of business of the enterprise. In enterprises producing cultural goods having a language content, a francization program must also take into account the particular situation of production units whose work is directly related to such language content.

Section 144 further provides that special agreements can be entered into between head offices and research centres and the French Language Office to allow the use of English as the language of operation. Section 144 states specifically that:

> ***144.*** *The implementation of francization programmes in head offices and in research centres may be the subject of special agreements with the Office to allow the use of a language other than French as the language of operation. Such agreements are valid for a renewable period of not more than five years.*
>
> *The Government shall determine, by regulation, in what cases, on what conditions and according to what terms a head office or research centre may be a party to such an agreement. The regulation may prescribe matters that must be dealt with under certain provisions of such an agreement.*
>
> *While such an agreement remains in force, the head office or research centre is deemed to be complying with the provisions of this chapter.*

The *Regulation of the Office québécois de la langue française respecting the definition of the term "head office" and the recognition of head offices eligible for special agreements with the Office*,[19] defines "head office" in a restrictive fashion, as being limited to certain types of positions held by physical persons (it does not refer to the whole establishment):

> ***2.*** *In accordance with the terms of the Act and this Regulation, "head office" means the positions held by natural persons responsible on a pan-Canadian or international scale for the activities of overall management, of management of staff departments or of service departments for the whole business firm or for its main office if the head office is located outside Canada.*
>
> *Members of the board of directors as well as executives, their assistants and the support staff assigned to the activities of overall management, of management of staff departments or of service departments for the whole business firm or for its main office are also included as head office personnel.*
>
> ***3.*** *Within the meaning of the Act and this Regulation, positions held by researchers, as well as by natural persons assigned to the management, conception and implementation of research and development activity in a business firm or a group of business firms are also included as head office personnel.*
>
> ***4.*** *Every head office established in Quebec by a business firm whose activity extends beyond Quebec and more than 50% of whose average gross income during the three years prior to the request accrues directly or indirectly from outside Quebec is entitled, upon written request of the firm, to be designated as eligible for an agreement.*
>
> ***5.*** *Every business firm whose activities extend beyond Quebec and less than 50% of whose average gross income during the three years prior to the request accrues from outside Quebec may request the Office in writing that its head office established in Quebec be recognized as eligible for an agreement if the firm is unable to comply, in implementing its francization program within its head office, with one of the program elements outlined in section 141 of the Act, having taken into account sections 142 and 143 of the Act, for one of the following reasons:*

18 CQLR, c. C-11, s. 152.1; *Bill 96* amended the threshold for registration with the Office from 50 persons to 25 persons. This requirement will come into force on June 1, 2025.

19 C.Q.L.R., c. C-11, r. 3

> *a) its frequent business contacts outside Quebec;*
>
> *b) the complexity of the techniques used;*
>
> *c) its requirements for specially-trained staff;*
>
> *d) the effects that implementation of its francization program within the head office may have on its competitive position.*
>
> ***6**. For the purposes of sections 4 and 5, where a head office of a business firm whose activity extends beyond Quebec, has been established in Quebec for less than three years, the average gross income is calculated for the period prior to the request.*
>
> ***7**. For the purposes of sections 4 and 5, the business firm must, prior to its request, have completed the analysis of its language situation.*

Section 3 of the *Regulation specifying the scope of terms and expressions in section 144 of the Charter of the French language and facilitating the application of the Charter,*[20] provides for "special agreements" with the French Language Office.

> ***3**. In section 144 of the Act, the expression "special agreements" means the agreements negotiated between the Office and a business firm for the purpose of authorizing the use of a language other than French as the working language of the head office of that business firm and including provisions respecting the following points:*
>
> *a) the use of French within Quebec for communication with clients, suppliers and the public as well as shareholders and those holding other stock or bond certificates;*
>
> *b) the use of French in communications with the management and the personnel of establishments of the business firm in Quebec;*
>
> *c) the use of French for communication relating to contractual links between the business firm and employees of the head office;*
>
> *d) the use of French on inside signs and posters in areas where head office personnel work;*
>
> *e) the increase at all levels in the number of persons having a good knowledge of the French language;*
>
> *f) the progressive use of French terminology;*
>
> *g) the adoption of a hiring, promotion and transfer policy suited to the use of French;*
>
> *h) the reasons for the amendment, suspension or cancelling of the agreement.*

As can be seen from the above provisions, an agreement with the French Language Office in respect of "head office" personnel can only be reached provided that certain prerequisite conditions are met and provided that the company has completed the analysis of its linguistic situation. It must be negotiated between the French Language Office and the company. Under the *Regulation of the Office québécois de la langue française respecting the definition of the term "head office" and the recognition of head offices eligible for special agreements with the Office,*[21] "Head office" personnel is defined as being limited to those persons who hold positions where they are responsible on a pan-Canadian or international scale for the activities of overall management, of management of staff departments or of service departments for the whole business firm. Researchers as well as persons who are assigned to the management, conception and implementation of research and development activities are also included as "head office" personnel. In the case of enterprises that have been established in Quebec for less than three years, such an agreement with the French Language Office can only be reached provided the following prerequisite conditions are met:

- the head office must be established in Quebec by a business firm whose activity extends beyond Quebec;
- more than 50% of its average gross income for the period prior to its request to the French Language Office must accrue directly or indirectly from outside Quebec; and
- the enterprise must have completed the analysis of its linguistic situation.

c) Information and communication technologies

Subsections 141(4) and 141(9) cited above provide that a francization program must, among other things, ensure that the use of French is generalized in "information technologies" as well as in a firm's working documents.

i) Hardware

The French Language Office's online resources mention that hardware, such as keyboards, printers, fax machines or other peripheral equipment used by employees in the province of Quebec must have inscriptions, command buttons, keyboard keys and electronic displays in French. The equipment must also be designed to provide all French diacritical marks (accents, cedillas, dieresis).

ii) Software

As for software applications, which include operating systems and other software packages, tutorials, development tools and network management systems, the French Language Office states the user interface – from menus, commands, dialogue, message and help boxes – must be in French.

20 C.Q.L.R., c. C-11, r. 12

21 C.Q.L.R., c. C-11, r. 3

According to our interpretation of the *Language Charter* and the regulations, if the software required for use by an employer does not exist in French, the English version of such software may be used. The employer would, however, have to demonstrate that equivalent software does not exist in French. In such a situation, the French Language Office frequently asks that an agreement be reached between the employer and the software supplier to ensure that the latter will provide a French version whenever available. In certain circumstances, the French Language Office has even also required that certain actions be taken, such as translating the menus in French and providing a French list of the terms most frequently displayed and used.

iii) Operating guides and manuals

Pursuant to subsection 141(4) of the *Language Charter*, for an enterprise with 25 or more employees, the working documents of an enterprise, such as operating guides and manuals (including teaching material and training manuals), must be in French.

Given section 89 of the *Language Charter*, it is our view that these documents can be bilingual, provided that English is not given greater prominence than French (section 91).

IV. Consequences in cases of non-compliance with the *Language Charter*

The French Language Office has jurisdiction to examine matters relating to instances of non-compliance with the *Language Charter* and it may, on its own initiative or following the filing of a complaint, make inspections and inquiries. The French Language Office has the right to access data contained in electronic devices and computer systems that are on the premises of a business.

If the French Language Office becomes aware of a failure to comply with the *Language Charter*, it may, by virtue of section 177, order the author of the failure either to comply with it or to cease contravening it, within the time that it specifies. A business targeted by such an order has 30 days to contest it before the Administrative Tribunal of Quebec, which may quash or confirm the order.

By virtue of section 205 of the *Language Charter*, non-compliance with an order issued by the French Language Office is a penal offence for which a corporation may be liable to a fine of $3,000 to $30,000. Corporations may be liable to additional fines of $10,000 to $250,000 if any reprisal is taken against a person who communicated with the French Language Office about a potential breach of the *Language Charter* or cooperated with an investigation of the French Language Office, or if any threat of reprisal was made in order to dissuade a person from communicating or cooperating with it.

The minimum and maximum fines are doubled for a second offence and tripled for a subsequent offence. If an offence continues for more than one day, it constitutes a separate offence for each day it continues. The minimum and maximum fines will also double when the offence is committed by a corporation's director or upper management. Furthermore, absent proof of due diligence, directors of a corporation will be presumed liable for a corporation's offence.

The French Language Office may also apply to the Superior Court of Quebec for an injunction relating to an alleged breach of the *Language Charter*. The Court may notably, on an application by the French Language Office, order the removal or destruction, within eight days after the date on which the order takes effect, of any poster, sign, advertisement or billboard that contravenes the *Language Charter* at the expense of the person to whom the order is directed.

Finally, the French Language Office will forward to Quebec's labour board, the *Commission des normes de l'équité, de la santé et de la sécurité du travail* (**CNESST**), complaints relating to i) reprisals taken against exclusively French-speaking employees; ii) discrimination or harassment against employees in the workplace for having limited fluency in a language other than French or for demanding respect of a fundamental right; and iii) the imposition of a requirement to know a language other than French in order to keep or obtain a position.

Labour and employment law

This chapter provides an introduction to Quebec employment law. The reader should also refer to chapters 1 and 5, which respectively discuss, in greater detail, language and privacy requirements in the workplace.

I. Introduction

Employment laws applicable to a business operating in Quebec are the same, whether the company is Canadian or foreign. Basically, in view of the existence of two jurisdictions, provincial and federal, all employers carrying on business in an area of activity deemed to be within the provinces' exclusive jurisdiction are subject to the employment laws of the province in which such business is carried on.[22] However, federal legislation will apply in matters pertaining to employment insurance, among others.

II. Contract of employment and labour standards (non-unionized employees)

a) The nature of the employment relationship

The concept of employment "at will" does not exist in Quebec. The employment relationship is contractual in nature. It is governed by the general rules of contract as well as by the specific provisions concerning contracts of employment, which are found in the *Civil Code*. In addition, quite a few statutes affect the employment relationship.

Generally, the contract of employment, like most contracts under civil law, need not be in writing. There are no requirements for handbooks or policy manuals. However, should such handbooks or policy manuals be issued to employees, these documents will in all likelihood constitute confirmation of some (or all) of the terms of the employment contract and will be binding. Short of eliminating such handbooks or manuals, it is possible to minimize the risks associated with their use by incorporating a statement such as the following: "This handbook or policy manual contains guidelines that are subject to change by the Company." It is recommended, where possible, to give "reasonable" advance notice of the change before a unilateral modification becomes effective.

There is a tacit obligation to act in good faith and deal fairly with third parties, in all matters involving employment law. The *Civil Code* creates a presumption of good faith; a party alleging bad faith has the burden of proof.

b) The term of the contract of employment

A contract of employment can be for a fixed or an indefinite term. It cannot be for a perpetual term. Whether or not the contract is for a fixed term will have an impact on the rules applicable to its termination, as will be discussed below.

c) The content of the contract of employment and labour standards

The general rule is that of freedom to contract. However, the *Act respecting labour standards* (***L.S.A.***),[23] guarantees basic minimum rights to all Quebec employees, whether temporary or permanent, unionized or non-unionized. Its provisions are "of public order," meaning that no agreement (including a collective agreement) can deviate from the *L.S.A.*, unless a derogation is specifically allowed by the *L.S.A.* However, since the requirements imposed by the *L.S.A.* are a statutory minimum, an individual contract of employment or a collective agreement may grant an employee better working conditions than those provided by the *L.S.A.*

The *L.S.A.* deals with wages, hours of work, rest periods, statutory holidays with pay, vacation, various leaves of absence such as family, maternity and parental leaves of

22 Note that labour and employment standards applicable to federal undertakings are not covered in this Guide.

23 C.Q.L.R. c N-1.1.

absence, and grants various recourses to employees. The *L.S.A.* also provides that different wage rates based solely on employees' employment status are prohibited as is, in relation to pension plans or other employee benefits, differential treatment based solely on the employees' hiring date. Below are the highlights of the most significant provisions.

i) Wages

Quebec's minimum wage rate is currently $15.75 per hour. It usually changes in May of each year, with some exceptions contained in regulations. For employees who receive tips or gratuities, the minimum wage is currently $12.60 per hour.

It should also be noted that the *L.S.A.* prohibits differences in treatment based solely on the date of hiring between employees performing the same tasks in the same establishment. Moreover, an employee cannot receive a lower rate of pay than that granted to other employees performing the same tasks in the same established simply because the employee works less hours each week. The *L.S.A.* gives all employees the possibility of bringing a complaint concerning prohibited differences in treatment before Quebec's labour board, CNESST.

ii) Minimum age for employment

Subject to certain exceptions, the minimum age to work in Quebec is 14 years old. Moreover, no child subject to compulsory school attendance[24] may be required to work:

- during school hours (section 84.4 ARLS);
- at night between 11 p.m. and 6 a.m. (section 84.6 ARLS)[25] and
- more than 17 hours per week and more than 10 hours Monday through Friday.

iii) Hours of work

The standard work week is currently 40 hours. Overtime (section 52 *L.S.A.*), which is paid at the rate of time-and-a-half (section 55 *L.S.A.*), is due when someone works beyond the standard work week hours. An employer may, with the written consent of the employee and based on certain conditions, stagger the working hours of said employee on a basis other than weekly, provided that the average of the working hours is equivalent to the norm provided in the *L.S.A.* or the regulations. Such schedule is also possible if said staggering is provided in a collective agreement or a decree (section 53 *L.S.A.*).

In certain circumstances, overtime can also be compensated by a paid leave equivalent to the overtime worked plus 50% (section 55 *L.S.A.*). Management personnel are not entitled to overtime (section 54(3) *L.S.A.*). This section also provides for other exceptions.

While there is no maximum number of hours per week, all employees are entitled to at least 32 consecutive hours of rest per week (section 78 *L.S.A.*).

An employee may refuse to work more than two hours after regular daily working hours, more than 14 working hours per 24-hour period or if the employee was not informed five days in advance that they would be required to work, pending certain exceptions. Subject to section 53 *L.S.A.* (which deals with staggering or working hours), an employee may also refuse to work more than 50 hours per week (more than 60 hours per week for an employee working in an isolated area or in James Bay). However, such right of refusal does not apply where there is a danger to life, health or safety of employees or the population, where there is a risk of destruction or serious deterioration of movable or immovable property or in any case of force majeure, or if the refusal is inconsistent with the employee's professional code of ethics (section 59.0.1 *L.S.A.*).

With respect to meal periods, an employer must grant an employee an unpaid rest period of 30 minutes for a meal, after five consecutive hours of work (section 79 *L.S.A.*). This period must be paid if the employee is not authorized to leave their workstation.

iv) Annual leave or vacation

Sections 66 to 77 of the *L.S.A.* deal with vacation. During the period known as the reference year, an employee accrues the right to an annual leave to be taken in the following year. The reference year start date can be determined by the employer. Should an employer not have a policy on this matter, the *L.S.A.* deems the reference year to start on May 1.

The employer may, at the request of the employee, allow all or part of the annual leave to be taken during the reference year, or defer the annual leave to the following year in the case of an employee who is on leave for sickness, accident or family or parental matters at the end of the 12 months following the end of a reference year. In the case of the employee who is on leave, if the annual leave is not deferred, the employer must pay the indemnity for the annual leave to which the employee is entitled.

24 In Quebec, a child is subject to compulsory school attendance from the age of six until the end of the school year in which he or she turns 16 or obtains a high school diploma.

25 Exceptions apply.

An employer chooses the vacation period and must provide at least four weeks' notice to the employee as to the start date of the vacation. Unless otherwise provided by law, in a collective agreement or decree, it is forbidden for an employer to replace the annual leave by a compensatory indemnity.

The reference date is used to determine the employee's entitlement to vacation. Depending on the employee's number of years of uninterrupted service on that date, the employee will be entitled to two or three weeks of vacation with pay (two weeks of vacation after one year of uninterrupted service and three weeks of vacation after three years of uninterrupted service). Annual vacation pay is equal to 4% of the employee's gross wages during the reference year, for employees entitled to two weeks' vacation and 6% for employees entitled to three weeks' vacation. "Uninterrupted service" is defined in section 1(12) as the "uninterrupted period during which the employee is bound to the employer by a contract of employment, even if the performance of work has been interrupted without cancellation of the contract," which is the case during leaves of absence and layoffs, for example. Uninterrupted service also covers the case where the employee is employed under a series of fixed-term contracts such that the employment relationship is not severed notwithstanding the fact that there may be a hiatus between the end of one term contracts and the commencement of the next.

It is also possible for an employee who is entitled to two weeks of vacation to request an additional leave without pay for the length of time necessary to bring their annual leave to three weeks.

Part-time employees are also entitled to a vacation period. The length of their vacation period will be the same as that of full-time employees with the same uninterrupted service. However, their vacation pay will of course be lower in view of the fact that it is based upon their earnings.

There are special provisions dealing with the vacation pay of an employee who has been absent owing to sickness, accident, maternity or paternity leave during the reference year. In short, an employee's vacation pay should not be reduced by an absence for such reasons.

v) Statutory general holidays or non-working days with pay

Section 60 of the *L.S.A.* provides for seven statutory general holidays, which are to be non-working days with pay if they coincide with a day when the employee would normally work. They are the following:

- January 1;
- Good Friday or Easter Monday, at the employer's option;
- the Monday that precedes May 25;
- July 1, or July 2 where Canada Day falls on a Sunday;
- the first Monday in September (or Labour Day);
- the second Monday in October (or Thanksgiving);
- December 25.

In addition, the *National Holiday Act* provides that June 24 is a statutory general holiday and non-working day with pay. June 24, like Independence Day in the U.S.A., must be celebrated on the same day. There are special provisions for employees who are required to work on such days.

vi) Leave for examinations related to pregnancy (section 81.3 *L.S.A.*)

Employees are entitled to as many days without pay as are necessary.

vii) Maternity leave (sections 81.4 to 81.17 *L.S.A.*)

A pregnant is entitled to a maximum of 18 consecutive weeks without pay. During this period, however, the employee is entitled to receive up to 18 weeks of parental insurance benefits (see the section entitled '*Employment insurance benefits*' for additional information).

The *L.S.A.* contains fairly elaborate provisions governing the rights and obligations of an employer during and after these periods of absence. An employee who has availed herself of the maternity leave provisions must be reinstated in exactly the same position as she would have been in had she not taken maternity leave. For example, if her employment would normally have been terminated due to restructuring, the employer can terminate her contract of employment. However, the contract of employment cannot be terminated simply because the employer prefers the employee who replaced her during her maternity leave. The legislation prohibits this kind of practice, among others.

viii) Paternity leave / leave for the non-birthing parent (sections 81.2 and 81.2.1 *L.S.A.*)

On the birth of their child, including a child born in the context of a surrogacy project, an employee is entitled to a paternity leave (or leave for the non-birthing parent) of not more than five consecutive weeks without pay. The employee who adopts a child is entitled to the same leave.During this period, the employee is entitled to receive up to 5 weeks of parental insurance benefits (see the section entitled 'Employment insurance benefits' for additional information).

