

A BANKER ASKED US: WHY IS THERE AN ENGLISH LANGUAGE CLAUSE IN QUÉBEC DOCUMENTS AND WHEN IS THIS CLAUSE MANDATORY?

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Q: We often see an English language clause in commercial documents when dealing with parties from Québec. Why is this clause included in those documents, and when is this clause mandatory?

A: As discussed before (see our previous article [A banker asked us: the English language clause in Québec documents](#)), under Québec law, certain types of contracts must be drawn up in French unless the express wish of the parties indicates otherwise. The Québec Charter of the French Language^[1] (the “**Charter**”) mandates French as “the official language” and the language of commerce and business in the province of Québec. The objective, as stated by the legislators, is to ensure the quality and influence of the French language while keeping the spirit of fairness and open-mindedness, and being respectful of other languages.

Under Québec law, the following commercial agreements, without limitation, must be drawn up in French unless the express wish of the parties indicates otherwise:

1. Contracts pre-determined by one party, contracts containing printed standard clauses, and the related documents;^[2]
2. Contracts between a consumer and a merchant;^[3] and
3. Leases (and the by-laws of the immovable, as well as notices relating to a lease).^[4]

Contracts pre-determined by one party and contracts containing printed standard clauses are likely to be considered as contracts of adhesion, of which the essential stipulations were imposed or drawn up by one of the parties, on his behalf or upon his instructions, and were not negotiable. To protect the interest of the adhering party, who may not understand contracts drawn up in another language and who cannot negotiate the terms and conditions of the contract, the Charter requires that such contracts be drawn up in French, unless the parties expressly agree otherwise.

Consumer contracts are another type of contracts that are required to be drawn up in French. Such requirement is set out in the Consumer Protection Act, and it is a condition for the formation of a consumer contract. In the event of non-compliance, a consumer may apply to the court to have the consumer contract annulled or terminated, and to seek reparation for damages, even punitive damages.

Leases are also required to be drawn up in French pursuant to the Civil Code of Québec. In general, leases usually contain printed standard clauses, which means that they are also subject to the French language requirement under the Charter. The Civil Code of Québec further requires that by-laws of the immovable and notices relating to a lease be drawn up in the same language as the lease. The non-compliance with this rule does not result in the nullity of the lease. However, it can result in fines as prescribed under the Charter.

Apart from the above commercial agreements, the Charter requires that order forms, invoices, receipts and quittances be drawn up in French,^[5] and that public signs and posters and commercial advertising be in French or in French and in another language provided that French is markedly predominant.^[6] Pursuant to the Securities Act, prospectus and other documents related to the securities shall be drawn up in French only or in French and English, unless an exemption is available thereunder.^[7]

Consequently, under Québec law, a number of commercial agreements and documents must be drawn up in French. Should the parties wish to use another language and provided that they are allowed to do so, they must manifest their intent in clear terms. To avoid the potential challenge that could be raised by one party, it has become a common practice in Québec to include an English language clause in all types of contracts drawn up in English, regardless of whether it is required to do so or not.

[1] R.S.Q., c. C-11. [Charter]

[2] Ibid, article 55.

[3] Consumer Protection Act, R.S.Q., c. P-40.1, article 26. “Consumer” means a natural person, except a merchant who obtains goods or services for the purposes of his business; “merchant” includes any person doing business or extending credit in the course of his business.

[4] Civil Code of Québec, R.S.Q., c. C-1991, article 1897 and 1898.

[5] Charter, article 57.

[6] Ibid, article 58.

[7] Securities Act, R.S.Q. c. V-1.1, article 40.1.

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