

DOING BUSINESS IN QUÉBEC

YOUR COMPLETE GUIDE

TORONTO
MONTRÉAL
NEW YORK

dwpv.com





At Davies, we focus on the matters that are the most important to our clients, in Canada and around the world. The more complex the challenge, the better.

Our strength is our people, who blend **proven experience, deep legal expertise and business sensibility to generate the outcomes you need.**

We measure our achievements by one simple standard: Your success.

TORONTO

DAVIES WARD PHILLIPS & VINEBERG LLP
1 FIRST CANADIAN PLACE, 44TH FLOOR
TORONTO ON CANADA M5X 1B1

TELEPHONE: 416.863.0900
FAX: 416.863.0871

MONTRÉAL

DAVIES WARD PHILLIPS & VINEBERG LLP
1501 MCGILL COLLEGE AVENUE, 26TH FLOOR
MONTRÉAL QC CANADA H3A 3N9

TELEPHONE: 514.841.6400
FAX: 514.841.6499

NEW YORK

DAVIES WARD PHILLIPS & VINEBERG LLP
625 MADISON AVENUE, 12TH FLOOR
NEW YORK NY U.S.A. 10022

TELEPHONE: 212.588.5500
FAX: 212.308.0132

TABLE OF CONTENTS

CORPORATE REGISTRATION REQUIREMENTS	1
LABOUR LAW REQUIREMENTS	3
<ul style="list-style-type: none"> • Employer Contributions <ul style="list-style-type: none"> - Commission de la santé et de la sécurité du travail du Québec - Employer Health Tax - Québec Pension Plan - Employment Insurance - Occupational Health & Safety and Workers' Compensation - Promotion of workforce qualifications and skills • Minimum Standards • Labour Relations • Civil Code of Québec • Pay Equity 	
PRIVACY LAW	7
<ul style="list-style-type: none"> • Nominative Lists 	
FRENCH LANGUAGE REQUIREMENTS	11
<ul style="list-style-type: none"> • French Name • Necessity to Provide Service in French • Packaging and Labelling • Commercial Publication • Signs and Posters • Predetermined Contract • Order Forms and Invoices • Offers of Employment • Website Issues <ul style="list-style-type: none"> - The obligation to translate • Francization of Enterprises <ul style="list-style-type: none"> - Requirements for enterprises with 50 or more employees - Requirements for enterprises with 100 or more employees 	
TAX	17
<ul style="list-style-type: none"> • Tax and Gift Certificates 	
CONSUMER PROTECTION ACT	19
<ul style="list-style-type: none"> • Conformity to advertisements • Sale price must be indicated <ul style="list-style-type: none"> - Optical Scan Exemption • Issuance of Credit Cards • Prepaid Cards 	
QUÉBEC CHARTER OF HUMAN RIGHTS AND FREEDOMS	23

Foreword

The major legal and practical considerations relevant to doing business in the Province of Québec are covered in our Doing Business in Canada guide. This guide serves as a supplement to our Doing Business in Canada guide by providing those interested in doing business in Québec with some additional details that may affect their operations in that province.

Note that this guide, together with our Doing Business in Canada guide, provides information on laws and regulations that affect the conduct of business in the Province of Québec but is not an exhaustive treatment of those laws and regulations or the issues that may arise when doing business in Québec. Accordingly, before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

Introduction

The Province of Québec is Canada's second largest and second most populated province. Its distinct culture, language and legal system present unique opportunities and challenges for those considering doing business there. Québec's history is rooted in its French origins from which it has retained not only the French language but also a legal system based on the French civil law, rather than the British common law. Today, Québec is predominantly French-speaking and has a distinct European flair unique in North America. Although a civil law jurisdiction in which private law matters, such as contract and property, are governed by a Civil Code, Québec's legal system is in effect a mix of civil law and common law, strongly influenced by Canada's North American location and orientation.

Corporate Registration Requirements

1

Corporate Registration Requirements

Businesses operating in Québec are required to file and update certain information with a governmental authority called the Enterprise Registrar (the “**Registrar**”). This information is then included in a public register. The initial filing of information is done by way of registration with the Registrar. Corporations constituted under the laws of a jurisdiction other than Québec are required to register within 60 days of the date at which they begin to carry on an activity, including the operation of an enterprise, in Québec. The concept of carrying on an activity or operating an enterprise in Québec is very broad, and includes having an address, establishment, post office box or the use of a telephone line in Québec, or merely performing any act for profit in Québec.

