

COMMUNITY DECISION MAKING PROCESS PHASE 1 – COMMUNITY HEARING

REQUEST FOR LEGISLATION: KAHNAWAKE JUSTICE ACT

GOLDEN AGE CLUB

Ahsénhaton/Wednesday, 30 Seskehkó:wa/September 2009

6:30 pm – 9:00 pm

RECORD OF DISCUSSION

FACILITATORS:

Karonhiénhawe Linda Delormier (Lead)

Tekatsi'tsahkhwa Alanna Jacobs/Teiokaraiehsen Melanie Mayo (Group 1)

Konwén:ni Melanie Gilbert (Group 2)

Tekanetontie Joe Delaronde (Group 3)

RESOURCE PEOPLE:

Shakoshennakéhte Ron Sky (Lead/Group 3)

Tekara'tén:sere Davis Montour (Group 1)

Karonhí:io Mike Bush (Group 2)

RECORDERS:

Kawén:nes Melissa Curotte (Lead)

Leah Phillips (Group 1)

Karonhiahá:wi Coreen Delormier (Group 2)

Courtney Montour (Group 3)

Kawennákwas Brittany Diabo (Program Assistant/Logistics)

6:40 PM Opening:

Kahsennenhawe Sky-Deer,

Kahsennenhawe opened the hearing with the Ohén:ton Karihwatéhkwén.

6:45 PM Welcome/Opening Remarks: Karonhienhawe Linda Delormier

Linda welcomed and thanked everyone for their attendance. She then reviewed some of the documentation hand outs including the Community Hearing General Meeting Guidelines

Linda then introduced each of the support team members assigned to each of the three groups. She provided a short explanation as to their role in the Community Hearing

7:15 PM Introduction to Evening's Topic: Karonhienhawe Linda Delormier and Shakoshennakéhte Ron Skye

Linda Delormier introduces Ron Skye to address the Community with the Consultation Survey Results and why we are all here tonight.

Ron Skye mentioned that in 1979 consolation and negotiations had been done to the Justice System. Changes were made. However, this still did not fit the Community's needs.

Kahnawake only has four Justices of the Peace left in the province of Quebec. Once these individuals retire, Kahnawa:ke will not have any Justices of the Peace left to hear any cases either at the Court of Kahnawà:ke or anywhere else.

The time has come now to make a decision on how to enforce Justice in the Community.

(See Kahnawake Justice Consultation Survey Results attached).

7:30 PM Request Community Mandate Karonhiénhawe Linda Delormier

In attaining a community mandate, four questions were developed. The first of these four questions was posed to the all in attendance.

The following are the discussion points, questions and concerns, posed from within each group.

**Question 1: Should Kahnawà:ke Have a Justice System?
Group 1**

Facilitator: Melanie Mayo/Lanny Jacobs
Resource Person: Davis Montour
Recorder: Leah Phillips
Group Speaker: Arlene Jacobs

Discussion Points

- Yes, we do need a justice system, it is our right.
- We have progressive levels, major crimes, banishment, turn them over to the outside
- "Buy a house" analogy
- We are entitled to a justice system
- Should we go further than where we've been.
- We are a sovereign nation, we should be sovereign.
- What if we create a justice system and it doesn't work what's next.
- Are non-community members going to be affected by it ie: Peacekeepers.
- We should keep it within ourselves.
- We have to fight with every government, we fight to get there (system)
- If we are sovereign, then let's give them something to be sovereign about.
- Do we want a provincial court or federal court system?
- Justice can be achieved by not going to courts, maybe restorative justice.
- Need justice system to be more culturally based.
- We can agree on "something", if we don't like what it entails, then we need start over. We need to have that first step to take us anywhere, something has to be done.
- If we want a traditional justice system, what kind of "traditional" system would that be, everyone has their own opinions of what "traditional" is.
- We could say we are all community members and we should all agree but what does it actually mean to be a community member, Kahnawakero:non.
- The Justice System should reflect Peace, harmony and good mind.

- Also, mainly respect and the rest will or should follow harmony and good mind. Respect our traditions of peace, harmony and good mind within the Kaianere'kó:wa.
- If we didn't respect our traditions then we would not need a justice system.
- Kaianere'kó:wa is part of who we are and we need to live with this, if the group does not agree then it will have to be accepted.
- "Separation" analogy.
- Look to the future, make a precedent.

