


*Report on the implementation of the Act
respecting mainly the implementation
of agreements on labour matters between
the Gouvernement du Québec
and the Mohawk Council of Kahnawake
and on the advisability of amending It*



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Message from the Minister

Jacques Chagnon
President of the National Assembly of Québec
Parliament Building
Québec City (Québec) G1A 1A4

Dear Mr. President:

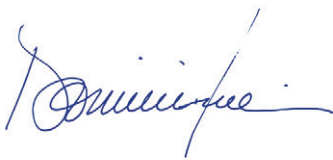
I am pleased to forward to you, for tabling in the National Assembly, the Report on the implementation of the *Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake and on the advisability of amending It*.

In accordance with the provisions of the Act, the report provides a detailed accounting of the implementation of this bill since it received assent on December 5, 2014. In particular, the report describes the actions taken since then to enable the application of this Act in an effective manner. In addition, the report addresses the question of whether or not to amend the Act.

In carrying out this mandate, the Government was able to count on the collaboration of the Commission des normes, de l'équité, de la santé et de la sécurité du travail, the Commission de la construction du Québec, the Régie du bâtiment, the Secrétariat aux affaires autochtones and the Mohawk Council of Kahnawake. I would like to express my sincerest gratitude to them.

Sincerely,

Minister responsible for Labour,



Dominique Vien

Québec City, January 2018



Legal deposit - Bibliothèque et Archives nationales du Québec, 2018

ISBN: 978-2-550-80626-4 (print)

ISBN: 978-2-550-80627-1 (PDF)

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1. *Introduction*

In December 2014, the *Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake* was enacted into law.

Section 11 of this Act provided that the Minister of Labour must, no later than December 5, 2017, report to the Government on the implementation of the Act and the advisability of amending it.

In addition, this report had to be tabled within the following 30 days in the National Assembly or, if it was not sitting, within 30 days of its resumption. It also provided that the appropriate committee of the National Assembly study the report.

2. Background

Since January 2007, numerous discussions have taken place between the Commission de la santé et de la sécurité du travail (CSST), now called the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), the Mohawk Council of Kahnawake (MCK), the ministère du Travail (MTRAV), now the ministère du Travail, de l'Emploi et de la Solidarité sociale (MTESS), and the Secrétariat aux affaires autochtones (SAA) regarding contributions by employers to the Québec occupational health and safety system. The MCK wished to reach an agreement that employer contributions be paid to the Mohawk Self Insurance Program (MSIP) instead of the CSST at the time.

In June 2009, the Cabinet issued a decree concerning the approval of a declaration of understanding and mutual recognition as well as a framework agreement for the negotiation of new sectoral agreements with the MCK.

The framework agreement was signed on July 16, 2009, and expressly provided that the parties negotiate a new sectoral agreement in the field of labour. It made specific reference to labour standards and the relationship between the CSST and the MSIP, and it specified that the parties should endeavour to conclude such a sectoral agreement within one year. Negotiations were therefore initiated in the area of occupational health and safety, as well as in the qualification of construction workers.

Negotiations led to the conclusion in 2011 of a general, comprehensive and permanent agreement on the occupational health and safety system applicable to the Kahnawake territory. The agreement provided that the special plan should also apply to the Honoré Mercier Bridge construction sites.

In 2011, discussions on the qualification of Mohawk construction workers led to the conclusion of the Interim Agreement on Certain Conditions Applicable to Kahnawake workers on Honoré Mercier Bridge Contract B, specifically the replacement of bridge decking, also in 2011. This agreement provided that the MCK, in compliance with the laws and regulations governing the construction industry, should be responsible for recognition of the qualification of Kahnawake workers undertaking repair work on the Honoré Mercier Bridge within the framework of the execution of Contract B.

The legislative amendments required to give effect to these two agreements were made in June 2011 by Bill 17, an *Act to provide for the implementation of special plans concerning employment injuries and occupational health and safety as well as labour relations, vocational training and workforce management in the construction industry*. The amendments applied only to these two agreements in a specific way.

