BILL 59

An Act to modernize the occupational health and safety regime

Brief submitted to the
Committee on Labour and the Economy

January 2021

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1. INTRODUCTION

The Québec Mining Association ("the QMA") was founded in 1936 to respond to health and safety issues in mines, and its members today continue to take workplace health and safety ("WHS") very seriously. The mining industry is a driving force behind Québec's economy, and workers' wellbeing is a key priority. Whether the focus is on health, safety or working conditions, every possible action is taken to ensure that the men and women who choose to work in the mining sector can achieve their full personal and professional potential. The pool of qualified workers available in Québec is one of its competitive advantages, and everything possible must be done to provide a safe working environment. For all these reasons, and in a spirit of cooperation, the QMA is submitting this brief on Bill 59, An Act to modernize the occupational health and safety regime ("the Bill").

1.1 Overview of the mining industry

1.1.1 Accident prevention and WHS record

In terms of health and safety, Québec's mining industry is a leader. Its practices are used as models, and WHS concerns are deeply embedded in the organizational culture and in the behaviour of all workers, managers and subcontractors. With respect to the health and safety regime in mines, there are no hierarchical levels and everyone plays a role in limiting risk. By relying primarily on prevention and training, the actions taken over the years have borne fruit, as shown in Figure 1 below which presents changes in the accident rate and temporary work assignments in the mining sector.[1] It should be noted in passing that in 2019, Québec's mining sector recorded a low number of accidents, 75, for a total of 24,727,628 hours worked. There can be no doubt that the mining sector should be proud of this outstanding record that results from mobilization at all hierarchical levels.

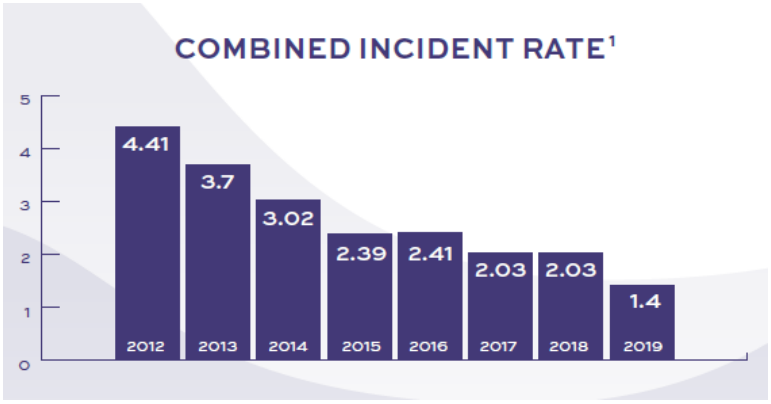

Figure 1 – Changes in the combined incident rate for the mining industry in Québec

[1] The combined incident rate represents the number of accidents resulting in compensation or a temporary work assignment per 100 workers, for 200,000 hours worked (50 weeks x 40 hours x 100 workers).

1.1.2 Economic benefits

The mining industry offers direct employment to almost 17,000 workers in Québec, and this increases to over 48,000 workers when indirect and induced jobs are included. With a total payroll of $1.8 billion annually, the average salary is $104,000.

Québec's mining industry spends around $10 billion each year, and also supports an extensive network of 3,800 suppliers in all regions of Québec. Few people realize that, after the Abitibi-Témiscamingue region, Greater Montréal is home to the second largest number of suppliers: 1,100 in all, including 686 on the Island of Montréal.

The mining industry generates annual revenues of $1.3 billion for the Québec government, and contributes $9 billion to the province's GDP.

This data demonstrates the importance of the mining sector for Québec's socio-economic prosperity.

Québec's mining sector has to compete with the rest of the planet. In other words, investors looking for a place to invest consider locations around the world and select a jurisdiction that offers both foreseeability and winning conditions. This is why it is necessary to ensure that legislative amendments do not harm the development of Québec's mineral sector.

2. GENERAL COMMENTS ABOUT THE BILL

The QMA supports the primary objective of the Bill is to modernize the health and safety regime. This is a necessary step that must be taken to ensure that it reflects current workplace practices. The QMA also agrees that preventing risks in the workplace is a key component in the modernization of the occupational health and safety regime in Québec. It also looks favourably on any measure that can help workers return to work quickly after sustaining a workplace accident and prevent it from becoming a chronic injury.

However, the QMA is concerned by some elements of the Bill, and in this section focuses on its general concerns that extend beyond the actual text of Bill 59. In other words, the comments in this section relate to irritants present in various provisions of the Bill but also in other existing laws and regulations. Several of the amendments proposed will undermine the foundations of the regime, and this is an issue for the QMA.

2.1 The shift from an insurance plan to a social plan

In Québec, compensation for vocational injuries can be traced back to 1909, with the passage of the Quebec statute respecting compensation for injuries to workmen.[2] This was the first time that the idea of vocational risks was considered, and that responsibility for compensating the victims of workplace accidents fell to employers, rather than to

[2] 1909 (Que), 9 Edw. VII, c. 66

general civil liability provisions. A few years later, following a report dated October 31, 1913 by Judge Ralph Meredith, the province of Ontario followed the same path.

There can be no doubt that Québec's plan for the compensation of employment injuries is a group insurance scheme, as pointed out by the Supreme Court of Canada in Bell Canada v. Quebec (Commission de la Santé et de la Sécurité du Travail) 1 1988 RCS 749:

> "In general, workmen's compensation schemes, whether in British Columbia, Quebec or the schemes in all or most of the provinces, are statutory insurance schemes of no-fault collective liability, which replace the former systems of individual civil liability based on fault."

The result, today, is that Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) plays the role of the insurer in a public workers' compensation scheme, financed by employer assessments based on the rates set by the CNESST. However, in the last few years in Québec, this fair and equitable insurance scheme has begun a slow shift towards a social plan that diverges fundamentally from insurance principles.

This means, for example, that provisions have been added concerning the preventive withdrawal of female workers who are pregnant or breast-feeding. Several categories of people have been included who are not workers in the ordinary sense of the word, and compensation is provided for injuries that belong more to the personal than to the occupational sphere.

One example is the program For a Safe Maternity Experience, which is not based on an insurance principle such as compensation. Instead, it is a social program that, although clearly of merit, should be paid for by the Québec parental insurance scheme. It is important to note that the existing regulations do not require the automatic withdrawal of the worker from the workplace, which is what currently happens, but instead the reassignment of pregnant or breast-feeding workers. No similar program exists anywhere in Canada.

This is why Québec employers, who bear all the costs for the compensation scheme, lose some of their competitive edge compared to their competitors in the other Canadian provinces. This is the conclusion reached in a report by Morneau-Shepell / Morency Société d'avocats, after completing an exhaustive analysis of the main elements of Bill 59 compared to the provisions currently governing other workplace accident plans in Canada (Ontario, Alberta, British Columbia and Manitoba).[3] As a result, the Québec regime costs employers far more than their counterparts in other provinces.
For several aspects, Québec comes last in terms of the cost of compensation and the number of cases not settled, creating extra costs estimated at up to $1 billion for Québec employers.

[3] *Projet de loi 59 : Loi modifiant le régime de santé et de sécurité du travail – Comparaison interprovinciale et recommandations*, 13 January 2021

2.2 Increase in the powers of the CNESST and undermining of the paritarian approach

The QMA has noticed that over the years, and even more so if Bill 59 is passed as it stands, the CNESST has been moving away from its traditional role as an insurer to exercise an increasing array of powers to the detriment of employers and workers. In other words, at a general level, the QMA is worried about the numerous additional powers that will be given to the CNESST.

The current provisions of the Act respecting occupational health and safety and its regulations cover all the factors that protect the safety of workers by eliminating sources of risk. As more time passes and more attempts are made to broaden the scope of the Act, one of its founding elements, the paritarian approach, is being eliminated.

The Bill's undermining of the paritarian approach is a major concern for employers in the mining sector, in particular because several provisions are designed to distance them from the process, or state that they will only be consulted if needed. It is important to remember that the Act respecting occupational health and safety, when it came into force in 1979, was seen as innovative because it gave both workers and employers a joint mission to ensure health and safety in the workplace via paritarian structures. However, since then and especially if Bill 59 is passed, the paritarian approach has been steadily eroded to give the CNESST more power.

The proposed amendments to the Act respecting occupational health and safety include new provisions that will have a significant impact on the way employers manage their businesses, and will also increase the red tape created by the Act while generating extra costs.

It is also foreseeable that the application of the provisions will create various problems with a negative impact on labour relations, especially given the extra powers assigned to health and safety representatives and health and safety committees.

The QMA also considers that several proposed amendments will not have the desired effect, and may even lead to a contrary outcome. In its specific comments, it will show how Bill 59 moves away from the principles of the paritarian approach that forms the foundation for Québec's existing prevention and compensation scheme for employment injuries.

2.3 Excessive regulatory powers

Bill 59 makes it possible to adopt a large number of rules relating to the application of the Act by making new regulations.

Although it is easier to amend a regulation than an Act, it is important, prior to the passage of Bill 59, to define the measures that will be included in regulations that deal with substance and not just form.

For example, what is the extent of the regulatory power mentioned in section 8 of the Bill, amending section 30 of the Act, or of the amendment in section 97 of the Bill, which will define how the new section 329 of the Act respecting industrial accidents and occupational diseases applies in new regulations?

It is customary to provide for a power to make regulations to specify certain technical matters. **However, Bill 59 provides broad regulatory powers in certain situations where it would be preferable to see the provisions concerned in the body of the Act itself.**

2.4 Qualification of inspectors

The provisions of Chapter 10 of the Act respecting occupational health and safety in connection with inspections are one of the foundations of the Act, and inspectors play a key role. It is important to specify that "inspectors are appointed and paid under the Public Service Act and are therefore public servants working for the CNESST."[4]

In general, it is admitted that the powers of inspectors are administrative, since they apply regulatory standards and their actions result in decisions that are essentially administrative in nature.[5]

Recently, in 2019, the CNESST, in a case against Les Constructions L.P.J. inc.,[6] claimed that its inspectors had autonomous powers for the application of the penal measures set out in the Act respecting occupational health and safety.

Although the court considered that inspectors have broad powers of investigation and correction, it concluded that "only the CNESST, via its regional director and with assistance from its attorneys, has the power to assess, decide, or institute penal proceedings (s. 242, par. 104)."

In other words an inspector is not, as has been stated frequently in recent times, an "internal organization" within the CNESST who can act at will. Inspectors are necessarily governed by CNESST policies and subject to the oversight of their superiors.

In addition, the *Règlement intérieur de la CNESST*[7] states, in section 11, that the CNESST is under the direction of the chair of the board of directors and chief executive officer, who exercises the powers conferred by the Public Service Act, and in other words has ultimate authority over the public servants working for the Commission.

Obviously, the QMA supports the inspection process for mine facilities by CNESST inspectors, but it has observed numerous shortcomings in the way inspections are conducted over the years.