Questions/Concerns:

Q: What would it be comprised of?

A: That is precisely what we are here for tonight to decide what it should be comprised of, you, the people need to decide.

Q: How far are we willing to go?

A: We need to go all the way, if we decide that we do in fact need a justice system, then we need one that the community as a whole will agree upon.

Q: Will our own Justice system work?

A: we have resource people that are qualified to do the job. Just need community's consent/agreement.

Q: How will outside forces recognize our force (system)?

A:

Q: How can we say we do when we don't know what we're dealing with.

A:

Q: Question is should we have our "Own", "Stand Alone or Separate" Justice System?

A:

Q: What is Justice exactly? There are all kinds of justice systems.

A:

Q: Building a justice system is like building a house, however, we need to know what it is about before we can proceed, like a marriage, need time to debate it.

A:

Q: What kind of "traditional" justice system, from what your beliefs are, different perceptions on what traditional means to the average Kahnawakehró:non?

A:

Q: Would the word Kaianere'kó:wa make a difference in our statement. Should we have left it in there or take it out.

A:

**Question 1: Should Kahnawà:ke Have a Justice System?
Group 2**

Facilitator: Melanie Gilbert
Resource Person: Davis Montour
Recorder: Coreen Delormier
Group Speaker: Mike O'Brien

Discussion Points

- Yes, Kahnawake should have it's own laws and a system to adjudicate them.
- Through Kaianere'kó:wa we do have our own laws. It was suggested to take those laws and modernize them to suit our times and need build on them rather than start from scratch.
- Clarification was requested about the definition of a justice system.
- Concern about our laws being practiced and applied only in Kahnawake and what law would we be subject to if we were apprehended for breaking an outside law.
- Mike Bush clarified for the group, the difference between Law and Justice.
- If we say no, what will that look that? Will we be subject to Federal or Provincial law? Therefore, I believe that there must be a justice system.
- The Indian Act is the barrier that separates us. We are all part of the confederacy no matter what. We have an opportunity to use the Kaianere'kó:wa to work to our benefit for a healthier justice system.
- If we would have our own justice system and a hearing to be held in the way of Kaianere'ko:wa, would a longhouse be considered to be the "court" and if so, which one. (longhouse)

Concerns:

Q: Would that mean that all our laws would supersede the outside law:

A: Ideally yes, provided we have an agreement with another jurisdiction so that we could enforce the law. We would also have to be in a position or prepared to accept an outside jurisdiction's request also. (Mike Bush)

Q: Are we talking about replacing all laws or filling in gaps that are not yet created or are we looking at laws that are not working for our people?

A: Melanie Gilbert clarified for the group that the question being asked at this point is, should Kahnawà:ke have a Justice System?

Q: When someone breaks the law how do we enforce it and settle it and where would we do it?

A: It was suggested to have a combined judicial system to administer laws.

Reference was made to another community practicing a combined system where the individual who broke the law had to serve jail time but also was subject to Traditional form of consequences. According to their tradition, the individual was required to go to the family to ask for forgiveness and apologize and follow their way for repenting for their "sin/wrong doing".

Q: How long will it take to implement the "justice system"?

Q: About the process happening tonight, would we be considered Legislators or the legislation?

A: Yes

**Question 1: Should Kahnawà:ke Have a Justice System?
Group 3**

Facilitator: Joe Delaronde
Resource Person: Ron Sky
Recorder: Courtney Montour
Group Speaker: Jeremiah Johnson)

Discussion Points

- A general consensus of needing to learn and see more before proceeding
- We don't have the same opportunity in a non-native court system. Rather have it (justice system) here than go out there.
- Will outside governments recognize our system? Participant has doubts about whether they will
- We have to take care in our approach to this new system
- A justice system is a good idea for the community; however, this should also include the development of our own liability system.
- Yes to a justice system but not to a legal system and there is a difference.
- What is it going to look like; is it going to be a carbon copy, parallel to the Canadian system?
- This will and needs to take time
- We need to try harder to get community involvement outside of these meetings. We need to bring it (this topic) to the people out there instead of bringing them to you (Band Council). Go to the Longhouse, go out to the community organizations.
- Suggestion to previous statement: how about bringing what we discuss tonight to your family and draw a consensus from there. It's not MCK's project. The invitation was put out to the community.
- Suggestion 2: If it's (justice system) that important, you (Council) go out to each person, try going to people's homes
- A few participants suggested the need to get feedback from other Mohawk communities. "Kahnawake is not the nation. It is not one community. There are

other Mohawks out there. You need to get their voices too, not just those of this community”

