

FRENCH LANGUAGE LAWS AND THE WORKPLACE

ANNICK DEMERS

In August 1977, the province of Québec became the first jurisdiction to grant employees the right to work in a French work environment. The bill that led to the adoption of the *Charter of the French Language* (the Charter) was introduced before the National Assembly four months after the Parti Québécois's first mandate as government party and after years of public debate on language issues. The adoption of the Charter results from the intention of the Québec Government to give to the French language the status of first and official language in the province of Québec, including its use by employees in the workplace.

The Charter provides various fundamental language rights, including the right of workers "to carry on their activities in French". The general obligations respecting language in the workplace found in the Charter apply to any enterprise (whether it be a company or another type of business entity) having employees in Québec. Employers that have 50 employees or more are, through the francisation process described below, monitored by the Office québécois de la langue française (the regulatory entity responsible for the enforcement of the Charter – the OQLF) to ensure they are complying with the requirements imposed by the Charter, including those relating to the provision of a French working environment.

FRENCH WORK ENVIRONMENT

The requirements respecting the language used in the workplace cover essentially written communications to employees, knowledge of English as a condition of employment and provision of French work tools.

Written communications to employees. Employers are required to prepare and send all written communications to their employees in French. They are also required to prepare and publish offers of employment or promotion in French. The text of written communications may also be in another language (such as English) as long as the French version of the text is displayed at least as prominently (which essentially means that it is visually equivalent) as the text in any other language. This may be achieved by preparing equivalent separate versions or bilingual documents.

Interestingly, the Charter does not specifically regulate oral communications between an employer and its employees or between employees. The fundamental right of employees to carry on their activities in French would cover oral communications between an employer (through its representatives) and its employees that are work-related (for example, instructions, performance reviews and training sessions). However, communications between employees are not covered and may be in the language of their choice.

Knowledge of English as a condition of employment. Employers are prohibited from dismissing, laying off, demoting or transferring an employee for the sole reason that the employee is exclusively French-speaking or has insufficient knowledge of a particular language other than French (such as English). Employers are also prohibited from making the obtaining of an employment position dependent upon the knowledge or a specific level of knowledge of a language other than French, unless the nature of the duties requires such knowledge.

CONT'D ON PAGE 2

IN THIS ISSUE

1 French Language Laws and the Workplace 3 Success in the Face of Adversity – First Nations in the Legal Profession 4 A Crash Course in Race Relations 5 Best in Class 7 LAWS Summer Job Program at Blakes



Annick Demers
Tel: 514-982-4017
E-mail: annick.demers@blakes.com

French Language Laws and the Workplace

CONT'D FROM PAGE 1

Provision of French work tools. The fundamental rights of employees to a French work environment would also include the right to have access to work tools that have French buttons and instructions. Work tools would include photocopiers, printers, faxes, French software and other information technology tools.

ENFORCEMENT MECHANISMS

Employers' compliance with the obligation to provide a French work environment is monitored using two mechanisms: (i) complaints filed with the OQLF and ii) the francisation process. Although the OQLF has broad powers to conduct investigations for the purposes of monitoring compliance of any enterprise (especially those not subject to the francisation process), it usually acts upon complaints.

Complaints. Complaints may be filed by any interested person (including an employee whose language rights have not been respected) against any enterprise doing business in Québec. The name of each complainant is kept confidential. The OQLF informs the enterprise against which a complaint has been filed of the complaint by sending a demand letter. In the demand letter, the OQLF requests that the enterprise inform the OQLF of the intended corrective measures that it intends to put in place to remedy the non-compliant situation. If the enterprise does not respond to the demand letter or does not satisfy the OQLF that the non-compliant situation has been remedied, the OQLF transfers the file to the Attorney General for penal prosecution. If the Attorney General satisfies the Court that the enterprise has not complied with the Charter, the Court may find the enterprise guilty of one or several offences and may impose fines.