A three-week written notice stating the expected date of the leave and of the return to work must be given to the employer. However, the notice may be shorter if the birth of the child occurs before the expected date.

ix) Leave for birth or adoption (section 81.1 *L.S.A.*)

An employee is entitled to be absent from work for five days for the birth of their child, including a child born in the context of a surrogacy project, or the adoption of a child or where there is a termination of pregnancy in or after the twentieth week of pregnancy. The first two days are remunerated. The leave may be divided into days at the request of the employee and may not be taken more than 15 days after the child arrives home or after the termination of the pregnancy (see the section entitled 'Employment insurance benefits' for additional information).

x) Parental leave (sections 81.10 and following L.S.A.)

Parental leave provides a maximum of 65 consecutive weeks without pay, to be taken by either parent within the 85 weeks following birth or the date the child is entrusted to the employee, in the case of adoption (or of a child born through a surrogacy project.

Parental insurance benefits are available (see the section entitled 'Employment insurance benefits' for additional information).

Section 81.15 *L.S.A.* provides for the maintenance of participation in the group insurance and pension plans recognized in the employee's place of employment subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer.

At the end of the parental leave, the employer must reinstate the employee in their former position, with the same benefits, including the wages to which they would have been entitled had they remained at work. If the position held by the employee no longer exists when they return to work, the employer must recognize all the rights and privileges to which they would have been entitled if they had been at work when the position ceased to exist. See also sections 79.5 and 79.6 *L.S.A.* (rights in the event of dismissals or layoffs and benefits).

A maternity, paternity or parental leave may be divided into weeks if the child is hospitalized, upon request of the employee. The paternity and parental leaves can also be divided into weeks if the employer consents.

If, during the leave, the child is hospitalized, the leave may be suspended and the employee may return to work during the hospitalization, following an agreement with the employer. Furthermore, an employee who, before the expiry date of the leave, sends the employer a notice accompanied by a medical certificate attesting that the state of health of the child or, in the case of a maternity leave, that the state of health of the employee requires it, is entitled to an extension of the leave for the duration indicated in the medical certificate (see section 81.14.2).

xi) Family or parental leave and absences (sections 79.6.1 and following *L.S.A.*)

An employee may be absent from work for 10 days each year to fulfill obligations relating to the care, health or education of the employee's child or relatives. For employees with three months of uninterrupted service, the first two days taken annually shall be remunerated according to the formula used to calculate holiday pay. The leave may be divided into days. The employee must advise the employer as soon as possible of the leave to be taken and must take reasonable steps to limit the leave and the duration of the leave. It is to be noted that the notion of "relative" extends far beyond usual family members.

An employee may be absent from work for a period of not more than 16 weeks over a period of 12 months where the employee must stay with a relative or a person for whom they act as a caregiver, because of a serious illness or a serious accident. Where the relative or person is a minor child, the period of absence is not more than 36 weeks over a period of 12 months. The leave may be extended to a maximum of 104 weeks where a minor child of the employee has a serious and potentially mortal illness, attested by a medical certificate.

An employee may be absent from work for a period of not more than 27 weeks over a period of 12 months where the employee must stay with a relative, other than their minor child, or a person for whom the employee acts as a caregiver, because of a serious and potentially mortal illness, attested by medical certificate.

The employee's participation in the group insurance and pension plans recognized in the employee's place of employment is to be maintained, subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer.

At the end of the leave, the employee is entitled to be reinstated in their former position with the same benefits, including the wages to which they would have been entitled had they remained at work. If the position held by the employee no longer exists upon the return to work, the employer must recognize all the rights and privileges to which the employee would have been entitled if the employee had been at work when the position ceased to exist. In the event of dismissals or layoffs, the employee on leave retains the same rights as the employees who were dismissed or laid off.

xii) Absences owing to sickness, an organ or tissue donation, an accident (other than due to an employment injury within the meaning of the Act respecting industrial accidents and occupational diseases), domestic violence, sexual violence or a criminal offense (sections 79.1 and following *L.S.A.*)

An employee is entitled to leave without pay for up to 26 weeks over a 12-month period owing to sickness, an organ or tissue donation, an accident, domestic violence, sexual violence or a criminal offense. The employee must advise the employer as soon as possible of the leave to be taken and the reasons therefor. The first two days shall be remunerated for employees with three months of uninterrupted service. However, note that the employer does not have to remunerate more than two days of absence per year in total for family or parental leaves and absences (sections 79.6.1 and following *L.S.A.*) and for absences pursuant to section 79.1 and following *L.S.A.*

Participation in the group insurance and pension plans recognized in the employee's place of employment is to be maintained, subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer. The other advantages available to an employee during such leave will be determined by regulation.

At the end of the leave, the employee is entitled to be reinstated in their former position with the same benefits. If the position held by the employee no longer exists upon the return to work, the employer must recognize all the rights and privileges to which the employee would have been entitled if the employee had been at work when the position ceased to exist.

This does not prevent an employer from dismissing, suspending or transferring an employee if the consequences of the sickness or accident or the repetitive nature of the absences constitute good and sufficient cause.

In the event of dismissals or layoffs, the employee on leave retains the same rights as the employees who were dismissed or laid off, including rights with respect to a return to work.

xiii) Absences owing to the disappearance or death of a minor child or a relative (sections 79.10 to 79.11 *L.S.A.*)

In the event of the death or disappearance of their minor child, or in the event of the death by suicide of their spouse, major child, father, mother, or parent an employee is entitled to leave without pay for up to 104 weeks.

At the end of the leave, it offers the same protection as employees who are absent owing to sickness, accident and family or parental matters and provides for their reinstatement to their former position with the same benefits.

xiv) Bereavement leave (section 80 *L.S.A.*)

Bereavement leave provides a maximum of five days (two days with pay and three days without), applicable to the employee's immediate family, as defined by the *L.S.A.* In addition, an employee is entitled to one day off, without pay, by reason of the death of other relatives as defined by section 80.1 *L.S.A.*

The notion of "spouse" also includes same-sex partners if they have been living together in a de facto union for one year or more.

xv) Wedding leave (section 81 *L.S.A.*)

One day without loss of pay is granted on the employee's wedding day.

xvi) Travel or training expenses (section 85.2 *L.S.A.*)

The employer is required to reimburse an employee for reasonable expenses incurred where the employee must travel or undergo training at the employer's request.

d) The termination of the contract of employment

As mentioned above, the rules for termination of employment vary with the term of the employment contract. If a contract of employment is for a fixed term, the employer who wishes to end such a contract before its termination date is likely to be held liable for the payment of all outstanding wages and benefits until the date at which the contract was originally intended to expire.

Should the contract be for an indefinite term, which is most often the case, either party can terminate it by giving "reasonable notice" and said notice can be incorporated into the contract of employment. What constitutes "reasonable notice" depends upon the courts' interpretation of the provisions of the *Civil Code* as well as upon the statutory obligations imposed by the *L.S.A.*

The relevant statutory provisions read as follows:

> ***Section 82 L.S.A.***
>
> *The employer must give written notice to an employee before terminating their contract of employment or laying off the employee for six months or more.*
>
> *The notice shall be of one week if the employee is credited with less than one year of uninterrupted service, two weeks if credited with one year to five years of uninterrupted service, four weeks if credited with five years to 10 years of uninterrupted service and eight weeks if credited with 10 years or more of uninterrupted service.*
>
> *A notice of termination of employment given to an employee during the period when the employee is laid off is absolutely null, except in the case of employment that usually lasts for not more than six months each year due to the influence of the seasons.*
>
> *This section does not deprive an employee of a right granted to them under another act.*
>
> ***Section 83 L.S.A.***
>
> *An employer who does not give the notice prescribed by section 82, or who gives insufficient notice, must pay the employee a compensatory indemnity equal to their regular wage excluding overtime for a period equal to the period or remaining period of notice to which the employee was entitled.*
>
> *The indemnity must be paid at the time the employment is terminated or at the time the employee is laid off for a period expected to last more than six months, or at the end of a period of six months after a layoff of indeterminate length, or a layoff expected to last less than six months but which exceeds that period.*
>
> *The indemnity to be paid to an employee remunerated in whole or in part by commission is established from the average of their weekly wage, calculated from the complete periods of pay in the three months preceding the termination of their employment or their layoff.*
>
> ***Article 2091 Civil Code of Quebec***
>
> *Either party to a contract with an indeterminate term may terminate it by giving notice of termination to the other party.*
>
> *The notice of termination shall be given in reasonable time, taking into account, in particular, the nature of the employment, the special circumstances in which it is carried on and the duration of the period of work.*

In addition, Section 83.1 of the *L.S.A.* provides for the possibility of postponing the payment of the compensatory indemnity to a later date for employees covered by a collective agreement.

NOTE: Section 82 *L.S.A.* does not apply in certain circumstances, including where the termination is for serious misconduct. A similar exception exists under the *Civil Code* where the termination occurs for a serious reason (article 2094).

In terms of case law, it has been held that all contracts of employment contain an implied term that they may be terminated upon "reasonable notice."

This notice period, according to the case law, varies from one individual to another depending upon several factors, the most important ones being the following:

- age;
- level of responsibility and/or position in the corporate hierarchy;
- salary;
- years of service;
- marketability and relocation opportunities;
- circumstances surrounding the hiring of the individual.

This list is not exhaustive and other factors may be considered in particular cases. Likewise, not all of these factors are assigned equal value. There is no mathematical formula.

e) Benefits during the notice period

Under the *L.S.A.*, benefits will cease at the end of the notice period. Also, when giving the “reasonable notice” required by the *Civil Code*, one must remember that the objective is to put the employee in exactly the same position they would have been in, had their employment not been terminated. Under the circumstances, an employee would be entitled to all the benefits they would have received during the notice period, which may include, depending upon the employer’s policies, the following benefits:

- sick leave days;
- car allowance;
- employer contributions to a group insurance plan;
- employer contributions to a pension plan;
- bonuses;
- commissions;
- salary increases that would have been given during the notice period.

f) Collective dismissal (sections 84.0.1 to 84.0.15 *L.S.A.*)

A collective dismissal is the termination of employment, including layoff for a period of six months or more, involving 10 or more employees from the same establishment in the course of two consecutive months. Except in the case of undertakings of a seasonal or intermittent nature, any employer who, for technological or economic reasons, foresees having to make a collective dismissal, shall give notice thereof to the Minister of Labour within the following minimum periods:

- eight weeks when the number of dismissals contemplated is at least equal to 10 and less than 100;
- 12 weeks when the number of dismissals contemplated is at least equal to 100 and less than 300; and
- 16 weeks when the number of dismissals contemplated is at least equal to 300.

In the case of a fortuitous event or when an unforeseeable event prevents the employer from respecting the above-mentioned periods, the employer shall inform the Minister of Labour as soon as possible.

The following employees are not covered by the collective dismissal provision:

- employees with less than three months of uninterrupted service;
- employees whose contract for a fixed term or for a specific undertaking is expiring;
- employees who have committed a serious fault; and
- employees to whom the *L.S.A.* does not apply, such as senior managerial personnel.

It is important to note that in order to determine the appropriate length of notice, all employees must be taken into account, whether salaried, sales, unionized, non-unionized or management personnel, except those specifically excluded by the law such as senior managerial personnel.

Changing the employees’ working conditions during the period covered by a notice to the Minister, except where the written consent of the employees concerned or the certified association representing them has been obtained, is prohibited.

In addition, an employer who fails to give notice or gives insufficient notice will, with certain exceptions, be required to compensate the employee, although the *L.S.A.* stipulates that the compensatory indemnities under section 83 *L.S.A.* and section 84.0.13 *L.S.A.* are not cumulative (the employee will receive the greater of the two). In addition, failure to give the required notice of collective dismissal will be considered an offence under the *L.S.A.* and the employer will be subject to a fine of $1,500 for each week or part of a week of failure to comply or late compliance.

The CNESST may take civil proceedings on an employee’s behalf to recover amounts owing for wages and benefits. The prescription period (statute of limitation) is one year from the due date of each payment.

The employer will be required to participate in the establishment of a reclassification assistance committee only where the collective dismissal affects 50 employees or more. Moreover, it will be possible to obtain an exemption where, in the Minister’s opinion, sufficient reclassification assistance measures exist in the establishment concerned

by the collective dismissal. Thus, the establishment of a reclassification assistance committee and the related obligations will not apply where the number of employees affected by the collective dismissal is less than 50.

g) Remedies under the *L.S.A*.

As mentioned above, employees are protected and granted various remedies. These remedial sections read as follows:

> ***Section 122 L.S.A.***
>
> *No employer or his agent may dismiss, suspend or transfer an employee, practice discrimination or take reprisals against him, or impose any other sanctions upon him:*

1) on the ground that such employee has exercised one of his rights, other than the right contemplated in section 84.1, under this Act or a regulation;

1.1) on the ground that an inquiry is being conducted by the CNESST in an establishment of the employer;

2) on the ground that such employee has given information to the CNESST or one of its representatives on the application of the labour standards or that he has given evidence in a proceeding related thereto;

2.1) on the ground that the employee has made a report to the employer or his agent concerning psychological harassment behaviour targeting another person or has cooperated in the processing of a report or complaint regarding such behaviour;

3) on the ground that a seizure of property in the hands of a third person has been or may be effected against such employee;

3.1) on the ground that such employee is a debtor of support subject to the Act to facilitate the payment of support (chapter P-2.2);

4) on the ground that such employee is pregnant;

5) for the purpose of evading the application of this Act or a regulation;

6) on the ground that the employee has refused to work beyond his regular hours of work because his presence was required to fulfill obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of a relative [...] or a person for whom the employee acts as a caregiver, even though he had taken the reasonable steps within his power to assume those obligations otherwise;

7) on the ground of a disclosure by an employee of a wrongdoing within the meaning of the Anti-Corruption Act (chapter L-6.1) or on the ground of an employee's cooperation in an audit regarding such a wrongdoing or non-compliance; [...]

With respect to item (4) above, an employer must of its own initiative transfer a pregnant employee if her conditions of employment are physically dangerous to her or her unborn child. The employee may refuse the transfer by presenting a medical certification attesting that her conditions of employment are not dangerous as alleged.

> ***Section 123 L.S.A.***
>
> *An employee who believes that they have been the victim of a practice prohibited by Section 122 and who wishes to assert his rights must do so before the CNESST within 45 days of the occurrence of the practice complained of. If the complaint is filed within that time to the Administrative Labour Tribunal (Tribunal), failure to file the complaint cannot be invoked against the complainant.*
>
> ***Section 124 L.S.A.***
>
> *An employee credited with two years of uninterrupted service in the same enterprise who believes that they have not been dismissed for a good and sufficient cause may present a complaint in writing to the CNESST or mail it to the address of the CNESST within 45 days of their dismissal, except where a remedial procedure, other than a recourse in damages, is provided elsewhere in this Act, in another act or in an agreement.*
>
> *If the complaint is filed with the Tribunal within this period, failure to have presented it to the CNESST cannot be set up against the complainant.*

This latter section does not apply to unionized employees who can file a grievance, as this is considered a "remedial procedure" within section 124 *L.S.A.* Pursuant to section 128 *L.S.A.*, an employee may ask to be reinstated in his employment.

It is possible for a non-unionized employee to whom the *L.S.A.* applies to be represented free of charge by the lawyers of the CNESST in any proceeding relating to prohibited practices and unjust dismissals.

h) Psychological and sexual harassment (sections 81.18 to 81.20 and 123.6 to 123.16, *L.S.A.*)

Psychological and sexual harassment is defined as any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee (section 81.18 *L.S.A.*). For greater certainty, psychological harassment includes such behaviour in the form

of verbal comments, actions or gestures of a sexual nature. Note that a single serious occurrence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

The *L.S.A.* provides that every employee has a right to a work environment free from psychological harassment (section 81.19). Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it. They must, in particular, adopt and make available to their employees a policy to prevent and manage situations of psychological harassment that includes, in particular, a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.

Note that it is very important for every employer to check whether it has policies/guidelines in this regard. If not, policies/guidelines should be adopted to fulfill this obligation.

As of September 27, 2024, the employer's policy has to include the elements provided for in the L.S.A.

Several provisions of the L.S.A. regarding psychological harassment are deemed to be an integral part of every collective agreement. An employee covered by such an agreement must exercise the recourses provided for in the agreement, insofar as any such recourse is available to employees under the agreement. Before the case is taken under advisement, the parties to such an agreement may make a joint application to the Minister for the appointment of a mediator.

An employee who believes they have been the victim of psychological or sexual harassment may file a complaint in writing with the CNESST. Such a complaint may also be filed by a non-profit organization (**NPO**) dedicated to the defence of employees' rights on behalf of one or more employees who consent thereto in writing.

A complaint must be filed within two years of the last occurrence of the offending behaviour.

On receipt of a complaint, the CNESST will make an inquiry with due dispatch, according to the rules set out in sections 103 to 110 *L.S.A.*, with the necessary modifications.

If the CNESST refuses to take action following a complaint, the employee or, if applicable, the NPO, may, within 30 days of the decision, make a written request to the CNESST for the referral of the complaint to the Tribunal.

The CNESST may, during the inquiry and with the agreement of the parties, request the minister to appoint a mediator. The CNESST may, at the employee's request, assist and advise the employee during mediation.

If the employee is still bound to the employer by a contract of employment, the employee is deemed to be at work during mediation sessions.

If no settlement is reached between the parties and the CNESST agrees to pursue the complaint, it is to refer the complaint to the Tribunal without delay.

The CNESST may represent an employee before the Tribunal.

The Tribunal may, if it considers that the employee has been a victim of psychological or sexual harassment and that the employer has failed to fulfill its obligations, render any decision it believes fair and reasonable (for example, reinstatement, monetary compensation, payment for psychological support, except for a period during which the employee is suffering from an employment injury within the meaning of the *Act respecting industrial accidents and occupational diseases* that results from psychological harassment).

III. *Labour Code* (unionized employees)

The *Labour Code*[26] provides for the certification process, including the possibility of a union being decertified or losing its bargaining rights. It creates a variety of unfair labour practices, offences and remedies. Among them, Section 14 states:

> ***Discrimination**. No employer nor any person acting for an employer or an employers' association may refuse to employ any person because that person exercises a right arising from this Code, or endeavour by intimidation or reprisals, threat of dismissal or other threat, or by the imposition of a sanction or by any other means, to compel an employee to refrain from or to cease exercising a right arising from this Code.*
>
> ***Restriction**. This section shall not have the effect of preventing an employer from suspending, dismissing or transferring an employee for a good and sufficient reason, proof whereof shall devolve upon the said employer.*

26 CQLR c C-27.

It also deals with the negotiation process, the acquisition of the right to strike and lock out, as well as successor rights following the alienation of all or part of an undertaking, by sale or otherwise. It further provides for grievance and dispute arbitration. It also contains replacement worker provisions, which prohibit the use of workers or subcontractors on site to perform work previously done by unionized employees during a strike or lock-out.