- One participant suggested to send representatives out to discuss with other communities
- If we have consensus here then we should do that but if we haven't decided specifically what we want, we shouldn't approach other communities yet.
- One participant said 'maybe' to the idea of a Kahnawake justice system. “We are dealing with inherent rights but we are not the only community who can use that. We have to think of other nations when we think of justice. How can we build on that past without hurting the greater good? I think inviting them to the process is important.”
- “We need it (justice system) yesterday, today and last week.” Businesses are affected. We don't have labour laws. We are behind. We have to think of the safety of people, of the community.
- We have to get our minds together before we go to other communities and have a strong sense of what we want. The chief system comes out of the Indian act but if we look at where we are today compared to 30 years ago, we are more people oriented. Changes are there. This process is something and it started somewhere. A lot of people are hurt and aren't confident because people don't have the energy or the confidence to come out to this but maybe with the rest of us trying to do something, we give them some power to come next time. This doesn't give Council carte blanche. We are encouraging others to participate. This can help us and help them and get bigger.

Concerns:

Q: There is confusion over the language used in the preamble. One participant doesn't understand how it correlates to the mandate of the Band Council.

A: Explains that this is a community effort, not a band council initiative. The preamble was drafted from community meetings.

Q: If we decide we can go ahead with a justice system, does that give Council carte blanche to do whatever it wants?

A: No, these sessions will help us structure and develop what the justice system will be.

Q: Where do these rules come from for the statistics; how is it an accurate analysis of the community's needs?

A1: For the survey, they spoke with 400 people. The process for analysis came from Statistics Canada.

A2: Many community decisions are made with less than 400 people but this number gives us a basis for discussion. The technical side of research says that this is representative of the community. The consultation provided a framework for the discussion tonight. We are hearing lots of "yes, but..." If we move forward all of those "whats" need to be addressed.

Q: Can you explain the difference between justice and legal? When you say justice I think of pieces that make up a system but maybe it's the principle or belief of what justice is (i.e. that which is moral, that which is traditional)?

A1: Canada has civil courts, family courts, etc. There is a process that you need to follow (evidence, etc.). You may have the best lawyer but it may not be justice. This will be discussed when we reach the other questions.

A2: Justice should mirror the fabric of the people. If it is the same as out there, we'll take theirs. Our own justice system and principles should reflect our culture and our people.

Position:

GROUP 1

Facilitator: Melanie Mayo/Lanny Jacobs

Resource Person: Davis Montour

Recorder: Leah Phillips

Group Speaker: Arlene Jacobs

Discussion: The Group is for a Justice System, although, some disagree.

Clarificaion: house building analogy. How do we fill the house. (Justice System)

Position: The group agrees, although they feel that the question should be re-worded.

Two people do not agree with the idea of Kahnawake having a justice system. Most agree with the concept of a justice system in Kahnawake but with many reservations and questions attached to the process of developing this system. The reoccurring statement is, "yes, but...what will that model be?"

One person stated that we are not there yet. There will need to be high standards. We are not deciding tonight on something we know nothing about, but this is nothing new. Not completely ready to decide anything tonight. There is a possibly we could have an indigenized justice system.

Participants are comfortable with a new justice system, with the exception of one. Yes, one community member poses, but **should** Kahnawake propose “a justice system” or should it be worded differently or even be a system that is completely away justice.

(Peace, harmony and respect)

GROUP 2

Facilitator: Melanie Gilbert
Resource Person: Davis Montour
Recorder: Coreen Delormier
Group Speaker: Mike O'Brien

Disussion: Group 2 decided that Yes, we need a unique system of Justice that reflects our “traditions”.

Clarification: N/A

Position: Responded yes *they want a unique system of justice that better reflects our community and continues to respect our tradition that embodies the values and principles contained within the Kaianere'kó:wa (peace, harmony, good mind and spirit.)”*

GROUP 1

Facilitator: Melanie Mayo/Lanny Jacobs
Resource Person: Davis Montour
Recorder: Leah Phillips
Group Speaker: Arlene Jacobs

Discussion: Would like clarify what Group 2 meant in choosing the word “traditions”. What does that include/mean?