Francisation. Enterprises subject to the francisation process (which are necessarily employers) are closely monitored by the OQLF for compliance. Francisation starts with registration at the OQLF and ends with the issuance of a francisation certificate. It involves the filing of various reports within a prescribed timetable and the participation in meetings with the OQLF to help the OQLF determine whether the use of French is generalized within the enterprise being evaluated for certification. The OQLF considers a number of factors to determine whether or not use of French is generalized and whether it should issue a francisation certificate, including:

- the knowledge of the official language on the part of manage-

ment, the members of the professional corporations and the other members of the personnel;

- the use of French as the language of work and as the language of internal communication;
- the use of French in the working documents of the enterprise, especially in manuals and catalogues;
- the use of French terminology;
- appropriate policies for hiring, promotion and transfer; and
- the use of French in information technologies.

The francisation certificate essentially confirms that the audit conducted by the OQLF indicated that the enterprise complied with the general obligations imposed by the Charter, including the obligation to provide a French work environment. Once the certificate is issued, certified enterprises are monitored every three years to verify whether they remain compliant with language laws.

The timing of the francisation process (i.e., that process taking place from the date of registration with the OQLF to the date of issuance of the francisation certificate) varies from one enterprise to another. However, this process usually takes less than five years. To facilitate the process, it is important to have one person co-ordinate francisation efforts and have certain key individuals involved in the process. For example, the person responsible for information technology should participate in the francisation process because the language of software and other information technology tools used by the enterprise being evaluated is a key element of the OQLF's review.

The consequences imposed for non-compliance with the Charter by enterprises subject to the francisation process (those with a minimum of 50 employees) illustrate the importance of language rights for the Québec legislature. In addition to monetary penalties provided for in the Charter, the *Politique gouvernementale relative à l'emploi et à la qualité de la langue française dans l'Administration* provides that the Québec government does not grant any contracts, subsidies nor any advantage to enterprises failing to comply with the requirements relating to the francisation process (including the failure to demonstrate compliance with language rights of employees). The application of this policy may result in losing access to lucrative contracts and subsidies granted by the Québec Government.

Blakes Montreal office obtained its francisation certificate in May 2006, less than three years after its initial registration.



Maria Morellato
Tel: 604-631-3324
E-mail: maria.morellato@blakes.com

SUCCESS IN THE FACE OF ADVERSITY — FIRST NATIONS IN THE LEGAL PROFESSION

MARIA MORELLATO

Recognition is a necessary and essential step in respecting and embracing our diversity as a profession. We have much to learn from each other, as lawyers and as individuals, in light of the distinct and varied cultures, religions and nationalities from which we come. This is equally true with regard to our First Nations colleagues. While we now see many prominent lawyers and judges of Aboriginal, Métis and Inuit descent within our profession, the historical and legal context from which such leaders have emerged remains largely unknown. We are challenged to learn more as we slowly begin to understand that theirs is a story of courage, perseverance and hard earned success in the face of formidable obstacles.

It is not widely known that for many years, and as recently as the mid-1950s, it was against the law for First Nation individuals or communities to retain the services of a lawyer. Canada's *Indian Act* made it a summary conviction offence liable to penalty and imprisonment for Indian persons to retain a lawyer or to raise funds for the purpose of doing so. Throughout this period of Canadian history, again through the *Indian Act*, First Nations persons were also legally stripped of their "Indian status", and the rights and protections afforded them, simply by entering university or practicing law. Further, it was not until the 1960s that all First Nations peoples were first permitted the right to vote in Canada. Even today, a very small percentage (in the single digits) of First Nations youth living on reserve graduate from high school. Within this daunting legal, historical and social milieu, it is clearly a testament to the character and strength of the indigenous peoples within Canada that our profession has nonetheless produced such excellent scholars and jurists as Roberta Jamieson, Harry S. LaForme, Gerald R. Morin, Alfred Scow and Mary Ellen Turpel-Lafond.

In some respects, the emergence of such distinguished individuals within our legal system has been too slow in coming. For example, Clara Brett Martin became Canada's first female lawyer in the latter part of the 1800s but it was not until 1975 that Roberta Jamieson achieved the distinction of becoming the first female Indian woman in Canada to be called to the bar. It is, nevertheless, remarkable that in the early 1960s, within a mere decade of Parliament repealing its prohibition against First Nations persons retaining lawyers, and just around the time the

right to vote was first given to all Aboriginal people in this country, that the Honourable Judge Alfred Scow became the first Aboriginal person in British Columbia to graduate from law school. Judge Scow later also became the first Aboriginal person to be appointed to the Provincial Court of British Columbia.

