Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare

NORTON ROSE FULBRIGHT

Doing business in Quebec

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Contents

Use of the masculine gender in this brochure includes the feminine gender.

Introduction

In Canada, governmental and legislative jurisdiction is divided between the federal and provincial governments. Quebec's jurisdiction includes the power to legislate over property and civil rights, health care, 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*) recognizes 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* (Office), which is responsible for defining and conducting Quebec policy on linguistic officialization, terminology and the francization of the civil administration and enterprises. The Office is also responsible for ensuring compliance with the *Charter*. Moreover, the Office must assess Quebec's linguistic situation and submit a report to the government at least once every five years.

I. The language of commerce and business

Section 5 of the *Charter* states that consumers of goods and services have a right to be informed and served in French.

(a) Contracts

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

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 boards, etc.) and health and social services,[2] must be in French. Such contracts and the related documents may be drawn up in another language when the civil administration enters into a contract with a party outside Quebec.

Section 55 states that contracts of adhesion (i.e. contracts pre-determined by one party) and contracts containing printed standard clauses, as well as related documents, must be drawn up in French. They may be drawn up in another language with the express consent of the parties.

Section 57 provides that application forms for employment, order forms, invoices, receipts, and acquittances must be in French. By virtue of Sections 89 and 91 of the *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.

(b) Commercial advertising

Section 58 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 defined by the *Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French Language*.[3]

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.

Where texts both in French and in another language appear 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.

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 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.

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,

1 C.Q.L.R., c. C-11
2 See Schedule A to the Charter.
3 C.Q.L.R., c. C-11, r 11

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[4] 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 firm name of a firm established exclusively outside Quebec as well as a recognized trade mark within the meaning of the *Trade-marks Act*[5] (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, there must be a sufficient presence of French elsewhere on the sign, as detailed in the *Regulation*.

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.

(c) Inscriptions on products

Section 51 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 than that in French. 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:

(1) the product is intended for a market outside Quebec;
(2) the inscription appears on a container used in interprovincial or international transportation of merchandise;
(3) the product is from outside Quebec, has not yet been marketed in Quebec and is being exhibited at a convention, conference, fair or exhibition;

4 C.Q.L.R., c. C-11, r 9
5 R.S. 1985, c. T-13

(4) 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;

(5) 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

(6) 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 firm name of a firm established exclusively outside Quebec and a recognized trade mark within the meaning of the *Trade-marks Act* (unless a French version has been registered) may be inscribed on a product exclusively in a language other than French.

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.

(d) Commercial publications

Section 52 of the *Charter* provides that catalogues, brochures, folders, commercial directories, and other publications of the same nature must be in French, but, by application of Sections 89 and 91 of the *Charter*, they may also be bilingual, provided that the French version is displayed at least as prominently 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 than the version in the other language.

The *Regulation respecting the language of commerce and business* also permits the firm name of a business firm established exclusively outside Quebec as well as a recognized trade mark within the meaning of the *Trade-marks 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) Firm names

Sections 63 and 64 of the *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*.[6]

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

II. The language of labour relations

(a) General principles

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

Chapter VI of Title I of the *Charter* deals specifically with the language of labour relations. The most relevant sections of this chapter are Sections 41, 42, 45 and 46, which read as follows:

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

41. Every employer shall draw up his written communications to his staff in the official language. He shall draw up and publish his offers of employment or promotion in French.

42. Where an offer of employment regards employment in the civil administration, a semipublic agency or an enterprise required to establish a francization committee, have an attestation of implementation of a francization program or hold a francization certificate, as the case may be, the employer publishing this offer of employment in a daily newspaper published in a language other than French must publish it simultaneously in a daily newspaper published in French, with at least equivalent display.

45. An employer is prohibited from dismissing, laying off, demoting or transferring a member of his staff for the sole reason that he is exclusively French-speaking or that he has insufficient knowledge of a particular language other than French, or because he has demanded that a right arising from the provisions of this chapter be respected.

A staff member not subject to a collective agreement who believes he has been aggrieved by an action that is prohibited by the first paragraph may exercise a remedy before the Tribunal administratif du travail (TAT) established by the *Labour Code* (chapter C-27). The provisions applicable to a remedy relating to the exercise by an employee of a right arising out of the *Code* apply, with the necessary modifications.

A staff member subject to a collective agreement who believes he has been so aggrieved may submit the grievance for arbitration if the association representing the staff member fails to do so. Section 17 of the *Labour Code* applies to the arbitration of the grievance, with the necessary modifications.

46. An employer is prohibited from making the obtaining of employment or office dependent upon the knowledge or a specific level of knowledge of a language other than the official language, unless the nature of the duties requires such knowledge.

A person, whether or not in an employment relationship with the employer, who believes he has been aggrieved by a contravention of the first paragraph and who is not subject to a collective agreement may exercise a remedy before the TAT established by the *Labour Code* (chapter C-27). The provisions applicable to a remedy relating to the exercise by an employee of a right arising out of the *Code* apply, with the necessary modifications.

A person who is subject to a collective agreement and who believes he has been so aggrieved may submit the grievance for arbitration if the association representing the person fails to do so.

The remedy is brought before the TAT within 30 days after the date on which the employer informed the complainant of the linguistic requirements of the employment or position or, failing that, from the last act of the employer that was invoked to support the allegation of contravention of the first paragraph of this section.

It is incumbent upon the employer to prove to the TAT or the arbitrator that the performance of the work requires knowledge or a specific level of knowledge of a language other than French.

If the TAT or the arbitrator finds the complaint to be justified, the TAT or the arbitrator may issue any order the TAT or the arbitrator considers fair and reasonable in the circumstances, in particular an order to cease the act complained of, to perform an act, such as the renewal of the staffing process for the employment or position, or to pay compensation or punitive damages to the complainant.

(b) Written communications and offers of employment

An employer must comply with the *Charter* when sending written communications to its staff and offers of employment and promotion as contemplated by Sections 41 and 42 cited above. The Office has recognized that Section 41 applies to communications pertaining to working conditions with personnel in general (those communications must be in French or bilingual) as opposed to communications with individuals, so that individual communications addressed to a particular employee, as opposed to communications addressed to all personnel, need not be in French, if such is the will of the employee. As mentioned above, bilingualism is permitted by Section 89 of the *Charter*, so that work-related communications can be in French or be bilingual, provided that the French version is displayed at least as prominently as the English version.

III. Francization of the business firms

The *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 program

Section 139 of the *Charter* provides that an enterprise which employs 50 persons or more for a period of six months must register with the Office within six months of the end of that period. For that purpose, the enterprise shall inform the 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 Office shall then issue a certificate of registration to the enterprise. Within six months of the date on which the certificate of registration is issued, the enterprise shall transmit an analysis of its linguistic situation to the Office. If the 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 according to the terms of Section 141 (cited below), it shall issue a francization certificate.

Section 141 of the *Charter* reads as follows:

> **141.** The francization program is intended to generalize the use of French at all levels of the enterprise through
>
> 1) the knowledge of the official language on the part of management, 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 working documents of the enterprise, especially in manuals and catalogues;
> 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;
> 9) the use of French in information technologies.

If, however, the 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.

Every business employing 100 or more persons in Quebec is also required to analyze its language situation. In addition, such businesses must form a francization committee consisting of six or more persons (Section 136), of which at least half represent the workers of the firm (Section 137). 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. They shall be deemed to be working and shall be remunerated at the normal rate during that time.