The declaration of registration must contain, among other things, the registrant's name and any other name used by it in Québec to carry on its business, although a registrant is prohibited from declaring or using in Québec a name that is not in conformity with the *Charter of the French Language*.

Labour Law Requirements

3

Labour Law Requirements

EMPLOYER CONTRIBUTIONS

COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL DU QUÉBEC

Every employer having an establishment in Québec and at least one employee at his employ, working full time or not, must register with the *Commission de la santé et de la sécurité du travail du Québec* ("CSST") within 14 days following the date on which the employer commences carrying on business in Québec (which usually corresponds to the hiring date of the first employee), failing which late fees, plus interests, on the contribution that had to be paid will be imposed upon the employer. Within 60 days following such date, the employer must provide information with respect to the nature of its activities and the salary he expects to pay during the year in order for the CSST to determine the contribution that the employer will be required to pay.

EMPLOYER HEALTH TAX

The employer will have to make a contribution ranging from 2.7% to 4.26% of the wages paid to its employees in the province to finance the health plan under the *Act respecting the Régie de l'assurance maladie du Québec*.

QUÉBEC PENSION PLAN

The employer will have to make a contribution to the provincial pension plan equal to 4.95% of the amount by which the pensionable salary exceeds the exemption for the pay period (the basic exemption is equal to \$3,500 per year) under the *Act respecting the Québec Pension Plan*.

EMPLOYMENT INSURANCE

Employers and employees in Canada are required by the *Employment Insurance Act* to contribute to the employment insurance account administered by the federal government. Employer and employee premiums are calculated each year as a percentage of annual insurable earnings up to a set maximum. For 2011, the maximum insurable earnings is \$44,200, the employee premium is 1.41% of insurable earnings up to said maximum (so that the maximum employee premium in 2011 is \$623.22) and the employer premium is 1.974% (so that the maximum employer premium per employee in 2011 is \$872.51). The employer's contributions are deductible for tax purposes as a normal business expense and may be reduced if the employer supplies a salary insurance scheme to its employees.

Unemployment insurance benefits are paid to employees who lose their jobs due to a lay off or termination. Employees on maternity leave, parental leave, or absence due to illness are also covered. Moreover, no benefits are paid to employees who quit a job without cause or who are fired for misconduct.

In Québec, the provisions of the *Act respecting parental insurance* provide a parental insurance plan that grants benefits upon the birth of a child or the adoption of a minor to the parents. Every employee resident in Québec and every Québec employer is required to pay a premium to finance this plan. The 2011 employee contribution is 0.537% (0.752% for the employer) of insurable earnings up to a maximum of \$64,000. Consequently, the maximum contribution payable in 2011 by the employee is \$343.68 and by the employer is \$481.28.

OCCUPATIONAL HEALTH & SAFETY AND WORKERS' COMPENSATION

In Québec, *An Act respecting occupational health and safety* is intended to eliminate dangers to the health, safety and physical well-being of workers. It grants an employee the right to refuse to perform work if there is reasonable cause to believe that the work would expose him or her to risks to health, safety or physical well-being or expose an unborn or breast-fed child to such risks, in the case of a pregnant or breast-feeding worker. Employees cannot contract out of the statute, although employees may agree with employers upon more favourable working conditions than the minimum standards required by law.

Québec's *Act respecting industrial accidents and occupational diseases* provides for compensation for injuries arising from employment and may include income replacement, compensation for bodily injuries, treatment, rehabilitation, and death benefits. Compensation is based on a no-fault system. Workers injured by accidents arising from employment or suffering from an industrial disease may receive compensation from the fund established for such purposes; they cannot, however, sue the employer for damages.

PROMOTION OF WORKFORCE QUALIFICATIONS AND SKILLS

The *Act to promote workforce skills development and recognition* requires most employers with a payroll in excess of \$1 million to spend an amount representing at least 1% of their total payroll on eligible training expenditures (defined as including a number of training activities and including certain in-house training).

