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11, Seskehkó:wa/September 2023

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Mohawk Council of Kahnawà:ke Brief on Bill-32 (An Act to establish the cultural safety approach within the health and social services network)

The Mohawk Council of Kahnawà:ke (MCK) welcomes the opportunity to submit this brief and provide input to the Parliamentary Committee on Bill 32, *An Act to establish the cultural safety approach within the health and social services network (the Bill)*. This brief includes noted issues and recommendations gathered through the MCK's Health Portfolio Team which consists of MCK Chiefs, Kahnawà:ke's Health and Social Services executive directors, and subject matter experts, all of whom are Kanien'kehá:ka of Kahnawà:ke.

We expect that there is ample time to incorporate the recommendations into the final version of the Act. The MCK will be expecting a positive response to our submission as the recommendations pertain to matters faced by our community as well as other Indigenous Peoples in Quebec. The MCK looks forward to an equitable relationship and partnerships in co-development on the key issues and recommendations.

Purpose

This briefing highlights issues with, and proposes recommendations for inclusion in Bill-32, *An Act to establish the cultural safety approach within the health and social services network (the "Bill")*. For the Bill to create a meaningful, active, and accountable approach to cultural safety, the MCK makes these recommendations.

Background

The proposed Bill-32 was tabled in the Assemblée Nationale June 9, 2023, by the Minister responsible for Relations with the First Nations and the Inuit, Ian Lafrenière. The Bill states Joyce's Principle as an impetus for its proposal. It also notes as a foundation, the distinct nature of Indigenous people and the need to allow them to engage in professional activities based on that distinct nature. The Bill requires that health institutions adopt a culturally safe and considerate approach to Indigenous people based on their historical

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and cultural realities. It is proposed as a foundation to create safe health and social system environments where relationships and partnerships can be built.

The Mohawk Council of Kahnawà:ke

The Mohawk Council of Kahnawà:ke is the governing body for the Mohawk Territory of Kahnawà:ke. It is the organization that provides governmental, administrative, and operational services to the community of Kahnawà:ke. The political sector of the MCK is comprised of the Council of Chiefs and the Office of the Council of Chiefs. The Council of Chiefs is the primary governing body of the MCK and provides political direction on matters concerning Kahnawà:ke and its affairs.

Issues

1. Drafting and Proposal:

A fundamental issue with the Bill and its proposal is with the approach taken with the initial drafting. While the Bill makes the statement that it is demanded by Joyce's principle, it has not been driven or co-drafted in consultation with First Nations or Inuit. Further, while this submission falls within a feedback period which is intended to gather input from First Nations and Inuit entities, the Assembly of First Nations of Quebec and Labrador's statements in reaction to the Bill's tabling must be reiterated: it is the right and responsibility of First Nations to define and protect their cultural safety, not that of the Quebec government.¹

The *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* Article 23 states:

"Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions."²

It is fundamental that First Nations and Inuit to be at the center of the drafting and actioning of the Bill.

Recommendation 1: It must be realized as a fundamental element that Indigenous people have the right to be the driving and deciding force behind the Bill. The Quebec government also must adjust its approach with that understanding for any legislation concerning Indigenous people.³ As proposed, the Bill does not reflect such action or understanding.

2. Paternalistic and One-Sided Language (Systemic Racism):

¹ Assembly of First Nations of Quebec and Labrador. Reaction to the tabling of Bill 32: First Nations must be at the heart of and guide the approach to cultural safety within the Quebec health and social services network. <https://www.newswire.ca/news-releases/reaction-to-the-tabling-of-bill-32-first-nations-must-be-at-the-heart-of-and-guide-the-approach-to-cultural-safety-within-the-quebec-health-and-social-services-network-890455892.html>. June 9, 2023.

² *United Nations Declaration on the Rights of Indigenous Peoples (United Nations General Assembly, September 13, 2007), A/RES/61/295 (UNDRIP).*

³ UNDRIP, article 19.

There are several occurrences within the Bill which reflect the government of Quebec's lack of understanding and genuine desire for the cultural safety of First Nations and Inuit. For example, in the preamble, it states "As this approach is important to Indigenous peoples . . .,"⁴ yet there is an absence of any statement concerning the importance of this approach to Quebec. As seen in the approach Quebec has taken in drafting and proposing the Bill, there is little evidence showing genuine concern for Indigenous people or their cultural safety. The approach taken to date is paternalistic in that it speaks about Indigenous realities while completely ignoring those realities. Indigenous people must be consulted, engaged, and be centered in the co-development of legislation, programs, decision making bodies, and accountability frameworks, which affect them.