As a profession, we are now continuing to witness important landmarks in Canadian history in this regard. The first Aboriginal person to be appointed to an appellate level court in our Commonwealth occurred very recently with the appointment of the Honourable Mr. Justice LaForme in 2005 to the Ontario Court of Appeal. Only a year earlier, Canada's first Métis Judge, the Honourable Mr. Justice Morin, was appointed to the Ontario Superior Court. The very well-respected aboriginal scholar and Harvard graduate Mary Ellen Turpel-Lafond was the first treaty Indian to be appointed in 1998 as a judge of the Provincial Court of Saskatchewan. The Honourable Madam Justice Turpel-Lafond was also recently identified by *Time Magazine* as one of the top Canadian leaders for the new millennium.

The list of distinguished Aboriginal, Métis and Inuit lawyers, judges and scholars is a growing one and too large to accurately capture in any representative way in a short article such as this. It is clear, however, that in a space of a few short generations, we have witnessed the emergence of trailblazers, such as those mentioned above, who are truly making a difference in their communities, in our profession, and across this country.

They have both our recognition and respect.



Paul Bent

Paul Bent was a second year summer student at Blakes during the summer of 2006 and has now returned to law school at Osgoode Hall. If you have any questions or comments for Paul, please contact Antonella Rizzello, Legal Personnel Facilitator, at 416-863-2906.

A CRASH COURSE IN RACE RELATIONS

PAUL BENT

On July 19, 2006, Blakes Equity and Diversity Committee hosted a movie night for summer students in the Toronto office screening Paul Haggis' 2005 Best Picture Academy Award winning film, *Crash*. The Equity and Diversity Committee also invited two representatives from the Toronto International Film Festival, Maxine Bailey, the Director of Public Affairs, and Cameron Bailey, a writer, broadcaster, and film programmer for the Festival.

After dinner, Rob Collins, a senior Partner in the corporate group and a member of the Board of Directors of the Toronto International Film Festival for 12 years, invited Cameron Bailey to introduce the film. *Crash* premiered at the Festival in 2004 and Mr. Bailey recounted the initial challenges Paul Haggis, a Canadian-born director and screenwriter, faced in releasing *Crash* to a broad audience given the sensitive subject matter of the movie.

He characterized *Crash* as a film that intricately combines the experiences of a group of individuals, over a 36-hour period, into a dynamic picture of race relations in an urban community. Having never seen *Crash*, I found that Mr. Bailey's commentary provided the context necessary to appreciate the full complexity of Haggis' work.

While the movie is set in Los Angeles, I felt the characters and storyline of the film could reflect race relations in any city at any time across North America. *Crash* illustrates how each sector of society contributes to the promulgation of racism and by not focusing on a single ethnic group, drives home the realization that we are all part of the problem. The film's opening and closing scenes involve two distinct car crashes where the characters engage in a racially charged exchange of words. By linking *Crash's* conclusion with its opening, Paul Haggis reveals that the purpose behind the film is not to propose a solution but rather to motivate the audience to consider their own behaviour and how they contribute to racism. The characters in *Crash* demonstrate how quickly we react to racism when it is directed against us but how slow we are to recognize our own prejudices.

The degree of personal reflection demanded from the film generates a wide spectrum of emotion in the audience as each person reflects on how racism affects their daily life and the lives of others. The beauty of *Crash* is that it does not shy away from holding a mirror up to society, forcing all of us to take a good hard look at ourselves.

Through great acting and a powerful script, *Crash* is not only entertaining but also thought provoking. In a country as diverse as Canada, cultural sensitivity is paramount, making *Crash* the perfect choice for movie night.



Victoria Hughes

Victoria Hughes was a first year summer student at Blakes during the summer of 2006 and has now returned to law school at University of Western Ontario. If you have any questions or comments for Victoria, please contact Antonella Rizzello, Legal Personnel Facilitator, at 416-863-2906.

BEST IN CLASS

VICTORIA HUGHES

This article takes a look at some ways Canadian law schools are approaching diversity and equity.

INTRODUCTION

Law schools are institutions of higher learning where new ideas are encouraged and nurtured.

The following provides a few examples of some of the more unique diversity and equity initiatives found at various Canadian law schools. In reading about the schools' different programs, you will discover that the initiatives are just as diverse as the causes they seek to further and the people they seek to protect.