The francization committee must meet at least once every six months and 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 Office. Where necessary, the committee shall devise a francization program for the enterprise and supervise its implementation.

Upon review of the linguistic analysis prepared by the francization committee, if the 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 *Charter* (cited above), it will issue a francization certificate (Section 145). Where a francization certificate is issued to the enterprise, the committee shall ensure that the use of French remains generalized at all levels of the enterprise according to the terms of Section 141.

If however, the 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 submitted to the Office within six months of receipt of the notification and must be approved by the Office.

After having approved the francization program of an enterprise, the 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 Office, every 24 months in the case of an enterprise employing fewer than 100 persons and every 12 months in the case of an enterprise employing 100 or more persons.

(b) Exceptions allowing the use of another language

Section 142 of the *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 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 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*,[7] 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

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

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:

(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 entitled *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*[8], provides the following:

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 branches 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 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 Office and the company. "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 Office can only be reached provided the following prerequisite conditions are met:

(i) the head office must be established in Quebec by a business firm whose activity extends beyond Quebec;

(ii) more than 50% of its average gross income for the period prior to its request to the Office must accrue directly or indirectly from outside Quebec; and

(iii) the enterprise must have completed the analysis of its linguistic situation.

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

Finally, it is important to note that once 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 *Charter*. This obligation is a continuous one and businesses must submit a report on the progress of their use of French to the Office every three years (Section 146).

(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.

In a leaflet published in February 2010 by the Office entitled *"Les technologies de l'information et des communications en français"* (English translation: "*Information Technologies and Communications in French*"),[9] the French expression "technologies de l'information" is defined as follows (no English definition is provided):

> Il s'agit de l'ensemble du matériel, des logiciels et des services utilisés pour la collecte, le traitement et la transmission de l'information.

This definition roughly translated would read as follows: "Information technologies refer to the entire hardware, software and support for collecting, processing and transmitting information."

In the Office's leaflet, it is also stated, among other things, that:

> Employers thus have the duty to provide their personnel with information technologies in French. This obligation also extends to documents communicated internally, along with data bases installed on internal networks. Every business should then implement a purchasing and development policy for information technologies in French, in which its linguistic requirements are stated.

(i) Hardware

The Office's leaflet on information technologies mentions 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 packages, educational programs, operating systems, development tools and network management systems, the Office states that menus, control keys and screen displays must be in French (including diacritical marks). Outputs displayed on screens and listings should also be in French. Similarly, it must be possible to use French diacritical marks in sorts and searches.

According to our interpretation of the *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 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 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) Website

According to the Office's leaflet, the publicity documentation of an enterprise having an address in Quebec is also subject to the *Charter*, even if such enterprise's head office or Internet server are not located in Quebec. Thus, the commercial publicity contained on the websites of such enterprise shall have a French version unless the enterprise is exempted pursuant to the *Charter* or regulations thereunder. An enterprise with 50 or more employees in Quebec shall offer at least a web interface in French. In the context of electronic commercial transactions, an enterprise having an address in Quebec shall inform the consumers that their electronic transactions (i.e. the orders, invoice, receipts, etc.) may be carried out in French.

(iv) Operating guides and manuals

Pursuant to Subsection 141(4) of the *Charter*, the working documents of an enterprise, such as operating

9 www.oqlf.gouv.qc.ca/ressources/bibliotheque/depliants/20100212_depliant6f_vf.pdf

guides and manuals (including teaching material and training manuals), must be in French.

Given Section 89 of the *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 *Charter*

Section 205 of the *Charter* states that every person who contravenes a provision of the *Charter* or the regulations made thereunder commits an offence and is liable, for each offence, to a fine of $600 to $6,000 in the case of a natural person, and of $1,500 to $20,000 in the case of a legal person. The fines are doubled for a subsequent offence.

A person commits an offence and is liable to the fines provided for in Section 205 if such person distributes, sells by retail sale, rents, offers for sale or rental or otherwise markets, for consideration or free of charge, or possesses for such purposes,

(a) a product, if the inscriptions on the product, on its container or wrapping, or on a document or object supplied with it, including the directions for use and the warranty certificates, are not in conformity with the provisions of the *Charter*,

(b) computer software, including game software and operating systems, or a game or toy that is not in conformity with the provisions of the *Charter*, or

(c) a publication that is not in conformity with the provisions of the *Charter*.

The Office has jurisdiction to examine matters relating to instances of non-compliance with the *Charter* and it may, on its own initiative or following the filing of a complaint, make inspections and inquiries. Where a complaint has been filed, the president and director general of the Office may exercise, alone, the powers of the Office. Every complaint must be filed in writing; it must set out the grounds on which it is based and state the identity of the complainant. The Office shall provide assistance to complainants in drawing up their complaints. The Office shall refuse to act if the complaint is manifestly unfounded or in bad faith.

Where the Office is of the opinion that the *Charter* or a regulation thereunder has been contravened, it shall give the alleged offender formal notice to comply therewith within the time indicated. If the alleged offender fails to comply, the Office shall refer the matter to the Director of Criminal and Penal Prosecutions so that, where required, appropriate penal proceedings can be instituted.

Other penalties of a commercial nature may also be imposed in cases of non-compliance. For example, Section 22 of the "Government Policy on the Use and Quality of French in the Public Administration" (Cabinet decision 96-312 of November 12, 1996) provides that:

> The Administration does not award any contract, grant or benefit to an enterprise that is subject to Chapter V of Title II of the *Charter*[10], if that enterprise does not hold a certificate of registration, or if it has failed to provide an analysis of its linguistic situation within the prescribed time period, or if it does not hold an attestation of implementation of a francization program or a francization certificate issued by the Office de la langue française, or if its attestation or certificate has been cancelled or suspended by the Office, for the duration of such cancellation or suspension. The tender documents make reference to this requirement.[11]

10 Chapter V of Title II of the *Charter* deals with the francization of enterprises.

11 *Politique gouvernementale relative à l'emploi et à la qualité de la langue française dans l'Administration (décision du conseil des ministres 96-312, du 12 novembre 1996)* (our translation)

Quebec labour and employment law

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

I. Introduction

(a) Historical background

- Quebec is one of 10 partners of the Canadian federal state, whose parliamentary system is modeled on the British system. *The British North America Act, 1867*, which established Canada, created two levels of government, i.e. a central or federal government, and the provincial governments. Each province has its own legislature and adopts legislation in those fields that fall under its jurisdiction. The federal Parliament has jurisdiction over industries and fields such as external affairs, national defence, currency, international and interprovincial transportation, etc.

- In Quebec, the members of the National Assembly, the Quebec Parliament, enact legislation (legislative power). The Lieutenant-Governor, who represents the Crown, gives assent to such legislation. On the one hand, the bases of the employment contract are to be found in the *Quebec Civil Code*. On the other hand, collective labour relations are also set in specific legislation (codes or acts). The first *Labour Code* was adopted in 1964 and it has been substantially amended in 1969, 1977 and 2002.

(b) Legal system

- The Province of Quebec has two legal systems. The first system, common law, is technically based on English common law concepts and legal organizational methods that assign a pre-eminent position to case law, as opposed to legislation, as the ordinary means of expression of general law. The second legal system, civil law, derives from the Roman heritage and applies to private law: contracts, liability, insurance, etc. Thus, Quebec labour and employment law is a mix of both legal traditions and calls upon either system depending on the nature of the employment matter.