Moreover, until the Quebec government admits and fully acknowledges its systemic racism, there will be no genuine action, or substantive outcome from the Bill. As currently drafted, the Bill only addresses cultural awareness – the acknowledgement of difference.⁵ While this is an important piece of cultural competence, it is not sufficient enough to create a substantive enough difference without additional aspects of cultural competence. Cultural competence also requires that service providers reflect on their *own* cultural values, identify how those values impact service delivery, and adjust approaches to service delivery if it can facilitate safer delivery of said services. As discussed more thoroughly below, cultural safety is determined from the perspective of the service user.⁶

Recommendation 2: The Government of Quebec must reflect on itself to understand and acknowledge its systemic racism, publicly and in the Bill; and ensure that the Bill itself has a thorough integration of all measures to facilitate cultural competence (including acknowledgement, forecasting impacts, and adjusting approaches) across health and social services.

3. Indigenous Histories and Realities:

Following the issue of systemic racism and its paternalistic approach, the tendency to make broad statements such as, "Indigenous persons must be distinguished from other users when taking into account users' rights to appropriate health services and social services, since they form nations with distinct histories and cultures," while failing to incorporate any provisions which serve to account for, inform, direct, or institute distinctions between First Nations and Inuit and their communities is problematic. Indigenous people are not a monolith and should not be thought of or treated as such. Further, distinct Indigenous Nations have varying historical realities, which must be taken into consideration in better understanding their unique needs and realities (such as time of contact, history of colonization, location and remoteness, lived cultural loss, etc).

Recommendation 3: Incorporate more distinctions-based language as well as provisions to ensure that a culturally safe health and social network fully engages with the necessary distinctions in Indigenous

⁴ Bill-32, *An Act to establish the cultural safety approach within the health and social services network*, Quebec Official Publisher, 2023, p.3. (Bill-32).

⁵ See Public Health Agency of Canada, "Common Definitions on Cultural Safety", June 2023, available online: <https://www.canada.ca/content/dam/hc-sc/documents/services/publications/health-system-services/chief-public-health-officer-health-professional-forum-common-definitions-cultural-safety/definitions-en2.pdf>.

⁶ *Ibid.*

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(including establishing standards), and evaluation (including establishing key performance indicators) mechanisms pursuant to the Bill.

5. Training:

Section 1 (4)(c) provides for mandatory training within the health and social system about Indigenous people.¹⁵ This remains a surface level commitment which does not ensure meaningful outcomes, relationships, or partnerships. There are no mechanisms to ensure adequate, continual, and consistent application or genuine and accurate understanding of Indigenous histories and lived experience.

Recommendation 5: Include provisions which ensure Indigenous led co-development of education, training, standards, and mechanisms of oversight, evaluation, and accountability.

6. Joyce's Principle not incorporated:

The Bill's preamble states that "this approach is important to Indigenous peoples and is one of the demands put forward in Joyce's Principle."¹⁶ This statement not only falls short in showing any importance to the Government of Quebec, what is called for in Joyce's Principle is not truly reflected throughout the Bill. Section 2 of Joyce's Principle states that, "The Government of Quebec, **in collaboration with the Indigenous authorities concerned**, must put in place **an action plan regarding Joyce's Principle**."¹⁷ The Government of Quebec, in its approach taken in drafting the proposed Bill, has ignored this point, with the content of the draft Bill also showing that Joyce's Principle has been overwhelmingly ignored.

Sections 2, 3, 4, 5 and 6 of Joyce's Principle lay out clear actions to be taken by Quebec which points to centering and collaborating with Indigenous people through Indigenous led education, co-development of legislation and policies, integration of Indigenous people into mechanisms of oversight and decision making, etc. The Bill, however, focusses primarily on vague buzzwords and actions and surface level awareness through training.

Recommendation 6: Incorporate all elements of Joyce's Principle in meaningful ways into the Bill. Work directly with Indigenous authorities to create the spaces necessary for Indigenous led actions, incorporation of Indigenous people into mechanisms for oversight, decision making, and accountability.

7. Ensuring Cultural Safety Requires a Systemic Approach

When the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec (**Viens Commission**) called upon the government of Quebec to amend the *Act respecting health*

¹⁵ Bill-32, S. 1 (4)(c), p.4.

¹⁶ Ibid. p.3.

¹⁷ Joyce's Principle, https://principedejoyce.com/sn_uploads/principe/Joyce_s_Principle_brief___Eng.pdf, ATIKAMEKW NEHIROWISIW, November 2020, p. 11. (bold emphasis added)

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and social services (ARHSS) to enshrine the concept of cultural safety, it clearly envisioned a systemic approach.¹⁸ Instead, the government has once more adopted a piecemeal trial-and-error approach.

While, as stated above, the MCK supports a distinctions-based approach which will respond to the diversity of Indigenous Peoples and their realities, requiring each institution to develop cultural safety practices in isolation risks creating important inconsistencies and inequities. More importantly, without significant outside support, there is a grave risk that systemic racism and power imbalances will persist. This risk is far from hypothetical: the coroner's report regarding the death of Joyce Echaquan makes repeated references to the dangerous lack of self-reflection within the provincial healthcare system.¹⁹ Much greater care is required here.