Under the *Labour Code*, periods are allowed for changing union allegiance. Raiding is possible at different times depending on the duration of the collective agreement.

The rules pertaining to labour organizations and collective bargaining are set out in specific legislation (codes or acts). In Quebec, the first *Labour Code* was adopted in 1964 and it was substantially amended in 1969, 1977, 2002 and 2015.

The Administrative Labour Tribunal (the Tribunal) is the specialised administrative authority responsible for hearing a wide range of disputes relating to employment and labour relations, occupational health and safety, essential services and construction and professional qualifications. Decisions of the Tribunal are final and without appeal.

a) Tribunal's powers

The law provides that the Tribunal is to allow the interested parties to be heard before it renders a decision; the Tribunal may only proceed on the record if it considers it appropriate to do so and with the parties' consent. However, the obligation to hear the parties does not apply to a labour relations officer who renders a decision on certification, although such officer must allow the parties to present their observations and file any documentation necessary to complete the record.

The Tribunal has jurisdiction over all *Labour Code* violations and is invested with very broad powers, which go well beyond those usually granted to similar bodies. In general, the Tribunal is empowered to render any decision that it deems appropriate. In addition to maintaining the traditional penal remedies, the legislature has specifically enumerated certain kinds of orders that the Tribunal may issue. These are described as follows:

- order a person, a group of persons, an association or a group of associations to do, not do or cease doing something in order to comply with the *Labour Code*;
- require any person to redress any act or remedy any omission made in contravention of a provision of the *Labour Code*;
- order a person or group of persons, in light of the conduct of the parties, to apply the measures of redress it considers the most appropriate;
- issue an order not to authorize or participate in, or to cease authorizing or participating in, a strike or slowdown within the meaning of section 108 or a lock-out that is or would be contrary to the *Labour Code*, or to take measures considered appropriate to induce the persons represented by an association not to participate, or to cease participating, in such a strike, slowdown or lock-out;
- order, where applicable, that the grievance and arbitration procedure under a collective agreement be accelerated or modified.

b) Decision

The legislation establishing the Tribunal provides for all matters to be heard and decided by a single Tribunal member, with certain specific exceptions, namely:

- where certification is granted by a labour relations officer;
- where the president of the Tribunal considers it appropriate to assign a matter to a panel of three members.

c) Review

Since no appeal lies from a decision of the Tribunal, the Tribunal has the authority, on application, to review or revoke its own decisions in three specific cases, namely:

- if a new fact is discovered that, had it been known in time, could have warranted a different decision;
- if an interested party, owing to reasons considered sufficient, could not present observations or be heard;
- if a substantive or procedural defect is of a nature likely to invalidate the decision.

Review or revocation proceedings must be brought within a reasonable time established at 30 days by relevant case law. A decision may be reviewed by the same member who made it in the first two cases above only. The inclusion of this

third ground does not amount to giving the parties a right of appeal, being more akin to the grounds that could serve as the basis for an application for judicial review.

d) Procedure

Decisions of the Tribunal have to be recorded in writing, signed and notified to the parties and give the reasons on which they are based. The *Labour Code* provided that the Tribunal is to render its decision within three months after a case is taken under advisement, except in the following cases:

- a petition for certification, where a ruling is to follow within 60 days from the filing of the petition;
- a petition under section 111.3 (petition for certification in the public or parapublic sectors), where a ruling is to follow within the period comprised between the end of the period for filing a petition for certification and the date of expiry of the collective agreement;
- an application pertaining to alienation or transfer of the operation of an undertaking, where a ruling is to follow within 90 days from the filing of the application.

These times may be extended by the president of the Tribunal, having regard to the circumstances and the interest of the parties concerned.

e) Members

Members are appointed by the government following consultation with the most representative employee and employer associations.

The term of office for members is five years, renewable for a further five-year period unless the member is notified to the contrary by the government's authorized agent.

IV. Sale of a business and successorship (sections 96 and 97 *L.S.A.*)

Successor rights exist in Quebec when a sale of a business occurs. With regard to non-unionized employees, the *L.S.A.* and the *Civil Code* contemplate such a situation.

In this context, two sections of the *L.S.A.* are very important.

The *L.S.A.* stipulates that in the event of the sale of a business:

> ***96****. The alienation or concession of the whole or a part of an undertaking does not invalidate any civil claim arising from the application of this Act or a regulation which is not paid at the time of such alienation or concession. The former employer and the new employer are bound solidarily in respect of that claim.*
>
> ***97****. The alienation or concession in whole or in part of the undertaking, or the modification of its juridical structure, namely by amalgamation, division or otherwise, does not affect the continuity of the application of the labour standards.*

It is also interesting to note that the *Civil Code* contains a somewhat similar provision:

> ***2097****. A contract of employment is not terminated by alienation of the enterprise or any change in its legal structure by way of amalgamation or otherwise.*
>
> *The contract is binding on the representative or successor of the employer.*

The *Labour Code* contains similar provisions pertaining to unionized employees (sections 45 and 46):

> ***45****. The alienation or operation by another in whole or in part of an undertaking shall not invalidate any certification granted under this code, any collective agreement or any proceeding for the securing of certification or for the making or carrying out of a collective agreement.*
>
> *The new employer, notwithstanding the division, amalgamation or changed legal structure of the undertaking, shall be bound by the certification or collective agreement as if he were named therein and shall become ipso facto a party to any proceeding relating thereto, in the place and stead of the former employer.*
>
> *The second paragraph does not apply in the case of the transfer of part of the operation of an undertaking where such transfer does not entail the transfer to the transferee, in addition to functions or the right to operate, of most of the elements that characterize the part of the undertaking involved.*
>
> ***45.2****. Where the operation of part of an undertaking is transferred, the following rules apply:*
>
> *1) for the purposes of labour relations between the new employer and the association of employees involved, a collective agreement referred to in the second paragraph of section 45 that has not expired on the effective date of the transfer is deemed to expire on the day the transfer becomes effective;*
>
> *2) the new employer is not bound by the certification or the collective agreement where a special agreement on the transfer includes a clause to the effect that the parties waive the application of the second paragraph of section 45. Such a clause binds the Tribunal but does not affect the effect, within the transferring employer's enterprise, of the certification of the association of employees having signed the agreement.*

Subparagraph 1 of the first paragraph does not apply, in the case of the transfer of the operation of part of an undertaking between employers of the public and parapublic sectors within the meaning of paragraph 1 of section 111.2.

***46**. It shall be the duty of the Tribunal, upon the motion of an interested party, to dispose of any matter relating to the application of sections 45 to 45.3. For that purpose, the Tribunal may, in particular, determine the applicability of those sections.*

The Tribunal may also, upon the motion of an interested party, settle any difficulty arising out of the application of those sections and of their effects in the manner it considers the most appropriate. To that end, the Tribunal may, in particular, render any decision necessary for the implementation of an agreement reached by the interested parties on the description of the bargaining units and on the designation of an association to represent the group of employees to whom the bargaining unit described in the agreement applies or on any other question of common interest.

Where two or more associations of employees are concerned by the application of sections 45 and 45.3, the Tribunal may also, to the same end,

1) *grant or amend a certification;*
2) *certify the association of employees that includes the absolute majority of the employees or hold a secret ballot in accordance with the provisions of section 37 and, consequently, certify the association that has obtained the greatest number of votes in accordance with the provisions of section 37.1;*
3) *describe or modify a bargaining unit;*
4) *merge bargaining units and, where two or more collective agreements apply to the employees of the new employer included in a bargaining unit resulting from the merger, determine the collective agreement that remains in force and make any modification or adaptation to the provisions of the collective agreement it considers necessary.*

The merger of bargaining units entails the merger, if any, of the employees' seniority lists to which they applied, according to the rules determined by the Tribunal governing the employees' integration.

Where the operation of an undertaking is transferred to another during certification proceedings, the Tribunal may decide that the transferring employer and the transferee are successively bound by the certification.

The Tribunal may also, on the motion of an interested party filed not later than the thirtieth day following the effective date of the transfer of the operation part of an enterprise and where it considers that the transfer was carried out for the main purpose of hindering the formation of an association of employees or undermining the continued integrity of a certified association of employees:

i) set aside the application of the third paragraph of section 45 and render any appropriate decision to facilitate the application of the second paragraph of the said section;

ii) set aside the application of subparagraph 1 of the first paragraph of section 45.2 and determine that the new employer remains bound by the collective agreement referred to in the second paragraph of section 45 until the date fixed for its expiration.

The time prescribed for seeking a determination by the Tribunal as to the applicability of section 45 is nine months, as established by case law; but within 30 days from the effective date of the transfer of the operation where a party considers that the transfer was carried out for the main purpose of hindering unionization efforts or undermining the continued integrity of a certified association.

Under subparagraph (1) of the first paragraph of section 45.2, where the operation of part of an undertaking is transferred, for the purposes of labour relations between the new employer and the association involved, the collective agreement referred to in the second paragraph of section 45 that has not expired on the effective date of the transfer is deemed to expire on the day the transfer becomes effective. This rule does not apply in the case of a transfer between employers in the public or parapublic sectors.

At the request of any interested party, if it considers that a transfer has been carried out for the main purpose of hindering the formation of an association of employees or undermining the continued integrity of a certified association of employees, the Tribunal may, as the case may be, set aside the application of the third paragraph of section 45 and the application of subparagraph 1 of the first paragraph of section 45.2.

In the event of such partial transfer of an undertaking, the parties may also agree that section 45 is not to apply, and the agreement will be binding on the Tribunal. However, the clause will not affect, within the transferring employer's enterprise, the effect of the certification of the association of employees having signed the agreement (section 45.2(2)).

The *Labour Code* also contains similar provisions pertaining to situations where an undertaking subject to the *Canada Labour Code* as regards labour relations becomes subject to the legislative authority of Quebec (section 45.3):

***45.3**. Where an undertaking subject to the Canada Labour Code (Revised Statutes of Canada, 1985, chapter L-2) as regards labour relations becomes, in that regard, subject to the legislative authority of Quebec, the following provisions shall apply:*

> 1) *a certification granted, a collective agreement made by a certified union and proceedings commenced under the Canada Labour Code for the securing of certification or the making or carrying out of a collective agreement are deemed to be a certification granted, a collective agreement made and filed and proceedings commenced under this Code;*
>
> 2) *the employer remains bound by the certification or collective agreement or, where the second paragraph of section 45 would have been applicable had the undertaking been under the legislative authority of Quebec, the new employer becomes bound by the certification or collective agreement as if the employer were named therein and becomes ipso facto a party to any related proceeding in the place and stead of the former employer;*
>
> 3) *proceedings in progress for the securing of certification or the making or carrying out of a collective agreement shall be continued and decided according to the provisions of this Code, with the necessary modifications;*
>
> 4) *the provision of the third paragraph of section 45 or those of section 45.2, as the case may be, apply where the undertaking becomes subject to the legislative authority of Quebec as a result of the transfer of part of the operation of the undertaking.*

Thus, it becomes very important for a buyer to have a good understanding of all working conditions before making a purchase offer.

See also section X '*Pay Equity Act*' of this document concerning the consequence of the alienation of an enterprise upon the obligations relative to adjustment in compensation under the *Pay Equity Act*.

V. Discrimination

In June 2008, the preamble of the *Charter of Human Rights and Freedoms* (***Charter***),[27] was amended to include formal recognition of the equality of women and men.

The *Charter* prohibits discrimination on the grounds mentioned in article 10, which reads as follows:

> ***10.*** *Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.*
>
> *Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.*

> ***10.1*** *No one may harass a person on the basis of any ground mentioned in section 10.*

Harassment is not defined in the *Charter*. The Human Rights Commission has adopted the following definition of "harassment":

> *Harassment can take the form of insulting, derogatory, hostile or unwanted words or behaviour. Harassment is considered discriminatory if it is based on the personal characteristics of the person who is experiencing it (for example, age, origin, sex). There are 14 personal characteristics that are prohibited grounds for harassment.*
>
> *Usually, repetition is what makes insulting comments and behaviour into harassment. But there are situations where a single serious action can constitute harassment. This is the case if the action has an ongoing harmful effect on the person who experienced it.*

The Commission offers the following definition of "sexual harassment":

> *a behaviour (words, actions or gestures) of a sexual nature*
>
> *– unwanted: causing discomfort or fear*
>
> *– repeated (a single, serious act can also be sexual harassment)*
>
> *which undermines the dignity and the physical or psychological integrity of the victim*

In order to comply with the provisions of the *L.S.A.*, it is necessary for employers to institute a "Harassment Prevention Policy" (see the section entitled '*Psychological and sexual harassment*' above).

In matters of employment generally, section 16 provides as follows:

> ***16.*** *No one may practise discrimination in respect of the hiring, apprenticeship, duration of the 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.*

Section 18.1 concerns application forms and interviews and section 18.2 deals with the specific case of a person who has been found guilty or has pleaded guilty to a penal or criminal offence. They read as follows:

> ***18.1*** *No one may, in an employment application form or employment interview, require a person to give information regarding any ground mentioned in section 10 unless the information is useful for the application of section 20 or the implementation of an affirmative action program in existence at the time of the application.*

27 R.S.Q., c. C 12

> ***18.2*** *No one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence.*

With respect to remuneration, section 19 of the *Charter* provides as follows:

> ***19.*** *Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.*
>
> *A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.*
>
> *Adjustments in compensation and a pay equity plan are deemed not to discriminate on the basis of gender if they are established in accordance with the Pay Equity Act (chapter E-12.001).*

Finally, section 20 is of considerable importance in that any exclusion, distinction or preference based upon the "aptitudes or qualifications required for an employment" is deemed non-discriminatory.

Complaints and proceedings alleging discrimination have become more numerous and more significant in the past few years. Indeed, discrimination can be illegal even if no intent to discriminate can be proven. It is not a question of good faith. Moreover, discrimination may or may not be directed at specific individuals; where it is inherent in the structures of the organization, it is "systemic."

The *Charter* provides for various recourses and the courts have developed the concept of the "duty to accommodate" an employee who has been the victim of discrimination on a ground prohibited by the *Charter*. This has been applied in several cases involving work schedules that came into conflict with religious beliefs. It has also been applied in other situations such as when an employee has a disability.

It should also be noted that the *Charter* and the *L.S.A.* specifically prohibit an employer from compelling an employee to retire automatically as of a certain age. An employee is entitled to work until they choose to retire, provided that the employee meets the normal requirements of their position. Indeed, section 84.1 *L.S.A.* specifically provides that an employer has the right to dismiss, suspend or transfer an employee for "good and sufficient cause." Employees can challenge such decisions through a complaint filed pursuant to section 122.1 *L.S.A.*

VI. The Quebec Occupational Health and Safety Plan

The Quebec Occupational Health and Safety Plan is the result of a broad consensus. Quebec has adopted laws setting out the rights and obligations of all its workers and employers, and establishing terms and conditions for their enforcement. They are the *Act respecting occupational health and safety*[28] (***OHS Act***), which deals with prevention, and the *Act respecting industrial accidents and occupational diseases*[29] (***IAOD Act***), which provides for worker compensation and rehabilitation.

These laws make both workers and employers responsible for health and safety in the workplace. To this effect, the CNESST is in charge of applying the laws.

The process for contesting decisions under both the *IAOD Act* and the *OHS Act* is before the Occupational Health and Safety division of the Tribunal, which is charged with hearing and deciding contestations of decisions made by the CNESST after an administrative review. There is also a procedure for the medical assessment of a worker who has suffered an employment injury.

a) Occupational health and safety

The *OHS Act* and its numerous regulations deal with the rights and obligations of an employer as well as its employees in matters of health and safety, provides for the creation of health and safety committees, the appointment of safety representatives and the development of a health and prevention program. In addition, it provides for inspections and creates various remedies, offences and penalties.

An employee has the following general rights:

> ***9.*** *Every worker has a right to working conditions that have proper regard for his health, safety and physical well-being.*
>
> ***10.*** *In accordance with this act and the regulations, the worker is entitled, in particular,*
>
> *1) to training, information and counseling services in matters of occupational health and safety, especially in relation to his work and work environment, and to receive appropriate instruction, training and supervision;*

28 R.S.Q., c. S-2.1.
29 C.Q.L.R., c. A-3.001.

> 2) *to receive the preventive and curative health services relating to the risks to which he may be exposed, and his wages for the time spent in undergoing a medical examination during employment prescribed for the application of this Act and the regulations.*

In addition, section 12 provides for the right to refuse to perform work in certain situations:

> ***12.*** *A worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical or mental well-being, or would expose another person to a similar danger.*

There are provisions allowing an employee to seek protective re-assignment if such employee is exposed to a contaminant that poses a danger (section 32). The same protection is given to a pregnant worker under section 40 of the legislation, which reads as follows:

> ***40.*** *A pregnant worker who furnishes to her employer a certificate attesting that her working conditions may be physically dangerous to her unborn child, or to herself by reason of her pregnancy, may request to be re-assigned to other duties involving no such danger that she is reasonably capable of performing.*

Concerning the indemnity for the pregnant worker, section 42.1 stipulates the following:

> ***42.1.*** *A pregnant worker shall receive no indemnity under sections 40 to 42 from the fourth week preceding the week of the expected date of delivery, as stated in the certificate referred to in section 40, if she is eligible for benefits under the Act respecting parental insurance (chapter A-29.011). The worker is presumed to be eligible for those benefits from that fourth week.*
>
> *However, the expected date of delivery may be changed if the Commission is informed by the worker's attending physician or specialized nurse practitioner of a new expected date of delivery, not later than four weeks before the date stated in the certificate mentioned in the first paragraph.*

Although the *OHS Act* is comprehensive, its impact is mostly felt in an industrial environment.

b) Workers' compensation

The *IAOD Act* defines its purpose as follows, in section 1:

> ***1.*** *The object of this Act is to provide compensation for employment injuries and the consequences they entail for beneficiaries.*
>
> *The process of compensation for employment injuries includes provision of the necessary care for the consolidation of an injury, the physical, social and vocational rehabilitation of a worker who has suffered an injury, the payment of income replacement indemnities, compensation for bodily injury and, as the case may be, death benefits.*
>
> *This Act, within the limits laid down in Chapter VII, also entitles a worker who has suffered an employment injury to return to work.*

The *IAOD Act* creates a "no fault" system of liability for an "employment injury" and an "occupational disease" as defined by the act.

The legislation provides for various avenues of recourse by employees and employers, including a medical evaluation procedure. Ultimately, all claims are handled by the Occupational Health and Safety division of the Tribunal.

