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RE: Kanien'kehá:ka of Kahnawà:ke Declaration on Bill S-3

Shé:kon/Greetings,

We the People, the Kanien'kehá:ka of Kahnawà:ke are located on sovereign Kanien'kehá:ka (Mohawk) Territory in what is referred to as the province of Quebec by Canada, just fifteen minutes south from the major metropolitan city of Montreal. We hereby submit this declaration to express our position on Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada*, and to highlight the impacts that it will have on our everyday lives, culture, language, land base, and our future generations. We view this legislation as part of Canada's strategy to assimilate our people.

The Kanien'kehá:ka of Kahnawà:ke denounced and did not participate in *The Collaborative Process*, as there was nothing 'collaborative' about it. Crown Indigenous Relations and Northern Affairs Canada (CIRNAC) was the delegated authority to carry out this process, and it was developed without any input from Indigenous Peoples. There was also no mechanism to ensure that our opinions on this matter would be accurately represented; despite the fact that we did not participate, we felt it was imperative to express our position outside of *The Collaborative Process*.

Technicians from the Mohawk Council of Kahnawà:ke took the initiative to inform and engage with our community. Over twenty community engagement sessions regarding Bill S-3 were held over the course of a few months, where hundreds of community members were informed about the Bill and its potential impacts. It was through these sessions and learning about Bill S-3 that infuriated and forced us to volunteer to take this stance against this and defend the rights and interests of our People.

We would like to point out that the historic colonial oppression, along with the initiation of *The Indian Act* have undoubtedly negatively impacted our community in numerous ways. Policies and institutions such as federally established Indian Residential Schools, Indian Day Schools and land expropriations like the International Saint Lawrence Seaway have all led to the near destruction of our distinct language and culture, inflicted emotional and physical trauma on children and their families, and as a result, intergenerational trauma still exists and persists in our community today.

Our community views Bill S-3 as another attempt by the federal government to intrude on our way of life, culture, language and beliefs, which is completely unacceptable. While we acknowledge that the historic discrimination in *The Indian Act* against Indigenous women regarding Indian status is unjust, **our community refuses to accept the fact that the federal government will create new status Indians who will be tied to the Mohawks of Kahnawà:ke without our consent. We exercise authority and jurisdiction to create and**

**implement our own laws. Therefore, the Will of the Kanien'kehá:ka of Kahnawà:ke will supersede any Foreign laws from any external government.**

We are able to confirm that this is our community's position through the results of a feedback form administered after presentations and the results of a community wide survey on Bill S-3. Below are some direct quotes from anonymous community members on this matter.

***I feel that people who will be [registered under S3] do not care about the issues we face [as] Onkwehón:we, who live and are immersed in our beliefs [and] culture”;***

***“I would like for the federal government to know that its not right. We have been oppressed... for far too long, and it needs to stop”;***

***“Although [Bill S-3] attempts to... right the wrongs, it was not done thoroughly [nor] does it consider the impacts [on communities]. It is a major threat to us no doubt. Could be the Feds’ strategy to assimilate us once again; this is dangerous”.<sup>1</sup>***

While there are some exceptions, the majority of our community maintains this view of Bill S-3. We would like to now remind you that Canada officially adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2016. Bill S-3 violates several articles in the UNDRIP, most notably:

Article 19:

*“States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”<sup>2</sup>*

Bill S-3 was passed as legislation by the federal government of Canada on December 22, 2017, without free, prior and informed consent from any Indigenous peoples, which violates the UNDRIP. This piece of legislation will affect all Indigenous peoples throughout Canada, yet *The Collaborative Process* consultation method was only developed and carried out after the Bill was passed.

Article 33.1:

*“Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live”.<sup>3</sup>*

We view Bill S-3 as an attempt by the federal government to appropriate the inherent right of Indigenous Peoples to determine who their own members are; the passage of Bill S-3 allows the federal government to create new status Indians who will be tied to the Mohawks of Kahnawà:ke. This does not respect the fact that Kahnawà:ke has a mechanism in place to create laws through community input and consultation, nor does it respect the fact that each and every nation across Canada has the right to determine their own membership and residency criteria without scrutiny from the federal government. Bill S-3 is a huge imposition by Canada on the issue of membership

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<sup>1</sup> Annex A

<sup>2</sup> “United Nations Declaration on the Rights of Indigenous Peoples For Indigenous Peoples.” *United Nations*, United Nations, [www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html](http://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html).

<sup>3</sup> “United Nations Declaration on the Rights of Indigenous Peoples For Indigenous Peoples.” *United Nations*, United Nations, [www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html](http://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html).

and residency identification in Kahnawà:ke. No Nation, including Canada, has the right to determine and impose criteria for belonging to another nation.

#### Article 8

1. *“Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their cultures”*
2. *“States shall provide effective mechanisms for the prevention of, and redress for:*

*“(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;*

*(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;*

*(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;*

*(d) Any form of forced assimilation or integration;*

*(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them”.*<sup>4</sup>

Response to a): A study conducted by Stewart Clatworthy indicated that the proposed “6(1)A All the Way” amendment, which has now passed but not yet in force, would extend registration entitlement under section 6(1) to all those individuals who can trace their ancestry to at least one person who was entitled to registration dating back to 1869<sup>5</sup>. This will clearly extend eligibility criteria to hundreds of thousands of people, many of whom were not raised with an Indigenous identity, traditions, language, customs, etc. This will transform the very fabric of what it means to be an Indigenous person in Canada.

