

STRENGTH

PEACE

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Implantation
de deux pôles
logistiques

Mohawks of Kahnawà:ke Position Paper on Bill 85

Submitted to: Committee on Planning and the Public Domain on August 15, 2017 at the National Assembly of Quebec in Quebec City

Mohawk Rights and Interests

As the original occupants and caretakers of lands extending through a vast territory, including most of what is today labelled as the areas of Southern Quebec and Ontario and extending south into the Mohawk Valley, the Mohawks of Kahnawà:ke again provide the government of Quebec notice of our interests and ownership over these territories. The Mohawks of Kahnawà:ke, as the original Peoples of these lands, are continually being faced with attempts to disregard our interests, and erode our rights and title. We are here today to advise you that the Mohawks of Kahnawà:ke are staunchly opposed to Bill 85. We are here to remind you that this attempt by the Quebec government to legislate and authorize development on our land without our consent will not be tolerated.

We have advised the Quebec government on many occasions that we have constitutionally protected rights and interests to our Aboriginal title lands and Seigneurie of Sault St. Louis ("SSSL") lands. In the context of Bill 85, Quebec was advised of our rights, interests and concerns in letters sent in December 2015 and March 2016¹. In fact, the whole area covered by Bill 85 cuts straight through our Aboriginal title lands and in the heart of our SSSL land grievance lands.

Further, we also have specific rights and interests stemming from accommodation measures that were previously and formally agreed upon between our Nations to permit the construction of Autoroute 30 (A30) on our SSSL and title lands. As a reminder, Quebec and Kahnawà:ke agreed to:

- a) an expedited process to transfer lands to Kahnawà:ke (through an Additions to Reserve process) north of the A30 and a small portion west of Kahnawà:ke consisting of approximately 500 acres;
- b) an additional 211 acres to be identified and transferred at a future date;

¹ Letters from Grand Chief Joseph Tokwiro Norton to Premier Phillipe Couillard, dated December 8, 2015 and March 7, 2016 and letter from Me Francis Walsh to Premier Phillip Couillard, dated March 8, 2016.

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- c) assurance all the returned lands would have the same legal status as the current Kahnawà:ke “reserve lands”;
- d) commitments to create mechanisms for the recognition of Kahnawà:ke jurisdiction in several areas;
- e) compensation for specific projects within Kahnawà:ke, including Quebec’s promise of financial aid in the amount of \$1.36M Dollars in order to provide access to parcel “D” of the decreed lands; and,
- f) aid with economic development, including ensuring viable commercial access to A30.

Accordingly, Kahnawà:ke has upheld our end of the agreement and has not deterred the development of the A30. However, the vast majority of Quebec’s commitments to Kahnawà:ke remain outstanding. It is Quebec’s legal duty and moral obligation to ensure that all of the commitments made within the context of the A30 lands agreement are fulfilled with diligence and in good faith. Quebec must uphold the Honour of the Crown. The A30 extension was completed in 2012 yet five years later we have yet to see any concrete benefits from the commitments made in exchange for permitting the A30 construction on our lands.

The accommodations facilitating our consent to allow for the construction of the A30 are highly relevant to the nature of Bill 85. It would be unjust for Quebec to proceed with facilitating the development of an economic corridor on the lands identified in Bill 85, as a principal factor in its construction was Kahnawà:ke’s consent, pursuant to accommodations. So long as the government of Quebec is not fulfilling the terms of our agreement, the Mohawks of Kahnawà:ke are forced to question the validity of Quebec proceeding with any further development that would be subject to our continued consent.

The government of Quebec must recognize the magnitude of the matter and address our concerns in a comprehensive and meaningful manner before considering any further development on any lands under the interests of the Mohawks of Kahnawà:ke.

Bill 85 Triggers Quebec’s Duty to Consult and Accommodate

Bill 85’s stated purpose is to promote the establishment of logistics sector enterprises in hubs located in the Municipality of les Cèdres in the Town of Contrecoeur and along A30 in the Montréal. These are all located on our Aboriginal title lands and our SSSL land grievance lands.

If adopted, Bill 85 will also allow Quebec to make rules by administrative order, which may override:

- a) certain by-laws of municipalities, MRC and the Montreal Metropolitan Community;
- b) the provisions of the *Act respecting land use planning and development* A-19.1;
- c) the provisions dealing with subdivision or alienation in the *Act respecting the preservation of agricultural land and agricultural activities* P-41.1.

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Of specific concern is the fact that the Bill purports to legislate on lands which Quebec has decreed to be transferred to the federal government for the exclusive benefit of the Mohawks of Kahnawà:ke. As such, Bill 85 has potential adverse impacts to our Aboriginal title, SSSL and decreed lands². Bill 85 also impacts on the Crown's ability to follow through and implement the commitments that were made within the context of the A30 lands agreement. Therefore, it is clear that the re-tabling of Bill 85 constitutes government conduct within the meaning of the duty to consult and accommodate and that the provincial Crown is required to consult and accommodate us before taking any further action on this Bill. To date, there has been no consultation; in fact, we were never even formally advised that Bill 85 was re-introduced and that hearings would take place. Our Nation found out by happenstance and had to take the initiative to request to participate.