- Furthermore, 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. 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 considerably 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.) 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 *Act*. 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 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

  — The minimum wage rate is currently $12.00 per hour. In May 2019, it will increase to $12.50. It usually changes in May of each year. The Regulation contains certain exceptions.

  — 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.

  — A number of rules are provided for the enforcement of the prohibition, including effective dates that vary according to whether they apply to collective agreements, individual employment contracts or collective agreement decrees.

  — While preventing a duplication of proceedings, the *Act* gives all employees the possibility of bringing a complaint concerning prohibited differences in treatment before the Commission des normes de l'équité, de la santé et de la sécurité du travail (CNESST).

  (ii) 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, 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.). Specific provisions have also been enacted with regard to the work of children, preventing them from working outside certain hours.

  — 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 he was not informed five days in advance that he 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 his workstation.

(iii) Annual leave or vacation

— Sections 66 and following 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 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. If the annual leave is not deferred, the employer must pay the indemnity for the annual leave to which the employee is entitled.

— Entitlement to vacation is determined at the date chosen 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 reference date is used to determine the employee's entitlement to vacation. Depending upon 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 (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 his or her 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.

(iv) 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 Canada Day);
- 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.

(v) Leave for examination related to pregnancy: (section 81.3, L.S.A.)

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

(vi) Maternity leave: (sections 81.4 and following, L.S.A.)

- Maximum of 18 consecutive weeks without pay. During this period, however, the employee is entitled to receive up to 15 weeks of parental insurance benefits and there is a two-week waiting period (*see the Section entitled Employment Insurance Benefits*).

- 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.

(vii) Paternity leave (section 81.2 and 81.2.1, L.S.A)

On the birth of his child, an employee is entitled to a paternity leave of not more than five consecutive weeks, without pay (*see the Section entitled Employment Insurance Benefits*).

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.

(viii) 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 his child 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 at the residence of his mother or father or after the termination of the pregnancy (*see the Section entitled Employment Insurance Benefits*).

(ix) Parental leave: (sections 81.10 and following, L.S.A)

- Parental leave provides a maximum of 52 consecutive weeks without pay, to be taken by either the father or the mother or both within the 70 weeks following birth or the date the child is entrusted to the employee, in the case of adoption. However, subject to the conditions prescribed by regulation, such leave may end at the latest 104 weeks after the birth or adoption.

- Special Employment Benefits are also available for up to to 35 weeks (*see the Section entitled Employment Insurance Benefits*).

- 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 his/her former position, with the same benefits, including the wages to which he/she would have been entitled had he/she remained at work. If the position held by the employee no longer exists when he/she returns to work, the employer must recognize all the rights and privileges to which he/she would have been entitled if he/she 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 (see section 81.14.1).

- 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).

(x) Family or parental leave and absences

- 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. 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. Only those employees with three months of uninterrupted service are entitled to this leave.

- An employee may be absent from work for a period of not more that 16 weeks over a period of 12 months where he must stay with a relative or a person for whom the employee acts 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 he must stay with a relative, other than his minor child, or a person for whom the employee acts as a caregiver, because of a serious and potentially mortal illness, attested by medical cerftificate

- 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 his/her former position with the same benefits, including the wages to which he/she would have been entitled had he/she 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.

(xi) 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

- An employee with three months of uninterrupted service 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 therefore.

- 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 his/her 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.

(xii) Absences owing to the disappearance or death of a minor child or a relative

— In the event of the death or disappearance of his minor child, or in the event of the death by suicide of his spouse, major child, father or mother, 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.

(xiii) Bereavement leave: (section 80, L.S.A.)

— Bereavement leave provides a maximum of five days without pay plus two days with pay, 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.

(xiv) Wedding leave: (section 81, L.S.A.)

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

(xv) 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, unless there is a specific clause dealing with termination with or without notice, the employer who wishes to end such a contract 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 the 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 *Labour Standards Act*.

- The relevant statutory provisions read as follows:

(i) Section 82, L.S.A.

The employer must give written notice to an employee before terminating his contract of employment or laying him off 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 he is credited with one year to five years of uninterrupted service, four weeks if he is credited with five years to 10 years of uninterrupted service and eight weeks if he is credited with 10 years or more of uninterrupted service.

A notice of termination of employment given to an employee during the period when he 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 him under another Act.

(ii) 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 his regular*

wage excluding overtime for a period equal to the period or remaining period of notice to which he 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 his weekly wage, calculated from the complete periods of pay in the three months preceding the termination of his employment or his layoff.

(iii) Section 83.1, L.S.A.

— This section provides for the possibility of postponing the payment of the compensatory indemnity to a later date for employees covered by a collective agreement.

(iv) 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.

— *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 (section 2094).

(v) 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 he would have been in, had his employment not been terminated. Under the circumstances, an employee would be entitled to all the benefits he 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.)

- 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 (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), 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;
- 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, he shall inform the Minister of Labour as soon as he is in a position to do so.

- 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 new section 84.0.13, L.S.A. are not cumulative. 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:

  (i) 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;

  (3) on the ground that a seizure by garnishment 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.

An employer must of his 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.

(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

(ii) Section 122.1, L.S.A.

No employer or his agent may dismiss, suspend or retire an employee, practice discrimination or take reprisals against him on the ground that he has reached or passed the age or the number of years of service at which he should retire pursuant to a general law or special *Act* applicable to him, pursuant to the retirement plan to which he contributes, pursuant to the collective agreement, the arbitration award in lieu thereof or the decree governing him or pursuant to the common practice of his employer.

(iii) Section 123, L.S.A.

An employee who believe s he has 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 TAT, failure to file the complaint cannot be invoked against the complainant.

(iv) Section 123.1, L.S.A.

Section 123 applies to every employee who believes that he has been dismissed, suspended or retired on the ground set forth in section 122.1.

However, the time limit to file such a complaint is then increased to 90 days.

(v) Section 124, L.S.A.

An employee credited with two years of uninterrupted service in the same enterprise who believes that he has not been dismissed for a good and sufficient cause *may present his complaint* in writing to the CNESST or mail it to the address of the CNESST within 45 days of his 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.

Exception. If the complaint is filed with the TAT 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.

- 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 Division II (sections 122 to 123.5, L.S.A.) and Division III (sections 124 to 128, L.S.A.) of Chapter V, L.S.A. (Recourses) (sections 123.5 and 126.1, L.S.A.).

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

- Through the above mentioned sections, the concept "psychological and sexual harassment" is introduced, which 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. For greater certainty, since June 12, 2018, psychological harassment includes such behaviour in the form of such 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. 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 psychological harassment prevention and complaint processing policy 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.
- Sections 81.18 and 81.19 and sections 123.7, L.S.A. (2 years to file a complaint), 123.15, L.S.A. (powers of the TAT) and 123.16, L.S.A. (non application of 123.15(2), (4) and (6), L.S.A. in the case of an employment injury), with the necessary modifications, 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 he/she has 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 2 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 TAT.
- 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 TAT without delay.
- The CNESST may represent an employee before the TAT.
- The TAT 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). Certain provisions of the *Labour Code* will apply to the application of these decisions.

III. *Labour Code* (unionized employees)

- The *Labour Code* 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.

- 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 has been substantially amended in 1969, 1977 and 2002.

- The Quebec government felt that it needed to adapt the *Labour Code* to modern society and enacted Bill 31 on June 21, 2001. It created a Labour Relations Commission that has been fully operational since November 25, 2002. Decisions of the Commission are final and without appeal.