Ultimately, the questions of care provision and cultural safety are questions for Indigenous Peoples to decide for themselves. Nevertheless, the failure to include cultural safety requirements in the ARHSS diminishes the importance and consideration of Indigenous rights and realities. At a bare minimum, institutional plans should be subject to the same scrutiny as other institutional plans set out in the ARHSS, requiring review and approval from an executive director, board of directors, and agency, as applicable. Incorporating these requirements into the ARHSS would facilitate ensuring those safeguards and accountability mechanisms are in place.

Systemic problems call for systemic responses. There are many options that the National Assembly should be exploring in collaboration with First Nations and the Inuit for creating a broad cultural safety net that ensures consistent, safe care throughout the system. These could include establishing a provincial steering committee charged with ensuring respect for Indigenous people's right to culturally safe services²⁰ or profession-based practice standards,²¹ among others.

Recommendation 7: Amend the Bill, in consultation with Indigenous Peoples, to ensure these important requirements are integrated into the ARHSS and to promote systemic options for ensuring cultural safety rather than adopting a piecemeal institution-by-institution approach.

8. Professional Orders

The MCK is heartened to see that the importance of Indigenous practitioners in ensuring cultural safety has been taken into consideration in s. 3 of Bill 32. However, the scope of these amendments is wildly inadequate. The MCK refers the committee to its extensive submissions regarding Bill 96,²² attached

¹⁸ Viens Commission, Recommendation 74.

¹⁹ Me Géhane Kamel, "For the Protection of Human Life: Concerning the death of Joyce Echaquan", p. 11, 12, 15, 18, 20; online: https://www.coroner.gouv.qc.ca/fileadmin/Enquetes_publicques/2020-06375-40_002__1__sans_logo_anglais.pdf

²⁰ As has been done for the right to reserve care in English, see, e.g. ARHSS, ss. 15, 348, 509

²¹ As has been done in British Columbia, see e.g. British Columbia College of Nurses and Midwives, https://www.bccnm.ca/Documents/cultural_safety_humility/All_PS_cultural_safety_humility.pdf.

²² Now the *Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14

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here²³, for a more fulsome analysis of how discriminatory requirements for accessing professional orders put Indigenous service users at risk and are contrary to rights enshrined in international law.²⁴

Recommendation 8: The scope of s. 3 should be expanded to provide appropriate exemptions for all professions which contribute to service delivery in health and social services.

²³ See APPENDIX 2: MCK Letter to Ministers Jolin-Barrette and Lafrenière RE: Impacts of Bill 96 on Indigenous rights and interests and position of Kahnawà:ke. May 19, 2022.

²⁴ See, e.g. UNDRIP, articles, 3, 4, 13, 14 and 24.

APPENDIX 1: List of Recommendations

Recommendation 1: It must be realized as a fundamental element that Indigenous people have the right to be the driving and deciding force behind the Bill. The Quebec government also must adjust its approach with that understanding for any legislation concerning Indigenous people. As proposed, the Bill does not reflect such action or understanding.

Recommendation 2: The Government of Quebec must reflect on itself to understand and acknowledge its systemic racism, publicly and in the Bill; and ensure that the Bill itself has a thorough integration of all measures to facilitate cultural competence (including acknowledgement, forecasting impacts, and adjusting approaches) across health and social services.

Recommendation 3: Incorporate more distinctions-based language as well as provisions to ensure that a culturally safe health and social network fully engages with the necessary distinctions in Indigenous cultures and histories; and additionally, require that there be increased education on historical realities of Indigenous Nations amongst service delivery personnel in health and social services.

Recommendation 4: Amend the Bill to include actionable language and mechanisms to induce systemic change. Work directly with Indigenous people to co-draft the Bill so that what cultural safety means to them is captured. Work directly with Indigenous people in the co-development, co-implementation (including establishing standards), and evaluation (including establishing key performance indicators) mechanisms pursuant to the Bill.

Recommendation 5: Include provisions which ensure Indigenous led co-development of education, training, standards, and mechanisms of oversight, evaluation, and accountability.

Recommendation 6: Incorporate all elements of Joyce's Principle in meaningful ways into the Bill. Work directly with Indigenous authorities to create the spaces necessary for Indigenous led actions, incorporation of Indigenous people into mechanisms for oversight, decision making, and accountability.

Recommendation 7: Amend the Bill, in consultation with Indigenous Peoples, to promote systemic options for ensuring cultural safety rather than a piecemeal institution-by-institution approach.

Recommendation 8: The scope of s. 3 should be expanded to provide appropriate exemptions for all professions which contribute to service delivery in health and social services.