Despite the signing of the Interim Agreement on Certain Conditions Applicable to Kahnawake workers on Honoré Mercier Bridge Contract B, a disagreement as to its interpretation meant that it was not applied. In addition, it became obsolete as a result of the postponement of work under Contract B. A new labour agreement was therefore required. Discussions began in 2013 and led to the conclusion of the Agreement on Labour in July 2014. However, to be implemented, the agreement required legislative amendments.

This agreement permitted the application of rules in several aspects of work (workers' compensation, occupational health and safety and construction) on the reserve's territory, including work at the Kateri Memorial Hospital Centre and the Honoré Mercier Bridge. It provided for cooperation between the institutions of Québec and Kahnawake in defining and implementing the special plan in Kahnawake. This plan had to be similar to the Québec plan since it needed to pursue the same objectives and fulfill the main requirements.

3. *The Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake*

Bill 21, an *Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake* was presented to the National Assembly on November 11, 2014. It was enacted into law on December 5, 2014.

The purpose of this Act is to authorize the implementation of agreements between the Government of Québec and the Mohawks of Kahnawake that allow the application of a special plan for Kahnawake relating to matters within the scope of the Act Respecting Industrial Accidents and Occupational Diseases, the Building Act, the Act Respecting Labour Relations, Vocational Training and Workforce Management in the Construction Industry, and lastly, the Act Respecting Occupational Health and Safety.

More particularly, the Act establishes that such agreements must provide that the Kahnawake plan contain standards similar to those defined in the acts concerned and that these agreements apply, unless otherwise provided, despite anything to the contrary in any of those acts. It also allows the Government to take, by regulation, any measure necessary to implement the agreements, which are to be posted on the respective websites of the ministère du Travail, de l'Emploi et de la Solidarité Sociale, the ministère du Conseil exécutif and the bodies concerned. The law requires that these agreements be tabled in the National Assembly. It also provides that these agreements and regulations must be studied by the appropriate committee of the National Assembly.

In addition, the Act provides that the newly enacted provisions apply to the *Agreement on Labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake*, approved by decree 730-2014 on July 24, 2014, and that three years after its assent, a report on its implementation be tabled in the National Assembly for examination by the appropriate committee.

Lastly, the law amends the corporate name of the Association provinciale des constructeurs d'habitations du Québec inc (APCHQ), which is now the Association des professionnels de la construction et de l'habitation du Québec inc.

To summarize, a section has been added to each of the four acts to permit the application of a special plan. It includes the following components:

- allows the implementation of any agreement relating to a matter covered by these acts concluded between the Government of Québec and the Mohawks of Kahnawake;
- unless otherwise stated in the agreement, its provisions apply despite anything to the contrary in the act in which it is entrenched;
- the Government may, by regulation, take any measure necessary to apply those provisions, in particular provide for any adaptations that must be made to the provisions of a law or a directive to take account of the agreements. Regulations made under this provision would require the prior approval of the Mohawks of Kahnawake;
- the Minister of Labour and the organizations concerned must post on their respective websites any agreements covered by these provisions.

4. *Effects of the Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake, and its outcome*

The *Act Respecting Mainly the Implementation of Agreements on Labour between the Gouvernement du Québec and the Mohawk Council of Kahnawake* permitted the approval of the 2014 Agreement on Labour. The latter was tabled on November 25, 2014 during special consultations to study the bill. This is an extremely important agreement since it paves the way for greater collaboration between the institutions of Québec and Kahnawake.

The Agreement covers several aspects of the labour field (workers' compensation, health and safety of workers, qualification of skills, construction sector) for all sites on the Kahnawake reserve and the Honoré Mercier Bridge.

Cooperation between the Québec institutions with respect to work and to Kahnawake is proposed by this agreement in order to implement a special plan in Kahnawake. This plan must be similar to the Québec plan since it must pursue the same objectives and meet the main requirements. To achieve this, Kahnawake set up a local labour office that will interact with Québec institutions. Also, in order to respect the spirit of the agreement advocating autonomy, the determination of similarity of character between the Kahnawake and Québec plans is the responsibility of this local labour office.

The agreement provides that complementary agreements would make it possible to specify the details of how the Kahnawake plan would work. Section 7 of the agreement provides that the parties will conclude complementary funding and financial agreements, which will define, among other things, the administration of contributions and compensation between the parties.