- On January 1, 2016, the *Act to establish the administrative labour tribunal* came in force and merged several Employment & Labour, Health & Safety, Construction and Essential services administrative instances into one administrative instance, the TAT. The labour relations division of the TAT is tasked with carrying on the mandate of the CRT.

(a) TAT's powers

- The law provides that the TAT is to allow the interested parties to be heard before it renders a decision; the TAT 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 TAT 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 TAT 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 TAT may issue. These are described as follows:

  (1) order a person, group of persons, association or group of associations to cease performing, not to perform or to perform an act in order to be in compliance with this *Code*;

  (2) require any person to redress any act or remedy any omission made in contravention of a provision of this *Code*;

  (3) 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;

  (4) 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 *Code*, or to take measures considered appropriate by the TAT to induce the persons represented by an association not to participate, or to cease participating, in such a strike, slowdown or lock-out;

  (5) order, where applicable, that the grievance and arbitration procedure under a collective agreement be accelerated or modified.

(b) Decision

- The *Labour Code* provides for all matters to be heard and decided by a single member, with certain specific exceptions, namely:

  - where certification is granted by a labour relations officer;
  - where the president considers it appropriate to assign a matter to a panel of three members that includes at least one advocate or notary who will preside over the panel;
  - in the event of review proceedings as described below.

(c) Review

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

  (1) if a new fact is discovered that, had it been known in time, could have warranted a different decision;

  (2) if an interested party, owing to reasons considered sufficient, could not present observations or be heard;

  (3) 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 the relevant caselaw. A decision may be reviewed by the same member who made it in the first two cases only; in the third, the application has to be heard by a panel of three members. 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 TAT have to be recorded in writing, be signed and notified to the parties and give the reasons on which they are based. The *Labour Code* provided that the TAT is to render its decision within 90 days 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 TAT, 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 (Section 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 TAT 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 TAT, 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 TAT may, in particular, determine the applicability of those sections.

The TAT 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 TAT 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 TAT 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 TAT governing the employees' integration.

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

The TAT 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 TAT as to the applicability of section 45 is (see section 46, may be 30 days) from knowledge of the fact that the undertaking has been alienated or the operation of the undertaking transferred.

- 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 TAT 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 TAT. However, the clause will not affect the effect, within the transferring employer's enterprise, 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 XI "*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*, R.S.Q., c. C-12, 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. Discrimination forbidden.** *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, 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 defined.** Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.
>
> **10.1 Harassment.** 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":

> [c]onduct which manifests itself, amongst other things, through repeated words, actions or gestures made in bad faith or in a vexatious manner, towards a person or group of persons, for any of the reasons mentioned in section 10 of the *Charter*. Harassment can be for reasons of race, sex, sexual orientation, religion, handicap, or other.

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

> [c]onduct which manifests itself in words, actions or gestures with a sexual connotation, which are repeated and unsolicited, and which show disregard for the dignity or physical or psychological well-being of the person, or cause unfavourable working conditions for the employee, or dismissal.

- In order to comply with the new provisions of the L.S.A., it is necessary (see "Psychological and sexual harassment" on page 28) for employers to institute a "Harassment Policy".
- In matters of employment generally, section 16 provides as follows:

> **16. Non-discrimination in employment.** 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 Information on job application.** 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.
>
> **18.2 Penal or criminal offence.** 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. Equal salary for equivalent work. Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

  Difference based on experience, non-discriminatory. 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*. [Emphasis added.]

- 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.

- 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 he or she chooses to retire, provided that the employee meets the normal requirements of his 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. Official language of Quebec

- The *Charter of the French Language* C.Q.L.R., c. C-11 recognizes that French is the official language of Quebec. All employees have the right to work in French. However, an employer is entitled to require his employees to have knowledge of another language, such as English, provided that the nature of the duties to be performed requires the knowledge of a language other than French.

- An employee who feels that the employer's requirements are not justified can file a complaint with the Office de la langue française.

- In addition, businesses that employ 50 or more employees must comply with the *Charter*'s provisions concerning the award of a francization certificate. Exceptionally, businesses that employ fewer than 50 employees may have the same obligations. However, this can be ordered only with the approval of the Minister.

- There are specific provisions dealing with communications by an employer with his personnel. Section 41 of the *Charter* is of particular interest. It reads as follows:

  41. Employer's notices, offers. Every employer shall draw up his written communications to his staff in the official language. He shall draw up and publish his offers of employment or promotion in French.

- Quebec courts have held that individual communications to an employee as opposed to communications to all personnel need not be in French. As a precautionary measure, we recommend that documents such as a contract of employment contain the following clause: "The parties have expressly requested that this agreement be drafted in English. Les parties ont expressément requis que cette convention soit rédigée en anglais."

- The *Charter* also stipulates that businesses that employ 50 or more employees must ensure that the use of French be generalized at all levels of the firm including the use of French in information technologies [section 141(9)]. Bill 40,

which came into force on September 1, 1997, amended the *Charter* to increase the fines that may be imposed, and it contains specific sections relating to software. It also created the agency in charge of the application of the *Charter*, the Office québécois de la langue française.

- We refer you to a more comprehensive analysis of the *Charter* in chapter 1 above and more specifically in section 2 of this chapter, insofar as the language of labour relations is concerned.

VII. 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*, which deals with prevention, and the *Act respecting Industrial Accidents and Occupational Diseases*, 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.

(a) Occupational health and safety

- The *Act respecting Occupational Health and Safety* (*Act*), R.S.Q., c. S-2.1 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.

- Conversely, an employee has the following general rights:

> **9. Working conditions.** Every worker has a right to working conditions that have proper regard for his health, safety and physical well-being.
>
> **10. Rights.** 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;
>
> (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 the following situation:

> **12. Refusal to perform work.** 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 well-being, or would expose another person to a similar danger.

- There are provisions allowing an employee to seek protective re-assignment if he or she 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. Pregnant worker.** 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.
>
> **Certificate.** The form and tenor of the certificate are determined by regulation, and section 33 applies to its issuance.

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

> **42.1. Restriction.** 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.

Change of date. However, the expected date of delivery may be changed if the Commission is informed by the worker's attending physician 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 *Act* is comprehensive, its impact is mostly felt in an industrial environment.

(b) Workers' compensation

- The *Act respecting Industrial Accidents and Occupational Diseases* (*Act*), C.Q.L.R., c. A-3.001, 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.

- This *Act* creates a "no fault" system of liability for an "employment injury" which is defined as follows in section 2:

> ***"employment injury"*** means an injury or a disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation; [...]

- An "occupational disease" is also defined in section 2:

> ***"occupational disease"*** means a disease contracted out of or in the course of work and characteristic of that work or directly related to the risks peculiar to that work; [...]

- 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 TAT.

- The payment of the benefits provided under the *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.

- **The unit-rate plan: for small businesses**

  This plan is intended for employers whose total annual premium is less than approximately $7,500. The premium is calculated on the basis of the rate (per $100 of total insurable payroll) charged for each classification unit to which the employer's wages are assigned based on the type of industrial activity(ies) being performed.

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

  This plan is intended for employers whose total annual premium is between $7,500 and $400,000 (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; 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 January 2013, approximately 55,000 employers were being assessed under this plan.

- **Safety groups:**

  A variation of the personalized-rate plan whereby the CNESST allows smaller (and therefore less personalized) employers the opportunity to form "Safety Groups" 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 collective health and safety performance, measured in terms of their collective claim costs.