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[4] Droit de la santé et de la sécurité au travail, Les Éditions Yvon Blais, 3e éd., 2018, Me Bernard Cliche et als.
[5] Traité de droit de la santé et sécurité au travail, Les Éditions Yvon Blais, 1993, Bernard Cliche, Serge Lafontaine, Richard Mailhot
[6] Commission des normes, de l'équité, de la santé et de la sécurité du travail c. Les Constructions L.P.J. inc., 2019 QCCQ 6559
[7] S-2.1, r.11.1

This situation was recognized by the Auditor General of Québec in 2019. After conducting a performance audit of the workplace health and safety inspections performed by the CNESST, the Auditor General pointed out that "to ensure effective and efficient inspections, the CNESST must define its priorities, and program and supervise its activities. It must also supervise implementation and see to the professional development and skills upgrading of its inspectors."[8]

The Auditor General of Québec was extremely critical of the inspectors and wrote, in a summary of the highlights, as follows:

> "The CNESST provides little guidance for its inspectors on how to assess responsibility for health and safety in the workplace and improvements to the inspection process have been delayed. This reduces the coherency and effectiveness of its inspections."[9]

The Auditor General added:

> "The CNESST does not ensure that the knowledge of its experienced inspectors is upgraded and that the support provided by its network of expertise is sufficient to promote the quality and consistency of its inspections across the province."[10]

In fact, over the years, the CNESST has experienced a significant loss of expertise in terms of the qualifications and training of its inspectors. For example, several years ago it employed around 120 engineers belonging to the Ordre des ingénieurs du Québec (OIQ), of whom two thirds worked in inspection and the remainder in other duties. Now, it employs only about thirty members of the same Order, most of whom are assigned to administrative duties.

This loss of expertise has had a substantial impact on all Québec employers, including those in the mining sector. In June 2018, the Administrative Labour Tribunal released a key decision, of over 200 pages, concerning various decisions made by CNESST inspectors with respect to an underground mining method used in practically all underground mines in Québec. The CNESST inspectors had decided to prohibit the method on the ground that it was dangerous.

The effect of this prohibition decided by inspectors led to costs of several tens of thousands of dollars for the mines concerned. Of all the CNESST inspectors who intervened on this matter, only one was a mine engineer. One was a psychoeducator, another was a forestry engineer, a third was a junior chemical engineer and a fourth was a technician in the field of water treatment and industrial safety.

The mining companies concerned provided testimony from numerous experts, including the heads of the mine engineering departments at Polytechnique and Université Laval, along with several international experts. They also testified to the fact that the method used was safe.

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[8] Rapport du Vérificateur général du Québec à l'Assemblée nationale pour l'année 2019-2020, Rapport du commissaire au développement durable, May 2019, chapter 3, p.27 [translation]
[9] Idem, p.3 [translation]
[10] Idem [translation]

The decision by the Administrative Labour Tribunal contained 1,100 paragraphs, but the QMA will cite only a few dealing directly with the inspectors' qualifications. The Tribunal stated as follows:

> "Based on the evidence, did the inspectors' decisions result from an objective, serious and rigorous assessment of the facts and the circumstances that triggered their intervention?" [paragraph 1 001 of the decision]
>
> "As indicated above, it is not mandatory for the inspector to have seen the contested method before prohibiting it but it is reasonable to ask whether, if the inspector had seen the method, the decision would have been the same. It is therefore preferable for this to be the case, in order to assess the risks and dangers and to ensure that the assessment of the risk or danger is not just theoretical."
> [paragraph 1002 of the decision]
>
> "The Tribunal notes that inspectors clearly relied on the technical knowledge and opinion of their "mining expert", Mr. St-Pierre, and that his opinion influenced, and even transcended, the following stages of the case. Some (…) had not even read the expert reports of Dr. Watson and Dr. Liu, and relied on his interpretation. His opinion became the "corporate position" of the Commission on the subject of mucking under loaded holes or holes being loaded." [paragraph 1 003 of the decision]
>
> "Mr. St-Pierre testified at length at the hearing as an ordinary witness, at the request of the applicants. **The Tribunal must state, from the outset, and given the importance of the case, that it was not impressed by the witness's preparation and often muddled brief, even though he knew he was one of the central witnesses in the case**, and this greatly affected his credibility." [paragraph 1 007 of the decision] [our emphasis]
>
> "**The Tribunal also wonders about some of the sources, such as Google and Wikipedia, that Mr. St-Pierre used to document his position**. The Tribunal was informed by the expert witnesses that there are several tools, databases and research banks that specialize in mine engineering, and that contain hundreds of thousands of references and are readily accessible. The IRSST has also collated a mass of information and data." [paragraph 1 008 of the decision] [emphasis added]

This example clearly proves the accuracy of the conclusions in the Auditor General's report concerning the CNESST approach to inspections. It is unfortunate that this is the case, since the role of inspector is fundamental to the fair and reasonable enforcement of the provisions of the Act respecting occupational health and safety. Inspectors have enormous powers and should normally be well trained, competent and fair when making their decisions.

The Bill contains various provisions concerning harassment and other psycho-social factors in the workplace. Inspectors will clearly be required to rule on these sensitive matters, which raises a number of questions. What training will they have received?

What human or professional qualities will they possess to intervene in highly delicate situations, often including factors that have nothing to do with work?

It is hard to think that inspectors will be given new duties while they still have difficulty performing their current duties. This is a major concern for the Québec Mining Association and its members.

2.5 Increased costs for employers

There are no studies to specify the actual costs of all the provisions included in Bill 59, even though the costs will be paid entirely out of the already high assessments paid by employers.

The Morneau-Shepell / Morency study shows that the average provincial rate for the CNESST (2021) is currently higher than for the main worker's compensation boards in Canada (+29 % compared to Ontario and +55 % compared to Alberta). The higher rate places an additional burden of more than $640 million on Québec employers, compared to those in Ontario, and of more than $1 billion compared to those in Alberta.[11]

For the mining sector in particular, the QMA compared the mining sector assessment rates for 2021 in Québec, Ontario, British Columbia and Alberta, all provinces with a strong mining sector. There is a huge difference in assessment rates, always to Québec's disadvantage, and can reach practically 100%. In 2021, for the various categories applicable to the mining sector in Québec, the assessment was always above $4 per $100 of eligible wages, while in the other Canadian provinces, the maximum rate never exceeds $2.73.

According to the Minister of Labour, accident prevention can reduce employers' costs. However, there is a limit to what can be achieved, and the mining sector is already a leader in the field. The introduction of new prevention measures alone cannot reduce costs and assessments for employers. Other actions are needed. The QMA believes that to maintain a reasonable level of costs, an effort must be made in the area of compensation and the return to work.

Bill 59 does not estimate the costs generated by the extension of all prevention measures to all sectors, and especially to small and medium-sized enterprises.

In addition to the increased costs generated by the Bill, the compensation and accident prevention system will also become far more bureaucratic.

2.6 Priority given to the attending physician

The Act respecting industrial accidents and occupational diseases gives priority to the opinion of the attending physician, whether for decisions involving treatment, care, functional disability or permanent impairment. As mentioned in the Morneau-Shepell / Morency report, "Québec's is the only legislation that gives priority to the worker's physician for important decisions such as diagnosis, date of consolidation, care and

[11] *Projet de loi 59 : Loi modifiant le régime de santé et de sécurité du travail – Comparaison interprovinciale et recommandations*, 13 January 2021, p. 9

treatment, or permanent impairment and functional disability. (…) This approach, in fact, creates a major barrier to the return to work process and leads to an increase in court cases."[12]

Only an appeal to the Bureau d'évaluation médicale (BEM), with the inevitable costs and delay, can reverse the opinion of the attending physician.

The BEM therefore plays a determining and indispensable role, and this situation is unique in Canada when the various universal compensation plans are compared.

The QMA is worried that Bill 59 is intended to give other powers to the attending physician, who must be consulted not only for temporary work assignments, as is already the case, but also for some aspects of rehabilitation.

This gives too much importance to the attending physician who knows little or nothing about the workplace concerned and is not equipped to determine the relevance of stopping or resuming work or the capacity for work. The physician is in fact in a situation of conflict of interest, either with his/her patient, with his/her employer or with the CNESST. The provisions that specifically concern the medical aspects of a claim, with priority given to the attending physician and a right of appeal to the BEM, have a major impact and create the conditions that lead to a chronic outcome, while Québec is already the Canada-wide champion for the duration of periods of invalidity.

The attending physician also has powers for referrals to physiotherapy and occupational therapy. Over time, and while the other provinces have limited the number of treatments to between 20 and 30, the number has been rising in Québec and increasing the length of the period of invalidity.

The role of the attending physician has another direct impact, since it prevents the CNESST from acting as a genuine insurer. The compensation officer is bound by the medical aspects of the case and the obligation to follow a strict medical procedure removes any possibility of acting as a proactive player in a rapid return to work.

In the view of the QMA, it is clear that the system must be completely reviewed because, as the Conseil du patronat du Québec (CPQ) mentions, "the priority role of the attending physician is to diagnose and treat an illness or injury, in accordance with the rules of conduct governing the physician as part of the physician/patient relationship. Over time, the role of the attending physician has become more difficult because of all the administrative elements included in the Act respecting industrial accidents and occupational diseases and the Act respecting occupational health and safety, which divert the physician from his or her role as the patient's caregiver. In fact, the CPQ has met physicians who claim that the decisions they have to take at the administrative level often interfere with their strictly medical decisions, which can undermine the relationship of trust they have with their patients."[13]

[12] Idem, p. 43

[13] *Commentaires du CPQ, projet de loi n°59 Loi concernant la modernisation du régime de santé et sécurité du travail*, January 2021, p.39 [translation]

2.7 Trend towards over-compensation

The current provisions of the Act respecting industrial accidents and occupational diseases result, in some cases, in a divergence away from the principle of full compensation for the injury suffered. The method used to calculate the indemnity for finding employment for a full-time employee with a contract for an indeterminate term generally raises no problems, but the method used to establish the base wages in order to calculate the income replacement indemnity for other types of work can be problematic.

For employees with a discontinuous employment contract, such as part-time, on-call or seasonal work, the income replacement indemnity is annualized from the 15th day of absence as if the employees had a permanent, full-time position, which obviously does not match their employment or the wages actually lost.

Another example is workers with two jobs, for whom the income replacement indemnity is calculated based on the best-paid job, as if it was held full-time. Obviously, this leads to over-compensation.

3. SPECIFIC COMMENTS

This section presents the specific concerns of the mining industry with regard to individual sections of the Bill. The sections concerned are reproduced here to make it easier to understand the QMA's comments, and the comments themselves are highlighted in a text box. Only the sections that raise concerns for the QMA, or with which it agrees, are included.