MINIMUM STANDARDS

Employment minimum standards are set by the *Act respecting labour standards* (the "LSA"). This legislation, subject to a few minor exceptions, does not apply to senior managerial personnel, which has been interpreted as being a limited group of individuals who have real managerial duties within the organization. The LSA and its regulations provide, *inter alia*:

- a minimum wage, as of May 1, 2010, of \$9.50/hour for normal employees (\$8.25/hour for workers in the restaurant and bar industry) and as of May 1, 2011, of \$9.65/hour for normal employees \$8.35/hour for workers in the restaurant and bar industry);
- a recourse for employees who are victims of specified prohibited practices, including psychological harassment;
- a remedy to employees who have more than two years of service and who believe they were dismissed without cause. An employee who is successful in challenging the employer's conduct may request to be reinstated in his or her employment, in addition to being awarded any lost wages;
- the possibility for an employee to be absent from work for an extended period of time for reasons related to his or her health or the health of his or her family. For example, an employee can be absent for up to 104 weeks if his or her minor child has a serious and potentially fatal illness. Moreover, the employer has the obligation, at the end of the leave of absence, to reinstate the employee in his or her former position with the same benefits, including the wages to which the employee would have been entitled had the employee remained at work; and
- the right for all employees, in the absence of just cause for termination, to a notice of termination, by way of "working notice" or pay in lieu of such notice.

In the case of a collective dismissal (i.e. the termination of 10 employees or more within two consecutive months), a notice must be sent to the Minister of Employment and Social Solidarity to ensure that a reclassification assistance committee is created within the organization.

LABOUR RELATIONS

Labour relations in Québec are subject to the Québec *Labour Code*. The Québec *Labour Code* prohibits an employer from hiring anyone to replace striking or locked out employees; management employees who already work in the establishment affected by the strike or lock out are nonetheless allowed to replace the workers. A new employer will be bound by a certification or a collective agreement, except in certain cases where there is a transfer of only part of the operation of an undertaking (enterprise) and such transfer does not entail the transfer of most of the elements that characterize the part of the undertaking (enterprise) involved.

CIVIL CODE OF QUÉBEC

Contracts of employment are also governed by the *Civil Code of Québec*. The following are some important provisions of the Civil Code to keep in mind:

- The employer has to take measures consistent with the nature of the work to protect the health, safety and dignity of the employee;
- Parties have the right to include a non-competition clause in a contract, provided it is limited as to time, place and type of employment;
- Employment contracts will not be terminated by a sale of the business or any change in its legal structure by way of amalgamation or otherwise, and will be binding on any successor employer;
- Either party to an employment contract with an indeterminate term may terminate the contract, subject to reasonable prior notice; one of the parties may always terminate the contract, without prior notice, for a serious reason; and
- A “choice of law” clause in an employment contract may be unenforceable if it deprives the worker of the protection to which he or she is entitled under the mandatory provisions of the law of the country where the worker habitually carries on his or her work. The “choice of law” cannot be forced upon a worker.

PAY EQUITY

It is illegal in every province in Canada to pay a woman less for doing the same job as a man. In Québec, this principle is enshrined in the *Pay Equity Act* which imposes obligations on private and public sector employers with ten employees or more, with additional procedural obligations for larger employers. For example, every employer (with ten or more employees) must submit a report of the implementation of the *Pay Equity Act* in its enterprise, inform employees through periodic postings and regularly evaluate the implementation of the Act. Employers with 50 or more employees must also establish a pay equity plan and complete a pay equity audit and related postings every five years, and those with 100 employees or more must, in addition, have a pay equity committee composed of at least 3 members, at least two thirds of which must be employee representatives, and of those, at least half must be women.

Privacy Law

7

Privacy Law

Privacy protection in Québec began with the adoption of the Québec *Charter of Human Rights and Freedoms* in 1975 and was later supplemented with the implementation of a new *Civil Code of Québec* (the “**CCQ**”) in 1994, which introduced practical and enforceable access and privacy rights in respect of personal information held by persons generally. To complete provisions of the CCQ dealing with privacy, Québec also enacted the *Act respecting the protection of personal information in the private sector* (the “**Privacy Act**”) to regulate commercial uses of personal information by private sector enterprises.

The Privacy Act imposes on employers around Québec a wide array of different obligations with respect to information held about both employees and customers.

In essence, pursuant to the Privacy Act, the collection and use of personal information is based on consent. Subject to a few exceptions, anybody who collects, uses or transmits information on another person must do so with that person’s consent. Thus, individuals have a “right to know” what enterprises know about them, and have the right to access, copy, and ask that information regarding them be corrected if need be. In the event of a disagreement relating to the access or correction of personal information or the deletion thereof, individuals can apply to the Québec Access to Information Commission (*Commission de l'accès à l'information du Québec*) (the “**Commission**”), which is an independent administrative body that has adjudicative, investigative, and advisory powers.