- **The retrospective plan: for very large businesses**

  This plan is intended for very large employers whose annual assessments exceed approximately $400,000.

  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. This adjustment will be influenced by the employer's "Risk limit selection," i.e. by the level of "stop-loss" insurance selected and purchased by the employer before the claim year begins.

- **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.

  Additional information concerning Bill 79 entitled An *Act to establish the Commission des lésions professionnelles and Amending Various Legislative Provisions*, assented to on June 6, 1997, is available upon request. The process for contesting decisions under both the *Act respecting Industrial Accidents and Occupational Diseases* and the *Act respecting occupational health and safety* is before the Occupational health and Safety division of the TAT, 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 and abolished the conciliation services.

VIII. Employment insurance benefits

1. Federal level:

- The federal government has jurisdiction to deal with employment insurance benefits. However, provincial governments that wish to be more involved in questions pertaining to training and the implementation of the new provisions will be able to reach agreements with the federal government as provided for in a piece of legislation entitled the *Act respecting Employment Insurance in Canada* (*EI Act*). Part of the *EI Act* came into force on July 1, 1996, and the remaining provisions came into force as of January 1, 1997. Benefits to employees on maternity leave and parental leave of absence or who become unable to work because of illness are available. Employers may further create a supplemental or benefit program (called SUB) to complement benefits and reduce premiums.

- 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 Human Resources and Development Canada (HRSDC) 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. The original list consisted of the following circumstances: 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; and the obligation to care for a child or an immediate family member.

- The following situations were also added to the list of circumstances constituting just cause for leaving one's employment: reasonable assurance of other employment in the immediate future; significant modifications of terms and conditions respecting wages or salary; excessive overtime work or employer's refusal to pay for overtime work; significant changes in work 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; discrimination with regard to employment because of membership in any association, organization or unionization of workers; undue pressure by an employer on employees to leave their employment; and such other reasonable circumstances as may be prescribed by HRSDC.

- 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 HRSDC in determining the validity of the claim. Special rules apply in cases where the issue of harassment arises.

Maternity and parental leave

- According to the CLC, the parental leave is 63 weeks, to which are added 17 weeks of maternity leave.
- Either parent or both parents can benefit from the parental leave employment insurance benefits.
- The number of consecutive months of continuous employment with the same employer to be eligible for maternity or parental leave is 6.

In case of parental leave, parents receiving employment insurance benefits will be able to work part-time while receiving benefits. They can earn of up to 25% of their weekly benefit or $50, whichever is higher, without affecting their employment insurance benefits.

2. Provincial level:

At the provincial level, the *Act respecting parental insurance* implemented a parental insurance plan in order to grant maternity benefits, paternity and parental benefits upon the birth of a child and adoption benefits. The *Regulation under the Act respecting parental insurance* establishes the situations where a person can be eligible under the plan and the situations where the employment is excluded from the plan. According to section 3 of the *Act*:

- A person is eligible under the parental insurance plan if:

  1) 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, 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;

  2) 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;

  3) the person's insurable earnings during the qualifying period are equal to or greater than $2,000; and

  4) the person has had an interruption of earnings as defined by regulation of the Conseil de gestion.

  Condition. The eligibility arising out of the obligation to pay a premium under a plan referred to in subparagraph 1 of the first paragraph, other than this plan, is conditional on the Conseil de gestion entering into an agreement for that purpose with the government of Canada or the government of another province or a territory.

- The maximum number of weeks for maternity benefits shall not exceed 18 and for paternity benefits shall not be more than five weeks. The total number of weeks of parental or adoption benefits may be allocated to one parent, divided between the parents or allocated concurrently to the 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.
- The amount to be granted as weekly benefits shall be equal to the following percentage of the average weekly earnings:

  1) 70% for the 18 weeks of maternity benefits, the five weeks of paternity benefits and the first seven weeks of parental benefits, and for the first 12 weeks of adoption benefits;

  2) 55% for the remaining weeks of parental or adoption benefits (section 18 of the *Act*).

- The employee can also opt for greater benefits for a shorter period, namely 75% for 15 weeks for maternity leave, three weeks for paternity leave, 25 weeks for parental leave and 28 weeks for adoption.

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

IX. The Quebec Pension Plan

- The Quebec Pension Plan 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.

- The plan is financed by contributions from workers and employers. The contributions are collected by the Quebec Ministère du revenu, 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.

  — In case of death if the deceased contributed to the plan for a minimum of three years,
  - 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.

X. Development of the manpower training

- The object of the *Act to Promote Workforce Skills Development and Recognition* (the *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 *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 *Act*, at least according to the *Regulation respecting the Determination of Total Payroll* as currently drafted.

- 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 *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.

- In January 2008, amendments and a new regulation were adopted providing for exemptions from certain obligations under the *Act* in certain circumstances.

- Employers must complete the *Summary of source deductions and employer contributions* form from the Quebec Department of Revenue.

- 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.

XI. *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* initially required every employer whose labour relations are governed by the provincial legislation and whose enterprise employs 10 or more employees to have determined the adjustments required to eliminate such a gap by November 21, 2001. The employer must have made the first adjustments in compensation under a pay equity plan by November 21, 2001. If the employer failed to make adjustments in compensation within the applicable time limits, the unpaid adjustments bear interest at the legal rate from the time as of which they were payable.
- In the cases prescribed by regulation, regardless of the number of employees, every employer is required to submit a report on the implementation of the *Pay Equity Act*. This report takes the form of an annual online declaration to the CNESST.
- An employer whose enterprise employs 50 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 his enterprise and, periodically conduct a pay equity audit in his enterprise. In particular, the employer shall ensure maintenance of pay equity upon the creation of new positions or new job classes, the modification of existing positions or of the conditions applicable to existing positions and the negotiation or renewal of a collective agreement. When a collective agreement is being negotiated or renewed, the certified association concerned shall also ensure that pay equity is maintained.
- 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 of the PEA).
- As of May 2009, an amendment to the *Act*, replaced the single existing governmental entity by two entities – the public service enterprise and the parapublic sector enterprise. This amendment establishes that in the parapublic sector enterprise there may only be one pay equity plan for all employees represented by certified associations. Furthermore, this amendment stipulates the composition of the pay equity committee, which is in charge of the pay equity plan.
- In addition, this amendment required employers who had not yet undertaken or completed their first pay equity exercise to do so by December 31, 2010. Firms that did not comply with the December 31, 2010, time limit and are the subject of a complaint will, in addition to paying the compensation adjustments owing, be required to pay an additional indemnity that is to be added to the legal interest rate.
- Whereas before the amendment, firms merely had an obligation to ensure that equity was maintained without having to conform to specific methods for doing so, persuant to the 2009 amendments they now have to conduct a pay equity audit every five years and to post information stating, among other things, for each predominantly female job class, the percentage or amount of the compensation adjustments to be paid and, if applicable, the method of payment.
- This audit may be carried out without a pay equity committee, notwithstanding the employer's size, at its discretion.
- The *Pay Equity Act* also requires firms to keep the information used for pay equity audit purposes, along with the content of all postings, for a period of five years after a posting is made.
- The 2009 legislative provisions also raised the amount of the fines that may be imposed for offences under the *Pay Equity Act*. The maximum, for employers with 100 or more employees, has been increased from $25,000 to $45,000.

- The *Pay Equity Act* provides for a voluntary confidential conciliation process.

