

Montreal, March 15, 2023

**Subject:** Bill 96 - *An Act respecting French, the official and common language of Québec*, SQ 2022 c 14

## The Current State of the Law and Its Impact on Insurance Contracts

*S. 55. Contracts pre-determined by one party, contracts containing printed standard clauses, and the related documents, must be drawn up in French. They may be drawn up in another language as well at the express wish of the parties.*

Although the Charter of the French Language<sup>1</sup> (hereinafter the " **Charter** ") does not specifically address insurance contracts, they are generally defined as contracts of adhesion, where the party with the weaker bargaining power, the policyholder, could not have negotiated changes to the terms of the contract. Accordingly, contracts of adhesion are defined as contracts that are not negotiable and where essential terms are imposed by one of the parties. At present, Section 55 of the Charter, quoted above, provides that contracts pre-determined by one party, such as contracts of adhesion, contracts containing printed standard terms, and related documents must be drafted in French. There is an exception to this where the adhering party explicitly gives prior consent.

## Amendments to Section 55 of the Charter

On June 1<sup>st</sup>, 2022, Bill 96 - *An Act respecting French, the official and common language of Québec*<sup>2</sup> (the " **Act** ") was assented to. While certain provisions are already in force, a transition period ranging from several months to three years will apply to certain provisions, including Section 55 of the Charter. When the amended Section 55 comes into force, insurers will have to provide policy documents in both French and English to new policyholders before they can choose which version they wish to be bound by. The amendments to Section 55 make it clear that no party may bind the other party to a contract of adhesion drawn up in a language other than French, unless the French version of the contract of adhesion has been given to the other party and that party has expressly agreed to be bound by it. Consequently, insurers must therefore ensure that they have French versions of their insurance products.

<sup>1</sup> *Charter of the French language*, CQLR c C-11.

<sup>2</sup> Bill 96 - *An Act respecting French, the official and common language of Québec*, SQ 2022 c 14.

## **The Exceptions to the New Regime Provided by the Act**

According to the amended Section 55, certain contracts will not be subject to the new regime. A specific exception will apply to insurance policies that meet the following conditions:

- 1) They come from outside Québec; or their use is not widespread in Québec;
- 2) They have no French-language equivalent in Québec.

From the parliamentary debates on the Act, it appears the above exception would apply when a particular line or type of insurance is simply not available from insurers doing business in Québec. There will also be an exception for contracts that contain standard clauses (whether printed or not) that are not contracts of adhesion. It is to be understood that insurance policies involving significant negotiations between the policyholder and insurer may not be considered contracts of adhesion. In these exceptional cases, the parties will be able to be bound in a language other than French, without the need for a French version to be submitted beforehand.

## **Penalties for Violation of the Charter**

It should be noted that new powers have been granted to the Office québécois de la langue française (hereinafter the "OQLF"), a body responsible for ensuring compliance with the Charter. In the performance of its duties, the OQLF is empowered to conduct investigations and impose administrative as well as disciplinary sanctions. The Act introduces three types of sanctions in case of breach: penal, civil, and administrative.

First, fines ranging from \$3,000 to \$30,000 can be imposed against a company that fails to comply with a notice of non-compliance delivered by the OQLF. These fines are doubled in the case of a second offence and tripled for subsequent offences. In addition, if an infraction continues for more than one day, each day constitutes a separate infraction.

Second, a party to a contract that violates the Charter may seek rescission of the contract through the courts. To do so, the party must establish it has been prejudiced by the violation. The burden of proof is reversed in case of contracts of adhesion: the insurer will must prove that the insured suffered no prejudice as a result of the violation. Alternatively, the insured may seek damages.

Finally, the Act introduces administrative sanctions. Consequently, the government may revoke any type of permit or authorization of a similar nature granted to a corporate entity that repeatedly contravenes the Charter, making it even more important for insurers to comply with the Charter's provisions. For the contracts that remain subject to the current regime, the Act provides that the civil and administrative recourses do not apply to them in the event of non-compliance with the Charter.

### **The Coming Into Force of the New Changes**

While the provisions relating to sanctions in the event of non-compliance entered into force on 1 June 2022, the amendments to Section 55 of the Charter will enter into force one on 1 June 2023.

### **Regulation-Making Powers Under the Charter of the French language**

We have analyzed a dozen regulations that have been adopted in relation to the Charter and have determined that none of them are relevant to the insurance business. However, we must bring to your attention that the government may adopt a regulation that affects the Charter amendments to Section 55 that are now in effect as well as the amendments that will soon come into effect. According to Section 93 of the Charter, in addition to its other regulation-making powers under the Charter, the government may make regulations to facilitate the administration of said Charter, including regulations defining the terms and expressions used in the Charter or defining their scope. Therefore, it is crucial to be on the lookout for the adoption of any regulation in this regard.