The following rules set out in the Privacy Act are worth noting:

- Only information about a natural, as opposed to a legal, person is subject to the Privacy Act. The Privacy Act is not intended to protect corporate or other legal persons. For example, information regarding an enterprise's corporate clients is not information about the clients as individuals and, therefore, is not personal information within the meaning of the Privacy Act;
- The Privacy Act is technologically neutral and applies to written, graphic, taped, filmed, computerized or other forms of personal information;
- Information is “personal” if it allows an individual to be identified;
- The Privacy Act provides that “any person carrying on an enterprise who may, for a serious and legitimate reason, establish a file on another person must, when establishing the file, enter its object”. The definition of the “object” is crucial because pursuant to the Privacy Act, personal information cannot be used for purposes not relevant to the object of the file.
- Furthermore, only information necessary for the object of the file may be collected. The term “necessary” has been interpreted as meaning anything that is absolutely indispensable to the attainment of the “object” of the file. The enterprise should therefore take all the steps possible to ensure that “unnecessary” information not be collected.
- An employer also has a notification obligation towards the person on whom a file has been opened to inform him, at the time of the establishment of the file, of the object of the file, the use which will be made of the information, the categories of persons who will have access to it within the enterprise, the place where the file will be kept and of the rights of access and rectification.
- The personal information contained in the file cannot be communicated to a third person, or be used

French Language **Requirements**

9

French Language Requirements

Québec is predominantly French speaking and is concerned about protecting its language and unique culture, which has led to the adoption of certain “language laws” including the *Charter of the French Language* (the “**Charter**”). The Charter affects the conduct of business in Québec at all levels, from a company’s name to its interaction with its consumers and employees.

FRENCH NAME

The Charter specifically provides that the name of an enterprise and names declared to the Enterprise Registrar must be in French. These names may be used concurrently with their original English version, provided that the French version of the name appears at least as prominently. However, in texts or documents drafted only in English, the name may appear in English only.

The French version of a name may contain family names, place names and expressions formed by the artificial combination of letters, syllables or figures. Expressions taken from other languages may also appear in a firm name, provided that a “generic” French language term is used in conjunction with the non French expression. “Generic” refers to a term that is used to describe the type of business or products offered. For example, the name “Quickfix” by itself would not be acceptable. However, the name “Quincaillerie Quickfix” would meet the requirements of the Charter given the use of the generic term “Quincaillerie” (meaning “hardware store”). To the extent that the expression taken from another language, including English, is a recognized trade mark under the Canadian *Trade Marks Act* and that no French version of such trade mark has been registered, it may appear exclusively, without any accompanying generic French term or expression. The *Office québécois de la langue française* (the “**OLF**”) does, however, strongly encourage the use of a generic French term or expression in conjunction with a non-French trade mark.

NECESSITY TO PROVIDE SERVICE IN FRENCH

The Charter provides that “consumers of goods and services have a right to be informed and served in French”. By implication, persons doing business in Québec must be capable of providing their services in French to consumers who so request it.

PACKAGING AND LABELLING

The Charter provides that “[e]very inscription on a product, on its container or on its wrapping, or on a document or object supplied with it, including the directions for use and the warranty certificates, must be drafted in French”. A translation is permitted, but the inscription in another language may not be given greater prominence than that in French.

There are, however, certain exceptions to this rule. For example, the law allows for the exclusive use of a language other than French in the case of inscriptions on a cultural or educational product such as a book or magazine to the extent that the content is in a language other than French. In addition, a recognized trade mark within the meaning of the *Trade Marks Act* may appear exclusively in a language other than French, unless a French version has been registered.

COMMERCIAL PUBLICATION

The Charter provides that “[c]atalogues, brochures, folders, commercial directories and any similar publications must be drawn up in French”. This provision has been broadly interpreted as applying to “commercial publications” in general, whether distributed in person or by mail, or appearing on a website.

Commercial publications may use both French and another language together, so long as the French version is displayed at least as prominently as the other language. A commercial publication may also be in two separate versions, one exclusively in French, the other exclusively in another language, 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 version exclusively in a language other than French may be sent only to persons who have made a written request to receive such documents in that other language.