- The 2009 amendments also introduced the obligation for all enterprises to produce an annual declaration online, stating amongst other things, whether or not the pay equity exercise has been carried out and confirming the dates at which the required postings were carried out. This annual declaration must be completed by enterprises that have at least six employees, even if they do not have to carry out a pay equity exercise until they reach the level of 10 employees.

- It is important to note that the Supreme Court of Canada issued a judgment in 2018 declaring that several section of the *Pay Equity Act* are unconstitutional. More specifically, it upheld a Québec Court of Appeal decision striking down the 2009 provisions dealing with the maintain and posting exercise. The Québec legislature has until May 2019 to amend the PEA accordingly. Bill 10, An act to amend the *Pay Equity Act* mainly to improve the pay equity audit process, was introduced by the Minister of Labour but was not sanctionned at the date of publishing of this brochure.

XII. *Tobacco Control Act*

- The *Tobacco Control Act* (CQLR c L-6.2) (*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* (1998, c. 33) which was adopted and assented on June 17, 1998.

- The main changes brought by the *Act* concern further restrictions on tobacco use both in enclosed spaces and outdoors, extension of the scope of the *Act* 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, common areas of shopping centres, gaming areas of state-owned casinos, amusement halls, marine passenger terminals, bus stations and railway passenger stations.

— The *Tobacco Control 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, 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 can't 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 Control 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.

(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 Control 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 Control 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 Control 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 $5,000 ($2,000 to $100,000 for a subsequent offence) for contravening the installation, construction or layout standards prescribed by the *Tobacco Control Act* or by regulation, for neglecting to post the mandatory notices or for tolerating smoking in an area where smoking is prohibited. 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)[13] (QTA) through the Quebec Revenue Agency (QRA). 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”.

I. 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. The QRA 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 11.6%. This rate will be reduced to 11.5% in 2020. A foreign corporation that carries on a business in Quebec is thus currently subject to a combined Canadian federal and provincial tax rate of 26.6%. In comparison, Ontario is currently the Canadian province with the lowest combined Canadian federal and provincial tax rate (26.5%), while Nova Scotia and Prince Edward Island share 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 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.

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.

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

(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 the QRA, unless the non-resident has obtained a waiver from the QRA. This withholding requirement does not apply to certain non-resident corporations that operate an insurance or a banking business in Quebec nor to individuals holding a SODEC attestation. 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, in the final analysis, 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 party 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 the QRA, 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)

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 sales 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. The QRA 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 the QRA. 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 the QRA.

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 or 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 non-resident 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.

VII. New QST registration system for non-residents selling into Quebec

Starting on January 1st, 2019, a "specified supplier" (i.e.: a person that is not carrying on a business in Quebec, that does not have a permanent establishment in Quebec and that is not registered under the regular QST regime) or an operator of a "specified digital platform" (i.e.: a digital platform for the distribution of property or services where the operator control the essential elements of the transaction with the recipient such as billing, terms and conditions and delivery)

may be required to register to a new registration system to collect and remit the QST on the supply of intangible personal property and services made in Quebec to Quebec consumers (i.e.: a person or a corporation that is not registered for QST and where the person's usual place of residence is located in Quebec) if its taxable supply to Quebec consumers in a past twelve-month period exceeds $30,000.

The specified digital platform rules will override the specified supplier rules such that a specified supplier using a specified digital platform for the supply of intangible personal property 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 supply intangible personal property or services outside of a specified digital platform, a registration and collection requirement may be triggered (determined pursuant to the threshold set above).

A similar registration requirements will also apply as of September 1st, 2019, to "Canadian specified suppliers" (e.i.: specified suppliers who are registered to GST/HST but not QST) but with the exception that this new regime will also ensure for the collection of QST on the supply of tangible personal property made to Quebec consumers. The supply of tangible personal property will therefore also be considered for the purpose of the $30,000 threshold test applicable to registration.

This special regime will 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.

VIII. 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. Generally, both the employee's and employer's contributions must be received by the QRA 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-V).
Quebec Pension Plan	— Contributions shared equally by the employer and the employee. — Maximum pensionable salary or wages for 2019 is $57,400 per employee, less a $3,500 basic exemption. — Pensionable salary is subject to employer and employee contributions, each at a 5.55% rate. — Both the maximum employer contribution and employee contribution per employee are $2,991.45 for 2019.
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 $6 million (the total payroll giving rise to a rate reduction will gradually be increased to reach $7 million in 2022). As of 2023, the total payroll threshold will automatically be adjusted for each year. — 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 2019 is $76,500 per employee. — Insurable earnings are subject to employee contributions at a rate of 0.526% and employer contributions at a rate of 0.736% for a maximum employer and employee contribution of $563.04 and $402.39 respectively.
Labour Standards Commission	— Contributions by the employer based on the total salaries or wages paid to employees. — Maximum remuneration subject to contributions for 2018 is $76,500 per employee. — Contribution rate of 0.07%.
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 2019 is $76,500. — Contribution rate varies between 0.22% (professional services office) and 15,31% (Locksmithing of buildings) 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 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 1.37% and 4.29% until March 31, 2019. From April 1st,2019 to March 31, 2020 the rate will range between 1.34% and 4.22%. From April 1st, 2020 to March 31, 2022 the rate will range between 1.32% and 4.14%. From April 1st,2022 to March 31, 2024 the rate will range between 0.90% and 2.80%. After March 31, 2024, the Compensation Tax for Financial Institutions is planned to be eliminated.

IX. 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) Scientific Research and Experimental Development (SR&ED)

A taxpayer who 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.

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. Further, 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.

All qualifying SR&ED expenditures are subject to a minimum threshold, below which no refundable tax credit is available. For corporations or partnerships with assets of $50 million or less, the minimum threshold is $50,000 of expenditures. Where assets total more than $75 million, the minimum threshold is $225,000. Taxpayers with assets between $50 million and $75 million are subject to a graduated minimum threshold ranging from $50,000 to $225,000.

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.

Private partnership pre-competitive research
A tax credit is available on eligible SR&ED expenditures to groups of private businesses doing pre-competitive 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.

Dues and fees paid to a research consortium
A taxpayer who is a member of a recognized research consortium may avail himself 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.

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 its salary in the computation of its income for a maximum of five consecutive years. For the first and second year, the individual may deduct 100% of its salary, for the third year, 75%, for the fourth year, 50%, and 25% for the fifth year.

(b) Deduction for innovative manufacturing corporations (DIMC)

A qualifying innovative manufacturing corporation may claim an income tax deduction in respect of commercialized SR&ED work developed in Quebec equal to 65.5% (reduced to 65.2% in 2020 and going forward) of the total value of all qualified patented features incorporated into qualified property that the corporation sold or rented in the year, to a maximum of 50% of the net income earned from the sale or rental of the qualified property.

A qualified patented feature is an invention for which the corporation holds a patent, alone or with other persons, under the *Patent Act* (Canada) or any other similar foreign legislation. The invention must, among other things, result in whole or in part from SR&ED work carried out in Quebec and must have given rise to the refundable SR&ED tax credit described above. Furthermore, in the five-year period preceding the year in which the corporation's patent application was filed, the corporation (alone or together with associated corporations) must have incurred at least $500,000 of qualified SR&ED expenditures.

In general, a qualified property is a property that integrates at least one qualified patented feature that is sold or rented by the corporation in the year, the gross income derived from which is reasonably attributable to an establishment of the corporation located in Quebec.

