

STRENGTH
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Mohawk Council of Kahnawake

P.O. Box 720
Kahnawake Mohawk Territory J0L 1B0
OFFICE OF THE COUNCIL OF CHIEFS



Tel.: (450)632-7500
Fax: (450)638-5958
Website: www.kahnawake.com

OPEN LETTER

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The Honourable Francois Legault
Premier of the Province of Québec
Conseil exécutif
Édifice Honoré-Mercier
835, boulevard René-Lévesque Est, 3^e étage
Québec (Québec) G1A 1B4

The Honourable Christian Dubé
Secrétariat du Conseil du trésor
875, Grande-Allée Est
4^e étage, secteur 100
Québec (Quebec) G1R 5R8

Premier Legault & Minister Dubé,

Introduction

The Mohawk Council of Kahnawà:ke (“MCK”) is writing to raise its concerns and opposition to Bill 61, “*An Act to restart Québec’s economy and to mitigate the consequences of the public health emergency declared on 13 March 2020 because of the COVID-19 pandemic*”. While the MCK understands the economic challenges associated with the pandemic, under their current form, the measures outlined in this Bill would be adopted at the expense of Indigenous Peoples and their rights. Moreover, we consider the approach adopted in this proposed legislation to be inconsistent with the Nation-to-Nation relationship Quebec has committed to build with Kahnawà:ke, notably through work under the framework of our Statement of Understanding and Mutual Respect, Memorandum of Understanding, and our Framework Agreement.

We are opposed to several measures outlined in this Bill, in particular those resulting in the increased government and third-party authority over Indigenous lands and resources and the acceleration or streamlining of environmental authorizations. Not only are these measures incompatible with our rights and jurisdiction over our territories and our worldviews, but they also have the potential to directly undermine years of efforts to progress towards an improved collaboration and partnership between our Nations. Of great concern is also the fact that the implementation of these measures will be incompatible with the fulfillment of the Crown’s consultation and accommodation obligations.

Problematic aspects of Bill

More specifically, the MCK is opposed to the following features of this Bill:

1. Absence of safeguards, mechanisms and/or provisions to ensure that the Crown’s duty to consult and accommodate Indigenous Nations is upheld;

2. Absence of measures to provide for partnerships with Indigenous communities or infrastructure projects that would directly benefit and uphold the socio-economic rights of Indigenous communities;
3. Section 3: The MCK opposes conferring unilateral authority to the government to designate projects that can benefit from the accelerated measures, in particular for any projects that can have adverse effects on our lands and resources;
4. Section 3: The MCK is opposed to the government designating projects that have been identified by municipalities and public bodies, since these entities do not have the same consultation and accommodation obligations as the Crown and since provincial legislation does not require or ensure consultation with Indigenous peoples in these instances;
5. Section 4: The process to designate additional projects is accelerated and fails to provide for prior Indigenous consultation, which means that the number and nature of projects that could benefit from this legislation is currently unknown;
6. Expropriation powers and acquisition of lands in the domain of the state: The MCK is concerned that the accelerated processes provided for expropriating lands and appropriating lands in the domain of the state do not provide or allow for any Indigenous consultation. Section 14, which allows works to proceed on an interim basis prior to authorizations being issued, is of particular concern. The risk is that Indigenous rights and interests could be irreversibly impacted by works carried out during the interim period;
7. Section 15: The MCK is opposed to allowing an eventual regulation to replace measures currently in place under the Environment Quality Act. Generally speaking, the MCK already believes that Quebec environmental law offers inadequate safeguards to protect the environment. Allowing current protections to be further weakened is unacceptable. The concept of “adequate protection” is subjective and undefined, and does not refer to any known legal or scientific standard of protection;
8. Section 16: The MCK considers that this provision, as a result of the limited list of project activities that are confirmed as still requiring authorizations under the Environment Quality Act, is effectively gutting the Act. Virtually none of the project activities listed under section 22 of the Environment Quality Act benefit from explicit protection under Bill 61;
9. Sections 18 and 22 fail to guarantee that the Minister can require the production of documentation or information in order to ensure that the duty to consult and accommodate Indigenous peoples is met;
10. Sections 20, 21 and 24: The MCK is vigorously opposed to allowing for the proposed accelerated authorization of activities that can adversely impact species or habitat for species that are threatened and vulnerable. The MCK is also firmly opposed to allowing such impacts to proceed on the condition that financial compensation be paid. This process is incompatible with Indigenous environmental stewardship rights and responsibilities. It is also incompatible with the legal duty to consult and accommodate, since the law prescribes that the Crown must consider the potential impacts of development activities on the exercise of rights, traditional land use activities, sites of cultural importance and language transmission prior to allowing activities to move forward, with Indigenous knowledge being key in this assessment.