SIGNS AND POSTERS

Subject to certain exceptions, public signs and posters and commercial advertising that is publicly displayed must be in French. They may also be both in French and in another language provided that the French text is “markedly predominant”. The determination of whether French is markedly predominant requires that the French has a much greater *visual* impact than the other language. This impact depends on a number of factors as outlined in the *Regulation defining the scope of the expression “markedly predominant” for the purposes of the Charter of the French Language*.

For example, this Regulation provides that if both English and French appear on the same sign, French will be considered to have a greater visual impact if: (1) the space allotted to the text in French is at least twice as large as the space allotted to English; (2) the French characters are at least twice as large as the English characters; and (3) there are no other characteristics of the sign that reduce the visual impact of the French text.

In the case of separate posters of the same size, one in French and one in English, the French will have a greater visual impact if: (1) the French signs and posters are at least twice as numerous as those in English; (2) the French characters are at least twice as large as the English ones; and (3) there are no other characteristics of the sign that reduce the visual impact of the French text.

Finally, in the case of separate posters of different size, one in French and one in English, the French will have a greater visual impact if: (1) the French signs and posters are at least twice as numerous as those in English; (2) the French signs and posters are at least twice as large as the English signs and posters; (3) the French characters are at least twice as large as the English ones; and (4) there are no other characteristics of the sign that reduce the visual impact of the French text.

PREDETERMINED CONTRACT

The Charter also requires that “[c]ontracts pre-determined by one party, contracts containing printed standard clauses, and the related documents” be drawn up in French. Examples of “related documents” that must be drafted in French in accordance with this rule include credit card billing statements, invoices and receipts that are provided in connection with such contracts.

There are two exceptions to this general rule. First, a contract and its related documents may be drafted both in French and in another language together, so long as the French version is displayed at least as prominently as that in the other language.

Second, a contract and its related documents may be drafted exclusively in a language other than French *at the express wish of the parties*. Thus, an English-only contract should include an express choice of language clause

in the contract. An example of such a clause would be: “The parties acknowledge that they require that this Agreement be drawn up in the English language only. *Les parties reconnaissent qu’elles ont exigé que la présente convention soit rédigée en langue anglaise seulement.*” Notwithstanding the foregoing, it is strongly recommended to have a contract drafted in French available at the moment of signature because a court might find that a contract only available in English is incomprehensible to a unilingual Francophone and thus unenforceable.

ORDER FORMS AND INVOICES

The Charter specifically provides that order forms, invoices, receipts and releases must be drafted in French. The implication is that although a bilingual version of these documents is permissible under the Charter, the parties may not choose that they be drafted exclusively in a language other than French. By contrast, if an order form, invoice, receipt or release is the accessory of a contract drafted in English and containing a choice of language clause, such documents could be drafted exclusively in English.

OFFERS OF EMPLOYMENT

The Charter provides that: “[e]very employer [...] shall draw up and publish his offers of employment or promotion in French.”

WEBSITE ISSUES

The Charter does not specifically regulate Internet-related technologies, such as websites and e mail. However, the courts have held that the requirements of the Charter apply regardless of the medium used. The following are the main requirements of the Charter that may apply with respect to the websites of companies that offer their products and services in Québec:

THE OBLIGATION TO TRANSLATE

The courts and the OLF have taken the position that the provision of the Charter regarding commercial publications applies to all commercial advertising material posted on websites, or transmitted via e-mail or fax. The same reasoning would apply to the Charter requirements regarding offers of employment, contracts, order forms, invoices and receipts. As a result, it would seem that all such items must be in French, even if they appear on a website.

However, the Charter allows the use both of French and another language together, so long as the French version is displayed at least as prominently as that in the other language. In the case of websites, this could be done by creating a link on the home page of the website allowing access to a French version of the site.

Furthermore, the Charter requirements do not apply to all websites. According to the OLF, the Charter will apply if the enterprise has an address or a physical establishment in Québec, and the advertisements posted on the website are for products available in Québec.

It should be noted that the Charter states that “[c]onsumers of goods and services have a right to be informed and served in French”. By implication, persons doing business in Québec must be capable of providing their services via a website in French to consumers who so request it. Nevertheless, the Charter does not specifically define an infraction that would allow the institution of penal proceedings. Although the consumer’s right to be informed and served in French could arguably be relied upon by a consumer in the context of civil proceedings, the legal consequences of its violation remain unclear.

FRANCIZATION OF ENTERPRISES

The Charter creates an obligation to promote the use of French within an enterprise situated in Québec. This obligation intensifies with the size of the business. Enterprises with 50 employees or more are required to register with the OLF and report on the situation of the use of French within the enterprise. Additionally, enterprises with 100 employees or more are required to form a francization committee with certain additional obligations.