3.1 Amendments made by Bill 59 to the Act respecting industrial accidents and occupational diseases

Section 2 of Bill 59:

> "Section 2 of the Act is amended
>
> (…)
>
> (4) by inserting the following definitions in alphabetical order:
>
> ""his employment" means the employment held by the worker when he suffered his employment injury defined in particular on the basis of his regular work schedule and the tasks actually performed;
>
> (…)"

QMA comment:

The QMA requests that the reference to the regular work schedule be removed from the definition. It is too limiting for employers. The definition should read as follows:

> ""**his employment**" means the employment held by the worker when he suffered his employment injury defined particular on the basis of the tasks actually performed;";

Section 8 of Bill 59:

> Sections 29 and 30 of the Act are replaced by the following sections:
>
> "29. A worker who meets the eligibility criteria for the claim that may be prescribed by regulation is presumed to be suffering from an occupational disease if he is suffering from a disease determined by regulation and if, on the day he receives the diagnosis of the disease, he meets the special conditions prescribed by regulation in relation to the disease.
>
> "30. A worker not presumed to be suffering from an occupational disease under section 29 and who meets the eligibility criteria for the claim that may be prescribed by regulation is considered to be suffering from an occupational disease
>
> (1) if he is suffering from a disease arising out of or in the course of employment and not as a result of an industrial accident or of an injury or disease caused by such an accident; and
>
> (2) if he satisfies the Commission that his disease is characteristic of work he has done or is directly related to the risks peculiar to that work."

QMA comment:

Sections 29 and 30 of the Act respecting industrial accidents and occupational diseases are amended essentially to replace the reference to Schedule I of the existing Act by a reference to the new Regulation respecting occupational diseases.

It is a good idea to review the diseases presumed to be occupational diseases, since medical knowledge has progressed greatly since 1985, when the Act respecting industrial accidents and occupational diseases was passed. In addition, making it possible to amend the list of occupational diseases by regulation adds flexibility to the process as a whole. However, the QMA has several questions and concerns about the parameters used to introduce new occupational diseases to which the presumption will apply.

Among the criteria introduced by the new Regulation are criteria concerning the duration of exposure. Do epidemiological studies exist on this topic? Which experts were consulted, etc.?

For example, with respect to hearing impairment, the threshold for daily exposure is set at 85 dBA for eight hours per day for a minimum of two years. On what data, for example, is this two-year period based?

With respect to injuries relating to musculoskeletal disorders, the QMA notes that epicondylitis is still not listed as a diagnosis that leads to the application of the presumption. The list of diagnoses needs to be made limitative to exclude epicondylitis, given the emergence of jurisprudence that tends to assimilate epicondylitis with tendinitis.

In addition, the new Regulation specifies that the exposure must have lasted two months, a period that appears too short. There is also no indication of its scientific basis.

The daily exposure of less than 50% of the time worked is another concern, since it may extend the application of the presumption, increasing the burden on employers who will have to rebut it.

In fact, many of these provisions need to be reformulated. At the very least, the third paragraph of Division VI of the new Regulation respecting occupational diseases, contained in the proposed amendments to the Act respecting industrial accidents and occupational diseases, needs to be withdrawn.

Other questions can be asked about the Regulation respecting occupational diseases, in particular concerning the inclusion of some mental disorders in Division VII.

The definition of post-traumatic stress disorder is vague and needs to be checked against the Diagnostic and Statistical Manual of Mental Disorders (DSM 5) of the American Psychiatric Association. In addition, for claims of stress-related occupational injury, personal factors are extremely important. However, nothing is provided in this connection in Division VII.

In addition, section 8 of Bill 59, amending section 30 of the Act respecting industrial accidents and occupational diseases, provides for the existence of a future regulation. Since this is a key issue, the QMA believes that the content of this future regulation should be made known now, or else the provision should be withdrawn.

Section 13 of Bill 59:

> "Section 38 of the Act is amended by striking out "and the physical rehabilitation record" in the fifth paragraph."

QMA comment:

Access to the medical record of a worker who files a claim with the CNESST is limited by the fact that only the health professional designated by the employer can have access to the medical record concerned.

In the view of the QMA, section 13 of Bill 59 misses its target and avoids a crucial question. Section 38 of the existing Act contradicts the jurisprudence of the higher courts, and in particular the Québec Court of Appeal and the Supreme Court of Canada, with respect to the right of an employer to access the medical record of its worker in connection with the locus of the injury concerned.

The QMA asks that changes be made to section 13 to give employers access to a worker's medical record instead of limiting access to the health professional designated by the employer. Obviously, the employer would have to respect the confidentiality of the record.

Section 16 of Bill 59:

> "Section 44 of the Act is amended by adding the following sentence at the end of the second paragraph: "That employment becomes, for the purposes of this Act, his employment."

QMA comment:

The QMA refers readers to its general comments on over-compensation in section 2.7 of this brief.

Section 17 of Bill 59:

> "Section 48 of the Act is amended
>
> (1) by replacing the first paragraph by the following paragraph:
>
> "Where a worker who has suffered an employment injury is again able to carry on his employment or an equivalent employment after the expiry of the time prescribed to exercise his right to return to work, his right to the income replacement indemnity provided for in section 45 is extinguished when the earliest of the following events occurs:
>
> (1) the reinstatement of the worker in his employment or an equivalent employment;
>
> (2) the refusal of the worker, without valid reason, to be reinstated in his employment or an equivalent employment;
>
> (3) a decision of the Commission concluding that the reinstatement of the

worker does not impose undue hardship on the employer; or

(4) one year has elapsed since the date on which the worker was again able to carry on his employment or an equivalent employment.";

(2) by replacing "the cessation of his employment" in the second paragraph by "his cessation of employment"."

QMA comment:

This provision in section 17 of Bill 59 should be changed to ensure that the income replacement indemnity cannot last for one year. Québec is the only Canadian province that specifies a one-year period. In general, the other Canadian provinces allow an income replacement indemnity that lasts 15 to 20 weeks. In addition, it is conditional on the fact that the worker must actively look for work under the direct supervision of a government agency.

As reported by Morneau-Shepell and Morency Société d'avocats in their study, "it is inconceivable for the Act respecting industrial accidents and occupational diseases to have no framework for monitoring the job-search activities of a worker during this 12-month period. The income replacement indemnity is paid automatically for a year, with no obligation on the worker to report on his or her job search efforts. (…) This period is clearly too long and (…) it is inconceivable that there is no obligation to demonstrate an effort to find work. This approach does not match the Minister's objective of a quick and sustainable return to work. We are a long way from the "better at work" concept promoted by most employment injury boards in Canada."[14]

It is important to note that in Québec, over 80% of workers "exhaust" the 52-week period referred to here.

As a result, the QMA asks Québec to reduce the gap with the other Canadian provinces and to set a time limit on the income replacement indemnity that matches the average for those provinces.

Section 19 of Bill 59:

"Section 53 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

"A worker 60 years of age or over who suffers an employment injury and who sustains, by reason of that injury, permanent physical or mental impairment that renders him unable to carry on his employment is entitled to the income replacement indemnity provided for in section 45 until he holds a new employment or until he holds or refuses to hold a suitable employment available with his employer or determined by the Commission.";

[14] Projet de loi 59 : Loi modifiant le régime de santé et de sécurité du travail – Comparaison interprovinciale et recommandations, Morneau-Shepell / Morency Sociétés d'avocats, 13 janvier 2021, p.68

(2) by replacing “a suitable employment with his employer” in the second paragraph by “an available suitable employment”;

(3) by replacing “with his employer and the latter” in the third paragraph by “and his employer”.”

QMA comment:

The QMA agrees that the right to an income replacement indemnity should be set at 60 years of age in some circumstances.

However, **the QMA would like to see it specified that a worker who retires loses his or her right to the income replacement indemnity.**

Section 27 of Bill 59

“The Act is amended by replacing the heading of Division I of Chapter IV and section 145 by the following:

“DIVISION I

“REHABILITATION MEASURES BEFORE CONSOLIDATION

“145. On accepting a claim for an employment injury and before the consolidation of the injury, the Commission may grant the worker rehabilitation measures that are adapted to the state of his health and favour his vocational reintegration, in the cases and on the conditions set out in this chapter and prescribed by regulation.

For that purpose, the Commission may, in collaboration with the worker and the employer, implement measures with the employer that favour the worker’s reinstatement, in particular by developing his capacity to gradually resume the tasks involved in his employment.

“145.1. The Commission shall submit the rehabilitation measures provided for in section 145 to the physician in charge of the worker when it considers it necessary that he determine whether implementing the measures is appropriate, considering the state of the worker’s health.

“145.2. Where the Commission considers, before the consolidation of a worker’s employment injury, that the worker will likely be entitled to a personal rehabilitation program due to the nature of the employment injury, it may, for a purpose other than to favour the worker’s vocational reintegration, grant the worker rehabilitation measures required by the state of his health, in the cases and on the conditions set out in this chapter and prescribed by regulation.

“145.3. The rehabilitation measures granted by the Commission under this division cease on the earliest of the following dates:

(1) the date of consolidation of the worker’s employment injury;

(2) the date of completion of the measures; or

(3) the date on which the Commission determines that the measures are no longer necessary or appropriate.

Despite the consolidation of the worker's employment injury, a measure granted by the Commission under this division may be maintained or included, as the case may be, in the personal rehabilitation program referred to in section 146.

"145.4. Where the employer temporarily assigns work during completion of the rehabilitation measures provided for in this division, only the measures that compromise the assignment must be interrupted.

"145.5. Where the Commission implements measures under the second paragraph of section 145, the employer may, in accordance with the rules established by regulation, select one of the options provided for in the second paragraph of section 180."

QMA comment:

The QMA agrees with the new text for section 145, except that, **once again, the content of the future regulation is not yet known.**

In section 145.1, the QMA does not agree that the physician in charge of the worker should be consulted. The worker is in a far better position to decide whether the implementation of the suggested measures is appropriate.

In addition, the employer is completely excluded from the process, which is inadmissible in particular with regard to the principles of the paritarian approach described above.

As a result, the QMA requests that the new section 145.1 be withdrawn from Bill 59.

In general, the provisions of sections 145.1 to 145.5 are relatively substantial. The objective is to prevent an injury from becoming chronic and ensuring that the worker returns to employment as quickly as possible. Based on past experience, the CNESST provides little assistance in this area.

Section 28 of Bill 59:

"Section 146 of the Act is amended

(1) by adding the following paragraph at the beginning:

"A worker who, as a result of the employment injury he has suffered, sustains permanent physical or mental impairment is entitled to rehabilitation, in the cases and on the conditions set out in this division and prescribed by regulation.";

(2) in the first paragraph,

(a) by replacing “the worker’s right to rehabilitation, the Commission shall prepare and implement, with the worker’s collaboration” by “that the worker is able to exercise that right, the Commission shall prepare and implement, with the collaboration of the worker, and of the employer if the latter’s participation is required”;

(b) by striking out “physical,”;

(3) by replacing “worker’s collaboration” in the second paragraph by “collaboration of the worker and, where required, of the employer”.”