Avoidance and mitigation of impacts are always prioritized in these cases. To allow activities to move forward without first assessing avoidance and mitigation measures to minimize adverse impacts on Indigenous rights is also a violation of the Crown's legal obligations. The MCK will oppose any and all projects that could impact our rights and interests and that move forward under this legislation without due regard for the Crown's legal duty;

11. Section 25: The MCK is also opposed to the accelerated and unilateral modification of park boundaries under this provision. We note that the Bill does not provide any criteria or safeguards to regulate the exercise of such decision-making authority. The potential for this power to be abused is high. As previously mentioned, the Crown must also consider Indigenous knowledge and the ways in which the modification of the boundaries of parks can potentially impact the exercise of rights, traditional land use activities, sites of cultural importance and language transmission prior to allowing activities to move forward;
12. Section 30: The MCK notes that the Bill provides a two-year window for projects to be added to the list and also provides that projects can benefit from the Act's accelerated processes for a period of five years. These timeframes seem both excessive and arbitrary. At a minimum, the government should be required to demonstrate the justification for the continuation of these measures;
13. Schedule 1: The MCK is opposed to the inclusion of projects that are subject to the Crown's legal duty to consult and accommodate Kahnawà:ke in Schedule 1. This includes the reconstruction of the Mercier Bridge project, the reconstruction of the Iles-aux-Tourtes bridge project, Highway 35-Phase IV and project REM, among others;
14. The MCK is also firmly opposed to the inclusion of any and all current or future projects that could adversely impact Kahnawà:ke rights and interests, including, but not limited to projects targeting the St. Lawrence River and river basin, projects that could take place within the boundaries of Kahnawà:ke's Seigneurie of Sault St. Louis (SSSL) or on lands that could otherwise be repatriated to Kahnawà:ke in fulfilment of the Crown's obligation to resolve the SSSL land grievance;
15. As an additional consideration, the MCK notes that Indigenous communities, including Kahnawà:ke, already have insufficient time and resources to carry out meaningful consultation and accommodation processes around projects with Quebec. The adoption of this Bill would further exacerbate this situation.

Position related to the Mercier Bridge project

In addition to the MCK's overall opposition to this Bill, the MCK also demands the removal of the Mercier Bridge reconstruction project from this legislation. The application of this legislation to this project is not only contrary to the spirit and intent of the Statement of Understanding and Mutual Respect and Framework Agreement, but also necessarily violates the terms of the Memorandum of Understanding for the Special Committee for the Honore Mercier Bridge Reconstruction Project signed between the MCK and Quebec. According to the MOU:

- The Parties recognize that the realization of the Project may have an impact and require access to Kahnawà:ke's territory and locations where aboriginal rights, including aboriginal fishing rights, are exercised;

- The objective of the Special Committee established for the project is to ensure that a collaborative approach be adopted on a Nation-to-Nation basis throughout the realization of all Project activities;
- The Parties agree that the Special Committee will be responsible to ensure that a meaningful consultation and accommodation process be completed as one of the means to fulfill the Committee's objective;
- The Parties shall adopt a Joint collaborative approach on how to conduct Environmental Assessment and monitoring activities, notably with the inclusion of representatives appointed by the Kahnawà:ke Environment Protection Office.

It remains the position of the MCK that the planned Mercier Bridge Reconstruction Project is taking place on Mohawk territory and is subject to Mohawk jurisdiction and requirements. The MCK fully expects that the commitments outlined in our jointly signed agreements will be fulfilled, and that proper measures will be put in place to uphold these commitments. The Mohawks of Kahnawà:ke will not allow this project to proceed based on the processes identified in Bill 61.

Conclusion

The MCK is strongly opposed to the adoption of Bill 61, which in its current form, is in no way consistent with a commitment to building a Nation-to Nation relationship and with the Crown's duty to consult and accommodate Indigenous Peoples. We will oppose the adoption and implementation of this legislation. We call on Premier Legault and Minister Dubé to meaningful engage and consult Indigenous Nations to inform the government's response to the economic crisis triggered by the ongoing public health emergency in a way that upholds Indigenous Peoples' rights and does not undermine our Nation-to-Nation relationship. Finally, the MCK requires the government of Quebec to remove the Mercier Bridge reconstruction project from Schedule 1.

In Peace and Friendship,

**ON BEHALF OF THE OFFICE OF THE COUNCIL OF CHIEFS
MOHAWK COUNCIL OF KAHNAWÀ:KE**


Grand Chief Joseph Tokwirot Norton

Jtn/NM/06092020/PremierLegault&MinisterDube

CC: Council of Chiefs
Ghislain Picard, Regional Chief, AFNQL
AFNQL Chiefs in Assembly
The Honourable Sylvie D'Amours, Minister Responsible for Indigenous Affairs
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