This consultation must be conducted in advance of the passage of the Bill into law, it must be profound and it will require accommodation. Given the stated purpose of the Bill, consultation must revolve around, at a bare minimum, having our explicit consent to any economic development projects or any other action which have a detrimental impact on our future use of SSSL lands or asserted title lands.

It should be made clear that Kahnawà:ke is not opposed to regional economic development, and in fact, we are confident that regional economic development can bring valuable benefits to our entire region. However, our concerns and particular rights and interests must be taken and addressed seriously, and we must be treated as a full and equal partner in such development.

Required Government Action

The MCK is strongly opposed to Bill 85. It is illegal for the province to legislate over our territory, in particular without the appropriate consultation and accommodation process having been followed. Should Quebec indeed proceed with legislation that supports regional economic development, it must be on the terms of our consent, and the meaningful fulfillment of factors that facilitate that consent. We therefore require the following government action with respect to Bill 85:

1. Quebec must: Respect our land rights and the corresponding obligation to obtain our consent regarding ANY economic development projects on our lands, including the potential establishment of a logistics hub and economic development corridor. Further, Quebec must meet all of its commitments pertaining to the A30 lands agreement prior to even considering any legislation pertaining to the establishment of a logistics hub and economic development corridor on our lands.
2. We reiterate, any logistics hub and economic corridor must include the Mohawks of Kahnawà:ke as partners in the development. Neighbouring municipalities cannot continue to develop our land without our involvement or consent.

² Potential adverse impacts stemming from Bill 85 were more fully outlined in the letter from Me Francis Walsh to Premier Phillip Couillard, dated March 8, 2016.

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More specifically:

3. Kahnawà:ke must be provided with the same capacity as neighboring municipalities in order to be viable economic development partners, including the necessary infrastructure development (including water, sewage, roads) on the lands Quebec decreed to be returned to the Mohawks of Kahnawà:ke, along A30 and 730. We also require viable commercial access to A30.
4. Kahnawà:ke requires the cooperation and coordinated aid of both the provincial and federal government in regards to its economic development by, among other aid, encouraging large logistic sector enterprises to locate in Kahnawà:ke and by removing legal and administrative impediments which would discourage said enterprises from locating in Kahnawà:ke.
5. To avoid difficulties with conflicting municipal by-laws, Kahnawà:ke requires Quebec to either ensure that no municipal by-laws apply to any lands which are returned to the Mohawks of Kahnawà:ke or redraw the boundaries between the municipalities and Kahnawà:ke in order to remove the decreed lands from the municipal boundaries. Quebec must ensure that this is completed in a manner that provides certainty to the Mohawks of Kahnawà:ke, in particular, with respect to any potential legal challenges from neighbouring municipalities. This is also required to satisfy Quebec's commitment to ensure that decreed land has the same status and rights as the current reserve³.
6. Moreover, Quebec must immediately and irrevocably identify, designate and transfer, in collaboration with Kahnawà:ke and Canada, the 211 acres of land which were promised to be returned but which were not included in the Decree of May 2013.
7. Additionally, Quebec had promised financial aid in the amount of \$1.36M Dollars in order to obtain access to parcel "D" of the decreed lands. To date Quebec has not reimbursed Kahnawà:ke for said capital outlay as of yet. We require that Quebec immediately pay the aforementioned amount to Kahnawà:ke.

Furthermore, the MCK hereby puts Canada and Quebec on notice, without prejudice, that, with respect to SSSL lands more generally:

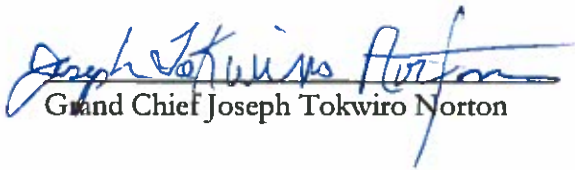
8. The Crown, including the government of Canada and Quebec cannot alienate, develop, or otherwise adversely impact any Crown lands on SSSL lands and that Crown lands within the SSSL claim boundary must promptly be returned to Kahnawà:ke.

³ As required by Condition 3 of Order in Council 498-2013, adopted on May 15, 2013.

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9. The Crown, including the government of Canada and Quebec, cannot take any government action (including the passing of legislation or regulation; the making any high level strategic decisions; and the issuance of any permits or other forms of authorization) that could cause significant adverse impacts to our SSSL lands (held by the Crown or any other entity) or the exercise of our aboriginal rights, without completing a consultation and accommodation process and obtaining the explicit consent of the Mohawks of Kahnawà:ke.

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


Grand Chief Joseph Tokwiro Norton