The payment of the benefits provided under the *IAOD Act* as well as the administrative costs of this no-fault insurance plan, are financed by way of premiums or assessments paid exclusively by all of Quebec's employers based on one of the province's three rate plans.

i) The unit-rate plan: for small businesses

This plan is intended for employers whose total annual premium is less than approximately $9,000. The premium is calculated on the basis of the rate charged for each classification unit to which the employer's wages are assigned based on the type of industrial activity(ies) being performed and per $100 of total insurable payroll.

This plan is collectively applied: when an employment injury occurs, all employers classified in the same unit bear the cost. In 2024, approximately 73% of employers were assessed under this pla n.

ii) The personalized-rate plan: for medium-sized and large businesses

This plan is intended for employers whose total annual premium is between $9,000 and $450,000 (these figures are approximate, as the "eligibility thresholds" change from year to year).

The premium is based on a personalized rate: in other words, the rate for the unit(s) in which the employer has been classified is adjusted (i.e. personalized) to take into account the level of claims costs charged to the employer's file, according to its performance in relation to all employers classified in that unit; in this way the CNESST can reward the employer for efforts made to prevent work-related injuries, success in controlling and managing the claims, and promoting the rehabilitation or return to work of injured workers.

In 2021, approximately 26% of insured employers were being assessed under this plan.

iii) Mutual groups

A variation of the personalized-rate plan whereby the CNESST allows smaller (and therefore less personalized) employers the opportunity to form a prevention mutual group in order to gain more personalization of their assessment rates, thereby generating greater returns for positive claims performance. Member employers are assessed collectively under the personalized-rate plan, which takes into account their common health and safety performance, measured in terms of their collective claim costs.

iv) The retrospective plan: for very large businesses

This plan is intended for very large employers whose annual assessments exceed approximately $450,000. In 2024, approximately 1% of insured employers were being assessed under this plan.

An employer's personalized rate assessment for any given year (based on its past claims experience and cost levels) will be adjusted after two and then four years so as to take into account that year's claims cost performance (four years of costs per claim year). The employer will be reimbursed for lower-than-expected claims costs or an additional assessment will be imposed to cover higher-than-expected claims costs.

v) Better management of health and safety = lower premiums

Quebec offers employers many rate plans to allow them to reduce their workers' compensation assessments by preventing work-related accidents and occupational diseases and by properly controlling and managing the claims that prevention activities could not eliminate.

VII. Employment insurance benefits

a) Federal level:

The federal government has jurisdiction to deal with employment insurance benefits, which provide temporary financial assistance. However, provincial governments that wish to be more involved in questions pertaining to training and the implementation of the new provisions are able to reach agreements with the federal government as provided for under the *Employment Insurance Act* (***EI Act***).[30]

Persons who voluntarily leave their employment without just cause or who are dismissed for misconduct do not qualify for benefits. Persons who leave their employment for cause or those who are laid off following a business reorganization do qualify, however. In most cases of layoffs, it is understood that Employment and Social Development Canada (**ESDC**) will continue to take into account any amounts received as a termination indemnity in considering a claim for benefits.

The issue of just cause having come before the courts on a number of occasions, Parliament saw fit to draw up a list of situations in which a claimant might be considered to have had no reasonable alternative and therefore just cause for voluntarily leaving a job, including sexual or other harassment; the obligation to accompany a spouse or dependent child to another residence; discrimination on a ground prohibited by the *Canadian Human Rights Act*; working conditions that constitute a danger for health or safety; the obligation to care for a child or an immediate family member; significant modifications of terms and conditions in wages or duties; antagonistic relations between an employee and a supervisor for which the employee is not primarily responsible; practices of an employer that are contrary to law; and undue pressure by the employer on the employee to leave their employment (section 29 of the *EI Act* enumerates additional situations).

It is also specified that where such circumstances must be proven, the claimant is to be given the benefit of the doubt. Both the claimant and the employer will have the opportunity to provide information to be taken into account by ESDC in determining the validity of the claim. Special rules apply in cases where the issue of harassment arises.

Benefits to employees who become unable to work because of illness or given their role as caregiver are available. Employers may further create a supplemental or benefit program (called SUB) to complement benefits and reduce premiums.

According to the "Working While on Claim" rule, if individuals work while receiving benefits, they can keep 50 cents of the benefits for every dollar earned, up to 90% of their previous weekly earnings.

30 S.C. 1996, c. 23.

b) Provincial level – maternity and parental benefits
At the provincial level, the *Act respecting parental insurance*[31] implemented a parental insurance plan in order to grant maternity benefits, paternity and parental benefits upon the birth of a child and adoption benefits to residents of Quebec, known as the Quebec Parental Insurance Plan (**QPIP**). QPIP replaces similar benefits that non-Quebec residents have access to under the *EI Act*. It also provides for benefits for the person who agreed to give birth to a child in the context of a surrogacy project and for the parents who are parties to the parental project involving surrogacy.

According to section 3 of the *Act respecting parental insurance*, a person is eligible under the parental insurance plan if:

- in respect of the qualifying period, the person is required to pay premiums under this plan in accordance with Division II of Chapter IV or, to the extent prescribed by regulation of the *Conseil de gestion de l'assurance parentale* (**Conseil de gestion**), under the employment insurance plan established under the *Employment Insurance Act* (Statutes of Canada, 1996, chapter 23) or a plan established for the same purposes by another province or a territory;
- the person is resident in Quebec at the beginning of the benefit period and, in the case of a person whose insurable earnings from a business are considered, on December 31 of the year preceding the beginning of the person's benefit period;
- the person's insurable earnings during the qualifying period are equal to or greater than $2,000; and
- the person has had an interruption of earnings as defined by regulation of the Conseil de gestion.

The maximum duration of the benefits is as follows:

- 18 weeks of maternity benefits for the mother of the child or for the person who gave birth to a child in the context of a surrogacy project;
- 5 weeks of paternity or non-birthing parent benefits for the father of the child, for each
- adoptive parent or each non-birthing parent involved in a surrogacy project;
- 13 weeks of shareable welcome benefits and of 37 for adoptive parents and for parents who are parties to a parental project involving surrogacy;
- 32 weeks of shareable parental benefits for the parents of a child, including a child born through a surrogacy project and adoptive parents;

Additional benefits are available for multiple births/adoptions and single parents.

A parent who has begun to receive or has already received benefits relating to a birth or an adoption under the employment insurance plan or a plan established by another province or territory is not eligible to receive benefits under this plan.

Under the basic plan, the amount to be granted as weekly benefits shall be equal to the following percentage of the average weekly earnings (up to a maximum amount):

- 70% for the 18 weeks of maternity benefits, the five weeks of paternity/adoptive/non-birthing parent benefits, for the 13 weeks of welcome benefits and the first seven weeks of parental benefits;
- 55% for the remaining weeks of parental benefits (section 18 of the *Act*).

The employee can also opt for greater benefits for shorter benefitsleave periods under the "special plan".

Under the plan, parents who share a minimum number of weeks of parental benefits may take advantage of a number of additional weeks of benefits.

The employer shall pay the premium in respect of each employee, in the manner set out by the *Act respecting parental insurance.*

VIII. The Quebec Pension Plan

The *Quebec Pension Plan* (**QPP**) is a compulsory pension plan for Quebec workers. The plan was established in 1966 and provides workers and their families with basic financial protection in the event of retirement, death or disability. On January 1, 2019, the QPP was enhanced with an additional plan.

31 CQLR c A-29.011

The plan is financed by contributions from workers and employers. The contributions are collected by Revenu Québec and the *Caisse de dépôt et de placement du Québec* is responsible for investing funds.

If a worker has contributed sufficiently, the plan provides:

- In case of retirement:
  - a retirement pension for workers who are at least 60 years of age;
  - retirement pension supplement.
- In case of death:
  - a surviving spouse pension;
  - an orphan's pension;
  - a death benefit.
- In case of disability:
  - a disability pension to a worker who becomes disabled;
  - a pension for a disabled person's dependent children;
  - additional amount for disability for retirement pension beneficiaries.

IX. Development of manpower training

The object of the *Act to promote workforce skills development and recognition*[32] (the ***Training Act***) is to improve manpower qualifications through increased investment in training and through concerted action among management, unions, community partners and the education sector, and thereby to foster employment, manpower adjustment, integration into employment and labour mobility.

Since January 1, 1996, and in accordance with a phase-in process that was to take place over a three-year period, the *Training Act* requires certain Quebec employers to spend, on a yearly basis, an amount equal to at least 1% of their total payroll for their Quebec operations on eligible expenditures related to employee training. Employers who fail to meet this obligation will have to pay the difference between the 1% minimum and the amount of the eligible expenditures actually incurred into a fund established and administered by the Quebec government.

Only employers whose total payroll exceed $2,000,000 per year are subject to the *Training Act*, according to the *Regulation respecting the Determination of Total Payroll*.

A number of alternatives are available in order to meet this requirement:

- training workers through in-house or outside activities, defined in a training program set up according to the *Training Act*;
- lending workers or equipment for training purposes;
- providing training leave;
- training apprentices; and
- making a contribution to a sectorial or regional association or other organization recognized by the *Commission des partenaires du marché du travail* for the implementation of a training plan it has accredited.

Employers must complete the Summary of source deductions and employer contributions form from Revenu Québec.

Training expenditures incurred in the year preceding the year in which an employer becomes subject to the Act can also be included provided they meet the conditions stipulated therein. Finally, employers must satisfy certain conditions concerning the justification of training expenditures.

X. *Pay Equity Act*

This legislation was introduced in 1996 to eliminate the salary gap due to systemic gender discrimination suffered by persons holding positions in predominantly female job classes.

The *Pay Equity Act*[33] (***PEA***) applies to employers with more than 10 employees. In the cases prescribed by regulation, regardless of the number of employees, employers are required to submit a report. This report takes the form of an annual online declaration to the CNESST whereby the employer provides information to determine whether or not it is subject to the *PEA*, if it has completed its pay equity exercise and if it has evaluated the maintenance of pay equity.

An employer with 10 to 49 employees must carry out a pay equity process in order to verify the presence of wage gapes due to systemic gender discrimination within its company and correct them. An employer whose enterprise employs 50

32 C.Q.L.R. c D-8.3

33 C.Q.L.R. c L-6.2

or more employees must establish a pay equity plan, and an employer whose enterprise employs 100 or more employees must also set up a pay equity committee that includes employee representatives.

The employer shall, after adjustments in compensation have been determined or a pay equity plan has been completed, maintain pay equity in the enterprise and periodically conduct a pay equity audit in the enterprise. The *PEA* requires the employer to post the results of the pay equity process. The audit and the posting of the results obtained must be carried out on the same date every five years.

Where, because of changed circumstances in the enterprise, the compensation adjustments or the pay equity plan are no longer appropriate to maintain pay equity, the employer shall make the modifications necessary to maintain pay equity.

The alienation of the enterprise or the modification of its juridical structure shall have no effect upon obligations relative to adjustments in compensation or to a pay equity plan, which shall be binding on the new employer.

Employers who reach a level of employment of 10 employees after 1996 have four years to carry out their initial pay equity exercise (sections 4 and 37 *PEA*).

The *PEA* also requires firms to keep the information used for pay equity audit purposes, along with the content of all postings, for a period of six years after a posting is made.

The legislation sets out fines that may be imposed for offences under the *PEA*. The maximum, for employers with 100 or more employees, has been set at $45,000 for a first offence. The fines double for a second or subsequent offence.

The *PEA* provides for a voluntary confidential conciliation process.

XI. *Tobacco Control Act*

The *Tobacco Control Act*[34] (***Tobacco Act***) came into force in November 2015, with the exception of certain provisions which came into force at later dates. The *Act* amends the *Quebec Tobacco Act*[35] which was adopted and assented on June 17, 1998.

The main changes brought by the *Tobacco Act* concern further restrictions on tobacco use both in enclosed spaces and outdoors, extension of the scope of the legislation by considering electronic cigarettes to be tobacco and tightening standards applicable to the tobacco trade. New penal provisions are enacted, the amounts of existing fines are increased and certain other penal provisions are reinforced by making employers and the directors and officers of legal persons, partnerships and associations more accountable.

The *Act* prohibits smoking outdoors within a nine-meter radius from any door, air vent or openable window communicating with, among other listed places, a workplace.

a) Closed smoking rooms and smoking areas

It is not permitted to have designated smoking areas in places such as restaurants, or terraces, casinos, sports grounds and workplaces.

The *Tobacco Act* authorizes the operator of certain facilities to set up smoking rooms to be used only for tobacco smoking and by the people lodged in the place. The smoking rooms must be equipped with a ventilation system that maintains negative air pressure at all times and exhausts smoke directly to the outside of the building. Smoking room doors must be equipped with a self-closing device.

It is permitted to smoke cigars or pipe tobacco in a cigar room, following some conditions, such as: the room must be specially set up for cigar or pipe smoking, the room must have been in operation in May 2005, and it must be equipped with a ventilation system that maintains negative air pressure and directs the smoke directly outside the building. Minors must not be allowed in the cigar room and meals cannot be consumed by customers in the cigar room.

b) Zero tolerance

The operator of a place or business must post notices visible to the persons using the place or business, indicating the areas where smoking is prohibited and must not tolerate smoking in such areas.

The *Tobacco Act* prohibits the display of tobacco in public view and specifies where the notice prohibiting the sale of tobacco to minors and the warning concerning the harmful effects of tobacco on health should be posted.

34 CQLR c L-6.2
35 1998, c. 33.

c) Standards

The government has reserved the right to determine, by regulation, standards concerning the construction or layout of smoking rooms and cigar rooms, the ventilation systems to be installed and the notices to be posted. Currently, there are no such regulations.

d) Inspection

The *Tobacco Act* provides that the Minister of Health and Social Services may appoint any person to perform the duties of inspector or analyst, such duties to include the power of ensuring compliance with the *Tobacco Act*, of taking photographs of the place inspected and of the equipment, property and products found there and of inspecting a place, including a workplace, at any reasonable time.

e) Violations of the *Tobacco Act*

A person who smokes in a place where smoking is prohibited is liable to a fine of $250 to $750 ($500 to $1500 for a subsequent offence).

The operator of a place or business is liable to a fine of $1,000 to $50,000 ($2,000 to $100,000 for a subsequent offence) for contravening the installation, construction or layout standards prescribed by the *Tobacco Act* or by regulation. The operator of a place or business that neglects to post the mandatory notices or for tolerating smoking in an area where smoking is prohibited is also liable to a fine of $500 to $12,500 ($1,000 to $25,000 for a subsequent offence). If such an offence continues for more than one day, each day during which the offence continues shall constitute a separate offence.

Tax considerations

Unlike many Canadian provinces, Quebec administers its own tax system under the *Taxation Act* (Quebec)[36] (***QTA***) through Revenu Quebec. The computation of taxable income under the *QTA* generally parallels the provisions contained in the Canadian *Income Tax Act* (***ITA***).

The following is a general outline of some of the principal Quebec tax issues which should be considered in connection with the establishment of a business in Quebec by a foreign corporation. For a review of the relevant Canadian tax considerations, please refer to our publication entitled "*Doing Business in Canada*".

Quebec taxation of a branch

Under the *QTA*, every corporation carrying on a business through an establishment in Quebec is liable for Quebec provincial income tax on the portion of its taxable income attributable to that establishment. Income taxable in Quebec also includes taxable capital gains from dispositions of "taxable Quebec property". A foreign corporation's income from sources outside Quebec and not attributable to an establishment in Quebec will not be subject to Quebec provincial income tax. Furthermore, unlike the *ITA*, the *QTA* does not impose a branch tax on foreign corporations.

The *QTA* defines an "establishment" as a fixed place of business and specifically includes, inter alia, branches and factories. Revenu Quebec has further stated that an establishment is basically "a place which is stable, permanent or of a fairly long duration, which the taxpayer currently or regularly uses in carrying on his business". A place where only administrative functions are carried on, such as bookkeeping or debt collection, would not normally qualify as an establishment unless other factors are present. An establishment may also result from an extended physical presence of employees in Quebec.

The general rate of income tax currently imposed by the province of Quebec on a corporation's business income is 11.5%. A foreign corporation that carries on an active business in Quebec is thus currently subject to a combined Canadian federal and provincial tax rate of 26.5%. In comparison, Alberta is currently the Canadian province with the lowest combined Canadian federal and provincial tax rate (23%), while Prince Edward Island is the Canadian province with the highest combined Canadian federal and provincial tax rate (31%).

II. Quebec taxation of a subsidiary

Foreign corporations often establish a sole-purpose Canadian subsidiary corporation to carry on business in Quebec.

A Quebec subsidiary is subject to the same combined tax rates applicable to foreign corporations carrying on business in Quebec through a branch.

Although it does not impose withholding tax on payments such as dividends, interest, royalties, rent or technical know-how to non-residents of Canada, the *QTA*, like the *ITA*, still contains rules restricting the capitalization of subsidiaries by non-residents of Canada.

a) "Thin capitalization" rules and interest deductibility
Generally, in computing its income, a corporation resident in Canada may deduct interest paid or payable by it pursuant to a legal obligation to pay interest on borrowed money, provided that the borrowed money is used to gain or produce income from a business or property and the amount of interest is reasonable in the circumstances. However, the "thin capitalization" rules may restrict this ability to deduct

36 R.S.Q., c. I-3.

interest. Generally, when the corporation's "outstanding debts to specified non-residents" exceed one-and-a-half times the corporation's "equity", a prorated portion of the interest paid or payable in the year to such non-residents is not allowed as a deduction in computing the income of the corporation. This restriction also applies to branches of non-resident corporations. Supporting rules also ensure that the thin capitalization rules cannot be circumvented through the use of certain back-to-back lending arrangements involving intermediaries.

Included in a corporation's outstanding debts to specified non-residents are debts owed to such specified non-residents by partnerships of which the corporation is a member. The partnership's debt obligations are allocated to its members based on their proportionate interest in the partnership.

Where a corporate partner's permitted debt-to-equity ratio is exceeded, the partnership's interest deduction is not denied but rather included in the corporate partner's income.

In order to avoid double taxation, such rules do not apply where an amount of interest, the deductibility of which would otherwise be denied or that is required to be included in income as mentioned in the preceding paragraph, as applicable, is included in the corporation's income pursuant to foreign accrual property income rules. These rules generally provide that passive income, which includes certain interest income, earned by a Canadian-resident corporation's foreign affiliate is taxed in the hands of its Canadian-resident parent.