REQUIREMENTS FOR ENTERPRISES WITH 50 OR MORE EMPLOYEES

The first obligation imposed upon an enterprise with 50 or more employees for a period of six months is to register with the OLF within six months of the end of that period.

Subsequent to this registration, the OLF should issue to the enterprise a certificate of registration. Within six months of the date of issue of this certificate, the enterprise must transmit an analysis of its linguistic situation to the OLF.

The analysis must be submitted in the form specified by the OLF. It should address the issues outlined in the Charter so as to satisfy the OLF that the use of French is generalized at all levels of the enterprise within the meaning of the Charter. Summarily, these issues concern the knowledge of French of the enterprise's personnel, the use of French as the language of work and internal communication within the enterprise, the availability of French versions of the information technologies used by the enterprise, and the use of French in its communications with the civil administration, clients, suppliers, and the public.

The object of this analysis is to convince the OLF that the use of French is generalized at all levels of the enterprise so that it may issue a "francization certificate" pursuant to the Charter. The OLF has some discretion as to whether it will issue the certificate. If a "francization certificate" is issued, the enterprise is required to ensure that the use of French remains generalized at all levels of the enterprise and must report to the OLF every three years on the status of the use of French within the enterprise.

If the OLF is not satisfied by the analysis submitted, it shall notify the enterprise that it must adopt a "francization programme". This programme must be submitted to the OLF by the enterprise within six months of the OLF's notice. The object of the "francization programme" is to generalize the use of French at all levels of the enterprise as summarized above (i.e. the knowledge of French of the enterprise's personnel, the use of French as the language of work and internal communication within the enterprise, the availability of French versions of the information technologies used by the enterprise, and the use of French in its communications with the civil administration, clients, suppliers, and the public). Template models of a francization programme may be obtained from the OLF.

If the OLF approves the francization programme submitted by the enterprise, it will then issue an "attestation of implementation". The enterprise must then comply with the programme and keep its personnel informed of its implementation. The enterprise must report periodically to the OLF on the implementation of the programme. Enterprises employing fewer than 100 persons must do so every 24 months whereas those employing 100 persons or more must do so every year. Once the implementation of the francization programme is completed and the OLF is satisfied that the use of French is generalized at all levels of the enterprise, the OLF will issue a "francization certificate" to the enterprise.

It must be noted that the OLF is empowered to refuse, suspend or cancel an "attestation of implementation" or a "francization certificate" if the enterprise does not comply or ceases to comply with the obligations imposed by the Charter or its regulations.

REQUIREMENTS FOR ENTERPRISES WITH 100 OR MORE EMPLOYEES

If the enterprise has 100 or more employees in Québec, it is required to establish a francization committee

composed of six or more persons. At least half of the members of the francization committee and every subcommittee established by it must be representatives of the employees of the enterprise. Assuming the enterprise is not unionized, these representatives must be elected by the employees of the enterprise in the manner and on the conditions determined by its management. Employees' representatives are elected for a term of two years, which may be renewed. The enterprise is required to provide the OLF with a list of the members of the francization committee and every subcommittee, and any changes to that list.

The francization committee is responsible for ensuring the generalized use of French at all levels of the enterprise. The committee must meet at least once every six months and must analyse the linguistic situation of the enterprise and report to the management of the enterprise. Management must transmit this report to the OLF. If a francization programme is required of the enterprise, the committee must devise the programme and supervise its implementation.

Tax

15

Tax

With respect to tax imposed by the provincial government, a corporation is subject, *inter alia*, to:

- a rate of 11.90% if carrying on an active business and having an establishment in Québec (the basic combined federal and Québec rate of tax for a corporation carrying on an active business in Québec, including non-resident corporations, being 28.4%) ; and
- a goods and services tax which closely parallels the Canadian (federal) goods and services tax (“GST”), known as the “Québec Sales Tax” (“QST”), if the corporation carries on a commercial activity. The corporation is required to register for the QST and, generally speaking, will be required to account for both the GST and QST by filing a combined GST/QST information return with the Québec tax authorities. The QST has a small supplier rule similar to the rule used for GST purposes. The QST applies at the rate of 8.5% to the price of goods and services inclusive of the GST, for a combined rate with GST of 13.925%.¹ The QST provides for an input tax refund (ITR), which is similar to the input tax credits (ITC) mechanism provided under the GST. As in the GST, the QST is ultimately paid by the end-consumer since suppliers will generally be entitled to ITRs for the QST they pay or will pass the cost of non-recoverable QST on the consumer. The Québec tax authority, Revenue Québec, is responsible for the collection and administration of both the GST and the QST.