QMA comment:

This provision does not make the collaboration of the employer or its participation mandatory. Instead, it refers to the “collaboration of the worker, and of the employer if the latter’s participation is required” and adds “where required” in the last paragraph. This is a move away from a mandatory requirement that the employer and worker do everything they can together to ensure a quick return to work. This is another illustration of the undermining of the paritarian approach, and the QMA is vehemently opposed to this trend. How can an amendment like this, which goes against the founding principles of the regime, be proposed?

As a result, the QMA requests that the words “if the latter’s participation is required” in paragraph 2(a) and “where required” in paragraph 3 be withdrawn.

In addition, a future regulation is provided for. Since the regulation will concern the substance of the plan, **the principle of the regulation should be made known immediately or included in the Act.**

Last, in light of existing collective agreements, where applicable, it will be hard to reintegrate a worker in a job where the question of seniority can be an obstacle to obtaining a specific position.

Section 31 of Bill 59:

“Section 152 of the Act is amended

(1) by replacing “may include, in particular,” in the introductory clause by “shall include”;

(2) by adding the following paragraph at the end:

“(6) other rehabilitation measures, in the cases and on the conditions prescribed by regulation.””

QMA comment:

Limits must be placed on the costs eligible under a social rehabilitation program. For example, what is the limit on requests for the reimbursement of the cost of ordinary maintenance work on the residence, provided for in paragraph 5 of section 152 of the existing Act, which are granted almost automatically, with no prior check to see if the work is genuinely ordinary maintenance work?

Similarly, the new paragraph 6 of section 152 of the Act respecting industrial accidents and occupational diseases provides for the possibility of other rehabilitation measures, in addition to those prescribed, in the cases and on the conditions prescribed by regulation. **The remarks already made with respect to the future regulation containing questions of substance apply here, meaning that the QMA considers that the regulation should be made known immediately.**

Section 33 of Bill 59:

"Section 167 of the Act is amended

(1) by replacing "may include, in particular," in the introductory clause by "includes";

(2) by replacing "assistance in finding employment" in paragraph 4 by "job search support services";

(3) by replacing "position" in paragraph 6 by "work station";

(4) by adding the following paragraphs at the end:

"(9) progressive return to work;

"(10) other rehabilitation measures, in the cases and on the conditions prescribed by regulation.""

QMA comment:

The addition of a progressive return to work to the vocational rehabilitation program opens up the possibility of a considerable increase in the number of progressive returns resulting from a physician's prescription. This provision must be applied reasonably, and current experience raises a number of doubts. A widespread reliance on progressive returns to work will become exceedingly costly and difficult for employers to administer.

The QMA opposes the addition of other rehabilitation measures by regulation, since section 167 of the Act respecting industrial accidents and occupational diseases, as amended by section 33 of Bill 59, already appears sufficient.

Section 34 of Bill 59

"The Act is amended by inserting the following sections after section 167:

"167.1. Where the Commission determined, before the employment injury appeared, that the worker was unable to carry on an employment, that employment may not constitute his employment for the purpose of determining the worker's capacity. The Commission shall then evaluate his capacity to carry on his employment on the basis of another employment he usually held or the employment the Commission already determined he had the capacity to carry on.

"167.2. Where a worker who has suffered an employment injury, whether or not he sustained permanent physical or mental impairment, is able to carry on his employment, an equivalent employment or a suitable employment available with his employer, the Commission may, if the period of absence or the situation of the worker warrants it, provide for his progressive return to work in order to facilitate his reinstatement with his employer.

In such a case, the Commission shall grant financial support to the employer for a maximum period of eight weeks according to the option provided for in the second paragraph of section 180 that he chooses, in accordance with the rules established by regulation. Such financial support constitutes a rehabilitation benefit.""

QMA comment:

This section both maintains the existing section 167 and adds sections 167.1 and 167.2.

Section 167.1 is incomprehensible as worded, and it is therefore hard to make any comments.

Section 167.2 fails to take into account the need for the CNESST to select the most economical solution, and sets no limits. The maximum period of eight weeks for the granting of financial support to the employer appears to be too short.

Section 35 of Bill 59:

"Section 169 of the Act is amended

(1) in the first paragraph,

(a) by replacing "disability" by "limitation";

(b) by striking out "before the expiry of the period for the exercise of his right to return to work";

(2) by replacing "and after consulting the employer" in the second paragraph by "and, if the participation of the employer is required, the employer's collaboration"."

QMA comment:

Once again, there is no mandatory consultation of the employer. In fact, in a number of sections introduced by Bill 59, the reference to the employer's collaboration in rehabilitation procedures should be simply reversed.

In other words, it should be specified, as was the case previously, that the employer must necessarily be consulted. The exception introduced by the Bill must become the rule in order to respect the paritarian approach. Currently, the opposite rule applies: the employer is excluded, and only participates if the CNESST considers it necessary. With provisions like these, the legislator appears to forget that Québec's occupational health and safety regime is based on a paritarian approach, with the employer and the worker as the two cornerstones.

The QMA requests that the current working of the second paragraph of section 169 of the Act respecting industrial accidents and occupational diseases be maintained, and that paragraph 2 of section 35 of Bill 59 be withdrawn.

Articles 36 et 37 of Bill 59:

"**36.** Section 170 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

"Where no rehabilitation measure exists that may enable a worker to carry on his employment or equivalent employment, the Commission shall determine whether there is any suitable employment available with the employer, evaluating in particular whether any rehabilitation measures are required to enable the worker to carry on such an employment. If so, the Commission shall inform the worker and his employer of the existence, where that is the case, of a rehabilitation measure that may enable the worker to carry on that employment.";

(2) by replacing "worker's collaboration and after consulting" in the second paragraph by "collaboration of the worker and of";

(3) by adding the following paragraph at the end:

"The rehabilitation program may include other measures than those set out in section 167, such as adjusted tasks and changes to the work schedule or work organization, provided those measures do not alter the nature of the employment."

37. The Act is amended by inserting the following sections after section 170:

"170.1. Irrespective of the expiry of the period prescribed to exercise the right to return to work, the Commission may require that the employer, a health and safety representative within the meaning of the Act respecting occupational health and safety (chapter S-2.1), a representative of the worker's union or a representative of another union representing employees of the employer, as the case may be, to provide it with the information and documents necessary for determining the worker's capacity to hold his

employment or an equivalent employment or for determining a suitable employment available with the employer.

The employer shall allow the Commission to have access to the worker's work station or to another work station so it can render a decision on the worker's capacity to carry on his employment, an equivalent employment or a suitable employment and on its availability.

The information and documents referred to in the first paragraph concern, in particular, a detailed description of the employments with the employer, the physical demands of those employments and their potential availability, the work adaptation and reorganization possibilities and, as the case may be, the provisions of the collective agreement.

"170.2. The employer shall, unless he proves the existence of undue hardship, collaborate in the implementation of the measures that must be carried out in his establishment.

"170.3. The employer is deemed to be able to reinstate the worker from the date on which the worker is again able to carry on his employment or from the date on which he becomes able to carry on an equivalent employment or a suitable employment available with his employer where such an event occurs before the expiry of the period for exercising his right to return to work.

Unless he is able to prove the existence of undue hardship, the employer is presumed to be able to reinstate the worker when the latter is again able to carry on his employment or becomes able to carry on an equivalent employment or a suitable employment available with his employer after the expiry of the period for exercising his right to return to work.

"170.4. The Commission may order an employer who refuses to comply with the obligations provided for in sections 170.1 and 170.2 or to reinstate a worker despite a decision establishing the worker's capacity to hold his employment, an equivalent employment or a suitable employment to pay to the Commission, within the time it specifies, a monetary administrative penalty equivalent to the cost of the benefits to which the worker could have been entitled during the period in which the employer failed to comply with those obligations or reinstate the worker, where applicable, but of which the amount may not be greater than the annual amount of the income replacement indemnity to which the worker is entitled.

Before issuing an order under the first paragraph, the Commission shall notify the employer in writing of its intention and of the employer's alleged failure. It shall grant the employer at least 10 days to remedy the failure, present observations or, where required, produce documents.

Sections 322 to 325 apply, with the necessary modifications, to an employer who is in default of payment of a monetary administrative penalty imposed under the first paragraph.""

QMA comment:

Bill 59 introduces what the CNESST doubtless considers to be the employer's obligations resulting from the *Caron*[15] decision of the Supreme Court of Canada concerning the reasonable accommodation of a disabled worker.

The QMA disagrees with the approach taken by the CNESST, which for all practical purposes gives itself exclusive jurisdiction, even stating that any decision it makes must be applied immediately. It diverges substantially from the conclusions of the Supreme Court in *Caron* and from the very notion of reasonable accommodation, since in each case accommodation should be defined by the disabled worker, on the one hand, and the employer, on the other.

The actual competency of the public servants given responsibility for ruling of complex questions normally dealt with by the courts is a matter of great concern. In fact, the Bill assigns the employer's role to the CNESST, which is unacceptable for the QMA.

There is a huge difference between allowing the CNESST to ensure compliance with the obligation of reasonable accommodation by an employer, and allowing the CNESST to take charge and to make decisions on all matters relating to reasonable accommodation.

Reading Bill 59, it is impossible to avoid the conclusion that the CNESST may impose on the employer, without its agreement, the suitable equivalent employment it has determined.

And for the concept of measures "that do not alter the nature of the employment" introduced by Bill 59, why even introduce such a concept? A reference to the notion of undue constraint is all that is required.

Bill 59 will also have a significant impact on the way in which employers manage collective agreements with respect, in particular, to the work schedule, seniority, etc. The employer and its workers are the people with the best knowledge of the jobs in the enterprise. The CNESST does not possess the necessary knowledge.
In light of the above, the QMA suggests that sections 36 and 37 of the Bill should be completely rewritten.

This is made even more important by the fact that the penalties provided for by Bill 59 in the new section are substantial and will lead to multiple disputes. In addition, in cases where the employer wins a dispute, there is no mention of how it will obtain the reimbursement of the amounts owed.

Clearly, the new sections 170 to 170.4 introduced by Bill 59 are unacceptable and must be totally redrafted.

[15] Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) c. Caron, 2018 CSC 3

Section 39 of Bill 59:

"Section 173 of the Act is replaced by the following section:

"173. The Commission shall provide job search support services to a worker who has suffered an employment injury where he is unable, as a result of his injury, to carry on his employment and where he becomes able to carry on a suitable employment that is not available.

The Commission shall also provide job search support services to a worker who has suffered an employment injury, whether or not he sustained permanent physical or mental impairment, where he is again able to carry on his employment after the period for exercising his right to return to work has expired and where his employer does not reinstate him in his employment or in an equivalent employment.""