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APPENDIX 2: MCK Letter to Ministers Jolin-Barrette and Lafrenière RE: Impacts of Bill-96 on Indigenous rights and interests and position of Kahnawà:ke. May 19, 2022.

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19, Onerahtohkó:wa / May 2022

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Re: Impacts of Bill 96 on Indigenous rights and interests and position of Kahnawà:ke

Dear Ministers,

During our May 13th, 2022 call to discuss the Mohawk Council of Kahnawà:ke's ("MCK") key concerns in relation to the implications of Bill 96, you repeatedly stated that once adopted as law, the bill will not modify the situation of Indigenous Peoples as it currently is under the *Charter of the French Language* ("French Charter"). You also repeatedly indicated that you did not share the MCK's analysis and interpretation of the text of the bill, attributing our concerns to erroneous interpretations and a lack of understanding of the text of the law. Finally, you requested the MCK specifically detail Bill 96's impacts on Indigenous Peoples and on the Kanien'kehá:ka (Mohawk) of Kahnawà:ke as a basis to move forward in discussions. On May 17th, 2022, we received a letter from Minister Jolin-Barrette, reiterating your opinion that the proposed legislation does not impact Indigenous rights and Peoples. The purpose of this letter is to address your request for an iteration of the potential impacts in response to both our prior meeting and your following correspondence, and to bring directly to your attention the resolute demands of the Mohawks of Kahnawà:ke with respect to Bill 96.

Before addressing the documented impacts on the rights of Indigenous Peoples, we will start by reiterating that the linguistic territoriality principle enshrined in the bill's approach to the protection of French is fundamentally contrary to the principle of peaceful and respectful coexistence with Indigenous Nations and communities. At a community meeting held in Kahnawà:ke on May 17th, our community discussed this very matter and noted that the approach to Bill 96 espouses to advance Quebec nationhood on an illegitimate foundation, as it fails to undertake any respect or consideration of Indigenous nationhood, rights, interests, title and languages.

Your government's approach to the protection of French is contrary to the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), specifically articles 3, 4, 13, 14 and 24. It goes against Quebec's own commitments to recognize UNDRIP principles and to negotiate its implementation with Indigenous Peoples, as formalized in two yet to be implemented National Assembly Resolutions (National Assembly Resolution of October 8, 2019; National Assembly Resolution of October 1st, 2020). It also contradicts the National Assembly Resolution of June 9, 2021, which recognizes the right of Indigenous Nations located within Quebec to live in their languages and to promote and protect these languages, as well as the corresponding responsibility of the government in this matter.

As was articulated during our meeting on May 13th, the undeniable and documented impacts of language barriers on the lives of Indigenous Peoples in Quebec pre-date Bill 96. Many of these impacts flow from the application of the *Charter of the French Language* since its adoption in 1977. Indigenous Peoples continually experience these impacts firsthand, both individually and collectively, in all areas of interactions with Quebec institutions and entities, including with public service providers and businesses, on a daily basis. The key concerns previously brought to Quebec's attention by the MCK reflect not only analytical points, but also the lived experience and knowledge of our community members, experts and service providers.

Impacts of ongoing language barriers on the relationship between Indigenous Peoples and public institutions, particularly in the area of service delivery, have been thoroughly documented in the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec's Final Report ("Viens Report"). In the context of the examination of Bill 96, the ongoing, additional and cumulative impacts of the Bill 96 amendments on Indigenous rights and the delivery of services to Indigenous People have been identified in briefs tabled before the Committee on Culture and Education (Committee) by a range of experts, organizations and sectors during the "Special consultations and public hearings on Bill 96". Very few, if any, of the substantive recommendations made by these experts to address grave impacts to fundamental rights and access to services, whether caused or perpetuated by the bill, were incorporated in the amendments adopted so far.

The Viens Commission has explicitly identified language barriers as a "vector of discrimination" in the delivery of services and formulated several cross-disciplinary measures and recommendations addressing language barriers to improve relations between public services and Indigenous peoples.¹ The Report states, at p. 235:

The first difficulty highlighted by the Commission is the fact that it is very often impossible for First Nation members and Inuit to have access to services in Indigenous languages or English, when those are their first and second languages.

The Report further includes the following testimony:

Simply put, what we're facing has to do with the availability of health professionals who speak English. There are several areas for which our people and other English-speaking people struggle with in receiving services. We're often talking about psychology, clinical social workers, speech therapist, to name a few.

The Report urged corrective action on the part of the government to rectify the situation, notably through Calls for Action 12-17, focusing on addressing these language barriers.

In its submission to the Committee, the Coalition of English-speaking First Nations Communities in Québec (CESFNCQ) (which includes Kanesatake, Akwesasne, Kebaowek First Nation, Gesgapegiag, Kahnawà:ke, Kawawachikamach, Kitigan Zibi, Listuguj, Long Point First Nation, Timiskaming, and Algonquins of Barriere Lake) raised specific issues in connection with the French Charter and Bill 96 and offered a series of recommendations to address such issues.

