

LANGUAGE

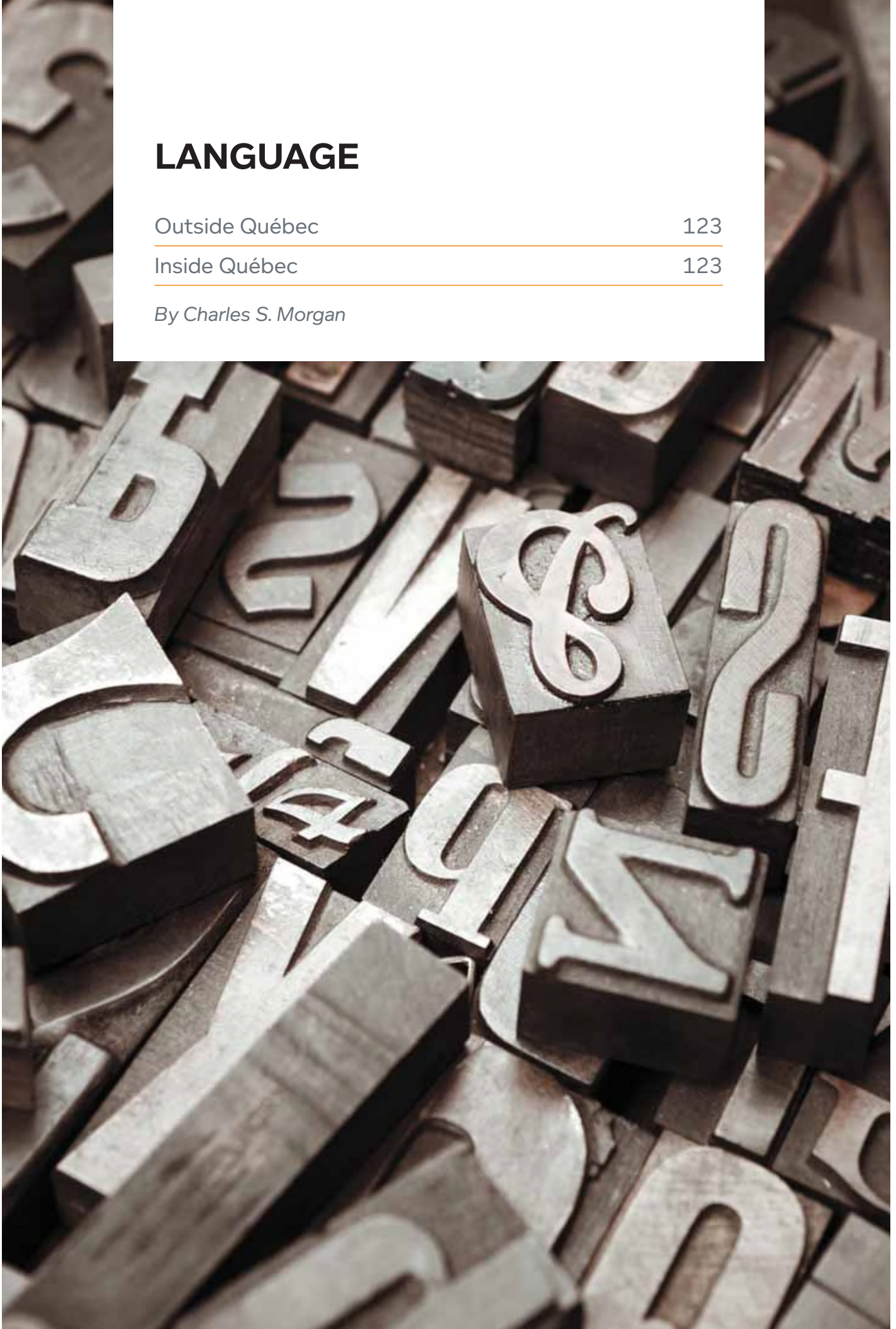
Outside Québec

123

Inside Québec

123

By Charles S. Morgan



LANGUAGE

Language rules in most of Canada apply primarily to government institutions, not private businesses. Canada's Constitution grants English and French equal status in Canada's Parliament and federal courts. Every law must be published in both English and French in some provinces, including Québec. The federal *Official Languages Act*, given additional profile by the *Canadian Charter of Rights and Freedoms*, requires that all federal institutions provide services in either language wherever there is demand for it, or wherever the travelling public is served. Public education is available in either official language, where numbers warrant.