QMA comment:

The QMA would agree with this provision if the time or duration of the support services were specified. As worded, the provision opens up the prospect of payments over an unlimited period and with no oversight.

Section 40 of Bill 59:

"Section 174 of the Act is amended by replacing "assistance in finding employment" and "refer" by "job search support services" and "direct", respectively."

QMA comment:

The QMA agrees with this provision, which provides assistance for the worker if needed. However, as mentioned in the comment on section 39 of Bill 59, a time limit should be specified.

Sections 42 and 43 of Bill 59:

"**42.** Section 179 of the Act is amended

(1) by inserting ", using the form prescribed by the Commission," after "may" in the introductory clause of the first paragraph;

(2) by inserting the following paragraphs after the first paragraph:

"An employer may not temporarily assign work to a worker if the physician in charge of the worker has not recorded his favourable opinion on the form prescribed by the Commission. The physician in charge of the worker shall also indicate on the form his findings regarding the worker's temporary

functional limitations resulting from his injury.

The employer shall send the duly completed form to the Commission on obtaining the opinion of the physician in charge of the worker. The form must be sent even if the physician's opinion regarding the assignment proposed by the employer is not favourable.";

(3) in the last paragraph,

(a) by replacing "with the physician" by "with the physician's favourable opinion";

(b) by replacing "the report of the physician" by "the physician's opinion".

43. Section 180 of the Act is replaced by the following section:

"180. The employer shall pay the worker who performs the work he temporarily assigns to him the salary or wages and benefits attaching to his employment and to which he would have been entitled if he had continued to carry on that employment.

Where the employer assigns work to the worker involving a number of hours that is less than the number usually performed for his employment, the employer shall indicate on the temporary assignment form which option he chooses, from among the following, for the payment of salary or wages to the worker:

(1) the same salary or wages and the same benefits as those provided for in the first paragraph; or

(2) the salary or wages and benefits provided for in the first paragraph, but only for the working hours the temporary assignment involves.

The employer may apply to the Commission in writing to have it modify the option chosen under the second paragraph. However, the employer may avail itself of that possibility only once for the same employment injury. Such a modification takes effect on the date of the application.

Where the employer chooses the option set out in subparagraph 1 of the second paragraph, he may, within 90 days after the end of a pay period, send the Commission a statement of the number of hours worked by the worker in order to obtain a reimbursement for the hours paid but not worked, up to 90% of the net salary or wages paid for those hours.

That amount constitutes an income replacement indemnity to which the worker is entitled.

Where the employer chooses the option set out in subparagraph 2 of the second paragraph, the Commission shall pay the worker an income replacement indemnity to make up the difference between the amount of the income replacement indemnity to which the worker would have been entitled but for the assignment and the net salary or wages paid by the employer for that work.

For the purposes of this section, the net salary or wages paid to the worker is equal to the gross salary or wages paid to him less the deductions

provided for in subparagraphs 1 to 4 of the first paragraph of section 62 and the other mandatory deductions, including the deductions provided for in a contract of employment or a collective agreement.

The time limit prescribed in the fourth paragraph may be extended only if the employer proves that it was impossible for him to act.""

QMA comment:

The QMA questions the underlying intention of sections 42 and 43 of the Bill. The worker's attending physician is clearly not in the best position to judge whether or not a temporary work assignment is feasible. The physician must rely on the worker's statements and it is practically impossible for the employer to make its position known to the physician.

Currently, QMA members have no problem with the application of the sections dealing with temporary work assignments. Why make the procedure more cumbersome and make the use of a CNESST form mandatory, while feigning ignorance of the fact that attending physicians are unlikely to want to fill in even more documents, especially given that no tariffs have been negotiated?

The QMA believes that the current situation should be maintained to avoid creating an extra administrative burden and obstacles for employers. As a result, it strongly recommends the withdrawal of sections 42 and 43 of the Bill.

Section 53 of Bill 59:

"Section 193 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

"Every worker is entitled to receive health services from a health institution governed by the Act respecting health services and social services (chapter S-4.2) or the Act respecting health services and social services for Cree Native persons (chapter S-5) of his choice.";

(2) by replacing "that the care" and "the required care" in the second paragraph by "that the health services" and "the required health services", respectively."

QMA comment:

The QMA considers that access to the private sector for certain types of surgery should be maintained and even extended, since it increases the pace of healing, reduces the risk of injuries becoming chronic, and promotes a rapid return to work. For this reason, the QMA suggests adding participation by the employer to section 53 of the Bill. **The first two lines of the second paragraph of section 193 of the Act respecting industrial accidents and occupational diseases would then read as follows:**

"Where, in the interest of the worker, the Commission or the employer considers that the care required by the condition of the worker cannot be provided within a reasonable time by the institution he has chosen, the worker may, if the physician in charge of him agrees, go to another institution to which he is referred by the Commission or the employer so that he may receive the required care more promptly." [emphasis added]

Section 61 of Bill 59:

"Section 216 of the Act is amended by adding the following paragraph at the end:

"A health professional who acts as a member of the Bureau may not act as a member of a committee on occupational lung diseases, a special committee or a committee on occupational oncological diseases acting under Chapter VI or as a member of the scientific committee.""

QMA comment:

The QMA considers that the creation of a special committee such as the special committee on occupational lung diseases or the committee on occupational oncological diseases will make access to pneumologists and, possibly, oncologists extremely difficult, since many of them will have mandates from the CNESST.

Currently, the lists of BEM members in the psychiatric sector are clearly insufficient, leading to excessive delays before obtaining an appointment with a psychiatrist who is a member of the BEM. The QMA is afraid that section 61 of Bill 59 will create the same accessibility problem for pneumologists and oncologists, increasing the delays experienced. It hopes that parliamentarians and the government authorities will take this into account in their scrutiny of this section.

Section 63 of Bill 59:

"The Act is amended by inserting the following section after section 218:

"218.1. On ascertaining that he will not be able to carry out the designation provided for in section 218 within 90 days after a contestation referred to in section 217 is received, the Minister shall notify the Commission.

Where the Minister is informed that, for the purpose of rendering an opinion, the member of the Bureau d'évaluation médicale must conduct examinations that require using equipment the Bureau does not have or that it must have recourse to specializations that are not practised by any member of the Bureau, the time prescribed in the first paragraph is 120 days. In such a case, the Minister shall inform the Commission without delay.""

QMA comment:

From the standpoint of efficiency and delay reduction, the 90-day time limit in the new section 218.1 is too long and should be cut to 60 days.

In addition, it does not appear advisable to allow a BEM member to demand other medical examinations requiring the use of equipment that the BEM does not have. If this is allowed, it is more than likely that this approach will be more widely used in the future, increasing the time needed to obtain an opinion from the BEM.

Section 66 of Bill 59:

> "Section 221 of the Act is amended by replacing the second paragraph by the following paragraphs:
>
> "When expressing his opinion regarding the date on which an employment injury is consolidated, the member of the Bureau shall also do so regarding the fact and degree of the worker's permanent physical or mental impairment as well as regarding the fact and assessment of the worker's functional limitations, where such impairment and such functional limitations have not been determined. He is not required to express his opinion if medical reasons prevent him from doing so. He shall, in such a case, state those reasons in his opinion.
>
> If the member of the Bureau is of the opinion that the injury no longer requires care or treatment, he may express his opinion regarding the date of consolidation, in which case the second paragraph applies.""

QMA comment:

The QMA agrees with the idea that BEM members should be able to express an opinion regarding the fact and degree of the worker's permanent physical or mental impairment as well as regarding the fact and assessment of the worker's functional limitations, where such impairment and such functional limitations have not been determined, provided it is possible to do so.

Section 68 of Bill 59:

> "Section 224.1 of the Act is amended
>
> (1) in the first paragraph,
>
> (a) by replacing "pursuant to section 221 within the time prescribed in section 222" by "within 120 days after the contestations referred to in section 217 were sent";

(b) by adding the following sentence at the end: “In the cases provided for in the second paragraph of section 218.1, the prescribed time is 150 days.”;

(2) by replacing “prescribed in section 222” in the second paragraph by “prescribed in the first paragraph”.”

QMA comment:

The question of the delays created by submitting contestations to the BEM is important. These delays have a significant impact on the costs of a case and, as a result, on employers’ assessments. Currently, the delays are excessive. The QMA supports any measure to reduce the delays, but is sceptical about the approach taken in Bill 59 to amend section 224.1 of the Act respecting industrial accidents and occupational diseases.

Section 73 of Bill 59:

73. The Act is amended by inserting the following division after section 233:

“DIVISION II.1

“SPECIAL PROVISIONS RESPECTING OCCUPATIONAL ONCOLOGICAL DISEASES

(…)

“233.2. The Government may form more than one committee on occupational oncological diseases whose function is to determine whether a worker is suffering from an occupational oncological disease.

A committee on occupational diseases shall be composed of the following members appointed following an invitation for applications and after consultation with the Comité consultatif du travail et de la main-d’oeuvre referred to in section 12.1 of the Act respecting the Ministère du Travail (chapter M-32.2), and, in the case of physicians, with the Collège des médecins du Québec:

(1) a physician holding a specialist’s certificate in medical oncology issued by the Collège des médecins du Québec;

(2) a physician holding a specialist’s certificate in general internal medicine issued by the Collège des médecins du Québec;

(3) a physician holding a specialist’s certificate in occupational medicine, or in public health and preventive medicine, issued by the Collège des médecins du Québec; and

(4) a person holding a university degree at the Master’s or doctoral level in occupational hygiene, occupational health or epidemiology.

The chairman of a committee shall be designated by the Government from among the committee’s members.

(…)

"233.5. The committee on occupational oncological diseases to which the Commission directs a worker shall examine him within 40 days after the Commission's request.

The committee shall make a report in writing to the Commission on its diagnosis within 20 days after the examination and, where its diagnosis is positive, it shall include in its report its findings relating to the functional limitations, the percentage of physical impairment and the worker's tolerance for a contaminant within the meaning of the Act respecting occupational health and safety (chapter S-2.1), or any other risk factor that caused his disease or that is likely to expose him to a recurrence, relapse or aggravation.

In its report, the committee shall also give its opinion on the link between the occupational disease and the characteristics or risks peculiar to the work carried on by the worker. To that end, it shall document the worker's exposure in carrying on his work to a contaminant within the meaning of the Act respecting occupational health and safety or to any other risk factor.

Before filing its report, the committee shall consult the opinions and recommendations of the Comité scientifique sur les maladies professionelles.

(…)"

QMA comment:

First, the members appointed to a committee on oncological occupational diseases must necessarily have practical experience, especially as regards workplaces, in their field of specialization. It seems reasonable to assume that **ten years' experience** should be required to be a member of a committee on oncological occupational diseases. **The QMA requests that a requirement of 10 years' practical experience be added to section 233.2.**

Second, section 233.5 should include **a formal obligation to state the personal factors that may have contributed to the occurrence of the employment injury**. As drafted, the new provision focuses only on the aspects connected to the link with employment, ignoring other factors that may be highly relevant.