In addition, since the adoption of the legislation, work has been completed in implementing the 2014 Agreement on Labour. This led to the Mohawks creating the Kahnawake Labour Office (KLO), which works in collaboration with Québec labour institutions.

In addition, a complementary agreement was negotiated, approved by the Cabinet on November 1, 2017 and signed in December 2017. It aims at implementing the Kahnawake plan to compensate victims of work accidents and occupational diseases, as well as preventively withdrawing workers who are pregnant or breastfeeding. This complementary agreement defines the procedures for administering the contributions and compensation between the parties, as provided in the 2014 Agreement on Labour, and undertakes, with the CNESST, to implement a mechanism that ensures the financial security of the Kahnawake plan.

4. *Effects of the Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake, and its outcome (continued from previous page)*

The guiding principles for the administration of the contributions and compensations provided for in the agreement are as follows:

- the Kahnawake plan provides universal coverage for Kahnawake workers;
- Kahnawake workers are compensated by the KLO, regardless of their employer and place of work;
- workers residing outside the Kahnawake territory (Québec workers) who work in the Kahnawake territory are compensated by the CNESST;
- Kahnawake contractors contribute to the KLO for all their workers (from Québec and Kahnawake);
- contractors whose head office or principal establishment is located outside the territory of Kahnawake (Québec contractors) contribute to the CNESST for all their workers (from Québec and Kahnawake);
- the KLO reimburses the CNESST for the compensation it pays to workers in Québec who are employed by contractors in Kahnawake;
- the CNESST reimburses the KLO for the compensation it pays to Kahnawake workers employed by Québec contractors.

This complementary agreement, which sets out the main principles, will be supplemented by agreements of an administrative nature between the CNESST and the MCK in order to define the implementation and monitoring procedures. These administrative agreements between the CNESST and the MCK are not subject to the tabling requirement in the National Assembly.

5. Conclusion: implementation and advisability of amending the Act

a. Implementation of the Act

Various actions of the Government since the adoption of the *Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake* show that this legislation is relevant and has been applied.

First, adoption of this Act has made it possible to implement the 2014 Agreement on Labour. It is fundamental to Québec-Kahnawake relations, as it covers several aspects of the labour field (workers' compensation, health and safety of workers, qualification of skills, construction sector). It allows the MCK to assume full autonomy and exercise its power over the territory defined by this agreement. For its part, the CNESST will no longer be responsible for compensation for work-related accidents in the territory defined in this agreement nor for recovering compensation from employers.

As the provisions in this *Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake* permit other agreements to be concluded without amending the laws concerned each time, a complementary agreement has made it possible to benefit from the effects of this law to the satisfaction of both parties (Complementary Agreement on the Implementation of the Kahnawake Plan for the Compensation of Victims of Work-related Accidents and Occupational Diseases and for the Preventive Withdrawal of Pregnant or Breastfeeding Workers).

In addition, the decree concerning the approval of the Complementary Agreement on the Implementation of the Kahnawake Plan for the Compensation of Victims of Work-related Accidents and Occupational Diseases and for the Preventive Withdrawal of Pregnant or Breastfeeding Workers provides for agreements to be reached between the parties amending this agreement or the Agreement on Labour, complementary agreements thereto and administrative agreements made pursuant to section 24.6 of the *Act respecting industrial accidents and occupational diseases* and section 8.7 of the *Act respecting occupational health and safety* will be excluded from the application of sections 3.8 and 3.49 of the *Act respecting the Ministère du Conseil Exécutif*. It will therefore be possible to conclude these agreements without the approval of the Cabinet.

b. Advisability of amending the Act

The text of the *Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake* has been drafted to permit the conclusion of any labour agreements in relation to one of the following four acts:

- the *Act respecting industrial accidents and occupational diseases* (chapter A-3.001);
- the Building Act (chapter B-1.1);
- the *Act respecting labour relations, vocational training and workforce management in the construction industry* (chapter R-20);
- the *Act respecting occupational health and safety* (chapter S-2.1).

The *Act respecting mainly the implementation of agreements on labour matters between the Gouvernement du Québec and the Mohawk Council of Kahnawake* has achieved its intended purpose. Therefore, it does not seem advisable to amend it.