¹ Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec's Final Report [*Viens Report*], section 6.3.5: "Breaking down language barriers".

In its submission to the Committee, the AFNQL and its Regional Commissions and Organizations provided a thorough review of existing literature and an overview of the key impacts of language barriers and a colonial history of assimilation as factors inhibiting Indigenous students' success. The brief proposed a series of amendments to address these impacts, many focusing on securing exemptions for Indigenous students. The Quebec Ombudsman's submission to the Committee echoed several of the AFNQL's concerns and recommendations. It is worth noting that the Quebec Ombudsperson is currently tasked with assessing whether the calls to action of the Viens Commission are being implemented.

In its submission to the Committee, the Commission des droits de la personne et des droits de la jeunesse (CDPDJ) has examined the relationship between linguistic rights and fundamental rights and expressed grave concerns regarding the Bill's overly broad and ill-defined use of the notwithstanding clause to circumvent fundamental protections.

In short, the impacts of the current legal, political and social context are systemic, documented, and lived by Indigenous People every day. In its current form, not only does Bill 96 ignore the discrimination documented by the Viens Report and fail to address it, but it contains measures that will perpetuate and reinforce such barriers and, in some areas such as access to justice, erect new ones. Bill 96 represents a key opportunity to take corrective action to redress the barriers to access created by the *Charter of the French Language* and begin addressing systemic discrimination faced by Indigenous Peoples in Quebec. Unfortunately, the approach that has been adopted is instead worsening the situation. We trust that you would be able to see this exemplified by not only taking a more sober review of, and authentic regard for, the Viens Report, documented concerns of the AFNQL and CESFNCQ, and to the *Mohawk Council of Kahnawà:ke – Key Concerns on Bill 96* document attached to this letter. For your convenience, we have provided an updated version of the latter document to include some references to the wealth of evidence brought to the attention of the government of Quebec, which, so far, it has chosen to disregard.

In your letter of May 17th, you state that Bill 96 does not contravene any Indigenous rights to protect and develop our languages and cultures; that the proposed legislation purports to maintain status quo in its implementation with respect to Indigenous Peoples; and that there is no contradiction between promoting and enhancing the French language and protecting and developing Indigenous languages, and that both are possible and necessary. It must be noted that we were disappointed that the letter failed to substantively address any concerns the MCK raised during our May 13th meeting that are attributed to the reality that our community, as a result of being subject to colonialism, functions primarily in Kanien'kéha (Mohawk) and English. While we agree that in theory, there is a manner in which promoting and enhancing the French language and protecting and developing Indigenous realities is possible, the approach taken in Bill 96 is contrary to this. The simple breadth of the application of the proposed law will indeed not only impact our community members who function in English as a working language in interactions external to the community, but also have resultant effects on our ability to fully promote Kanien'kéha retention and revitalization.

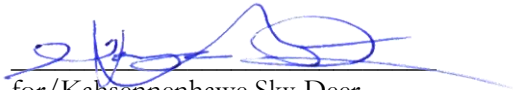
In this context, the solution is not to double down and reinforce the current, failed approach and lack of regard. Nor will a piecemeal approach suffice, given the breadth of already existing and documented impacts, the use of the notwithstanding clause to circumvent fundamental and constitutionally protected rights, and the blatant absences of guarantees and mechanisms to ensure Indigenous Peoples' rights will be enforced and that systemic discrimination will be addressed.

As was mentioned earlier in this letter, our community has been holding community meetings on the issue of Bill 96. At the most recent community meeting, in-depth discussions were held on the formal position of the community and related matters. Our community continues to strongly oppose the adoption of Bill 96, and in fact, has taken a resolute position that **Quebec must not pursue the legislation any further.**

To resolve this situation, the MCK proposes that the sponsoring Minister of the proposed legislation, supported by the Coalition Avenir Quebec, withdraw Bill 96 before it is tabled for 3rd reading on May 24th. The MCK request that Quebec undertake a responsible, humane and ethical approach to the situation by committing to withdrawing the proposed legislation and engaging in discussions with Indigenous Nations prior to future tabling of legislation to ensure that such efforts to promote language protection respect Indigenous interests and realities.

We advise you govern yourselves accordingly.