Readers should also be aware that the Federal Government released in November 2022 revised draft legislation introducing a new earnings-stripping rule, which will apply in conjunction with the existing federal "thin capitalization" rules. To date, the Quebec government has not announced if corresponding proposals will be introduced in the Quebec legislation. Very generally, under the proposed federal provisions, the "net interest expense" that a corporation (and various other entities) may deduct will be capped to no more than a fixed percentage of the "tax EBITDA." The "tax EBITDA," in general, would be a corporation's taxable income before taking into account net interest expense and interest income, income tax, and deductions for depreciation – each of these items as determined for income tax purposes. Under the proposals, the allowed "tax EBITDA" percentage has decreased to 30% for taxation years beginning on or after January 1, 2024.

b) Withholding tax for services rendered in Quebec
Under the *QTA*, a person who makes a payment for services (other than employment) rendered in Quebec by a non-resident of Canada must deduct 9% from that payment (in addition to the 15% federal withholding tax) and remit the amount deducted to Revenu Quebec, unless the non-resident has obtained a waiver from Revenu Quebec. This withholding requirement does not apply to certain non-resident corporations that operate an insurance or a banking business in Quebec. A waiver may generally be obtained by a non-resident who does not have an establishment in Quebec.

The withholding does not constitute a final tax. Rather, it is on account of the final tax liability of the non-resident. If, ultimately, the non-resident does not have any tax payable, the non-resident may recover the amount withheld by filing an income tax return in Quebec and claiming a refund.

III. Transfer pricing

Whether a branch or a subsidiary is used, consideration should be given to the issue of transfer pricing. Transfer pricing, sometimes referred to as inter-entity pricing, is the pricing for goods or services transferred between related parties. Particular areas of concern include management and administration fees, development charges, royalties and interest.

Like the *ITA*, the *QTA* contains provisions requiring prices charged in related parties and other non-arm's length transactions to conform to prices charged in comparable arm's length transactions. The purpose of these provisions is to ensure that a reasonable profit is being earned by the entity transferring goods or services and that only reasonable deductions are claimed for tax purposes by the entity paying for the goods or services.

The transfer pricing rules generally apply where a taxpayer and a non-resident person with whom the taxpayer does not deal at arm's length enter into one or more transactions and either: i) the consideration paid in the transaction is not an arm's length amount, in which case the amount of the consideration may be adjusted to what arm's length persons would have paid; or ii) the transaction would not have been entered into between persons dealing at arm's length and it may reasonably be considered that the transaction was not entered into other than to obtain a tax benefit, in which case the transaction may

be recharacterized into the transaction that would have been entered into by persons dealing at arm's length. It should be noted that transactions involving partnerships may also be subject to transfer pricing adjustments.

IV. Income tax administration matters

A foreign corporation that carries on a business in Quebec through a branch is required to file federal and provincial income tax returns within six months of the end of its taxation year. After the return has been received by Revenu Quebec, an assessment is sent to the taxpayer. Income taxes are payable in monthly instalments which are calculated by reference to the previous taxation year and the balance is generally payable within two months after the year-end. No instalments are due in the first year of operation.

V. Capital tax

Quebec capital tax was abolished on January 1, 2011.

VI. Quebec Sales Tax (QST)

a) General information

The QST is a value-added tax that is generally harmonized with the federal goods and services tax (**GST**) and similar to the sales and value-added taxes imposed by many European countries. It is a multi-stage tax that applies to almost all "supplies" of goods and services made in Quebec throughout the chain of production and distribution. Even the transfer of real property situated in Quebec is considered to be a "supply of goods". All purchasers of taxable supplies must pay QST at a rate of 9.975% on the value of the consideration paid or payable in respect of the supply, excluding GST. However, if the payer of the QST is engaged in a commercial activity and is registered as a supplier for QST purposes, it is entitled to recover some or all of the QST it has paid through the input tax refund (**ITR**) mechanism. Thus, effectively only consumers and certain providers of exempt supplies (including, for instance, financial service providers) bear the final incidence of the QST.

Every person carrying on business in Quebec (whether a resident of Canada or not) whose worldwide taxable supplies exceed $30,000 per year must register as a supplier for QST purposes at the latest on the day of the person's first taxable supply in Quebec. Revenu Quebec administers both the GST and QST in Quebec.

Except for certain sales of real property, the supplier is required to collect QST and remit the QST collected net of their ITRs to Revenu Québec. Registrants must file a QST return and remit the QST on a monthly, quarterly or annual basis depending on their level of sales. If the ITRs claimed for a particular period exceed the QST collected for that period, a refund can be claimed from Revenu Quebec.

Except for certain non-taxable importations, an importer is required to self-assess QST on the duty paid value of goods brought into Quebec, whether from outside or within Canada. An exception is, however, available for certain goods and services brought into Quebec in the course of commercial activities by a person who is a QST registrant. Exports of goods and services from Quebec are not subject to QST. This means that non-residents will not have to pay QST on goods or services acquired in Quebec when those goods or services are not considered to be consumed in Quebec. Generally, if the goods are purchased and exported from Quebec or delivered outside of Quebec, the supply of the goods will be "zero-rated" (i.e., taxed at a rate of 0%).

As described above, QST will be payable on all taxable supplies made in Quebec. A supply of goods is deemed to be made in Quebec if the goods are located in or are to be delivered in Quebec to the recipient. With respect to services, a supply is generally deemed to be made in Quebec if the supplier obtains, in the ordinary course of business, an address in Quebec and, as the case may be: i) the supplier has obtained only one business or residential address of the recipient in Canada and that address is in Quebec, ii) the supplier has obtained more than one business or residential address of the recipient in Canada and the business or residential address that is most closely connected with the supply is in Quebec, or iii) the Quebec address is neither a business nor residential address of the recipient but is the address of the recipient that is most closely connected with the supply. Where, in the ordinary course of business of the supplier, no Canadian address is obtained for the recipient, a service is deemed to be made in Quebec if the service is performed principally in Quebec. Special rules beyond the scope of this summary are applicable where the supply is of services in relation to real property, services in relation to tangible personal property, certain services rendered in the presence of the recipient, services rendered entirely outside

of Canada, transportation services or telecommunications services.

There is an "override rule" which applies to supplies made by non-residents. Subject to the new QST registration regime for non-residents selling into Quebec, any supply of personal property or a service made by a non-resident of Quebec is deemed to be made outside of Quebec, unless:

- the supply is made in the course of a business carried on in Quebec;
- at the time the supply is made, the non-resident is registered for the QST; or
- the supply is an admission to a place of amusement, a seminar, an activity or an event where the nonresident person did not acquire the admission from another person.

This override rule does not apply to the supply of real property in Quebec. Such a supply will be subject to QST whether the supplier is a resident or non-resident.

If a non-resident has paid QST, it will not be entitled to claim ITRs unless it is registered for QST. However, an unregistered non-resident is entitled to a rebate of QST it has paid in certain limited circumstances.

b) Registration system for non-residents selling into Quebec

The following persons are required to register under the new registration system to collect and remit the QST on all taxable supplies of digital products and services made to "specified Quebec consumers" (i.e., a recipient of a supply that is not registered for QST purposes and whose usual place of residence is located in Quebec) to the extent the total of such taxable supplies exceeds $30,000 over a 12-month period:

- a "specified supplier" (i.e., a person not resident in Quebec that does not make supplies in the course of a business carried on in Quebec and that is not registered under the regular QST regime);
- a "distribution platform operator" (i.e., a person other than the supplier or an excluded operator that controls or sets the essential elements of the transaction between the supplier and the recipient, such as billing, terms and conditions and delivery, in respect of a supply of property or a service made through a "specified distribution platform"); or
- an "accommodation platform operator" (i.e., a person other than the supplier or an excluded operator that controls or sets the essential elements of the transaction between the supplier and the recipient, such as billing, terms and conditions and delivery, in respect of a supply of short term accommodation service made through an accommodation platform).

The specified distribution platform rules will override the specified supplier rules such that a specified supplier using a specified distribution platform for the supply of digital products or services in Quebec to Quebec consumers will generally not be required to register or collect tax on its supplies. However, if a specified supplier also supplies digital products or services outside of a specified distribution platform, a registration and collection requirement may be triggered (determined pursuant to the threshold set above).

Similar registration requirements also apply to the aforementioned persons in respect of a taxable supply made to a "specified Canadian recipient" (i.e.: a recipient of a supply that is not registered for GST purposes and whose usual place of residence is located in Canada). This regime will also ensure the collection of QST on the supply of digital products and services made to Quebec consumers. The supply of digital products and services will therefore also be considered for the purpose of the $30,000 threshold test applicable to registration.

This special regime does not allow registrants to recover ITR with respect to QST paid on business expenses. However, suppliers may voluntarily register under the regular QST regime (if the general conditions are met) in order to claim ITRs.

VII. Payroll taxes

Employers in Quebec are required to deduct income tax and employee contributions to certain social programs at source and to remit such amounts to the tax authorities on behalf of their employees. Employers are also required to make contributions for the benefit of their employees in accordance with certain social programs. For a new employer, both the employee's and employer's contributions must be received by Revenu Quebec in monthly instalments on the 15th day of the month following the month in which the remuneration was paid.

Quebec Income Tax	▪ Deduction from remuneration paid to employees. ▪ Amount withheld based on Source Deduction Table for Quebec Income Tax (TP-1015.TI).
Quebec Pension Plan	▪ Contributions shared equally by the employer and the employee. ▪ Maximum pensionable salary or wages for 2024 is $68,500 per employee, less a $3,500 basic exemption. ▪ Pensionable salary is subject to employer and employee contributions, each at a 6.40% rate. ▪ Both the maximum employer contribution and employee contribution per employee are $4,160.00 for 2024. ▪ Starting January 1st, 2024, employees and employers have to contribute to the 2nd component of the additional plan previously announced in 2019. Under the additional plan, pensionable earnings exceeding the maximum contribution of $4,160.00 are subject to a contribution at a 4% rate, for a maximum of 188$ for 2024, in respect of pensionable salary or wages up to $73,200, for a combined maximum contribution of $4,348 for both the employer and the employee. ▪ As of 2025, the additional plan will be increased to 114% of the maximum pensionable earnings.
Health Services Fund	▪ Contributions by the employer based on the total salaries or wages paid to employees. ▪ Contribution rate rises from 1.25% to 4.26% depending on total payroll, sector of activity, and category of employer. ▪ Maximum rate of 4.26% where total payroll is greater than or equal to $7.5 million. ▪ Minimum rate of 1.25% where total payroll is less than or equal to $1 million and 50% or more than the total payroll is attributable to activities in the manufacturing or primary sectors.
Quebec Parental Insurance Plan	▪ Contributions shared by the employer and the employee. ▪ Maximum insurable earnings for 2024 is $94,000 per employee. ▪ Insurable earnings are subject to employee contributions at a rate of 0.494% and employer contributions at a rate of 0.692% for a maximum employee and employer contribution of $464.36 and $650.48, respectively.
Labour Standards Commission	▪ Contributions by the employer based on the total salaries or wages paid to employees. ▪ Maximum remuneration subject to contributions for 2024 is $94,000 per employee. ▪ Contribution rate of 0.06%.
Health and Workplace Safety Fund	▪ Contributions by the employer based on the total salaries or wages paid to employees and certain independent contractors deemed to be employees. ▪ Maximum remuneration subject to contributions for 2024 is $94,000. ▪ Contribution rate varies between 0.22% and 15.89%, depending on the employer's sector of activity.
Workforce Skills Development Recognition Fund	▪ Contributions by employers with total payroll in Quebec greater than $2 million. ▪ At least 1% of the total Quebec payroll must be spent on employee training. If not, the employer must contribute an amount equal to the difference between 1% of its total Quebec payroll and the amount spent on training.
Compensation Tax for Financial Institutions	▪ Contributions by certain financial institutions based on the total salaries or wages paid to employees. ▪ Rate varies by category of financial institution, between 0.90% and 2.80%.

VIII. Quebec tax incentives

The Quebec government offers a broad range of tax incentives to businesses operating in Quebec, generally in the form of tax credits (some of these incentives are discussed below). It is worth mentioning that in certain instances, such incentives are only available to taxpayers which are incorporated businesses, Canadian-controlled corporations or Canadian-controlled private corporations. Furthermore, in order to avail themselves of such incentives, taxpayers must, in some cases, file prescribed information and/or obtain certificates or attestations from the relevant Quebec authorities.

a) Tax credit for investment and innovation

A corporation carrying on a business through an establishment in Quebec that is not: i) a corporation that is exempt from tax, ii) a Crown corporation or a wholly-controlled subsidiary of such a corporation, iii) an aluminum producing corporation, or iv) an oil refining corporation, that acquires manufacturing or processing

equipment, general-purpose electronic data processing equipment or certain management software packages between March 10, 2020, and January 1, 2025, may obtain a tax credit of 15%, 20% or 25% depending on the region in which the investment is made, for equipment acquired after December 31, 2023.

The tax credit is fully refundable where the corporation's assets and gross income for the taxation year do not exceed $50 million. It is, however, partially refundable where the corporation's assets and gross income for the taxation year exceed $50 million but do not exceed $100 million. The tax credit is not refundable where the corporation's assets and gross income exceed $100 million for the applicable taxation year. The non-refundable portion of the tax credit may be carried-back for three years and carried-forward for 20 years.

The tax credit is calculated on the portion of the specified expenses incurred to acquire the equipment which are in excess of $5,000 (for management software packages) or in excess of $12,500 (for any other specified property). However, the specified expenses in respect of which a qualified corporation may claim the tax credit may not exceed a cumulative limit of $100 million on a five-year period.

b) Scientific Research and Experimental Development (SR&ED)

A taxpayer which carries on a business in Canada and carries out SR&ED in Quebec on its own behalf or on behalf of another person, or has such research and development carried out on its behalf, may be entitled to a refundable tax credit. This tax credit is refundable in the sense that the taxpayer will be paid the amount of the tax credit even if the taxpayer does not have any income tax payable.

In order for the taxpayer to be considered to be carrying out SR&ED, the objective of its project must be to acquire knowledge that advances the understanding of the underlying scientific relations or technologies and the probability of achieving a given objective or result must not be known or determined in advance on the basis of generally available scientific or technological knowledge or experience.

Furthermore, the taxpayer's SR&ED must also incorporate a systematic investigation, meaning that it must begin with the formulation of a hypothesis followed by testing through experiment or analysis and finishing with the drawing of logical conclusions. The Quebec government offers four SR&ED programs which are discussed below under separate headings.

i) Salary and wages

This tax credit is computed as a percentage of salaries and wages paid to employees of an establishment located in Quebec who are undertaking SR&ED, as well as the portion of any consideration paid to a subcontractor that may reasonably be attributed to salaries and wages paid to an employee in Quebec. In circumstances where the taxpayer is dealing at arm's length with the subcontractor, only half of such portion is included in computing this tax credit.

In order to determine the salary eligible for such credit, a taxpayer is allowed to use one of the following two methods: (1) the proxy method or (2) the traditional method. The proxy method is simpler but more restrictive, as it takes into account only expenditures that are generally readily associated with SR&ED activities, whereas the traditional method takes into consideration only salaries and wages paid in order to undertake work related to the project. Eligible salaries and wages must be reduced by the amount of any governmental assistance and non-governmental assistance attributable thereto (other than the federal investment tax credit). Other specific rules pertaining to contract payments and contributions may also reduce the amount eligible to the tax credit.

As for the rate of the tax credit, in the case of a corporation that is not a Canadian-controlled private corporation, the rate of the credit will be 14%. If the corporation is a Canadian-controlled private corporation and has no more than $50 million in assets, the tax credit will be computed at a rate of

30% on the first $3 million paid in eligible salaries and wages in a taxation year. However, the rate of the credit on the first $3 million paid in eligible salaries and wages is gradually reduced from 30% to 14% in cases where the assets of a small or medium-sized business range between $50 million and $75 million. Businesses at or over the $75 million threshold are limited to a tax credit of 14% on the first $3 million paid in eligible salaries and wages. As for the eligible salaries that exceed $3 million, the tax credit is computed at a 14% rate, regardless of the assets held by the taxpayer's business.

ii) SR&ED under a university research contract

Where a taxpayer has entered into a research contract with an eligible Quebec university or an eligible research centre, a tax credit is available on 80% of the payments made to the university. The rate of the credit is the same as and varies on the same basis as that for salary and wages described above.

iii) Private partnership pre-competitive research

A tax credit is available on eligible SR&ED expenditures to groups of private businesses doing precompetitive research which exclusively involves a "private-private" partnership. In circumstances where the taxpayer is dealing at arm's length with the subcontractor, 80% of the amount paid to the subcontractor is considered in computing such tax credit. The rate of the credit is the same as and varies on the same basis as that for salary and wages described above.

iv) Dues and fees paid to a research consortium

A taxpayer which is a member of a recognized research consortium may avail itself of a tax credit on dues and fees attributable to SR&ED carried on by the research consortium in Quebec. An eligible research consortium means a body in respect of which the relevant Quebec authority has issued a certificate recognizing it as a research consortium. The rate of the credit is the same as and varies on the same basis as that for salary and wages described above.

v) Tax holiday for foreign researchers and specialists

Researchers and specialists who are not resident in Canada and who have expertise in certain specialized areas of activity are entitled to a tax holiday when they settle in Quebec. The tax holiday targets researchers specialized in pure or applied sciences and specialists in management, financing and marketing in certain fields of innovation activities or technology who work for a person carrying on a business and performing R&D activities in Quebec. The tax holiday takes the form of a deduction which allows the individual to deduct a portion of their salary in the computation of their income for a maximum of five consecutive years. For the first and second years, the individual may deduct 100% of their salary, for the third year, 75%, for the fourth year, 50%, and 25% for the fifth year.

vi) Government assistance and contract payment

Taxpayers claiming SR&ED expenses in the context of contracts entered into with a government (federal or provincial), a municipality or a public authority should be mindful that SR&ED expenses can be reduced in certain circumstances where the taxpayer is considered to have received government assistance or a contract payment. Government assistance includes grants and subsidies as well as forgivable loans and deductions for taxes. A contract payment is an amount payable by a government to a taxpayer for SR&ED to be performed for it or on its behalf.

c) Incentive deduction for the commercialization of innovations in Quebec

A corporation carrying on a business through an establishment in Quebec and from which it derives income from the commercialization of a qualified intellectual property asset to which it holds the rights may be eligible to a deduction on the qualified portion of its taxable income attributable to that asset at an effective taxation rate of 2%.

A "qualified intellectual property asset" is defined as an incorporeal property that results from SR&ED activities carried on in whole or in part in Quebec and that is either i) a protected invention of the corporation, ii) a protected plant variety of the corporation, or iii) a protected software of the corporation.