To qualify for the DIMC, a corporation must (i) carry on 50% or more of its activities in the manufacturing and processing sector in Quebec, and (ii) have a paid-up capital of at least $15 million (alone or together with associated corporations) for its previous taxation year or for the current taxation year if it is in its first fiscal period.

(c) 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.

(d) 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 7.50% 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 $37,500. However, up to 20% of such jobs are not subject to this limit.

(e) 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. In all cases, labour expenditures giving rise to this tax credit may not exceed 50% of the total production costs of the film.

The principal beneficiaries of this credit are generally independent producers, to the exclusion of broadcast licence holders and related corporations.

(f) 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.

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.

(g) 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 (90% or more) on the construction or conversion of an eligible vessel.

Moreover, qualified ship-owners may be eligible to setup a tax-free reserve in which interest, dividend, and capital gains income may accrue tax-free until December 31, 2033, provided the funds in the account are used exclusively for carrying out certain maintenance, improvement, or renewal work on vessels in Quebec.

(h) 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 $16,000 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 the QRA 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.

(i) 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.

(j) Tax holiday for large investment project (THI)

Businesses that invest in a large investment project (i.e., $75 million or more in an eligible region, or $100 million or more in all other regions) in Quebec may benefit from a 15-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, and data processing and hosting.

(k) Tax credits for the manufacturing sector

An eligible corporation with a paid-up capital not-exceeding $250 million may obtain a tax credit in respect of eligible expenses incurred for manufacturing and processing equipment acquired before January 1, 2020. The basic rate of the tax credit is 10% and may be enhanced by an additional 10%, 20% or 30% depending on the region in which the investment is made. However, where the corporation's consolidated paid-up capital is over $250 million without exceeding $500 million, the enhanced rates are reduced on a straight-line basis to the basic rate of 5%. The tax credit is fully refundable where the corporation's consolidated paid-up capital does not exceed $250 million, whereas it is partly refundable between $250 million and $500 million. A maximum of $75 million of eligible investments made by a corporation over a three-year period can qualify for an increased rate, refundability or both of these benefits. Eligible expenditures must be in excess of $12,500, as the tax credit does not apply to amounts below that threshold.

Until December 31, 2020, an eligible corporation may also benefit from a refundable tax credit for job creation where it carries on eligible activities in the Gaspésie region or certain maritime regions of Quebec. The tax credit is equal to 15% of the increase in eligible payroll over the corporation's base year and which is attributable to eligible employees (to a maximum salary of $83,333 per eligible employee). Eligible corporations may not, however, claim both the refundable tax credit for job creation and the tax holiday for a large investment project described earlier, in respect of the same salaries.

Finally, qualifying corporations in the manufacturing sector that are small or medium-sized businesses are eligible to receive a refundable tax credit for costs relating to the integration of information technologies in their business processes. The tax credit is equal to 20% of expenditures made in connection with the supply of a qualified management software package and that are incurred prior to January 1, 2020. However, the rate is linearly reduced to 0% where a corporation's paid-up capital for a taxation year exceeds $35 million and reaches $50 million or more. The maximum tax credit a qualifying corporation may receive in respect of IT integration contracts is limited to $50,000.

(l) 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, the corporation's activities and whether the government of Quebec takes an equity interest in the operations.

X. 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.

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 vehicles.

I. Sole proprietorship

The businessperson acting under his own name or with a registered name is the simplest method used to carry on a business. The owner of the business operates his business as a sole proprietorship, without any corporate structure separating his 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*[14] (*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 himself 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 his 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 his 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.

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.[15]

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.

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

14 R.S.Q., c. P-44.1.
15 Art. 2189 C.C.Q.

partnership who are not otherwise liable for the obligations of the partnership, as discussed below, will not be liable as a result thereof.[16]

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.[17]

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.[18]

(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.[19] Unless stipulated differently in the partnership agreement, each partner's share in the assets, profits and losses of the partnership will be equal.[20]

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.[21] 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 his powers, provided he 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.[22] If they fail to appoint a manager, the partners are deemed to have conferred the management powers on one another.[23] Every partner has the right to participate in the collective decisions regarding the partnership, and he may not 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.[24]

Notwithstanding any stipulation to the contrary, any partner may inform himself of the affairs of the partnership and consult its books and records even if he is excluded from management.[25]

From a liability perspective, any act performed by a partner in his 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[26] 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[27] 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.[28] 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 his own creditors are paid.[29] It is to be noted that a partnership may sue and be sued in a civil action under the name it declares.

16 Art. 2196 C.C.Q.
17 Art. 2197 C.C.Q.
18 Art. 2230 C.C.Q.
19 Art. 2203 C.C.Q.
20 Art. 2202 C.C.Q.
21 Art. 2212 C.C.Q.
22 Art. 2213 C.C.Q.
23 Art. 2215 C.C.Q.
24 Art. 2216 C.C.Q.
25 Art. 2218 C.C.Q.
26 Art. 2220 C.C.Q.
27 Art. 2219 C.C.Q.
28 Art. 2221 C.C.Q.
29 Art. 2221 C.C.Q.

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.[30]

A special partner may only give an advisory opinion with regard to the management of the partnership. He may not negotiate any business on behalf of the partnership or act as mandatary or agent of the partnership or allow his name to be used in any act of the partnership; otherwise he 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, he may be liable in the same manner as a general partner for all the obligations of the partnership.[31]

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 his own income, the profits allocated to him 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 his 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 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 his contribution is without effect.[32] 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 his status as a special partner is clearly indicated.[33] 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 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.[34] Each partner contracts in his 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.[35]

30 Art. 2238 C.C.Q.
31 Art. 2244 C.C.Q.
32 Art. 2246 C.C.Q.
33 Art. 2247 C.C.Q.
34 Art. 2254 C.C.Q.
35 Art. 2253 C.C.Q.

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.[36]

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*,[37] while corporations incorporated under the laws of Quebec are governed by the *Business Corporations Act*[38] (*Act*).

The *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 *Act* since February 14, 2011, without any special action having been required on their part. Under the new *Act*, such companies are no longer referred to as companies, but as business corporations.

The purpose of the *Act* was to modernize and substantially amend the legal framework applicable to corporations in Quebec. Many of the *Act*'s provisions are inspired by the *Canada Business Corporations Act* and legislation in several other Canadian provinces, while others are entirely new law. Major innovations introduced by the *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 *Act*, Quebec businesses are now provided with a legal framework that enhances their ability to grow and to compete.

It is important to note that entities incorporated under the *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. Nevertheless, 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.

Please consult our specialists for tailored advice on the *Act* or before making a decision on incorporating a corporation under the *Act* or under the *Canada Business Corporations Act*. 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.

36 Art. 2251 C.C.Q.
37 R.S.C. 1985, c. C-44.
38 R.S.Q., c. S-31.1.

Privacy legislation

Both the Quebec and the federal governments have enacted privacy legislation. The *Civil Code of Quebec* (*Civil Code*) and the *Act respecting the Protection of Personal Information in the Private Sector* (*Quebec Protection Act*)[39] 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.[40]

I. Quebec privacy protection legislation

(a) *Civil Code* of Quebec

The *Civil Code* contains provisions dealing with the administration of information pertaining to individuals as well as the protection of their reputation and privacy. Sections 35 to 41 of the *Civil Code* and the *Quebec Protection Act* enshrine an individual's right to respect for his/her reputation and privacy and prohibit invasion of that privacy.

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 means of accumulating evidence, although it is still permitted under certain circumstances.