ON BEHALF OF THE OFFICE OF THE COUNCIL OF CHIEFS



for/Kahsennenhawe Sky-Deer
Ohén:ton Ì:iente ne Ratitsénhaienhs

Cc: National Chief Roseanne Archibald, Assembly of First Nations
Regional Chief Ghislain Picard, Assembly of First Nations Quebec-Labrador
Chiefs, Assembly of First Nations Quebec-Labrador
Prime Minister Justin Trudeau, Government of Canada
Minister Marc Miller, Crown-Indigenous Relations
Premier François Legault, Government of Quebec
Dominique Anglade, Quebec Liberal Party, Leader of the Official Opposition
Gabriel Nadeau-Dubois, Québec solidaire, Québec solidaire, Leader of the Second Opposition Group
Paul St-Pierre Plamondon, leader of the Parti Québécois
Claire Samson, MNA Conservative party of Quebec

**Mohawk Council of Kahnawà:ke – Key Concerns on Bill 96,
*An Act respecting French, the official and common language of Québec***

1. Bill 96’s approach to the protection of French fundamentally deviates from a respectful, Nation-to-Nation approach and the principle of peaceful and respectful coexistence

- The enshrinement of the principle of linguistic territoriality to protect French directly conflicts with a Nation-to-Nation approach and respectful relationships with Onkwehón:we (Indigenous People, the Original Peoples of this land);
- Enshrining French as the “sole and common” official language in Quebec attempts to negate and erase Indigenous Peoples, languages and nationhood; the absence of acknowledgement, status and protections afforded to Indigenous interests and languages in the bill further exemplifies this negation and the assimilatory nature of this instrument;
 - AFNQL submission, p. 16, section 2.3.1 : Indigenous Languages and First Nations Cultures in Québec.
 - CDPDJ submission, p.41.
- The bill and its amendments ignore the recommendations of the Truth and Reconciliation Commission, the Viens Commission as well obligations flowing from international instruments such as the *United Nations Declaration on the Rights of Indigenous Peoples*, which the National Assembly has committed to implementing;
- No meaningful and adequate engagement with Indigenous communities, Nations and groups on the impacts of the bill has taken place, and no real consideration of their concerns and recommendations is evidenced in the bill and its amendments.
- Exempting Indigenous People from the application of the *Act* will not compromise its stated goal to preserve the French language and culture. Insisting on applying these measures to Indigenous Peoples leads to the elements of colonialism and assimilation.
- The imposition of the French language and cultural identity on key aspects of Indigenous Peoples’ lives contradicts any pretense of respect and Nation to Nation approach to relations with Indigenous Peoples, as well as any stated desire to protect and preserve their languages and cultures.

2. The bill worsens barriers to equal access to health, social services and public services for Indigenous people, increasing vulnerability within already existing, documented discriminatory systems

- By elevating French language rights over other recognized rights, the bill undermines fundamental rights and worsens barriers to access to services including healthcare, social services and public services;
 - *Viens Report*, p. 235.
 - *Viens Report*, p. 243: discriminatory impact of the disparity in access to information was cited by several witnesses as harmful to Indigenous citizens in the context of service delivery. Calls for Action 14, 15, 16 & 17.
 - CEFSNCQ, p. 18, Issue 4: Lack of access to technical health and safety documents in English.
 - While the bill does not explicitly forbid speaking English and does in some sections state that a language other than French can be used, exceptions provided for in the bill and its amendments (e.g. for purposes of health, public safety or the principles of natural justice, s.22.3.1; application of s. 15 of the *Act respecting health services and social services*) are vague and insufficient.

Further, it is impossible to know how these will be interpreted and applied in practice. Some legal scholars note that these seem to suggest a case-by-case analysis will be conducted, possibly only allowing for the use of a language other than French in extreme cases and not for the overall provision of services to English-speaking service recipients.

- The new s.13.2 fleshes out the administration’s duty to use French in an exemplary manner, providing that even where, exceptionally, another language may be used, the administration may “not make systematic use” of that other language.
 - Combined with the narrow carve-out for the exceptional use of other languages and the provision stating that the use of a language other than French may not be systematic, this creates uncertainty and a reasonable interpretation that services in English may be limited or not guaranteed in all interactions.
 - Section 15 of the *Act respecting health services and social services* is about institutional obligations towards English people, and does not stop Bill 96 from mandating individual health and social service providers to communicate with their patients in French.
 - The bill amends many laws and the analysis of its impacts includes an assessment of how these amendments will be interpreted alongside laws such as the *Act respecting health services and social services*. As currently drafted, there is no clear statement protecting the rights of English-speaking Indigenous persons to access healthcare in English **at all times** – regardless of factors such as urgency, etc.
 - To adequately protect Indigenous Peoples, a carve-out must not be vague, narrow or open to such uncertainty, especially considering the bill’s interplay with other laws and policies at play and its cumulative impacts.
- The bill may further undermine the ability of English-speaking and Indigenous professionals to provide services to Indigenous individuals and communities, increasing the burden on community service providers offering services to Indigenous People;
 - *Viens Report*, p. 238: Impacts of application of the *Charter of the French Language* on recruitments of professionals called upon to work with Indigenous Communities / Calls for Action No. 12 and 13.
 - CEFSNCQ Submission, Issue 3: Insufficient exceptions for professionals working on reserve, p. 17 and following.
 - CEFSNCQ Submission, Issue 5: Increased burden on community organizations offering services particularly to Indigenous Peoples, p. 19.
 - Québec Ombudsman submission, section 2.4 : Élargir les dérogations pour les professionnels exerçant leurs activités dans une communauté autochtone, nonobstant leur lieu de résidence, ainsi que pour les interprètes et traducteurs en langues autochtones.
 - Collège des médecins du Québec submission, p. 16 : La présence de médecins en territoires autochtones.
 - The bill and adopted amendments ignore recommendations to address these concerns, as well as recommendations from the Viens Commission.
 - As for professional orders, the addition of sections 35.1 and 35.2 requirements significantly modifies the situation of non-French speaking