OSGOODE HALL – KAWASKIMHON 2006

In March 2006, Osgoode Hall hosted the Kawaskimhon National Aboriginal Rights Moot. Kawaskimhon means to "speak with knowledge". The organizers of the moot feel that "the vision of Kawaskimhon is to offer Aboriginal students a culturally appropriate learning environment to legal education. It is based on a belief that students would bring a unique perspective, analysis and understanding to the issues debated." The moot is primarily for Aboriginal students but also allows students who show a genuine interest in Aboriginal issues to participate. Overall, the moot hopes to encourage participants to research and debate Aboriginal rights in greater depth.

UNIVERSITY OF TORONTO – ISLAMIC LAW COURSE

The Faculty of Law at the University of Toronto has created a new course about Islamic law which covers the controversy surrounding Shariah law.

In the past two years, Shariah law has raised interest in the legal community as it took centre stage in Ontario's arbitration system. Ontario's *Arbitration Act* was changed in 1991 to allow for "faith-based arbitration" in an effort by the Ontario government to alleviate backlog in the courts. Following this, in 2004, the Islamic Institute of Civil Justice said it wanted to set up its own faith-based arbitration panels. The National Association of Women and the Law and the National Organization of Immigrant and Visible Minority Women of Canada have argued that under Shariah law men and women are not treated equally. The Faculty of Law's course promises to explore this controversy in the Canadian justice system.

UNIVERSITY OF WESTERN ONTARIO – INTERNATIONAL INTERNSHIP PROGRAM

This past year, the Faculty of Law at the University of Western Ontario launched two internships at the Caribbean Court of Justice in Port-of-Spain, Trinidad as part of Western Law's International Internship Program. In addition, Western is sending a student to the Inter-American Commission on Human Rights in Washington, D.C., the Special Court for Sierra Leone in Freetown, Sierra Leone and a children's rights organization in Bucharest, Romania. The internships allow students to get a glimpse at different legal systems and issues in order to promote new ideas to encourage diversity in the Canadian legal system.

QUEEN'S UNIVERSITY – LEGAL EDUCATION EQUITY PROGRAM

"The aim of the Program is to provide academic or personal support, guidance and information in the hopes of creating fair conditions under which students may complete their legal studies." The Legal Education Equity Program provides free tutors mostly for first-year students admitted through the equity mandate, personal counselling, information on day-care facilities, special needs access and language support, and funding for special projects. This program aims to give all law students the support to pursue their legal studies on equitable grounds.

UNIVERSITY OF ALBERTA – CLUB TOUT DROIT (FRENCH CLUB)

French culture is an important part of our Canadian heritage which is why it is refreshing that students at the Faculty of Law at the University of Alberta have established a French Club. This club doesn't just hold meetings – it recommends that students participate in school exchanges with French universities, lists bilingual moots in which students can participate and provides links to French legal Web sites. In short, this club strives to spread French culture at the University of Alberta.

CONT'D ON PAGE 6

Best in Class

CONT'D FROM PAGE 5

MCGILL – ASIAN PACIFIC LAW ASSOCIATION OF MCGILL UNIVERSITY

“The Asia Pacific Law Association of McGill University (APLAM) promotes the understanding of Asian legal systems and their evolution.” APLAM serves as a forum amongst students interested in law-related and public-policy issues in the region, encourages scholarship in Asia-related issues, facilitates networking opportunities for students seeking professional development in the region, and promotes learning through activities that highlight the region’s richness and diversity. To help encourage awareness about Asian Pacific legal issues, APLAM publishes articles on topics such as *The Chinese Legal System – A Transsytemic Dragon?* and *The Japanese Legal System – Casting a Wide Net*.

UNIVERSITY OF OTTAWA – SOCIAL JUSTICE PROGRAM

The Faculty of Law at the University of Ottawa’s social justice concentration program “examines law’s implication in constructing and maintaining historic and current social, political and economic inequalities, and law’s potential and limitations as an instrument of redistributive and egalitarian social, economic and political change”. To further encourage law students to get involved in social justice, the faculty launched a Summer Fellowship program “to help students gain exposure to social justice advocacy in both a domestic and international context and enhance their capacity as future social justice lawyers to work towards the protection of human rights.”