CANADA'S
CONSTITUTION
GRANTS ENGLISH
AND FRENCH EQUAL
STATUS IN CANADA'S
PARLIAMENT AND
FEDERAL COURTS.

Outside Québec

Outside Québec, the main exception to this focus on the public sector is consumer packaging. Regulations under the federal *Consumer Packaging & Labelling Act* identify specific information with which pre-packaged consumer products sold in Canada must be labelled. That information must be set out in both English and French. Exceptions include religious, specialty-market and test products, and language-sensitive products, such as books and greeting cards.

Although Canada is bilingual at the federal level, other governments in Canada may apply their own language policies to matters within their jurisdiction. New Brunswick and the three northern territories are officially bilingual. Several provinces have adopted legislation to ensure that public services are available in French where warranted; but only Québec's language legislation regulates how businesses operate.

Inside Québec

Québec's *Charter of the French Language* (Charter) affirms French as that province's official language. The Charter grants French-language rights to everyone in Québec, both as workers and as consumers. Anyone who does business in Québec — anyone with an address in Québec and anyone who distributes, retails or otherwise makes a product available in Québec — is therefore subject to rules about how they interact with the public and how they operate internally inside the province.

In the Workplace

In Québec, written communications with staff must be in French, including offers of employment and promotion and collective agreements. No one may be dismissed, laid off, demoted or transferred for not knowing a language other than French — but knowledge of English or another language may be made a condition of hiring if the nature of the position requires it.

Businesses that employ at least 50 people within Québec for at least six months must register with a provincial regulator (the Québec French Language Office or OQLF) to obtain a francization certificate by demonstrating that the use of French is generalized at all levels of the business (including in relation to the use of information technology and in communications with clients, employees and investors). Businesses where the use of French is not generalized at all levels may be subject to a francization program in order to achieve this goal over time. In addition, businesses with at least 100 employees must establish an internal francization committee that monitors the use of French in the workplace.

In the Marketplace

Rules about how businesses communicate in Québec's marketplace differ according to whether the communication is in a public or private place. Billboards and signs visible from a public highway, on a public transport vehicle or in a bus shelter must be exclusively in French. Public signs, posters and commercial advertising located elsewhere may include other languages, but the French text must predominate. Non-French business names must be accompanied by a French version appearing no less prominently, unless the non-French name has been trade-marked and a French version has not. Moreover, anyone carrying on business at a Québec location must register a French language business name.

RULES ABOUT HOW BUSINESSES COMMUNICATE IN QUÉBEC'S MARKETPLACE DIFFER ACCORDING TO WHETHER THE COMMUNICATION IS IN A PUBLIC OR PRIVATE PLACE.

With respect to the "trade-mark" exception for public signs, pursuant to draft regulations published in 2016 (not in force, as at time of writing), any person having as part of its public signage a trade-mark that is only



in English will have to add one of the following three elements in French: (i) a generic term or a description of the products or services concerned; (ii) a slogan; or (iii) any other term or indication, favouring the display of information pertaining to the products or services to the benefit of consumers or persons frequenting the site. This new requirement, if adopted, is intended to address concerns expressed by certain francophone consumers in Québec to the effect that English-language trade-marks were dominating the urban commercial landscape in some cities.

Communications such as leaflets, catalogues, brochures, order forms, invoices, receipts, user manuals, warranties and product packaging must include French text that is no less prominent than any non-French text displayed. Because such communications are not displayed in a public place, however, the French text need not predominate. The latter rule applies not only to communications and product labelling, but also directly to certain products that use words. Subject to certain cultural exceptions, for example, the words on toys and games must be available in French alongside any other language version. In the case of software products, if a French-language version of the software exists and has been made commercially available somewhere in the world, then non-French versions may be sold in Québec only if a functionally equivalent French-language version is simultaneously made available in Québec on terms and conditions that are equally attractive to those applicable to the non-French version.

Québec courts have held that certain provisions of the Charter apply to websites. For example, product and service descriptions on websites may be subject to French-language requirements since they are akin to a commercial catalogue. Similarly, standard form contracts (such as website terms of use and privacy policies) as well as order forms must be drafted in French according to the Charter. In general, if a company has a physical address in Québec and its website advertises products or services sold in Québec, then the above-mentioned aspects of the website may be subject to French language requirements.

FOR MORE INFORMATION, PLEASE CONTACT:

Charles S. Morgan

514-397-4230

cmorgan@mccarthy.ca