Section 78 et 79 of Bill 59:

"**78.** Section 252 of the Act is amended by striking out "and any request for intervention made under sections 245, 246 and 251".

79. Sections 256 and 257 of the Act are amended by inserting "or in an equivalent employment or in an available suitable employment determined by the Commission beforehand," after "in his employment"."

QMA comment:

As mentioned above with respect to sections 36 and 37 of Bill 59, the QMA believes that the CNESST is granting itself powers that are incompatible with the idea of reasonable accommodation. **As a result, the proposed amendments to sections 78 and 79 of Bill 59 should be withdrawn**.

Section 93 of Bill 59:

> "Section 326 of the Act is amended by striking out "or unduly burdening an employer" in the second paragraph."

QMA comment:

This provision is intended to amend section 326 of the Act respecting industrial accidents and occupational diseases to remove the idea of "unduly burdening an employer".

It is important to remember, first, that the assignment of costs is simply a division of the costs of compensation among employers in certain circumstances. Workers are not penalized by the existence of section 326 of the Act respecting industrial accidents and occupational diseases.

It is also important to remember that all the costs generated by the application of the Act respecting industrial accidents and occupational diseases are borne by employers and that the general fund of the CNESST is fully funded.

As a result, there is no reason to remove the reference to "unduly burdening an employer" since this provision is used to restore balance between employers.

The provision, like others, is also used because the CNESST accepts without question practically all claims for employment injuries.

As a result, the QMA requests that section 93 of Bill 59 be withdrawn.

Section 94 of Bill 59:

> "Section 327 of the Act is replaced by the following section:
>
> "327. The Commission shall impute to the employers of all the units the cost of
>
> (1) benefits due by reason of an injury or disease that, despite having arisen solely as the result a worker's gross and wilful negligence, is recognized as an employment injury under section 27;
>
> (2) benefits due by reason of an employment injury contemplated in

section 31; and

(3) benefits for the health services, adapted equipment and other costs provided by reason of an employment injury, other than a hearing impairment caused by noise not resulting from an industrial accident, that does not render the worker unable to carry on his employment beyond the day on which his injury appeared.

Subparagraphs 1 and 2 of the first paragraph apply only if a final decision has determined the injury or disease to be admissible as an employment injury under section 27 or 31.""

QMA comment:

The QMA believes that the word "solely" in subparagraph 1 of the first paragraph of the new section 327 of the Act respecting industrial accidents and occupational diseases should be replaced by "mainly".

The QMA also suggests another amendment that is not currently included in the Bill. **The QMA would like to see stricter limits on the term "severe" in section 27 of the Act respecting industrial accidents and occupational diseases** to which section 94 of Bill 59 refers. Currently, it is extremely difficult to obtain a sharing of costs based on this provision although, in actual fact, it is not unusual to see an event that results from a worker's gross and wilful negligence.

With respect to subparagraph 3 of the first paragraph of the proposed section 327, the wording "health services, adapted equipment and other costs provided by reason of an employment injury" should be defined, which is not currently the case.

Section 95 of Bill 59:

"Section 328 of the Act is amended

(…)

(3) by adding the following paragraph at the end:

"In the case of a hearing impairment caused by noise not resulting from an industrial accident, the Commission shall impute the cost of benefits to one or more groups of units, which it determines by regulation, on the basis of the nature of the work that most contributed to the appearance of the hearing impairment, or to all the employers if such an imputation is not possible.""

QMA comment:

The addition of a paragraph via paragraph 3 of section 95 of Bill 59 provides for the possibility of making a regulation to determine how costs will be imputed in certain circumstances. **Once again, the new regulation will address substance and not just form, and the CNESST should make its plans known immediately.**

Section 96 Bill 59:

"The Act is amended by inserting the following section after section 328:

"328.1. The Commission may also, on its own initiative or on the application of an employer, impute all or part of the cost of the income replacement indemnity due by reason of an industrial accident or an occupational disease to the employers of all the units in the following situations:

(1) a worker to whom work has been assigned temporarily in accordance with section 179 interrupts the assignment by reason of a medical condition unrelated to the employment injury or of confinement, and the duration of the interruption corresponds to at least 20% of the period of the authorized assignment;

(2) a worker interrupts a progressive return to work carried out in accordance with section 167.1 by reason of a medical condition unrelated to the employment injury or of confinement, and the duration of the interruption corresponds to at least 20% of the period of the progressive return to work; or

(3) a worker ceases to receive care or treatment for an employment injury by reason of a medical condition unrelated to the injury, and the period of the cessation corresponds to at least 20% of the total time the injury takes to consolidate.

An application under the first paragraph must state the reasons for the application and be filed in writing by the employer within one year after the situation described by the employer began.""

QMA comment:

Bill 59 provides for various situations in which the employer can ask for a "dis-assignment" of costs based on the scenarios set out in the proposed section 328.1.

The QMA does not agree with the requirement that the duration of the interruption must correspond to at least 20% of the period of the authorized assignment. Similarly, when a worker is incarcerated, logic indicates that all the costs should not be imputed to the employer if the worker cannot perform the temporary assignment. The same applies to the other hypotheses raised by the proposed section 328.1 introduced by Bill 59.

The QMA asks that the following words be removed from the new section 328.1:

- **"and the duration of the interruption corresponds to at least 20% of the period of the authorized assignment" in paragraph 1;**
- **"and the duration of the interruption corresponds to at least 20% of the period of the progressive return to work" in paragraph 2;**
- **"and the period of the cessation corresponds to at least 20% of the total time the injury takes to consolidate" in paragraph 3.**

Section 97 of Bill 59:

> "Section 329 of the Act is amended
>
> (1) by inserting "according to the terms and conditions prescribed by regulation" at the end of the first paragraph;
>
> (2) by inserting the following paragraph after the first paragraph:
>
> "For the purposes of the first paragraph, a worker is already handicapped if, before his employment injury, he had a deficiency causing a significant and persistent disability and if he is liable to encounter barriers in performing everyday activities.""

QMA comment:

On this question, the QMA refers readers to its comments about the provisions on the assignment of costs, in connection with section 93 of Bill 59.

It is inadmissible for Bill 59 to aim to eviscerate section 329 of the Act respecting industrial accidents and occupational diseases, for all practical purposes, by removing the imputation of costs among all employers. Once again, no workers are penalized by this provision. On the contrary, its purpose is to promote the hiring and retention of workers who are already disabled.

Until now, as is the case for section 326 of the Act respecting industrial accidents and occupational diseases (that section 93 of the Bill attempts to amend), the CNESST has seen its interpretation of the law rejected by the Administrative Labour Tribunal which, like the Québec Superior Court and Court of Appeal, has repeatedly validated the positions taken by employers.

There is no reason to change the existing situation. Any change would only incite employers to challenge the receipt or acceptance of claims for employment injuries. **The QMA therefore asks that no change be made to section 326 of the Act respecting industrial accidents and occupational diseases and that section 97 of the Bill be withdrawn.** Once again, **the legislator refers to a future regulation without specifying what it will contain.** Last, the QMA vigorously opposes the addition of a definition of "handicapped" in the proposed second paragraph of section 329. **The QMA also asks that section 278 of the Bill, which contains transitional measures connected with sections 326 to 328.1 and the second paragraph of section 329 of the Act respecting industrial accidents and occupational diseases, be withdrawn.**

This section constitutes a major problem, because its provides for the new provisions, and therefore the new criteria they introduce, to apply to any application for imputation made by an employer and to any imputation made on the initiative of the Commission on or after the date of assent.

First, given the major delays involved in transferring and sharing the assignment of costs, employers and their representatives would be forced to manage two legislative systems at the same time because applications made prior to assent, but not yet

processed, could still be reviewed and contested before the Administrative Labour Tribunal.

Second, it is worth focusing on a key issue that arises from the application of the legislative provisions in everyday practice. The Bill appears to fail to take into account the entire process that precedes an application for transfer or sharing. These sections are already covered by an extremely detailed interpretation by the Commission des lésions professionnelles, and also by the Administrative Labour Tribunal. The jurisprudence established over the years has provided the criteria and guidelines used for such applications.

Some claims could, for example, have been dealt with before the coming into force of the new provisions, but the planned direction for transfers or sharing would no longer be feasible in light of the amendments to the Act. This could be, for example, a diagnosis which, following a decision by the Tribunal or by agreement, has been qualified to include one or more elements that, with regard to the medical elements of the file, are more likely to stem from a pre-existing personal condition or disability. The process leading to the qualification would obviously have been based on the criteria existing at that time. This could create an obstacle for employers who planned to use the disability established as the starting point for an application for sharing under section 329, which would however now contain far more restrictive criteria that would make sharing impossible.

The probable outcome will be situations in which employers could have signed a settlement to recognize injuries of occupational diseases to the benefit of the worker concerned, while planning to recover a large part of the costs through the relevant sections of the Act. However, in some cases it could now be more difficult, or impossible, to obtain the sharing or transfer.

Section 101 of Bill 59:

"The Act is amended by inserting the following chapter after section 348:

"CHAPTER X.1

"SCIENTIFIC COMMITTEE ON OCCUPATIONAL DISEASES

"DIVISION I

"ESTABLISHMENT AND MANDATE

"348.1. A scientific committee on occupational diseases is established under the name "Comité scientifique sur les maladies professionelles" (the Committee).

"348.2. The Committee's mandate is to make recommendations to the Minister and the Commission as regards occupational diseases, in particular

(1) by identifying and analyzing the research and studies on occupational diseases;

(2) by analyzing the causal relations between diseases and contaminants or

the risks peculiar to a type of work; and

(3) by producing written opinions on the identification of occupational diseases, on contaminants or on the peculiar risk factors related to occupational diseases and on the criteria for determining them.

The Committee may carry out any other mandate conferred on it in accordance with the Acts administered by the Commission. A further mandate conferred on the Committee is to examine any matter submitted to it by the Minister or the Commission and to give its opinion.

For the purposes of its mandates, the Committee may consult any expert or public body or have one carry out work for it.

"DIVISION II

"COMPOSITION AND OPERATION

"348.4. The Committee is composed of five members appointed by the Government following an invitation for applications and after consultation with the professional orders concerned and with the Comité consultatif du travail et de la main-d'oeuvre referred to in section 12.1 of the Act respecting the Ministère du Travail (chapter M-32.2). The Committee must include at least the following members:

(1) a physician holding a specialist's certificate in occupational medicine, or in public health and preventive medicine, issued by the Collège des médecins du Québec;

(2) a physician holding a specialist's certificate issued by the Collège des médecins du Québec in a specialty other than the one specified in subparagraph 1 and who is an associate professor or full professor at a Québec university;

(3) a person holding a university degree at the Master's or doctoral level in occupational hygiene or occupational health; and

(4) a person holding a university degree at the Master's or doctoral level in epidemiology.