professionals. Under s. 35, while a professional had to have knowledge of the official language appropriate to the practice of the profession, he or she was “deemed” to have this knowledge if:

(1) he has received, full time, no less than three years of secondary or post-secondary instruction provided in French;

(2) he has passed the fourth or fifth year secondary level examinations in French as the first language;

(3) from and after the school year 1985-86, he obtains a secondary school certificate in Québec.

- The new section 35.1 requirements to maintain knowledge of the official language that is appropriate to the practice of the profession to hold a permit (35.1) is vague and ill-defined. It fails to demonstrate any relevance to the practice of the profession in community contexts and professional environments in communities that speak languages other than French;
- The new section 35.2 states that a professional order may take measures against a professional who does not maintain the level of knowledge appropriate to the practice of the profession (without defining this level). These measures include powers to inquire as to a professional’s level of French and to impose courses, a requirement to obtain a certificate from the OQLF (a proficiency test that has proven to be very difficult even for francophones), and go as far as empowering the creation of new obligations under s. 90 of the *Professional Code*, which, of course, are not yet defined.
- Professionals falling under the current section 35(3) would never be subject to language testing or any inquiry as to their French proficiency. The introduction of s. 35.2 now allows for a professional order, for “serious reasons” (a notion that is not defined or circumscribed in the bill), to require from a professional who currently holds a permit under their professional order to obtain a certificate issued by the OFQL, a requirement they were initially not subject to, having obtained a secondary school certificate from Quebec after 1985. Not only will professionals from other provinces be dissuaded or barred from practicing their professions in Quebec, but it is possible that current professionals may see their right to exercise their profession in this province taken away after these amendments.
- Consequently, this may result in professionals choosing to practice in another province or professionals currently practicing in this province leaving as a result of the application of s. 35.2.

3. The bill worsens barriers for Indigenous people, in particular youth, to fully pursue their educational and professional goals and aspirations, thus perpetuating neo-colonialism and genocide of Indigenous Nationhood

- The bill pits academic and professional success in Quebec against the protection, preservation and flourishing of Indigenous languages;
 - AFNQL Submission, section 2.4.1: Factors Inhibiting First Nations Student Success
- By imposing stricter requirements regarding the mastery of the French language to obtain educational credentials, the bill diverts individual and collective resources away from the

protection, revitalization and sustainment of flourishing Indigenous languages, in order to succeed within Quebec's educational system and access post-secondary institutions. This undermines the importance and centrality of Indigenous languages to thriving Indigenous cultures;

- AFNQL Submission, Section 2.4, Literature Review: First Nations Student Success, Cultural Pride and First Nations Control of First Nation Education.
 - Québec Ombudsman Submission, Section 2.2 : “Contribuer à la réussite éducative des jeunes autochtones ».
- The bill maintains and reinforces strict linguistic requirements to hold permits issued by professional orders (56 professions, including: lawyers, doctors, dentists and nurses) that are out of touch with the reality of Indigenous communities and may dissuade or prevent Indigenous students from entering such professions or practicing their profession in this province, further restricting Indigenous students and workers' professional horizons in Quebec.
 - *Viens Report*, p. 238: Impacts of application of the *Charter of the French Language* on recruitments of professionals called upon to work with Indigenous Communities / Calls for Action No. 12 and 13.
 - CESFNCQ submission, Issue 2: Reduced access to provincial health services in English, p. 13 and following.
 - The requirement to take five French courses may result in lowered success of Indigenous and anglophone students and could impact their entry into competitive professional programs such as law school, medicine or engineering, which may restrict the representation of Indigenous people in these professions as well as the availability of English or Indigenous language-speaking professionals serving Indigenous communities.
 - In addition, as a result of these additional requirements, many Indigenous parents may be forced to consider putting children in French schooling earlier on to ensure their success in CEGEP, effectively placing Indigenous parents in the difficult position of having to forgo sending their child to an Indigenous language school in their primary years in order to prepare them to succeed at CEGEP.
 - It must be noted that language impacts values and world views and that Indigenous language schools also teach Indigenous cultures, values and traditions. The choice of what primary school a child goes to impacts the very fabric of Indigenous societies, particularly in light of the legacy of genocidal and assimilationist policies such as the Indian Day Schools and Indian Residential Schools.
 - It must also be noted that francophone students can use their time and course load to take courses of interest or those that will help them prepare for post secondary studies, while Indigenous students will be spending those credits trying to succeed at a colonial language.