Group 1 would like further clarification Group 2 definition of “tradition”.

Linda Delormier facilitates clarification at this point.

Discussion: Yes, Group 2 agrees with the statement. Consensus was made on the following statement:

“They want a unique system of justice that better reflects our community and continues to respect our tradition that embodies the values and principles contained within the Kaianere’kó:wa (peace, harmony, good mind and spirit.)”

Linda addressed Group 3 to see if they agree with the statement.

GROUP 3

Facilitator: Joe Delaronde
Resource Person: Ron Sky
Recorder: Courtney Montour
Group Speaker: Jeremiah Johnson)

Discussion: The majority of the group agree. The group decided that Kaianere’kó:wa should be removed? If Kaianere’kó:wa is to be used then we should go back to the entire traditional system.

Group decides that the word “embodies” is over used by Council. The group wants it changed to “built upon.”

Clarification: Group would like to replace with the response to our communities needs.

Position: Group 3 believes that the attendance is too small, and that more Community involvement needs to be made to make such a large decision. They agree to the below statement.

“Yes, we want a unique system of justice that better responds to our community’s needs and continues to respect our traditions that are built upon the values and principles of peace, power and righteousness, harmony, good-mind and respect.”

GROUP 1

Facilitator: Melanie Mayo/Lanny Jacobs
Resource Person: Davis Montour
Recorder: Leah Phillips
Group Speaker: Arlene Jacobs

Discussion: Group 1 can live with the decision that Group 3 has made, they do have an issue with the removal of Kaianere'kó:wa This should not be removed.

Position: Agreed, however they do not want to remove the word Kaianere'kó:wa . The group agreed that words *peace, power, and righteousness, harmony, good-mind and respect*" reflect the Kaianere'kó:wa. Group are in consensus.

GROUP 2

Facilitator: Melanie Gilbert
Resource Person: Davis Montour
Recorder: Coreen Delormier
Group Speaker: Mike O'Brien

Discussion: The group agrees with group 3 with taking the Kaianere'kó:wa word out of the statement, they also agreed to include the word "such as" to the statement.

*Yes, we want a unique system of justice that better responds to our community's needs and continues to respect our traditions that are built upon the values and principles **such as** peace, power and righteousness, harmony, good-mind and respect."*

Position: Group 2 are in consensus.

GROUP 3

Facilitator: Joe Delaronde
Resource Person: Ron Sky
Recorder: Courtney Montour
Group Speaker: Jeremiah Johnson)

Position: The group accepts the below statement and they are in consensus.

"Yes, we want a unique system of justice that better responds to our community's needs and continues to respect our traditions that are built upon the values and principles such as peace, power and righteousness, harmony, good-mind and respect."

All three groups have reached consensus.

Conclusion:

Linda mentioned that this is a long process and Wednesdays are to be set aside for Community Hearings. The next location will be determined and the community will be informed as soon as possible.

The participant will return next Wednesday with a friend and or family member.

A Phase I Community Hearing Report will be drafted and distributed to the Community within 3 business days.

DRAFT

Community Feedback/Comments:

The following are comments received by community members either via email or through the feedback mechanism at Kahnawakemakingdecisions.com

The preamble refers to the people of Kahnawake as being part of the Haudenosaunee Confederacy, being sovereign, lives being governed by the principles of the Great Law, etc. This could be debated amongst community members as to whether or not they actually are part of the aforementioned group. And on the other side of the coin, the longhouse of 207 are saying this is not so, aiming their disagreement at Chief and Council.

Which ever way you look at it, people attending the Phase 1 session or Chief and Council calling for such type of dialogue to take place (even though being approved by the council audience) , the process will be labeled "Indian Act " by those negating it.

I recommend the wording be used such as ones agreed to in the one question answered last night "Should Kahnawake have a Justice System ?", ie Haudenosaunee wording deletion. A short, preamble wording should have been same as response to question # 1.

Color cards were given out last night to signify what group you were to sit in. Keep it this way, do not premise it to be the way of the clans holding a meeting and having dialogue. The process of last night was facilitation one and had focus groups congregating and coming up with a position. Do not mix up the focus way with clanship one.