(…)"

QMA comment:

These provisions provide for the creation of a scientific committee on occupational diseases. **The QMA recommends, as it did for the committee on oncological occupational diseases, that the scientific committee on occupational diseases be made up of experts with several years' (at least 10) practical experience in their field of expertise, especially as regards workplace issues.**

In the view of the QMA, the number of mandates given to the committee appears to be excessive. It is important to remember that the Institut de recherche Robert-Sauvé en santé et en sécurité du travail (IRSST) already has a mandate that is similar to the

mandate described in the new section 348.2, since this paritarian organization can make suggestions and carry out various studies.

Once again, the QMA deplores the fact that the committee's mandate ignores all aspects connected with a worker's personal condition. For example, the scientific committee on occupational diseases could be asked to conduct research and make recommendations on mental illnesses, especially anxio-depressive disorders or depression occurring in connection with employment. The committee could limit its work to describing only the elements that relate to employment without taking into account the personal condition of the individuals concerned which is often, in practice, at the centre of the medical issues.

Sections 108 et 109 of Bill 59:

"**108.** Section 359 of the Act is amended

(1) by replacing "45" in the first paragraph by "60";

(…)

109. Section 359.1 of the Act is amended by replacing "45" by "60"."

QMA comment:

The QMA believes that the 45-day time limit was sufficient, and that extending the time limits will only increase delays in the review and appeal process.

It requests that the time limit remain at 45 days, and that paragraph 1 of section 108, as well as section 109, be withdrawn.

Section 110 of Bill 59

"The Act is amended by inserting the following section after section 359.1:

"360. A person who believes he has been wronged by a decision rendered by the Commission may elect to apply for a review of the decision within 30 days of its notification or contest it before the Administrative Labour Tribunal within 60 days of its notification in the following cases:

(1) if the decision relates to a matter referred to in subparagraphs 1 to 5 of the first paragraph of section 212 following an opinion given by the Bureau d'évaluation médicale, the second paragraph of section 230 following an opinion rendered by a special committee, or the second paragraph of section 233.5 following a report made by a committee on occupational oncological diseases; or

(2) if the decision is rendered under Chapter IX or X.

In the cases referred to in subparagraph 1 of the first paragraph, the

Commission or the Tribunal may, where applicable, decide any other question that is the subject of the decision.

If a decision that is the subject of an application for review is also contested before the Tribunal, the latter refers the matter to the Commission for a review decision.""

QMA comment:

This provision introduces new law, once again to accelerate the review and appeal process.

The QMA agrees with this proposal, and hopes that the volume of appeals to the Administrative Labour Tribunal will not paralyze its operations.

Section 112 of Bill 59:

"Section 365 of the Act is amended by replacing the first paragraph by the following paragraph:

"The Commission may, within six months, reconsider a decision it has rendered, provided the decision has not been the subject of a decision rendered under section 358.3 or, in the cases referred to in the first paragraph of section 360, provided the decision has not been contested before the Administrative Labour Tribunal, in order to correct any error.""

QMA comment:

The QMA disagrees with the proposal to give the CNESST six months to reconsider a decision it has already made. A six-month period is too long, and makes all decisions rendered uncertain.

3.2 Amendments made by Bill 59 to the Act respecting occupational health and safety

Section 131 of Bill 59:

"Section 19 of the Act is amended by replacing "registered mail" in the third paragraph by "any appropriate means that provides the inspector with proof that it was delivered".

QMA comment:

The QMA agrees with the proposed change.

Section 143 of Bill 59:

> "Section 51 of the Act is amended
>
> (…)
>
> (4) by adding the following at the end:
>
> "(16) take the measures to ensure the protection of a worker exposed to physical or psychological violence, including spousal or family violence, in the workplace.
>
> For the purposes of subparagraph 16 of the first paragraph, in a situation of spousal or family violence, the employer is required to take the measures if he knows or ought reasonably to know that the worker is exposed to such violence.""

QMA comment:

Since the growth of teleworking during the COVID-19 pandemic and given the fact that it will probably become an increasingly common type of work organization, the provisions of paragraph 16 of section 51, as proposed, take on even more significance.

Employers are required to take measures to ensure the protection of a worker exposed to physical or psychological violence, including spousal or family violence, in the workplace.

The "workplace", as defined in the Act respecting occupational health and safety, obviously includes a worker's home.
ow can an employer be asked to decide if spousal or family violence exists in a worker's home? In fact, the victim of spousal violence may not be the worker, but someone else in the worker's family.

In addition, how it is possible to define a situation in which the employer "knows or ought reasonably to know that the worker is exposed to such violence"?

If unfortunate incidents of this type occur in a private home, and there are no manifestations of violence in the employer's establishment, the employer will not only have no information about the existence of the spousal or family violence, but will be absolutely incapable of verifying any aspect.

Zero tolerance of physical and psychological violence, including spousal and family violence, is first and foremost a question for society in general. All reasonable people, whatever their status, will generally intervene in a situation of unjustified violence, at the very least by reporting it to the authorities.

As a result, the QMA suggests that paragraph 16 be reworded to limit its effect to establishments under an employer's control, rather than all workplaces.

Similarly, the quasi-presumption in paragraph 16 should be removed because, in an establishment with possibly hundreds of workers, it is practically impossible for the employer to know what is happening in employees' homes.

Section 146 of Bill 59:

"Section 58 of the Act is replaced by the following sections:

"58. Every employer must prepare and implement a prevention program specific to each establishment employing at least 20 workers during the year, subject to the regulations.

If an establishment employs fewer than 20 workers, the employer must prepare and implement a prevention program if the risk level associated with the activities carried on in the establishment, determined by regulation, requires it.

(…)"

QMA comment:

This provision would extend prevention measures to cover enterprises with fewer than 20 workers.

Obviously, the members of the Québec Mining Association are already subject to all the measures. In addition, mining is covered by various regulations affecting all aspects of the work that go well beyond what is suggested in Bill 59.

The QMA agrees with the principles underlying Bill 59, which increase the scope of the prevention measures.

Section 147 of Bill 59:

"Section 59 of the Act is amended

(1) by replacing the second paragraph by the following paragraph:

"Such a program must take into account the occupational health programs prepared by the Commission under section 107, the regulations applicable to the establishment and, where applicable, the recommendations from the health and safety committee and must set out, in particular,

(1) the identification and analysis of the risks that may affect the health of the establishment's workers, including the chemical, biological, physical, ergonomic and psychosocial risks related to the work, and the risks that may affect the workers' safety;

(…)"

QMA comment:

The goal here is to add the need to identify work-related psychosocial risks to the Act respecting occupational health and safety. However, the notion of psychosocial risk is extremely broad and at the same time unclear. It can include a wide range of factors on which even experts cannot reach a consensus. For some, the notion must necessarily be linked to the work itself, whereas for others, it includes all aspects of a worker's life, including the aspects connected to a purely personal sphere.

The reference to psychosocial risks will necessarily interfere with management rights and lead to pointless confrontations, especially during labour disputes.

Section 148 of Bill 59

"Section 60 of the Act is amended

(1) by striking out "; he shall also send the program and the updating of it to the Commission, with the committee's recommendations, as the case may be, according to the terms and conditions and within the time limits prescribed by regulation" in the first paragraph;

(2) by replacing the second paragraph by the following paragraph:

"The employer shall also send to the Commission, every three years on the form it prescribes, the priorities for action determined as part of his prevention program as well as the follow-up of the measures that he has implemented to eliminate and control the risks identified for those priorities.""

QMA comment:

The mining industry does not oppose the use of prescribed forms in general. However, prevention programs in the mining sector are complex and detailed. The QMA suggests that employers should be allowed to demonstrate that a prevention program is appropriate without having to use a prescribed form. In addition, it is impossible to transfer an entire prevention program onto a single form. This new requirement will lead to extra work and to an increase in bureaucracy and paperwork, while generating no new benefits for workers. In addition, it completely contradicts the government's goal of reducing the administrative burden for enterprises.

With respect to mines, there is already a mandatory monthly visit from the CNESST inspector, who must verify on-site that the employer is complying with all the requirements for the application of a prevention program. In addition, the programs are available to the inspectors at all times, and they can consult them at will.

Section 156 of Bill 59:

"Section 78 of the Act is amended

(1) by striking out paragraphs 1 and 2;

(2) by replacing "to establish" in paragraph 3 by "to determine";

(3) by replacing "devices" in paragraph 4 by "means";

(4) by inserting ", to cooperate in its preparation, updating and follow-up" after "program" in paragraph 5;

(5) by replacing paragraph 6 by the following paragraph:

"(6) to participate in the identification and analysis of risks that may affect the health and safety of the establishment's workers and in the identification of the contaminants and dangerous substances present in the workplace;"

(6) by replacing paragraph 8 by the following paragraph:

"(8) to entrust specific mandates to committee members, in particular to the health and safety representative so that the latter exercises functions in addition to those set out in section 90;";

(7) by inserting the following paragraph after paragraph 10:

"(10.1) to receive and take into consideration the health and safety representative's recommendations;";

(8) by replacing "in" in paragraph 11 by "concerning";

(9) by replacing paragraph 12 by the following paragraph:

"(12) to receive and study the statistical data or any other data produced by the Commission or by any other body;"."

QMA comment:

A review of all the powers now given to the health and safety committee leads the QMA to conclude that the powers will only interfere with an employer's management rights. Bill 59 appears to take for granted that employers are always in bad faith.

Once again, the Bill adds more bureaucracy and paperwork.

Section 164 of Bill 59:

"Section 90 of the Act is amended

(…)

(2) by inserting ", including recommendations concerning the psychosocial risks related to the work," after "appropriate" in paragraph 4;

(…)"

QMA comment:

The question of psychosocial risks was commented on above. It simply needs to be added that health and safety representatives have no specific training. The total training provided lasts around seven hours, including all aspects of the duties of a health and safety representative.

Section 170 of Bill 59:

"Section 101 of the Act is amended, in the second paragraph,

(…)

(2) by inserting the following subparagraph after subparagraph 2:

"(2.1) cooperate in the preparation and implementation of prevention programs referred to in this Act to which its member establishments are subject;";

(…)"

QMA comment:

The QMA does not oppose paragraph 2.1, but considers that there are already enough parties involved in the mining sector, including health and safety committees, that contribute to the preparation of prevention programs. In addition, employers in the mining industry have all the necessary resources to complete these tasks.