TAX AND GIFT CERTIFICATES

Generally, GST/QST is not applicable on the sale of a gift certificate. The merchant will calculate the GST/QST on the price of the item being purchased by way of a gift certificate.

A gift certificate is generally a voucher, receipt or ticket:

- that has a stated monetary value;
- that can be redeemed on the purchase price of a good or service from a specific supplier (the supplier agrees to accept the gift certificate as money for the purchase);
- for which money or other consideration in the amount of the certificate's face value is given to the issuer of the certificate; and
- that has no intrinsic value. For example, commemorative gold or silver coins have an intrinsic value.

¹ The rate of QST is proposed to be increased to 9.5%, effective January 1, 2012. The combined rate of GST and QST would be 14.975%.

Consumer Protection Act

17

Consumer Protection Act

In Québec, consumer protection is governed principally by the *Consumer Protection Act* (the “CPA”), which applies to various contracts and transactions between merchants and consumers. The CPA offers a number of protections to Québec consumers. General points of interest of the CPA and the *Regulation respecting the application of the Consumer Protection Act* (the “CPA Regulation”) are listed below:

CONFORMITY TO ADVERTISEMENTS

Goods or services provided must conform to the statements or advertisements regarding them made by the merchant or the manufacturer. The statements or advertisements are binding on that merchant or that manufacturer and their responsibility extends to all information contained in declarations, public messages and brochures.

SALE PRICE MUST BE INDICATED

A merchant must indicate the sale price clearly and legibly on all the goods or, if the goods are wrapped, on the wrapping of all the goods offered for sale in its establishment subject to the CPA Regulation. However, there are several exemptions to the aforementioned rule in the CPA Regulation whereby the price of an article need not be clearly and legibly displayed on the good, but must be displayed near the place where the good is sold, such as in the case of:

- Goods for sale at a price not exceeding \$0.60;
- Goods sold in automatic vending machines;
- Goods that are part of a package, where the price of the package is indicated on it or where the wrapper of the package is to be reused by the manufacturer;
- Goods marked with a sale price that the merchant does not intend to change;
- Goods that are so small that it would be impossible to indicate the price on them legibly;
- Goods that are not packaged and are usually sold in bulk, unless they are clothing items;
- Trees, plants and flowers; and
- Goods sold in a returnable container.

OPTICAL SCAN EXEMPTION

There is also an exemption from the rule requiring that a merchant indicate the sale price clearly and legibly on all the goods where the merchant uses *universal product code* (“UPC”) *optical scanning technology* in its establishment, where the conditions set out in the CPA are met.

Every merchant availing itself of the UPC optical scanning technology exemption under the CPA Regulation is required to adopt an “*Accurate Pricing Policy*” in every establishment where it wishes to take advantage of this exemption. The minimum requirements for this policy are as follows:

- Should the price at the cash register be higher than the advertised price, the lower price will prevail;
- Should the error pertain to an article costing exactly \$10 or less, the article in question will be given to the customer free of charge;
- If the error pertains to an article costing more than \$10, the merchant will correct the error and give \$10 to the consumer;
- Should the same error reoccur for identical goods in the same transaction, the price of each item will be corrected but the compensation policy will only apply to one article;
- This compensation policy will not be applicable if it violates existing laws or regulations, meaning that it cannot allow a merchant to sell an article at a price lower than the minimum price set by law or regulation and does not apply to articles for which discounts are prohibited;
- This policy is applicable immediately upon discovery and recording of the error at the cash register, even if the transaction at the cash register has not been completed, provided the consumer purchases the goods.

Merchants who take advantage of the UPC optical scanning technology exemption must also inform their customers of this *Accurate Price Policy* by posting notices near the cash registers and in the case of large establishments, by posting large signs. In addition, they will be required to periodically publish their *Accurate Price Policy* in their circulars.

ISSUANCE OF CREDIT CARDS

The CPA regulates “contracts extending variable credits” which include contracts made for the use of what are commonly referred to as “credit cards”. The term “credit” is defined in the CPA as the “right granted by a merchant to a consumer to perform an obligation within a term in consideration of certain charges”. The CPA provides that penalties imposed for non-payment at the expiry of a term constitute credit charges.