The amount a corporation can deduct is calculated by applying a formula, which can be broken down into three elements, namely i) the qualified profits from a qualified intellectual property asset of the corporation, ii) the Quebec nexus, which refers to the relative extent of SR&ED activities carried out in the province of Quebec by the corporation, and iii) the rate of the tax benefit.

d) Synergy capital tax credit

A "qualified investor" (i.e., a corporation other than an excluded investor for the year that carries on a business in

Quebec and has an establishment in Quebec) may claim a non-refundable tax credit equal to 30% of the total amounts invested in the capital stock of an innovative growth-stage corporation (up to a maximum of $225,000), if the qualified corporation i) is a Canadian-controlled private corporation whose paid-up capital, for its most recent taxation year at the time of filing its application for an authorized placement certificate, is less than $15 million and ii) it has been carrying on business through an establishment in Quebec for at least 12 months in one of the following eligible sectors:

- life sciences;
- manufacturing or processing;
- green technologies;
- artificial intelligence; or
- information technologies.

Certain conditions must be met to benefit from this tax credit, including i) the corporation's main business must not consist in financing or investing, ii) it must deal at arm's length with the qualified corporation and ii) it must hold the shares for a minimum of five years.

e) Tax credit for technological adaptation services
A qualified corporation that enters into a contract with an eligible liaison and transfer center (LTC) or an eligible college center for technology transfer (CCTT) may claim a tax credit equal to 40% of its qualified expenditures it has incurred in the year and in connection with such contract, for the purpose of obtaining one of the following eligible liaison and transfer services:

- locating and brokering research results;
- assessing the needs of businesses;
- bringing together stakeholders;
- carrying out technical feasibility studies and studies assessing the commercial potential of innovation projects;
- supporting businesses through the various stages of realizing innovation projects; and
- conducting software certification tests.

In order for an expenditure to be eligible for the Tax Credit for Technological Adaptation Services, it must not be eligible for certain SR&ED tax credits.

f) Refundable tax credit for the development of e-business
A qualifying corporation may claim a refundable tax credit equal to 24% of eligible salaries paid (to a maximum annual salary of $83,333 per employee), in addition to a non-refundable tax credit equal to 6% of such salaries (subject to the same maximum salary), where it carries on one of the following e-business activities through an establishment in Quebec:

- information technologies consulting services relating to technology, systems development, e-business processes and solutions;
- development, integration, maintenance and evolution of information systems and technology infrastructure;
- design and development of e-commerce solutions, for instance, portals, search engines and transactional websites; or
- development of security and identification services relating to e-commerce activities.

For taxation years beginning after December 31, 2024, an exclusion threshold per eligible employee will be introduced in respect to the qualified wages for the year. As such, the current limit of $83,333 per employee will be removed. Additionally, the non-refundable tax credit of 6% will be increased by one percentage point annually until it reaches 10% in 2028. Correspondingly, the refundable tax credit of 24% will be decreased by one percentage point annually until it reaches 20% in 2028. The rates applicable in 2028 will apply to subsequent years.

g) Refundable tax credit for multimedia productions
A refundable tax credit is available to corporations operating a multimedia productions business through an establishment in Quebec. The tax credit is equal to 30% of qualified labour expenditures incurred in respect of multimedia titles intended for commercialization, other than vocational training titles, or 26.25% for all other multimedia titles. A corporation producing a multimedia title eligible for the 30% rate may benefit from an additional 7.5% where a French version of the title is made available.

To benefit from this tax credit, the taxpayer must ensure that the multimedia production is produced for commercial use on electronic media, is controlled by software that allows interactivity, and includes an appreciable quantity of three of the following four types of data: text, sound, fixed images and animated images. The maximum financial assistance available per eligible job is $100,000. As of January 1, 2025, the limit of $100,000 will be removed and an exclusion threshold per employee will be introduced in respect to qualified labour expenditure. Budget 2024 proposes to split the tax credit for multimedia production into a refundable tax credit and a non-refundable tax credit. As such, starting January 1, 2025, a non-refundable tax credit starting at 2.5% will be increased by 2.5% annually until it reaches 10% in 2028. Correspondingly, the refundable tax credit will be decreased by 2.5% annually until 2028. The rates applicable in 2028 will apply to subsequent years.

h) Refundable tax credit for Quebec film and television productions

An eligible corporation may benefit from a refundable tax credit equal to 28% to 40% of qualified labour expenditures incurred to produce a Quebec film, with the higher rate generally applicable to French language and big-screen productions that are not adapted from a foreign format.

In addition, all productions are eligible to claim an additional tax credit in respect of qualified labour expenditures where conditions relating to special effects and computer animation, regional productions and non-public financial assistance are met. The additional tax credit is equal to 10% of such qualified expenditures attributable to special effects and computer animation, 10% or 20% of expenditures attributable to regional productions (depending on the category of production concerned), and up to 16% of expenditures where public financial assistance is not received or does not exceed a prescribed threshold.

The maximum aggregate tax credit available to eligible corporations is 62% of eligible labour expenditures for films adapted from a foreign format or 66% for all other films.

i) Refundable tax credit for film production services

Eligible corporations producing foreign productions or local productions that do not satisfy Quebec content criteria may claim a refundable tax credit for film production services equal to 20% of the total cost of eligible labour and eligible goods attributable to the various stages of carrying out an eligible production. An additional refundable tax credit equal to 16% of eligible labour costs may be claimed where such costs relate to activities tied to the completion of computer-aided animation and special effects. Broadcasters and corporations which do not deal at arm's length with broadcasters do not qualify for either credit. However, since May 31, 2024, only 65% of the cost of a contract related to computer-aided special effects and animation will be considered in calculating the basic tax credit.

Taxpayers claiming the refundable tax credit for film production services may not accumulate the refundable tax credit for Quebec film and television productions, as described above, in respect of the same expenses.

j) Refundable tax credit for the construction or conversion of vessels

The vessel credit consists of a refundable tax credit applicable in respect of certain eligible construction or conversion expenditures incurred by a corporation that has an establishment in Quebec and carries on a shipbuilding business in the province. The expenditures may be in connection with a prototype vessel and up to three vessels constructed or converted as part of a production run. The rate of this tax credit for a prototype vessel is 37.5%, to a maximum of 18.75% of the construction or conversion cost. Eligible expenditures incurred for the first, second, and third vessels of a production run may give rise to a refundable tax credit of 33.75%, 30%, and 26.25%, respectively, to a maximum of 16.875%, 15%, and 13.125%, respectively, of the cost of the units. The rates apply to the cost of plans and specifications produced entirely in Quebec (or the Quebec salaries incurred to produce them), and to the wages incurred with persons employed by the corporation and who work directly on the construction or conversion of an eligible vessel.

k) Refundable tax credit for international financial centres (IFC)

In general, a corporation carrying on qualified international financial transactions (**QIFT**) or qualified international financial operations (**QIFOs**) within the urban agglomeration of Montreal may claim a refundable and/or non-refundable

tax credit equal to 24% of salaries (up to $75,000 per eligible employee on an annual basis) paid to its employees. A refundable tax credit is available for wages incurred in respect of QIFOs and back office activities relating to QIFTs. A non-refundable tax credit may be claimed by an IFC for wages incurred in respect of QIFT activities other than back office activities.

QIFTs include, among other things, trading in outstanding securities, the operation of a clearing house, securities advising and portfolio management, the provision of financial packaging services, and the provision of damage insurance brokerage services, generally for the benefit of non-residents of Canada. QIFOs include the performance of support, analysis, control and management services on behalf of a foreign financial entity such as due diligence, corporate finance and taxation, financial disclosure, and risk management services.

To qualify as an IFC, a corporation must receive a qualification certificate from the Minister of Finance attesting that six or more eligible employees worked for the corporation for all or part of a taxation year, as the case may be. Eligible employees are those who work full-time for the IFC and allocate at least 75% of their time carrying out QIFTs or QIFOs. The corporation's QIFT and QIFO must be conceived, administered, carried out, managed, governed and centralised in Montreal and the IFC's management regarding the completion of QIFTs and QIFOs must be located in Montreal.

Moreover, subject to certain detailed conditions, foreign specialists in respect of whom Revenu Quebec has issued a qualification certificate recognizing them as such and who are employed by a corporation qualified as an IFC are entitled to a personal Quebec income tax exemption of 100% for the first two years, 75% the third year, 50% the fourth year and 37.5% the fifth year of the applicable reference period. For this purpose, the reference period begins on the earlier of the day on which the individual begins to perform the duties of their employment and the day on which the individual became resident in Canada to form part of the strategic personnel of an IFC in Canada.

l) Refundable tax credit for new financial services corporations
An eligible corporation may receive a refundable tax credit equal to 24% of the eligible salaries it pays, subject to an annual maximum of $24,000 per employee, and a refundable tax credit equal to 32% of the eligible expenditures it incurs, subject to an annual maximum of $120,000 to be shared with any associated corporations. Both tax credits may be claimed by an eligible corporation over a maximum period of five years.

To be eligible, the corporation's activities must include one or more of the following activities: analysis, research, management, advisory or securities transactions or distribution services performed by certain types of securities dealers, securities advisory or securities portfolio management services provided by certain types of securities advisers.

Foreign specialists employed by new financial services corporations may also benefit from the tax holiday granted to foreign specialists of IFC described above.

m) Tax holiday for large investment project (THI)
Businesses that invest in large investment projects (i.e., $50 million or more in an eligible region, or $100 million or more in all other regions) in Quebec may benefit from a 10-year tax holiday from corporate income tax and contributions to the Health Services Fund with respect to the project, up to 15% of the project's total eligible capital investment expenditures. Strategic sectors eligible for large investment projects include: manufacturing, wholesale trade, warehousing, data processing and hosting or any sector where the investment project is to modernize a business of the corporation or partnership through digital transformation.

n) Refundable tax credit for natural resources
A corporation may benefit from a refundable tax credit for exploration, development, and renewable and conservation expenses, provided that such expenses are not flowed through to the corporation's shareholders. The rate varies between 12% and 38.75% depending on the type of resource, where the expenses are incurred and the corporation's activities.

IX. Quebec mining tax regime

A mining operator is generally required to pay mining duties corresponding to the greater of its minimum mining tax or its mining tax on its annual profit for the fiscal year.

The minimum mining tax is equal to 1% of the first $80 million of the operator's, as well as all associated operators', output value at the mine shaft head in respect of the mines it operates, which is calculated on the basis of the operator's gross value of annual output from the mine. This includes all of the work relating to the various phases of mineral development and other related activities, up to the disposition of the mineral substance or its use by the operator. A rate of 4% applies to all output value in excess of $80 million.

With respect to the mining tax on annual profit, its amount is computed by applying progressive rates ranging from 16% to 28% to a particular segment of the operator's annual profit margin. Such profit is calculated on a mine-by-mine basis and is generally equivalent to the operator's annual earnings, less certain expense allowances attributable to exploration activities and pre-production development work. Where an operator suffers an annual loss rather than earning an annual profit, it may obtain a credit on duties refundable for losses.

Finally, where an operator is required to pay mining duties corresponding to its minimum mining tax, the excess of this amount over the mining tax on its annual profit will be included in a cumulative minimum mining tax account, which will enable the operator to reduce the amount of its mining duties payable in subsequent years which are based on annual profit rather than minimum tax.

X. Other tax considerations

a) Disclosure of a nominee agreement

Under the *QTA*, a taxpayer who is a party or a partnership that is a party to a nominee agreement entered into in the course of a transaction that bears tax consequences has to disclose the agreement and the transaction on or before the 90th day after the date on which the contract was entered into.

In order to comply with these new mandatory disclosure obligations, one of the parties to the nominee agreement will have to disclose its existence by filing a prescribed form, which must include the following information:

- the date the nominee agreement was entered into;
- the identity of the parties to the nominee agreement;
- a complete description of the facts of the transaction that is sufficiently detailed to allow Revenu Quebec to analyze it and have a proper understanding of the tax consequences;
- the identity of any other person or entity in respect of which the transaction has tax consequences; and
- such other information as is required by the prescribed form.

Where the nominee agreement is not disclosed by one of the parties within the prescribed time to do so, the parties to a contract may be liable to a minimum penalty of $1,000 and an additional penalty of $100 per day of omission, up to a maximum of $5,000.

The *QTA* provides that where a taxpayer fails to file the prescribed form in respect of the contract and the transaction, the normal reassessment period is suspended for taxation years in which the taxpayer did not comply with its nominee agreement disclosure obligations. Where a taxpayer makes a late disclosure, the normal reassessment period will begin to run again from the filing date.

b) Disclosure of aggressive tax planning

The Quebec tax legislation contains a series of provisions aimed at fighting aggressive tax planning. In this regard, the *QTA* provides a list of transactions or agreements that are subject to mandatory disclosure by taxpayers.

A taxpayer who carries out a transaction involving conditional remuneration, a confidential transaction or a transaction with contractual protection or who is a member of a partnership who carries out such transaction has to disclose the transaction to Revenu Quebec where the transaction results in a tax benefit of $25,000 or more for the taxpayer or has an impact on the taxpayer's income of $100,000 or more for a taxation year.

The *QTA* and the Mandatory Transaction Disclosure Regulation[37] also provide a list of specified transactions which must be disclosed to Revenu Quebec, including transactions involving payment to a non-treaty country or involving the trading of tax attributes. With respect to payments to a non-treaty country, it applies when one or more payments, totalling $1 million or more

37 CQLR c I-3, r.2

during a taxation year, made by a person to an entity which it is not dealing at arm's length with and which is located in a jurisdiction that has not entered into a tax treaty with Canada, where the conditions prescribed in the regulation are met.

The specified transaction pertaining to the trading of tax attributes generally target tax planning strategies where a taxpayer's tax attributes are used by another taxpayer that is not affiliated with the taxpayer before the series of transactions or the use, resulting in a loss, of tax attributes by a corporation or trust further to its capitalization by an arm's length party if there is a connection between the capitalization and the use of the tax attributes, provided that the conditions prescribed by the regulation are met.

Failing to disclose transactions subject to mandatory disclosure can result in severe consequences. Taxpayers who fail to disclose a transaction subject to mandatory disclosure can face penalties up to $100,000 and 50% of the tax benefit derived from the transaction. In addition to monetary penalties, failing to disclose such transaction may also result in becoming ineligible for public contracts for a five-year period and into a longer for reassessment by Revenu Quebec.

XI. Tax disputes

Revenu Quebec administers the application of all Quebec tax laws. Tax audits, assessments and collection measures are conducted by Revenu Québec on behalf of the Government of Quebec. To do so, Revenu Quebec is granted large and vast powers to audit taxpayers, which have been narrowed by the courts in recent years.

Tax disputes arising out of the application of Quebec tax laws are under the jurisdiction of Quebec Tribunals. Quebec Tribunals follow their own rules of civil procedures and rules of evidence.

Revenu Quebec and the Canada Revenue Agency (**CRA**), the Canadian taxing authority, have entered into an automatic information exchange agreement pursuant to which taxpayer information will be made available to both authorities, to allow them to replicate audits and assessments, for example. Taxpayers should be mindful that if they receive tax assessments from both Revenu Quebec and CRA, they will need to challenge each assessment separately under the appropriate jurisdiction.

Corporate law

The following is a summary of the various alternative legal structures available for carrying on commercial activities in Quebec. These structures can be divided into three major categories – the individual owner or sole proprietorship, the partnership and the corporation. What follows is a brief description of each business vehicle.

I. Sole proprietorship

The businessperson acting under their own name or with a registered name is the simplest method used to carry on a business. The owner of the business operates their business as a sole proprietorship, without any corporate structure separating their personal assets from those of the business.

The sole proprietorship is the easiest of the alternative structures to set up. The only formalities necessary are the registration process to be completed in compliance with the *Act respecting the legal publicity of enterprises*[38] (***Publicity Act***), if the owner desires to operate under a name that does not include that person's surname and given name. Apart from the absence of other formalities, the lack of a governing structure permits the sole proprietor to make quick decisions and adjust to different circumstances.

With such a structure, the owner will both directly benefit from all profits and absorb any losses stemming from the business operations. As a result, the owner will have to file a single income tax return for them self and for the business and any losses incurred by the business may be deducted from other income. The individual owner will be taxed at the progressive tax rates applicable to individuals under the various income tax laws rather than the rates applicable to corporations, which are lower in most cases. This form of organization does not permit revenue-deferring techniques. However, should this structure become non-cost effective from a tax point of view, the assets of the business can be transferred to a partnership or to a corporation on a tax-free basis.

One of the disadvantages of this method of carrying on business is that the owner will be directly liable for the obligations and liabilities of the business, in that creditors will have access to the owner's personal assets should the business encounter any financial difficulties. Also, since the owner operates their business alone, the availability of financing may be limited.

Finally, there are no dissolution requirements necessary for this type of business since all the owner has to do is discontinue the business operations and, if necessary, dispose of their assets.

II. Partnership

A partnership is created by a contract of partnership in which the parties, namely the partners, in a spirit of cooperation, agree to carry on an activity, to contribute thereto by combining property, knowledge or activities and to share any resulting pecuniary profits.

The essential elements of any partnership are therefore the obligation of each of the partners to contribute to the partnership by way of money, property, knowledge or activity and the obligation to share the profits.

Although a written contract is not necessary to evidence the creation of a partnership, such a contract should help the partners to clearly establish their respective rights and obligations and provide the rules for the management of the partnership in order to minimize the possibility of future disagreements.

There are three kinds of partnerships: a) general partnership, b) limited partnership and c) undeclared partnership.

38 R.S.Q., c. P-44.1.

39 Art. 2189 *Civil* Code

A general or limited partnership is formed under a name that is common to the partners. Such a partnership is required to file a registration declaration under the *Publicity Act*, failing which it will be deemed to be an undeclared partnership and subject to the rights of third persons in good faith.[39]

The registration declaration of a partnership must set out the information prescribed under the *Publicity Act*, including the name and domicile of each partner together with a statement that no person other than the persons named therein is a member of the partnership as well as the object of the partnership. Recent amendments to the *Publicity Act* were passed to improve the transparency of enterprises so that additional information is to be provided to the registry maintained under the *Publicity Act*. Such additional information relates to natural persons that are the ultimate beneficiaries of registrants. Please see section III below for more information as to the concept of ultimate beneficiary and information to be disclosed pursuant to the *Publicity Act*.