DALHOUSIE UNIVERSITY – INDIGENOUS BLACK AND MI’KMAQ INITIATIVE

The Indigenous Black and Mi’kmaq Initiative at the Dalhousie Law School “involves community outreach and recruiting; providing student financial and other support; developing scholarships in the areas of Aboriginal law and African Canadian legal perspectives, and promoting the hiring and retention of graduates”. Indigenous Black Nova Scotians and Mi’kmaqs are encouraged to apply under this initiative by filling out the regular Dalhousie Law School application form and indicating their status. The initiative doesn’t stop when its students graduate:

“All of our alumni have their own unique histories and experiences, which are linked to their communities. As such, they make the legal profession more representative of the people it serves and the practice of law more inclusive, and by extension, more just”.

UNIVERSITY OF BRITISH COLUMBIA – CENTRE FOR FEMINIST LEGAL STUDIES

The Centre for Feminist Legal Studies at the University of British Columbia put out an information sheet for first-year law students in 2003. The newsletter held a powerful message: “women are a fundamentally important part of the law school”. This message lives on through UBC Feminist Legal Studies at the Faculty of Law. UBC Feminist Legal Studies’ Web site lists visiting feminist professors, upcoming lectures, feminist courses, and feminist legal research at UBC.

UNIVERSITY OF CALGARY – SAFE COUNSEL

The Faculty of Law at the University of Calgary has formalized their equity plan by establishing a committee called “Safe Counsel”. Comprised of faculty members, LL.B and LL.M. students, the Dean and the President of the Society of Law Students, Safe Counsel provides guidance and makes policy to address a number of diversity and equity issues expressly including classism and ageism. While the program is still in its beginning phases, the Faculty of Law feels that the program is a necessary addition because “as a legal institution within Canada, the Faculty of Law should be committed to equality among all members of the law school community and fostering appreciation of the diversity of its members.”

A LESSON FOR US ALL

The initiatives being taken by Canadian universities should not be overlooked or undervalued. These distinctive programs should be applauded and taken into account when considering various solutions to encourage diversity and equity in society. In short, while most programs are in their beginning stages, they all deserve an A+ for creativity and addressing important and pressing issues.



Farha Salim
 Tel: 416-863-5260
 E-mail: farha.salim@blakes.com

LAWS SUMMER JOB PROGRAM AT BLAKES

FARHA SALIM

This summer, Blakes Toronto office hired a high school student as a part of the LAWS (Law in Action Within Schools) Summer Job Program – an innovative high school program that combines law-related studies with practical experiences for high school students who face barriers to achieving their academic, career and life goals. Started in September 2005, LAWS is a partnership between the Faculty of Law at the University of Toronto and the Toronto District School Board. The Program’s objectives include increasing students’ knowledge about the law, introducing students to positive and professional role models and providing students with positive and motivating early work experiences.

Amon Gill, a student at Central Technical High School in Toronto, spent three weeks in the Toronto office working in the

Legal Personnel Department where he assisted with the preparation of marketing materials for student recruitment and put together a diversity calendar for use by the Firm. In addition to his work, Amon also attended professional development sessions for students, had the opportunity to meet with a number of the summer and articling students and shadowed two lawyers, sitting in on conference calls with clients and attending in court. Amon demonstrated maturity and professionalism in his work and a genuine enthusiasm about his experience at Blakes.

At a reception held at the University of Toronto for firms and employers who participated in the LAWS Summer Job Program, Amon spoke of his time at Blakes: “This job has given me confidence and I’ve learned to be more independent ... thanks for giving me this chance.”

EDITOR: LINC ROGERS

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www.blakes.com

MONTRÉAL

Tel: 514-982-4000

Fax: 514-982-4099

OTTAWA

Tel: 613-788-2200

Fax: 613-788-2247

TORONTO

Tel: 416-863-2400

Fax: 416-863-2653

CALGARY

Tel: 403-260-9600

Fax: 403-260-9700

VANCOUVER

Tel: 604-631-3300

Fax: 604-631-3309

NEW YORK

Tel: 212-893-8200

Fax: 212-829-9500

CHICAGO

Tel: 312-739-3610

Fax: 312-739-3611

LONDON

Tel: 0207-680-4600

Fax: 0207-680-4646

BEIJING

Tel: 8610-6530-9010

Fax: 8610-6530-9008