Section 184 of Bill 59:

"Section 127 of the Act is amended

(1) by replacing "the agency" and "109" in the introductory clause by "the integrated health and social services centre" and "109.2", respectively;

(2) by replacing paragraph 1 by the following paragraph:

"(1) ensure the cooperation of physicians in charge of occupational health in

the preparation of the health components of the prevention program described in section 59;";

(3) by replacing "of the person" in paragraph 2 by "of the integrated health and social services centre or of the person or partnership";

(4) by inserting "and of the health elements of the prevention program set out in section 59, in particular the examinations, analyses and expert opinions made for the purposes of subparagraphs 6 to 8 of the second paragraph of that section" at the end of paragraph 3;

(5) by inserting the following paragraph after paragraph 3:

"(3.1) ensure, where an employer so requests, that the occupational health providers' services are provided in his establishment or in a facility of the integrated health and social services centre or of the person or partnership operating a hospital centre or local community service centre and referred to in section 109.2, or elsewhere if the public health director believes this to be necessary because the other premises are not available;";

(6) by striking out paragraph 7."

QMA comment:

The extension of prevention mechanisms to all employers, subject to certain conditions, will necessarily lead to greater demands on the public health sector and especially the occupational health sector.

It is clearly that there are not enough medical resources in Québec to quickly implement the goals of Bill 59 for occupational health. This is a practical, not a theoretical, concern which will require more attention.

Section 210 of Bill 59:

"Section 180 of the Act is amended by inserting ", including a physician in charge of occupational health or any other occupational health provider defined in section 116.1" at the end of paragraph 7."

QMA comment:

The QMA opposes the addition to paragraph 7 of section 180 of the Act respecting occupational health and safety, which will allow the inspector to be accompanied by a physician in charge of occupational health or any other occupational health provider. Inspectors already have this option, and simply need to exercise it. In addition, the QMA refers readers to its general comments on inspection in section 2.4 of this brief.

For the reasons given previously, the QMA requests that the amendment to section 180 of the Act respecting occupational health and safety be removed and that section 210 be withdrawn from Bill 59.

Section 228 of Bill 59:

"Section 223 of the Act is amended, in the first paragraph,

(1) by striking out subparagraph 5;

(2) by striking out ", and determining the form and tenor of the certificate contemplated in sections 32, 40 and 46" in subparagraph 6;

(3) by replacing "every establishment or construction site in view of ensuring" in subparagraph 7 by "every workplace so as to ensure";

(4) by replacing "devices" in subparagraph 9 by "means";

(5) by replacing subparagraph 10 by the following subparagraph:

"(10) determining the contaminants and dangerous substances for which the employer must draw up and keep up to date a register in accordance with section 52 and prescribing the content of the register and the manner in which it is to be sent;";

(6) by replacing subparagraph 17 by the following subparagraphs:

"(17) establishing the rules applicable to maintaining a prevention program and a health and safety committee for establishments employing fewer than 20 workers;

"(17.1) determining the risk levels related to the activities carried on in the establishments for which the employer must prepare and implement a prevention program and designate a health and safety representative;

"(17.2) determining the manner and the time limits for implementing and updating a prevention program and establishing the hierarchy of preventive measures for the purpose of preparing the prevention program;";

(7) by replacing "determining the categories of establishments in which a health and safety committee may be formed and fixing, by category, the minimum and maximum number of members of a committee;" in subparagraph 22 by "setting, by category of establishments, the minimum and maximum number of members of a health and safety committee and";

(8) by replacing subparagraph 23 by the following subparagraph:

"(23) setting, by category of establishments, the minimum frequency of the health and safety committees' meetings;";

(9) in subparagraph 24,

(a) by replacing "safety representative may devote to his functions, determining, by category of establishments or construction sites, the instruments or apparatus a safety representative needs to exercise his functions" by "health and safety representative must devote to his functions";

(b) by replacing "91 and 211" by "78.1, 91, 207.1, 211 and 215.3";

(10) by inserting the following subparagraph after subparagraph 24:

"(24.1) determining the content and duration of the training programs in

which the members of the health and safety committees and the health and safety representatives must participate under sections 78.1 and 91 and prescribing the time limit for completing that training;";

(11) by replacing subparagraph 31 by the following subparagraph:

"(31) determining the terms and conditions relating to the composition of job-site committees and the designation of their members, establishing the rules of operation of the committees, setting, by category of construction sites, a minimum number of meetings that is different than the number set by this Act, determining the content and duration of the training programs in which the members of the job-site committees must participate under section 207.1 and prescribing the time limit for completing that training;";

(12) by replacing "the amount of time that a safety representative" and "the safety representative contemplated" in subparagraph 32 by "the minimum number of designated health and safety representatives on a site, the amount of time that a health and safety representative" and "the health and safety representative contemplated", respectively;

(13) by inserting the following subparagraph after subparagraph 32:

"(32.1) determining, by category of construction sites, the minimum number of health and safety coordinators designated on a site as well as the content and duration of the training programs in which they must participate under section 215.3 and prescribing the time limit for completing that training;";

(14) by inserting the following subparagraph after subparagraph 40:

"(40.1) imposing the use of a medium or technology for a document necessary for the application of an Act or a regulation it administers and prescribing that such a document must be sent or received using any method of transmission specified by the Commission;"."

QMA comment:

The Act respecting occupational health and safety already provides for a significant number of regulations, and the Bill plans to introduce more. This is contrary to the government's goal of regulatory streamlining and a reduction in bureaucracy and paperwork.

3.3 Amendments made by Bill 59: Regulation respecting prevention mechanisms

Section 239 of Bill 59

"The Regulation respecting prevention mechanisms, the text of which appears below, is enacted.

"REGULATION RESPECTING PREVENTION MECHANISMS

"DIVISION III

“HEALTH AND SAFETY COMMITTEE

“§3. — Rules of operation for health and safety committee

“22. If no agreement is entered into in accordance with section 74 of the Act, the employer determines the frequency of the health and safety committee’s meetings at the beginning of each year, according to the number of workers and the establishment’s risk level, from among the following choices:

(1) low risk level:
(a) 20 to 50 workers: every 3, 4 or 6 months;
(b) 51 to 100 workers: each month or every 2, 3 or 4 months;
(c) more than 100 workers: each month or every 2 or 3 months;

(2) medium risk level:
(a) 20 to 50 workers: every 2, 3 or 4 months;
(b) 51 to 100 workers: each month or every 2 or 3 months;
(c) more than 100 workers: each month or every 2 months;

(3) high risk level:
(a) 20 to 50 workers: each month or every 2 or 3 months;
(b) 51 to 100 workers: each month or every 2 months;
(c) more than 100 workers: each month.”

QMA comment:

Following discussions with its members, the QMA notes that the requirement of holding twelve meetings per year, for establishments with a high risk level and more than 100 workers, is excessive. **It suggests drawing inspiration from the Canada Labour Code which stipulates in section 135 (10): *A work place committee shall meet during regular working hours at least nine times a year at regular intervals and, if other meetings are required as a result of an emergency or other special circumstances, the committee shall meet as required during regular working hours or outside those hours*.** This would ensure consistency between the requirements and harmonize the two regimes.

Section 239 of Bill 59:

> "23. Where a worker dies, the health and safety committee must meet within three working days after a request of one of its members."

QMA comment:

It should be specified that the worker's death must result from an employment injury, which is not clear from the current wording.

The QMA requests that the words "following an employment injury" be inserted after the word "dies" in the wording of this provision.

Section 239 of Bill 59

> "27. A vacancy in the health and safety committee co-chair position is filled in accordance with section 24, not later than 10 days after the committee is notified of the vacancy."

QMA comment:

The QMA considers that 10 days is not long enough to find a new co-chair, even with the best will in the world. To standardize the time limits within the regulation, the QMA suggests a 30-day time limit, the same as in section 31 of the Regulation.

The QMA requests that the figure "10" in section 239 of Bill 59 be replaced by the figure "30".

3.4 Comments on the transitional and final provisions

QMA comment:

Bill 59 includes a large number of transitional measures that make it hard to understand the exact times when the new provisions will come into force. The QMA has listed some of the times referred to in Bill 59. For example:

- 1 January 2022;
- 1 January 2023;
- Six months after the date of assent to the Act;
- One year after the date of assent to the Act;
- The date of coming into force of a regulation concerning health services, adapted equipment and other costs to which compensated workers will be entitled;
- At the time of or 60 days after the date on which the members of the new committees created by the Bill are appointed;
- 60 days after the date on which all the members of the first committee referred to in section 233.2 of the Act, enacted by section 73 of the Bill, have been appointed;
- The date on which all the members referred to in section 348.4 of the Act respecting industrial accidents and occupational diseases, enacted by section 101 of the Bill, have been appointed. Although the QMA keeps a close watch on administrative matters, it considers that the Government and the Commission should announce all the provisions that will come into force a reasonable time prior to the date concerned. If this is not done, it will be extremely difficult to monitor all the dates that apply and to comply with the requirements of the new provisions.

In addition, how will employers and workers be able to receive prior notice of a date of coming into force that depends on the appointment of all the members of a committee?

4. CONCLUSION

As stated in the Introduction, the mining industry spares no effort to ensure the health and safety of its workers. In fact, this is why it welcomes the proposed reform of the occupational health and safety regime.

Times have changed since the law was first introduced, and amendments are needed. However, it is important to note that Québec's mining sector has not waited for the law to be updated before introducing mechanisms to ensure that workplaces are as safe as possible. Prevention is already well-established, at all hierarchical levels. The results reflect this focus on safety, and mining companies are rightly proud of their record.

Although it supports the principles of the reform, the QMA questions several elements, as set out in this brief. It is worried about the way in which the Bill undermines the paritarian approach, in particular because employers are too often removed from the process. It also questions the over-reliance on regulations for questions of substance that should have been presented in the Bill itself, immediately. Parliamentarians and the government authorities have a colossal amount of work to accomplish, of the greatest importance. To do this successfully, they must listen carefully to employers' recommendations, requests and concerns. The QMA hopes that they will take its comments into consideration and make the necessary changes to the Bill. It firmly believes that its proposals will help Québec employers retain their competitive edge over their competitors, in particular in the other Canadian provinces, without compromising on the question of worker health and safety.

The QMA's comments and requests are also consistent with the government's goal of reducing delays, streamlining the regulatory framework and reducing the administrative burden, although Bill 59 appears to go in the opposite direction. The study by Morneau-Shepell / Morency, abundantly quoted from in this brief, highlights Québec's poor performance compared to other jurisdictions in Canada, and the QMA proposes simple and realistic ways to help reduce the gap.

Last, one major factor: the Bill in its current form will inevitably increase costs for Québec employers. The QMA hopes that the government will assess these cost increases to understand the impact on enterprises and the economic impact of the Bill on Québec.

The mining industry will continue to act as a leader in the field of workplace health and safety. It hopes to be able to rely on an effective, competitive set of rules. Unfortunately, Bill 59 introduces several irritants that will do more harm than good.

Parliamentarians and the government authorities must keep an open mind about the comments made by the QMA, in order to correct the Bill's deficiencies.

The Québec Mining Association offers its assistance to help ensure that the new occupational health and safety regime is modern, fair and responsive.