If the registration declaration of a partnership is incomplete, inaccurate or irregular or if, although a change has been made in the partnership, no amending declaration has been made under the *Publicity Act*, the partners are liable towards third persons for the resulting obligations of the partnership; however special partners in a limited partnership who are not otherwise liable for the obligations of the partnership, as discussed below, will not be liable as a result thereof.[40]

General or limited partnerships must indicate their juridical form in their name or after their name when carrying on business. Failing such indication in any act performed by the partnership, a court, in ruling in an action of a third person in good faith, may decide that the partnership and its partners are liable, in respect of that act, in the same manner as an undeclared partnership and its partners.[41]

A partnership is dissolved by the causes of dissolution provided for in the partnership agreement, by the accomplishment of its object or the impossibility of accomplishing it, or by consent of all the partners. It may also be dissolved by the court for a legitimate cause. The partnership must then be liquidated in accordance with the law.[42]

a) General partnerships

In a general partnership, a partner has the right to participate in the profits of the partnership, but also has the obligation to share the partnership's losses. Any stipulation in the partnership agreement whereby a partner is excluded from participation in the profits will be without effect. Furthermore, any stipulation whereby a partner is exempt from the obligation to share in the losses may not be set up against third persons.[43] Unless stipulated differently in the partnership agreement, each partner's share in the assets, profits and losses of the partnership will be equal.[44]

The partners may enter into such agreements between themselves as they consider appropriate with regard to their respective powers in the management of the affairs of the partnership.[45] The partners may appoint one or more persons (fellow partner(s), third person(s), or both) to manage the affairs of the partnership. The manager, notwithstanding the objection of the partners, may perform any act within the manager's powers, provided the manager does not act fraudulently. The powers of management may not be revoked without a serious reason during the existence of the partnership, except where they were conferred by an act subsequent to the partnership agreement, in which case they may be revoked in the same manner as a simple mandate.[46] If they fail to appoint a manager, the partners are deemed to have conferred the management powers on one another.[47]

Every partner has the right to participate in the collective decisions regarding the partnership, and no partner may be prevented from exercising that right by the partnership agreement. Unless otherwise stipulated in the partnership agreement, decisions are taken by the vote of a majority of the partners, regardless of the value of their interest in the partnership. However, decisions to amend the partnership agreement have to be adopted by a unanimous vote.[48]

40 Art. 2196 *Civil Code*
41 Art. 2196 *Civil Code*
42 Art. 2197 *Civil Code*
43 Art. 2203 *Civil Code*
44 Art. 2202 *Civil Code*
45 Art. 2212 *Civil Code*
46 Art. 2213 *Civil Code*
47 Art. 2215 *Civil Code*
48 Art. 2216 *Civil Code*
49 Art. 2218 *Civil Code*
50 Art. 2220 *Civil Code*
51 Art. 2219 *Civil Code*

Notwithstanding any stipulation to the contrary, any partner may inform them self of the affairs of the partnership and consult its books and records, even if such partner is excluded from management.[49]

From a liability perspective, any act performed by a partner in such partner's own name in respect of the common activities of the partnership or the property used by the partnership will bind the other partners, although without prejudice to the right of such other partners[50] to object to the act before it is performed. Therefore, each partner is a mandatary of the partnership in respect of third persons in good faith[51] and binds the partnership for every act performed in its name in the ordinary course of business. No stipulation to the contrary may be set up against third persons in good faith. In respect of third persons, the partners are jointly liable for the obligations contracted by the partnership, but they are solidarily liable if the obligations have been contracted for the service or operation of an enterprise of the partnership.[52] Being solidarily liable means that each partner may be forced to pay to the creditors of the partnership the total amount of debts incurred by the partnership for these purposes. That partner may afterwards recover from the other partners their respective portion of the debt. The creditors must, however, realize against the property of the partnership before instituting proceedings for payment against any one of the partners. If proceedings are instituted, the property of the partner is not applied to the payment of creditors of the partnership until after their own creditors are paid.[53] It is to be noted that a partnership may sue and be sued in a civil action under the name it declares.

General partnerships are especially attractive from a fiscal point of view since the partners can generally deduct in the computation of their personal income the losses incurred by the partnership. The profits of the partnership are, however, allocated to each partner and taxed in the partner's hands in accordance with the tax treatment applicable to the partner. Although the partnership itself does not file an income tax return, it must, in certain cases, file a partnership information return, which includes financial statements for the fiscal year.

b) Limited partnerships

A limited partnership is a partnership consisting of one or more general partners who are the sole persons authorized to administer and bind the partnership, and of one or more special partners (also known as limited partners) who are bound to furnish a contribution to the common stock of the partnership.

General partners have the powers, rights and obligations of the partners of a general partnership, but they are bound to render an account of their administration to the special partners.[54]

A special partner may only give an advisory opinion with regard to the management of the partnership. A special partner may not negotiate any business on behalf of the partnership or act as mandatary or agent of the partnership or allow such special partner's name to be used in any act of the partnership; otherwise such special partner will be liable in the same manner as a general partner for the obligations of the partnership resulting from such acts and, according to the importance and number of such acts, such special partner may be liable in the same manner as a general partner for all the obligations of the partnership.[55]

Most of the advantages and disadvantages applicable to general partnerships will apply to limited partnerships. A notable exception from a liability point of view is that the limited partners' liability will be limited to their investments in the partnership. From a tax point of view, the partner must include in their own income, the profits allocated to them in accordance with the partnership agreement. According to what is commonly referred to as the "at-risk rules," the losses of the partnership can be deducted from the partner's income only to the extent of the partner's actual contribution to the partnership.

General partners are solidarily liable for the debts of the limited partnership in respect of third persons, in case of an insufficiency of the property of the partnership; however, special partners are liable for such debts up to the agreed amount of their respective contributions, notwithstanding

52 Art. 2221 *Civil Code*
53 Art. 2221 *Civil Code*
54 Art. 2238 *Civil Code*
55 Art. 2244 *Civil Code*
56 Art. 2246 *Civil Code*
57 Art. 2247 *Civil Code*

any transfer of their shares in the common stock of the partnership. Any stipulation whereby a special partner is bound to secure or assume the debt of the partnership beyond the agreed amount of their contribution is without effect.[56] However, a special partner whose name appears in the firm name of the partnership will be liable for the obligations of the partnership in the same manner as a general partner, unless their status as a special partner is clearly indicated.[57] Profits will be shared among the partners in proportion to their contribution, unless otherwise agreed.

From a financing point of view, it is interesting to note that a limited partnership is the only form of partnership legally entitled to make a distribution of securities to the public to establish or increase its common stock, and to issue negotiable instruments. All other forms of partnership may not do so, on pain of nullity of the contracts entered into or of the securities or instruments issued and of the obligation to compensate for any injury such action causes to third persons in good faith. Furthermore, in case of contravention, the partners will be solidarily liable for the obligations of the partnership.

c) Undeclared partnerships

An undeclared partnership may be established simply from a series of facts indicating the intention of the partners to form such a partnership.

In this type of structure, partners are not solidarily liable for debts contracted in carrying on their business unless the debts have been contracted for the use or operation of a common enterprise. The partners are liable towards the creditors of the partnership, each for an equal share, even if their shares in the undeclared partnership are unequal.[58] Each partner contracts in such partner's own name and is alone liable towards third persons. Where, however, to the knowledge of third persons, the partners act in their capacity as partners, each partner is liable towards such third persons for the obligations resulting from acts performed in that capacity by any of the other partners.[59]

If the partners do not have a special agreement dealing with the relationship among them, the rules of the general partnership will apply, with the appropriate modifications.[60]

The tax treatment applicable to the general partnership and its partners is also applicable to the undeclared partnership.

III. Corporation

A corporation may be incorporated under the laws of Canada or under the laws of one of the provinces or territories of Canada. Federally incorporated corporations are governed by the *Canada Business Corporations Act*,[61] (***CBCA***) while corporations incorporated under the laws of Quebec are governed by the *Business Corporations Act*[62] (***Quebec Corporations Act***).

The *Quebec Corporations Act* came into force on February 14, 2011, and replaces the former Quebec *Companies Act*. Companies that were incorporated, continued or amalgamated under the former *Companies Act* are now governed by the *Quebec Corporations Act*, without any special action having been required on their part. Under the *Quebec Corporations Act*, such companies are no longer referred to as companies, but as business corporations.

The purpose of the *Quebec Corporations Act* was to modernize and substantially amend the legal framework applicable to corporations in Quebec. Many of the *Quebec Corporations Act*'s provisions are inspired by the *CBCA* and legislation in several other Canadian provinces, while others are entirely new law. Major innovations introduced by the *Quebec Corporations Act* include provisions that i) establish a general framework outlining the duties and responsibilities of directors and officers, in particular regarding governance, ii) add flexibility to the rules relating to the maintenance of share capital, iii) enhance the rights and recourses of shareholders, particularly minority shareholders, iv) simplify the internal functioning of corporations and v) set out rules governing changes to a corporation's legal structure. As a result of the numerous changes introduced in the *Quebec Corporations Act*, Quebec businesses are now provided with a legal framework that enhances their ability to grow and to compete.

Although inspired by the *CBCA*, the *Quebec Corporations Act* differs from the *CBCA* in that the *Quebec Corporations Act* does not provide for a residency requirement for directors of corporations incorporated under the *Quebec Corporations Act*, while the *CBCA* requires that at least 25% of a corporation's directors be Canadian residents. Practically speaking, this

58 Art. 2254 *Civil Code*
59 Art. 2253 *Civil Code*
60 Art. 2251 *Civil Code*
61 *R.S.C. 1985, c. C-44.*
62 R.S.Q., c. S-31.1.

entails that a corporation incorporated under the *Quebec Corporations Act* might have a board of directors comprised entirely of foreign directors. Another of the significant differences between the *Quebec Corporations Act* and the *CBCA* is that the *Quebec Corporations Act* allows for the issuance of shares whether or not those have been paid in full. Shares not paid in full are subject to calls for payment and may be confiscated in the event that a shareholder defaults on its obligation to make a required payment. This increased flexibility allows shareholders to fund the corporation over time, without the need of actually going through the process of a share issuance every time that the corporation has capital needs, especially when such capital needs will arise as a result of a long-term project of the corporation.

Entities incorporated under the *Quebec Corporations Act* require an extra-provincial license in order to do business in another province. On the other hand, entities incorporated under federal legislation may carry on their business anywhere in Canada without having to obtain such a license.

It is important to note that the *Publicity Act* applies to all incorporated entities doing business in Quebec, regardless of whether they are federally or provincially incorporated. Such entities must file declarations stating information such as their names and those of their shareholders and directors as well as on the nature of their business and number of employees. Any change in the stated information requires the filing of an amending declaration. Similar to the recent changes we have seen to the *CBCA*, recent amendments to the *Publicity Act* were passed to improve the transparency of enterprises so that additional information is to be provided to the registry maintained under the *Publicity Act*. Such additional information relates to natural persons that are the ultimate beneficiaries of registrants.

The *Publicity Act* now contains a definition of the concept of "ultimate beneficiary", which includes, inter alia, i) holding, directly or indirectly, of shares to which are attached 25% or more of the voting rights attached to all shares of the registrant carrying the right to vote, ii) holding, directly or indirectly, of shares to which is attached 25% of more of the fair market value of all issued and outstanding shares of the registrant, iii) having a direct or indirect influence on the affairs of the registrant which, if exercised, would constitute effective control of the affairs of the registrant, iv) being the general partner of a partnership, or v) being a trustee of a trust. In addition, where several natural persons have agreed, directly or indirectly, to jointly exercise their voting rights attached to shares of a registrant (which agreement could take the form of a shareholders agreement) and that such persons jointly hold 25% or more of the voting rights attached to all shares of the registrant carrying the right to vote, each such natural person is deemed to be an "ultimate beneficiary".

As of March 31, 2023, all entities that are required to be or that have voluntarily registered under the *Publicity Act* will be required to disclose the natural persons that are their ultimate beneficiaries, subject to narrow exceptions. The information to be provided in respect of ultimate beneficiaries includes their name(s); exact date of birth; home address and professional domicile, where applicable; details on the type of control exercised by each of them or the percentage of shares or units they hold or of which they are the beneficiaries; and date on which they became or ceased to be ultimate beneficiaries. The majority of the information disclosed regarding ultimate beneficiaries will be available to the public on the Quebec Enterprise Registrar's (**REQ**) website. However, the ultimate beneficiaries' date of birth and certain information on minors who are ultimate beneficiaries will not be available to the public. Finally, registrants have to provide the REQ with a copy of identification for each director listed in the REQ, along with the date of birth (day, month and year) of all natural persons whose names are to be disclosed to the REQ (which includes officers of corporations).

Please consult our specialists for tailored advice on the *Quebec Corporations Act* or before making a decision on incorporating a corporation under the *Quebec Corporations Act* or under the *CBCA*. Our publication entitled "*Doing Business in Canada*" also provides additional information regarding incorporation, registration and other relevant information regarding the establishment of a business in Quebec. Our specialists are also available to assist with the determination of persons that are ultimate beneficiaries of an entity and related information to be disclosed to the REQ.

Privacy legislation

Both the Quebec and the federal governments have enacted privacy legislation. The *Civil Code of Quebec* (***CCQ***) and the *Act respecting the Protection of Personal Information in the Private Sector* (***Quebec Privacy Act***)[63] govern the protection of personal information that is collected, held or disclosed in the course of carrying on an enterprise in Quebec. The Canadian federal parliament also adopted the *Personal Information Protection and Electronic Documents Act* (***PIPEDA***), which came into force in 2004.[64] On September 21 2021, the Quebec National assembly adopted the *Act to modernize legislative provisions as regards the protection of personal information* (***Act 25***), which introduces a number of significant changes to the *Quebec Protection Act*, most of which came into force on September 22, 2023.

I. Provincial laws and regulations

a) *CCQ*

The CCQ contains provisions dealing with the administration of information about individuals and the protection of their reputation and privacy. Sections 35 to 41 of the CCQ and the Quebec Privacy Act enshrine an individual's right to have their reputation and privacy respected and prohibit invasion of that privacy.

It is noteworthy that the CCQ cites examples of what constitutes an invasion of privacy, without being exhaustive on the matter.

It is noteworthy that the *Civil Code* cites examples of what constitutes an invasion of privacy, without being exhaustive on the matter. These examples include the intentional interception or use of private communications and the keeping of an individual's private life under observation by any means. These sections will affect, for example, the ability of employers to tape or film employees as a means of accumulating evidence, although this is permitted under certain circumstances.

The CCQ sets out a two-step test when gathering a file on another person: i) the person who establishes a file on another person shall have "serious and legitimate reason for doing so", and the person may only gather ii) information deemed relevant to the stated objective of the file.[65] The term "Relevant" has been interpreted narrowly and has been referring to the concept of "necessity" in the Quebec Privacy Act.[66] More precisely, establishing a file is deemed necessary only when doing so would allow achieving the "serious and legitimate reason" stated before establishing the file.[67] While the CCQ sets out some general principles for privacy rights, the Quebec Privacy Act sets out a more comprehensive set of rules applying to persons conducting business as defined under section 1525 of the CCQ.

b) The *Quebec Privacy Act*

Objective, Scope, and Definitions

The primary objective of the *Quebec Privacy Act* is to create a set of rules for the protection of i) **personal information** that is collected, held, used, or communicated to third persons in the course of ii) "**carrying on an enterprise**". An additional distinction is made for iii) "**sensitive personal information**".

i) Personal Information | In the context of the *Quebec Privacy Act*, personal information is defined as any information that relates to a natural person and directly or indirectly allows that person to be identified. Although a case-by-case analysis must be conducted, this definition only applies to information concerning a natural person and excludes most sensitive business information, such as a business's financial information or trade secrets.

63 R.S.Q., c. P-39.1.

64 R.S.C. 2000, c. 5.

65 Art 37, CCQ.

66 Art 5, Quebec Privacy Act.

67 See Syndicat des employées et employés professionnels et de bureau, section locale 57 et Caisse populaire St-Stanislas de Montréal, 1998 CanLII 27651 (QC SAT) citing *Regroupement des comités de logement et association de locataires du Québec c. Corporation des propriétaires immobiliers du Québec (CORPIQ).*

ii) Enterprise | This term is defined in section 1525 of the CCQ as "the carrying on by one or more persons of an organized economic activity, whether or not it is commercial in nature, consisting of producing, administering or alienating property or providing a service."

iii) Sensitive Personal Information | The information is deemed sensitive due to its nature (e.g., medical record, biometric data, etc.), the context in which it is collected or because there is a high level of reasonable expectation of privacy. Personal information held by professional orders is also subject to the Quebec Privacy Act.

Collection

Any person carrying on an enterprise who, for a serious and legitimate reason, collects personal information on another person must determine the purposes for collecting the information before doing so and may collect only the information necessary for those purposes. Provided that personal information is collected under the *Quebec Privacy Act*, it may only be used for purposes stated at collection. However, the consent of the person concerned may be obtained in order to use such personal information for any other purpose or before it is communicated to third parties. The person's consent must be manifest, free, and given for a specific purpose. Collecting a minor's information, who is under 14 years of age, must be done with the consent of the person having parental authority or of the tutor, unless doing so is clearly for the minor's benefit.

Access by the Person Concerned and Disclosure to Third Parties

Under the *Quebec Privacy Act*, businesses that collect personal information are required to inform individuals of the purposes for which the information is collected, the means by which the information is collected, the rights of access, the rectification provided by law and the person's right to withdraw consent to the communication or use of the information collected. Provisions of the *Quebec Privacy Act* address the right of the individual concerned to access their personal information and to rectify any inaccuracies contained in such information by adding, deleting or commenting on information. In some instances, the person carrying on an enterprise will have the right to refuse access, partially or totally. Any dispute arising from the right of the individual to access personal information shall be submitted to the Commission d'accès à l'information (CAI), a specialized tribunal.

As a general rule, the communication/disclosure of personal information by a person to third parties without consent is prohibited. However, the *Quebec Privacy Act* also provides for certain exceptional situations where an enterprise can communicate/may disclose personal information regarding a natural person to a third party without consent (including communications to the attorney of the person holding the file, to a person responsible, by law, for the prevention, detection, repression of crime or statutory offences who requires it in the performance of their duties; or if the information is needed for the prosecution of an offence or to a person to whom it is necessary to communicate the information). Other exceptions relate to:

- The communication to a person to whom it is necessary to communicate under the law or a collective agreement and who requires it in the performance of their duties.
- A public body in compliance with the representatives' functions or the implementation of a program.
- A person or body having the power to compel communication.
- In cases of emergency where life, health or safety is threatened.
- An authorized person in the context of a study, record or statistical purposes.
- A person authorized by law to recover debts.
- Third parties to whom nominative lists are communicated in accordance with the *Quebec Privacy Act*.

Authorized personnel within an enterprise, agents, mandataries and parties to a contract for work and services have access, without the authorization of the person concerned, to personal information needed for the performance of their duties. The *Quebec Privacy Act* also deals with the rights of a person carrying on an enterprise to use or communicate a nominative list (a list of clients, for example). It enacts rules by which business development using nominative lists can/may be conducted. If applicable, individuals must be informed of the name of any third parties to whom it is necessary to communicate the information and of the possibility that it could be communicated outside Quebec. The information must be provided in clear and simple language. Implied consent is possible in specific circumstances.