And yes, a bigger area is required. I found it somewhat difficult to listen to the talks which took place in my group. It may be isolation which is of need and not necessarily a larger area. And it would be good to have more TV screens on the walls to have the audience able to digest changes being made to the subject matter themselves.

This is what I saw and feel after attending last night session. The process has definite potential and I personally hope to see it lead to the Haudenosaunee way. With due diligence and facilitation techniques, it should happen (in my opinion).

I spoke with Linda Delormier concerning this feedback, however she asked that I include it on the website, therefore, it is not necessary to respond back to me. My questions were concerning how a "dissenter's" voice was heard and represented within the individual group or the larger group. I have been concerned that an individual may disagree with a particular component of a decision and due to the composition of the group, they may not be heard, may be "over ruled" or may not be validated. In addition, that person may have input that should be heard by the other 2 groups as it may affect their decision as well.

Linda explained how the process worked this past Wednesday concerning the dissenters that were present, and further explained how this played out among the large group, meaning the final wording was changed due to the dissenter's input, and after that, the dissenter could therefore live with the process.

I would suggest that an explanation be provided to everyone to explain this element, as I believe it is valuable for people to know that their voice is being heard and addressed, even when they disagree with a particular component.

Concern over the leading questions - you just about had to agree w/supporting. When our group wanted more information, we were just about told to stick to the question. I understand timeframe has a lot to do with process but this will have a major impact on Kahnawake - should we not be doing this by allowing the community to speak their minds.

I think the term Kaianere'kó:wa is too often used with reckless and misunderstood connotation. Let me attempt to clarify this thought.

While the Kaianere'kó:wa does offer some morality teachings as the byproduct of its narrative, it is not a moral code. The Kaianere'kó:wa is a national constitution that defines the structure, organization, and rules of the Confederacy's chief legislative body – the Grand Council of Chiefs. Nowhere in the Kaianere'kó:wa are codified morality rules, nor are there rules that deal with community laws or domestic justice. Principles such as peace, righteousness, and strength are intended to be the results of legislation passed by the Grand Council of Chiefs and its tributary national councils.

Understanding the true nature of the Kaianere'kó:wa as a national constitution as opposed to a mere moral code, one can easily see that it has no context in the language of the preamble or anywhere within the MCK Community Decision-Making Process. The Kaianere'kó:wa is synonymous with the Haudenosaunee Confederacy and has absolutely no application outside the Haudenosaunee Confederacy.

The Haudenosaunee Confederacy has defined that Longhouse council fires are the only locally recognized legislative bodies within its territories, that serve as the stewards of the Kaianere'kó:wa and as custodians of the sovereignty which the Confederacy provides. This means that only community Longhouse councils who have and maintain a relationship with the Confederacy, exist within the context of the Kaianere'kó:wa. Likewise, citizens of the Haudenosaunee are free to democratically engage in only legislative venue recognized by the Confederacy - the Longhouse. There are no substitutes.

To suggest that the MCK, the Justice Commission, or Community Decision-Making Process are or would be empowered through the Kaianere'kó:wa is simply an unsubstantiated falsehood, since these bodies do not have a relationship with the Haudenosaunee Confederacy. In fact, the Grand Council of Chiefs and the legislation it passes are not recognized by the MCK or any of its tributary bodies.

For example, the Haudenosaunee Grand Council has an active policy that outlaws casinos – yet the MCK periodically pursues one, blatantly ignoring policy created by the legislative body defined by the Kaianere'kó:wa. This small example demonstrates how seriously committed they are the Kaianere'kó:wa and to the Haudenosaunee Confederacy.

A community justice system that considers itself a part of the Confederacy and loyal to the Kaianere'kó:wa, truly would have no problem interpreting this policy as being inconsistent with the federal policy of the Haudenosaunee Confederacy.

With that said, I believe that the Community Decision-Making should abandon any reference to the Kaianere'kó:wa or the Haudenosaunee Confederacy. I believe that Kahnawake should have a justice system that is independent from Canadian or provincial law – but it MUST accept and respect legislation passed by the Haudenosaunee Confederacy and recognize the governing authority of the Grand Council and the Mohawk Nation Council of Chiefs for starters.