4. The bill erects additional barriers to access to justice for Indigenous People

- The bill raises numerous concerns in relation to access to justice, including provisions that will impact self-represented litigants and the imposition of additional translation costs for court filings and proceedings, among other concerns.

- *Viens Report*, p. 311: "Access problems: Inherent language barriers, limited access to interpreters, and the flagrant ignorance of the main actors in the judicial system as to the history and culture of Indigenous peoples have been identified earlier in this report as major obstacles to the accessibility of services.
- Canadian Bar Association – Quebec Division submission, p. 4-5: « L'exigence d'une traduction certifiée en français pour tout acte de procédure émanant d'une personne morale »
 - While litigants can address the court in English, there may be less judges who are bilingual and able to understand and hear English cases – this will add to judicial delays that are already problematic.
 - The obligations to have all documents and proceedings translated into French will result in significant added costs and delays (legal translations are very specialized, time consuming and expensive). There is also the strong possibility that nuances will be lost through misinterpretations from the translation of concepts from Indigenous languages, to English (if that is their second language or the language of their lawyers) to French, with the original meaning at risk of being lost.
 - For situations involving Indigenous rights violations or in any matter requiring an injunction of safeguard order, additional unjustifiable delays will in all likelihood be imposed as a result of the requirement of the French translations. For example, some legal tests require that the applicant demonstrates the urgency of the motion. Indigenous communities and Nations are already at a disadvantage given typical timeframes within the justice system do not reflect Indigenous realities, such as unavailability as a result of people engaging in traditional activities, or the time needed for collective decision-making based on extensive discussions and/or consensus, which many Indigenous communities and Nations engage in.
 - Geographic remoteness of many communities/Nations that are located far from legal services and/or courts is not taken into account when imposing additional costs and burdens to translate documents into French.
 - As already documented, it must be reiterated that Indigenous People are already at a serious disadvantage when taking legal action or defending themselves against the state, without the imposition of Bill 96's additional burdens. Whether in the context of the protection of Indigenous Lands, child protection, or other areas impacting their rights and interests, Indigenous Peoples do not benefit from the resources at the state's disposition, which this furthers the systemic inequality in access to justice.

5. The bill uses s. 33 of the *Canadian Charter of Rights and Freedoms* (notwithstanding clause) to override fundamental constitutional rights, curtailing legal recourses to protect and enforce constitutionally protected rights.

- CESFNCQ submission, p. 11.
- CDPDJ submission, p. 37 and following : « Le recours à la disposition de dérogation ».
 - The Canadian Charter was created to protect people from governments. Governments are to govern *under* these fundamental rights and freedoms, and not to exempt their politics from constitutional protections by shielding

legislation from constitutional challenges and recourses by invoking the notwithstanding clause.

6. It is anticipated the bill will negatively affect interactions and relationships with municipal and provincial bodies, undermining relationship-building efforts and progress on key priority areas.

- The bill restricts the availability of key information and documents impacting Kahnawà:ke's rights and interests in English (e.g. bylaws, regulations, land-use plans, etc.) and imposing unjustifiable costs to access this information in English;
 - The Supreme Court has emphasized that the ability of Indigenous communities to obtain key documentation in a language that they understand is crucial to the meaningful implementation of the Crown duty to consult. The Crown's duty to consult requires, at a minimum, that the parties "talk together for mutual understanding". For instance, see *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 (CanLII), [2017] 1 SCR 1069, paragraph 46. Basic accessibility of information is compromised by Bill 96. Not only is the imposition of additional translation burdens on Indigenous communities unacceptable, but it is also not feasible and will further worsen the quality of consultation and the capacity of Quebec to meet the requirements of its duty to consult, even more so in the context of Quebec's practice of imposing tight timelines for consultation.
- The application of the civil administration's duty to use French exclusively and in an exemplary manner raises concerns in relation to ongoing negotiations and engagement in the context of Québec-Kahnawà:ke Relations;
 - Viens Report, p. 243-244, Call to Action 17.
 - The bill provides that the French version of agreements concluded with Indigenous communities and Nations will have precedence over other versions, which is incompatible with the principle of mutual respect and a Nation-to-Nation approach.
 - Indigenous Nations will need additional resources in order to have bilingual lawyers or translators to ensure that French documents accurately reflect the English versions and the intention of the parties.
 - Historically, treaties with First Nations were drafted in the mother tongue of the colonial government, and this has been the version of the documents that has been used to explain what the agreement between the parties were. This has led to many injustices as the parties have interpreted the documents differently and whereby the Indigenous record of those interactions and agreements has not been given equal weight.