Safeguards: Governance Policies & Practices, Privacy Impact Assessment (PIA), and Privacy by Default

The *Quebec Privacy Act* now requires enterprises to designate a person to be in charge of protecting personal information and who will be responsible for implementing privacy safeguards in accordance with the law. By default, this person is the one with the highest authority within the company; however, the role may be delegated to any employee in writing. In addition, a person carrying on an enterprise must take the necessary security measures to ensure the protection of the personal information collected, used, communicated, kept or destroyed and which are reasonable given the sensitivity of the information, the purposes for which it is to be used, the quantity and distribution of the information and the medium on which it is stored. Moreover, privacy by default is now enshrined in the *Quebec Privacy Act*, as enterprises offering a technological product or service that has privacy parameters are required to ensure that the privacy parameters provide the highest level of confidentiality by default—without any intervention by the person concerned. This parameter requirement does not apply to privacy settings for browser cookies. Companies that collect personal information through technological means must publish a confidentiality policy drafted in clear and simple language on the enterprise's website, if applicable.

Since September 22, 2023, companies have been required to have a greater understanding of the personal information they hold and their use of it. A PIA must be done regarding the acquisition, development and redesign of an information system involving the collection, use, communication, keeping or destruction of personal information. In addition, enterprises are required to conduct a PIA before communicating any personal information outside of Quebec. The PIA needs to consider the sensitivity of the information, the purposes for which it is to be used, the protection measures, including contractual ones, that would apply to it, and the legal framework applicable in the State to which the information will be communicated. Additionally, transfers of personal information outside of Quebec will need to be governed by a written contract that considers any weaknesses identified by the PIA and, if applicable, the terms agreed on to mitigate the risk identified in the PIA.

Confidentiality Incident Notification

Since September 22, 2022, the *Quebec Privacy Act* has imposed mandatory notification in case of a confidentiality incident if it presents a risk of serious injury. A confidentiality incident is defined as any unauthorized access, use, disclosure, loss of or any other breach in the protection of personal information in an enterprise's custody. Enterprises must **promptly** notify the CAI and the affected individuals unless doing so would hamper a criminal or statutory offence investigation. The *Regulation Respecting Confidentiality* Incidents specifies the content of the notification to be sent if enterprises are not using the form provided by the CAI to report a breach. Enterprises are required to maintain a registry of all confidentiality incidents, including incidents not meeting the "risk of serious injury" threshold, and make them available to the CAI upon request. Such a registry should be maintained for at least five years after an incident.

Enforcement Mechanisms

The *Quebec Privacy Act* now provides for greater enforcement mechanisms.

The new regime gives the CAI the power to impose administrative monetary penalties of up to $10 million, or an amount corresponding to 2% of worldwide turnover for the preceding fiscal year. These fines could apply to a wide range of violations, including the failure to report a privacy breach. Furthermore, the CAI has the right to institute criminal proceedings for an offence under the *Quebec Privacy Act*. These criminal proceedings may lead to fines of up to $25 million, or an amount corresponding to 4% of worldwide sales for the previous fiscal year. These amounts are doubled in the event of a repeat offence.

c) Regulation Respecting the Anonymization of Personal Information

The Regulation Respecting the Anonymization of Personal Information came into force on May 30, 2024. This regulation provides a framework for enterprises to apply when anonymizing personal information as required by the *Quebec Privacy Act* if the personal information is not deleted. Similarly to the PIA, the enterprise must conduct a risk assessment before, during, and after the anonymization process. They must keep a register recording:

- A description of the personal information that has been anonymized.
- The purposes for which the body intends to use the anonymized information.
- The anonymization techniques used.
- The protection and security measures established
- The date on which a re-identification risk analysis was last conducted.

Enterprises are not required to demonstrate a 0% risk of re-identification. Instead, they must show that the residual risk of re-identification is very low. Anonymization techniques must be consistent with generally accepted best practices and provide reasonable protection as well as security measures to reduce the risk of re-identification. The methods chosen are selected based on the preliminary analysis of the re-identification risks.

II. Federal laws and regulations

a) PIPEDA

Scope and Application

The federal PIPEDA legislation is very similar to the Quebec Privacy Act before the amendments introduced by Act 25. It applies to every enterprise (i.e., an association, a partnership, a person, a trade union) concerning personal information that is collected, held, used or disclosed in the course of commercial activities. Since many of these provisions in the federal act are akin to the Quebec Privacy Act, it will apply whenever personal information is disclosed outside the province of Quebec and to all organizations that are federally regulated (such as banks, railways, and airlines). This legislation applies to "personal information" defined as information about an identifiable individual, not including the name, title, business address or telephone number of an employee of an organization.

PIPEDA's Fair Information Principles

PIPEDA establishes ten fair information principles governing the collection, use, and disclosure of personal information. The principles can be summarized as follows:

- Subject only to specified exceptions, information shall not be collected, used or disclosed without the knowledge, and consent of the individual to whom it pertains.
- Generally, organizations will be required to collect personal information solely from the individual to whom the information pertains and only after disclosing to the individual how the information will be used and disclosed.
- The information may only be used or disclosed in the manner identified at the time of collection unless further consent is obtained from the individual; an individual may withdraw a previously given consent.
- The individual to whom the information pertains may, by written request, obtain information regarding the existence, use, and disclosure of their personal information. Subject to certain exceptions, the individual may obtain access to the information, challenge the accuracy of the information, and have the information corrected where appropriate.
- Personal information is to be retained only as long as it is necessary to fulfill the purpose for which it was collected, or to permit an individual to access their information pursuant to a request for access.
- Personal information must be protected by security safeguards appropriate to its sensitivity. These safeguards shall protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use or modification. These methods of protection should include physical, organizational, and technological measures. PIPEDA is creating a mandatory breach reporting regime that came into force in 2018 through the *Breach of Security Safeguards Regulations*.
- The organization shall make specific information about its policies and practices relating to the management of personal information readily available to individuals. Furthermore, the organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the PIPEDA.

Dispute Resolution Mechanism

Any dispute arising from an individual's right to access or any complaint regarding the respect of PIPEDA shall be submitted to the Office of the Privacy Commissioner of Canada for investigation. Upon the filing of the Privacy Commissioner of Canada's (**Privacy Commissioner**) report on the dispute/complaint, a complainant may apply to the Federal Court for a hearing. On reasonable notice, the Privacy Commissioner may also audit an organization's personal information management and practices.

b) Bill C-27
In June 2022, the Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry, introduced Bill C-27. The introduction and first reading of Bill C-27 took place on June 16, 2022, and it is now, as of June 2024, in consideration in committee.

Consumer Privacy Protection Act **(CPPA)**
If passed, Bill C-27 would enact the CPPA, which would overhaul the federal government's approach to regulating privacy in the private sector and consequently repeal parts of PIPEDA that regulate the processing of personal information. The CPPA redrafts PIPEDA's Schedule of privacy principles into substantive provisions, and many of PIPEDA's obligations have been carried over into the CPPA. However, the CPPA would also create several new and enhanced obligations for private sector organizations, including:

- An obligation to implement a privacy management program that includes policies, practices, and procedures designed to ensure compliance with the CPPA and to provide Privacy Commissioner with access to those policies, practices and procedures upon request.
- Requirements to provide plain-language explanations about the processing of personal information, both in connection with obtaining valid consent and to meet transparency requirements under the CPPA.
- Data portability rights to give individuals greater control over the transfer of their personal information from one organization to another.
- The obligation to allow individuals to request that the organization dispose of their personal information, subject to limited exceptions.
- New transparency requirements that apply to automated decision-making systems like algorithms and artificial intelligence (**AI**), requiring businesses to explain how such systems are utilized.
- Rules governing how and when de-identified information derived from personal information may be created, used and shared.
- An obligation for organizations to de-identify personal information prior to sharing it with parties in the context of a proposed business transaction, for example, in the due diligence phase.
- A designated special status for the personal information of minors.

Enforcement of the CPPA
The maximum penalty for administrative sanctions is the higher of $10 million, or an amount corresponding to 3% of worldwide turnover for the preceding fiscal year. When determining the penalty to be imposed, the Privacy Commissioner must consider, non-exhaustively, the following:

- The nature and scope of the contravention.
- Any evidence that the organization exercised due diligence to avoid the contravention.
- Whether the organization made reasonable efforts to mitigate or reverse the contravention's effects.
- The organization's ability to pay the penalty and if paying the fine will affect the organization's ability to carry on its business.

Ceiling amounts for penal sanctions could be up to the higher of $25 million, or an amount corresponding to 5% of worldwide turnover for the preceding fiscal year.

Bill C-27 would also enact the PIDPTA, which establishes an administrative tribunal to hear appeals of certain decisions made by the Privacy Commissioner under the CPPA and imposes penalties for contravention of some of its provisions. A complainant would have thirty days after the day on which the Privacy Commissioner renders the decision.

Artificial Intelligence and Data Act **(AIDA)**
Bill C-27 enacts the AIDA, which regulates international/interprovincial trade and commerce in AI systems by requiring that certain persons adopt measures to mitigate risks of harm and biased output related to high-impact systems. The term "high-impact systems" is yet to be defined in a coming regulation, but the following factors could be included in the regulation to assess the AI system :

- Evidence of risk of harm to health and safety.
- Risk of adverse impact on human rights.
- The severity of the potential harm.
- The scale of use.
- The nature of harms or adverse impacts that have already taken place.

c) Canada's Anti-Spam Legislation (CASL)

CASL introduced measures to address the problems of unsolicited commercial e-mails (spam), phishing, spyware, and malware.

Scope and Definitions

CASL prohibits sending commercial electronic messages (**CEM**) to an electronic address by means of a computer system located in Canada without the recipient's prior consent (opt-in system). This prohibition covers all forms of telecommunication, including e-mail, instant messaging, and telephone, as well as all forms of messages, including text, sound, voice or image. A CEM is one designed to encourage participation in a "commercial activity". It is important to note that an electronic message that contains a request for consent to send a CEM is also prohibited by CASL.

Recipients' consent may be expressed or implied in certain situations. Implied consent is deemed to exist when there is an "existing business relationship" between the recipient and the sender, for instance, the recipient's purchase or lease from the sender of a product, good or service within two years preceding the message. Implied consent can also arise where a contract is entered into between the recipient and the sender or where the recipient accepts a business, investment or gaming application to the sender within a six-month period preceding the commercial electronic message. CASL also provides a few "limited" circumstances where consent would not be required before sending a commercial electronic message.

Once express or implied consent exists, any CEM has to contain an unsubscribe mechanism that allows the recipient to unsubscribe using the same electronic means by which the message was sent or, if impracticable, another electronic means by which an unsubscribe directive can be given. The message must also contain a link to a website or an electronic address accessible with a browser where the recipient can unsubscribe. Any CEM that fails to comply with this or other specified requirements violates the law as soon as transmission is initiated whether or not the message is received.

Enforcement of CASL

CASL provides for a private right of action created for persons affected by infringements to the legislation. This private right of action was supposed to come into force on July 1, 2017, but has yet to be implemented. Applications to exercise a private right of action can be made to the Federal Court of Canada or the Superior Court of a province. Upon demonstrating a violation to CASL, an applicant will be entitled to compensation for damages suffered due to the violation and, depending on the specific violation, a maximum of $200 for each contravention, not exceeding $1,000,000 for each day.

CASL, PIPEDA, and Bill C-27

CASL also amends PIPEDA by adding to its provisions a prohibition on collecting an individual's electronic address using a computer program designed for that purpose, collecting personal information through unauthorized access to a computer system, and using such illegally collected information. The private right of action created by CASL will also apply to these prohibitions, thus adding teeth to PIPEDA, which has provided only one remedy so far, i.e., a complaint to the Privacy Commissioner's Office.

On the recommendation of the Minister of Industry, the Governor General in Council has made the *Electronic Commerce Protection Regulations (**Regulations**)*. It provides new exemptions for certain business activities that are now outside the intended scope of CASL.

The Regulations propose a broader definition of "personal relationship", which now includes:

- Broader exemptions about messages sent in a business-to-business context.
- Clarification on when CASL will not apply to messages sent from outside Canada.
- An exemption for messages sent to satisfy legal obligations.
- An exemption for messages that are solicited or sent in response to complaints or requests.
- Conditions for the use of consents obtained by third parties.
- Provisions related to the installation of certain computer programs by telecommunication service providers.

Consumer Protection Act

The *Consumer Protection Act*[69] (**CPA**) applies to contracts between consumers and merchants. The term "consumer" is defined as a natural person and does not include merchants who obtain goods or services for the purposes of their business. The *CPA* comprises more than 350 provisions and is completed by a detailed set of regulations. It is not possible to explain here all the rights and obligations created in this legislation, but the following comments will provide a general overview.

The *CPA* contains provisions regarding the content of certain specific types of contracts:

- legal warranties;
- distance contracts (which includes contracts for the purchase of goods and services online);
- contracts entered into by itinerant merchants;
- contracts of credit, including high-cost credit contracts;
- long-term lease of goods;
- contracts relating to automobiles and motorcycles;
- repair of household appliances;
- contracts for the sale of prepaid cards;
- contracts relating to loyalty programs;
- contracts relating to timeshare accommodation rights;
- service contracts involving sequential performance for instruction, training or assistance, including a contract entered into with a physical fitness studio;
- prohibition/limitation of contractual stipulations under which a merchant may amend or terminate a contract unilaterally;
- obligation to indicate when a stipulation of a contract is inapplicable in Quebec because it is prohibited under a provision of the Act or its regulations;
- service contracts involving sequential performance of a service provided at a distance (alarm systems, cable, internet, cellular phones, etc.);
- contracts for the sale of an additional warranty on goods; and
- contracts entered into by debt settlement service merchants.

The *CPA* provides that contracts must be written in French. If the parties expressly wish to, a contract can be drawn up in a language other than French. However, a French version must be given to the consumer beforehand[70]. Certain contracts will have to be made in writing and comply with mandatory content imposed by the *CPA* and the *Regulation* respecting the application of the *Consumer Protection Act*[71]. Also, certain contractual stipulations are prohibited, by the *CPA*, including:

- any stipulation whereby a merchant is liberated from the consequences of their own act or the act of their representative;
- any stipulation that obliges the consumer to refer a dispute to arbitration or that restricts the consumer's right to go before a court, in particular by prohibiting the consumer from bringing a class action or the right to be a member of a group bringing a class action;
- a stipulation having the effect of obliging a consumer to submit a dispute to a court other than a court in the province of Quebec;
- any stipulation requiring the consumer, upon the non-performance of their obligation, to pay costs other than the interest accrued;

69 *R.S.Q., c. P-40.1.*

70 CQLR, c. C-40.1, s. 26.

71 CQLR c P-40.1, r 3.

- any stipulation that the contract is wholly or partly governed by a law other than an act of the Parliament of Canada or of the legislature of Quebec;
- a stipulation intended to exclude or restrict the legal warranty provided for by the *CPA*;
- a stipulation intended to exclude or limit the obligation of a merchant or manufacturer to be bound by a written or verbal statement made by its representatives;
- a stipulation intended to exclude or limit the rights of the consumer to sue both the retailer and the manufacturer for latent defects or for the execution of the legal warranty provided for in the *CPA*;
- in a long term contract, a stipulation whereby the merchant claims charges on certain grounds, such as if a part is not an original part from the manufacturer or that the maintenance service was not performed by the manufacturer or merchant approved by the manufacturer ;
- as a general rule, any stipulation indicating an expiration date on a prepaid card (or giftcard); and
- any stipulation providing that the exchange units received by the consumer under a loyalty program may expire on a set date or by the lapse of time.

A merchant who would include these stipulations in a consumer contract subject to the *CPA* is exposed to civil and penal recourses. The *CPA* also states that it is forbidden to derogate from the provisions of the *CPA* by private agreement and that no consumer may waive the rights granted to them by the legislation.

The *CPA* also contains provisions on the warranty of quality. Goods forming the object of a contract must be fit for the purposes for which goods of that kind are ordinarily used and must be durable in normal use for a reasonable length of time. Before proposing to consumers to purchase contracts that include additional warranty on goods, merchants must inform consumers of the existence and nature of the warranty of quality provided for in the *CPA*. Moreover, the consumers must be informed that they may resolve the additional warranty without cost or penalty within 10 days after the contract has been entered into[73].

A whole section of the *CPA* pertains to fair business practices. For example, no merchant may, by any means whatsoever, make false or misleading representations to a consumer. No merchant may falsely ascribe certain special advantages to goods or services. No merchant may falsely invoke a price reduction, indicate a regular price or another reference price for goods or services. No merchant may make false representations concerning the existence, the scope or the duration of a warranty. No merchant may fail to mention an important fact in any representation made to a consumer. No merchant may offer a gift, a prize or a rebate on any goods in connection with a contest or a draw without clearly disclosing all the terms and conditions for obtaining it. No person may make use of advertising regarding the terms and conditions of long-term lease of goods, unless such advertising states expressly that the offer concerns long-term lease and includes the particulars prescribed by regulation in the manner therein provided.

Additionally, the *CPA* grants consumers protection against planned obsolescence. No merchant may carry on the business of trading in goods for which obsolescence is planned. Under the terms of the *CPA*, the obsolescence of goods is planned where a technique aimed at reducing its normal operating life is used on them[74].

Furthermore, when advertising a sale price, merchants must ensure that the price advertised includes the total amount the consumer must pay for the goods or services, including any charges, fees or duties. However, the Quebec Sales Tax or the Goods and Services Tax, as well as duties chargeable under federal or provincial acts that must be charged directly to the consumer and remitted to a public authority under an act, may be excluded from the price advertised. The *CPA* prohibits charging, for goods or services, a higher price than that advertised. This has been interpreted by courts to apply to a transaction on the internet when the price at checkout is higher than the price advertised at the first step on the website.

If the merchant fails to fulfill an obligation imposed by the *CPA*, the consumer may demand a variety of remedies: specific performance of the obligation, authorization to execute it at the merchant's expense, reduction of their obligations, rescission or annulment of the contract, compensatory and punitive damages. The *CPA* also contains penal provisions.

The *Office de la protection du consommateur* is the government body responsible for applying the *CPA* and for receiving consumer complaints. The president of the office has the powers to investigate any matter respecting the

73 CQLR, c. P-40.1, s. 228.3.
74 CQLR, c. P-40.1, s. 227.0.4.

application of the *CPA* or its regulations. Such person may conduct inspections and examinations in the establishments of a merchant, a manufacturer or an advertiser. The office is also responsible for issuing permits with respect to itinerant merchants, merchants who contract money loans governed by the *CPA*, merchants who operate physical fitness studios, as well as merchants offering or contracting additional warranties relating to an automobile or a motorcycle. The president of the office can also seek an injunction order (interlocutory and permanent) against a person who was engaged or engages in a prohibited practice or a merchant who has included or includes in a contract a stipulation prohibited by the *CPA* or a regulation or who failed to mention that a stipulation was inapplicable in Quebec, when they should have.

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