The contract between a merchant and a consumer for the issuance of a credit card is, in most cases, a bilateral contract known under Québec law as a contract of adhesion. The contract between the parties will usually set out the maximum credit allotted, under what conditions a credit card will be issued, and the cost of using the credit card. There is also usually a clause dealing with the term of the contract.

The merchant may not issue or send a credit card to a consumer unless the consumer has applied for it in writing. When the card has been issued, the CPA extends to the cardholder a great deal of protection against theft and/or loss. For example, a consumer incurs no liability for a debt resulting from the use of a credit card by a third person after the issuer has been notified of the loss. However, even if the issuer has not been notified, the liability of the consumer whose credit card is lost or stolen is limited to the sum of \$50.

The CPA sets out rules of contract formation that merchants must abide by in order to issue credit cards.

Once the contract has been entered into, the merchant may not increase the maximum amount of credit available to the consumer without first being asked to do so by said consumer. If the parties do wish to amend certain provisions of the contract, and if the credit rate or the credit charges are thereby increased, the parties must execute a new contract in accordance with the rules set out at section 98 of the CPA. The merchant may, however, amend the contract extending variable credit to increase the amount chargeable as membership or renewal fees or the credit rate by sending a 30 day notice to the consumer setting out the amended clauses and the date of coming into force of the increase.

The merchant must also furnish the consumer who owes a debt with a statement of account, mailed not less than 21 days before the date on which the creditor may impose credit charges, if the consumer does not discharge his or her obligation in full.

PREPAID CARDS

The CPA also regulates prepaid gift certificates, gift cards, and similar media of exchange that are paid for in advance ("Prepaid Card"). Pursuant to new provisions that came into force on June 30, 2010, any stipulation providing for an expiry date on a Prepaid Card is prohibited unless the contract provides for the unlimited use of a service or is for mobile telephone services. Moreover, no charge may be levied against a consumer for the issue or use of a Prepaid Card, except in certain specific cases such as the customization of the card, the replacement of a damaged, lost or stolen card, a Prepaid Card that allows the purchase of goods or services from several independent merchants who do not carry on business under the same name (in which case an activation fee of up to \$3.50 and fees for non-use up to a maximum of \$2.50 per month may be charged, provided that the merchant includes certain information on the card), and a Prepaid Card issued by a financial institution to acquire goods or services from any merchant using the international payment system identified on the card. The rules applicable to Prepaid Cards do not apply however to certain types of services, subscriptions and memberships that involve sequential performance, such as health club memberships and various types of courses and classes. These types of services are subject to other CPA rules.

It is important to note that merchants have an obligation to disclose in writing to the consumer the terms and conditions of use of the Prepaid Card, as well as how the consumer may check the balance remaining on the Prepaid Card.

Finally, a merchant must refund to the consumer, upon request, an amount equal to the balance of the Prepaid Card when said balance is lower than \$5.00, except in the case of a Prepaid Card for mobile telephone services. The refund obligation is designed to prevent consumers from having to choose between losing the balance on their Prepaid Card and overspending.

Québec Charter of Human Rights and Freedoms

21

Québec Charter of Human Rights and Freedoms

The *Charter of Human Rights and Freedoms* is analogous to the various human rights codes adopted in other Canadian provinces. Unlike the federal *Charter of Rights and Freedoms*, the Québec Charter governs the relationship between private citizens. Summarily, it prohibits discrimination based on race, colour, sex, pregnancy, sexual orientation, civil status, religion, political convictions, language, social condition, etc.

TORONTO

DAVIES WARD PHILLIPS & VINEBERG LLP
1 FIRST CANADIAN PLACE 44TH FLOOR
TORONTO ON CANADA M5X 1B1

TELEPHONE: 416.863.0900
FAX: 416.863.0871

MONTRÉAL

DAVIES WARD PHILLIPS & VINEBERG LLP
1501 MCGILL COLLEGE AVENUE 26TH FLOOR
MONTRÉAL QC CANADA H3A 3N9

TELEPHONE: 514.841.6400
FAX: 514.841.6499

NEW YORK

DAVIES WARD PHILLIPS & VINEBERG LLP
625 MADISON AVENUE 12TH FLOOR
NEW YORK NY U.S.A. 10022

TELEPHONE: 212.588.5500
FAX: 212.308.0132

A superior line of thought