Response to b): Bill S-3 will bring about a dramatic increase to the ‘Indian’ population in Canada, and this will undoubtedly put enormous stress on reserve lands and resources. According to Clatworthy, about 99% of the increased “Indian” population will be made up of persons residing off reserve.<sup>6</sup> For Kahnawà:ke, this is a major concern as communal land and resources are already becoming sparse. Bill S-3 will definitely cause those persons with newly acquired Indian Status to want to relocate to our community, as we are considered to be an ‘urban’ reserve and are in proximity to a major Canadian city; Montreal. Our community cannot and will not sustain an influx of population; it will dramatically and quickly deplete our lands and resources.

Response to d): Creating hundreds of thousands of new ‘Indigenous people’ who may have very little to no connection to Indigenous practices, languages and cultures and granting them status, is a form of assimilation. Over time, the integration of hundreds of thousands of people who are presently considered non-Indigenous into our small Indigenous communities throughout Canada will erode our culture, languages, and identities. Without these practices and traditions, we will no longer be a distinct people. We view this as forced integration, which the Kanien’kehá:ka of Kahnawà:ke will not accept.

**Therefore, we would like to state that on behalf of the Kanien’kehá:ka of Kahnawà:ke, both the federal government of Canada and CIRNAC do not have consent from our community to continue to add eligible persons under Bill S-3 onto the federal registry of the Mohawks of Kahnawà:ke. We demand that you stop**

<sup>4</sup> “United Nations Declaration on the Rights of Indigenous Peoples For Indigenous Peoples.” *United Nations*, United Nations, [www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html](http://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html).

<sup>5</sup> Clatworthy, S.J, An Assessment of the Population Impacts of Select Hypothetical Amendments to the Indian Act, prepared for Indigenous and Northern Affairs Canada, 22 September 2017.

<sup>6</sup> Clatworthy, S.J, An Assessment of the Population Impacts of Select Hypothetical Amendments to the Indian Act, prepared for Indigenous and Northern Affairs Canada, 22 September, 2017.

adding these persons onto the federal registry of the Mohawks of Kahnawà:ke, due to the fact that individuals who will be getting registered under Bill S-3 will have a false sense of belonging if they do not meet Kahnawà:ke's membership criteria. Kahnawà:ke has had its own Membership Law since 1984, and we maintain that it is up to our community to decide who is a Kanienkehaka of Kahnawake or who reside amongst us; the federal government of Canada cannot unilaterally dictate who should belong in Indigenous Nations across the country, as this is yet another violation of International standards.

As mentioned previously, we the Kanien'kehá:ka of Kahnawà:ke have had the opportunity to take part in the Kahnawà:ke bill S3 survey. When asked what we should do to maintain our authority over membership criteria, the most popular response was: **"Negotiate an agreement with Canada that respects Kahnawà:ke's full jurisdiction and authority over membership"**.

We would now like to remind you that this is not the first time our community has asserted our authority and jurisdiction over our territory to the federal government of Canada. "In 1947-48, the Haudenosaunee communities of Kahnawake, Akwesasne and Kanehsatake appeared before the Joint Senate and House of Commons Committee of the Parliament of Canada" in order to assert our rights. "The Kahnawake delegation was a unified representation of band council chiefs and traditional chiefs... [and] they informed the Committee that we were already in possession of rights and privileges as a nation, and that we were sticking by our treaties and principles of the Two Row Wampum".<sup>7</sup>

Again in 1981, the Canadian government was reminded of the Haudenosaunee Confederacy's jurisdiction and authority to govern our own communities. Prior to the passage of the Canadian Constitution in 1982, the Haudenosaunee Confederacy stated that the Constitution would have "no jurisdictional authority within our territories or concerning our peoples"<sup>8</sup>. It was stated that "any effort to subjugate our people within 'Canada' [was] in violation of our right of self-determination under international law, for which we will hold you responsible within the world community. We will resist any attempts to force jurisdiction or alienation of our lands upon us with all means at our disposal"<sup>9</sup>.

In 2019, we remind the federal government of Canada again that the passage of legislation such as Bill S-3 without our consent is a violation of our right to self-determination and jurisdictional authority. We hereby demand that you respect the authority and collective will of the Kanien'kehá:ka of Kahnawà:ke to determine who we recognize as our People and what rights and entitlements they can exercise on our lands. "All of the burdens of the Descheneaux decision arise because of the government's decision[s] between 1951 and 1985 to include marrying-in/out" (Nadijiwan Law Office). The Kanien'kehá:ka of Kahnawà:ke did not create the gender discrimination in the Indian Act, and therefore we should not be burdened with the consequences of the federal government of Canada's mistakes or any liabilities created as a result of it.

Skén:nen/Peace,

The Kanienkehá:ka of Kahnawà:ke

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<sup>7</sup> Statement of the Haudenosaunee concerning the Constitutional Framework and International Position of the Haudenosaunee Confederacy. Print.

<sup>8</sup> Shenandoah, Audrey, and Tadodaho. "The Grand Council of the Haudenosaunee." Received by Her Majesty, Queen Elizabeth II, The Six Nations Iroquois Confederacy, 29 Nov. 1981, Onondaga Nation, New York.

<sup>9</sup> Shenandoah, Audrey, and Tadodaho. "The Grand Council of the Haudenosaunee." Received by Her Majesty, Queen Elizabeth II, The Six Nations Iroquois Confederacy, 29 Nov. 1981, Onondaga Nation, New York.