The *Civil Code* also provides that anyone who establishes a file on another person must have a serious reason for doing so and may gather only information relevant to the stated objective of the file. Relevance has been interpreted as referring to the concept of "necessity."

(b) *Quebec Protection Act*

The primary objective of the *Quebec Protection Act* is to create a set of rules for the protection of personal information that is collected, held, used or communicated to third persons in the course of "carrying on an enterprise." The term "enterprise" is defined in article 1525 of the *Civil Code* 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."

Personal information is defined as any information that relates to a "natural person" and allows that person to be identified, whatever its medium and the form in which it is accessible, whether written, graphic, taped, filmed, computerized or other. A person carrying on an enterprise in Quebec who wishes to collect, use or communicate personal information relating to other persons with whom he has dealings must have serious and legitimate reasons for establishing a file on such person and must be able to demonstrate that the information is necessary for the purpose of the file. This legislation would apply/only applies to information that concerns a natural person.

Provided that personal information is collected in accordance with the *Quebec Protection Act*, it may only be used for the stated purpose of the file. 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. Consent of the person concerned must be manifest, free and given for a specific purpose.

The *Quebec Protection Act* also states that 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 that 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.

As a general rule, the communication/disclosure of personal information by a person to third parties without consent is prohibited. However, the *Quebec Protection Act* also provides certain exceptional situations where an enterprise can communicate/may disclose personal information regarding a natural person to a third person without consent (including communication 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 his 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 his duties; to a public body in compliance with the representatives' functions or the implementation of a program; to a person or body having the power to compel communication; in cases of emergency where life, health or safety is threatened; to an authorized person in the context of a study, record or statistical purposes; to a person authorized by law to recover debts; and to third parties to whom nominative lists are communicated in accordance with the *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,

39 R.S.Q., c. P-39.1.
40 R.S.C. 2000, c. 5.

to personal information needed for the performance of their duties. The *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), and enacts rules by which business development using nominative lists can/may be conducted.

If the information is communicated outside the Province of Quebec, measures must be taken to ensure that the information will not be used for purposes not relevant to the object of the file. The *Quebec Protection Act* establishes that a person carrying on an enterprise in Quebec who wishes to communicate, outside of Quebec, information relating to persons residing in Quebec or to entrust a person outside of Quebec with the task of holding, using or communicating such information, must refuse to do so if he/she believes that it won't receive the proper protection. The contravention of this duty imposes a fine of $5,000 to $50,000 and from $10,000 to $100,000 for subsequent offences.

Other provisions in the *Quebec Protection Act* address the right of the individual concerned to access personal information relating to him and to rectify any inaccuracies contained in such information by adding, deleting or commenting on information. In certain cases, the person carrying on an enterprise will have the right to refuse access, whether partially or totally. Any dispute arising from the right of the individual concerned to access personal information shall be submitted to the *Commission d'accès à l'information*, a specialized tribunal. Personal information held by professional orders is also subject to the *Act*.

II. Federal privacy protection legislation (PIPEDA)

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

PIPEDA establishes a number of key principles governing the collection, use and disclosure of personal information, which 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. One of the main differences between the *Quebec Protection Act* and PIPEDA is the notion of "implied consent," which is present within the federal *Act*, but does not exist in the *Quebec Protection Act*;
- The individual to whom the information pertains may, by written request, obtain information regarding the existence, use and disclosure of his or her personal information and, subject to certain exceptions, obtain access to the information; an individual may also challenge the accuracy of the information and have the information corrected where appropriate;
- Personal information is to be retained only as long as is necessary to fulfill the purpose for which it was collected, or to permit an individual to access his or her information pursuant to a request for access;
- Personal information must be protected by security safeguards appropriate to the sensitivity of the information, which shall protect the 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 creates a mandatory breach reporting regime that is expected to come into force in 2018;
- The organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information. 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 *Act*.

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

III. Canada's Anti-Spam Legislation

In December 2010, Bill C-28 received royal assent from the federal Parliament. Canada's Anti-Spam Legislation (CASL), came into force on July 1st, 2014 (provisions related to SPAM only) and introduces measures to address problems of unsolicited commercial e-mails (spam), as well as phishing, spyware and malware (these prohibitions came into force on January 1st, 2015.).

CASL prohibits sending commercial electronic messages 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, and all forms of messages, including text, sound, voice or image. A "commercial electronic message" 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 commercial electronic message also constitutes a "commercial electronic message" 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 the recipient accepts a business, investment or gaming offer within two years preceding the commercial electronic message, or where the recipient has made an inquiry or 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 prior to the sending of a commercial electronic message.

Once express or implied consent exists, any commercial electronic message 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 commercial electronic message 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 actually received.

CASL provides for a private right of action created for persons affected by contraventions to CASL. This private right of action was supposed to come into force on July 1, 2017, but has been suspended for an undetermined period of time. Application exercising 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 as a result of the violation and, depending on the specific violation, a maximum of $200 for each contravention, not exceeding $1,000,000 for each day.

CASL also amends PIPEDA by adding to its provisions a prohibition to collect 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 provided only one remedy so far, i.e. a complaint to the Privacy Commissioner's Office.

The Governor General in Council on the recommendation of the Minister of Industry, has made the *Electronic Commerce Protection Regulations*.[41] It aims to define key terms and

41 (2013) 147 Gaz. Can. I.

exceptions in the CASL and to respond to business concerns. It provides new exemptions for certain business activities that are now outside the intended scope of the *Act*.

The Regulations propose a broader definition of "personal relationship" which now includes virtual relationship between individuals. The Regulations also include:

- 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; and
- Provisions related to the installation of certain computer programs by telecommunication service providers.

Consumer Protection Act

The *Consumer Protection Act*[42] (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. 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.

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;
- long-term lease of goods;
- contracts relating to automobiles and motorcycles;
- repair of household appliances;
- contracts of service involving sequential performance, 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;
- contracts for the sale of prepaid cards;
- 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.

CPA provides that contracts must be written in French, unless the consumer expressly requires a contract in another language. Certain contracts will have to be made in writing and comply with mandatory content imposed by the *Act* and the *Regulation respecting the application of the Consumer Protection Act*. Also, certain contractual stipulations are prohibited, by the *Act*, for example/among which:

- any stipulation whereby a merchant is liberated from the consequences of his own act or the act of his 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 his obligation, to pay costs other than the interest accrued;
- 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 CPA;
- as a general rule, any stipulation indicating an expiration date on a prepaid card (or giftcard).

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

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.

42 R.S.Q., c. P-40.1.

A whole section of 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.

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.

If the merchant fails to fulfil an obligation imposed on him by this legislation/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 his obligations, rescission or annulment of the contract, compensatory and punitive damages. The *Act*/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 Office may institute penal proceedings against merchants who contravene the CPA, and the president of the Office has the powers to investigate any matter respecting the application of the CPA or its regulations. He 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/the 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 he should have.

A new bill, the *Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs*[43], was adopted in November 2017. While its effective date remains to be determined, this *Act* will create new sets of rules regarding variable credit contracts, which includes credit cards, advertising, reward points programs and protection regime relating to debt settlement service contracts. Here are some of the key highlights:

- a new contract category, the high cost credit contracts, will be created;
- the obligation for the merchants to assess the consumer's capacity to repay the credit requested before entering into a credit contract or before granting a credit limit increase will be required;
- the obligation to present all the information in an advertisement concerning goods or services in a clear, legible and understandable manner will also be required;
- the prohibition of 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 will be imposed on the merchants.

43 S.Q. 2017, c. 24.

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