

**COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE JUSTICE SYSTEM**

Karonhianonha School Gym
21 Tsothohrhkó:wa/January 2014
6:00 – 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Kahente Horn-Miller (Lead - CDMP)
Patsy Bordeau

RESOURCE PEOPLE:

Ron Skye (Lead – Resource Person)
Joe Delaronde

RECORDERS:

Leslie Skye (Lead/Logistics)
Sophia Dupont (Main Screen)

6:00 P.M. OPENING - Leslie Skye

6:05 P.M. INTRODUCTION/MEETING GUIDELINES – Kahente Horn-Miller

6:10 P.M. KAHNAWÀ:KE JUSTICE SYSTEM - Ron Skye

6:15 P.M. DELIBERATIONS/DISCUSSION –

8:15 P.M. NEXT STEPS – Kahente Horn-Miller & Ron Skye

8:30 P.M. CLOSING – Kahsennenhawe Sky-Deer

FINAL MINUTES

Second Hearing – 2nd Draft Kahnawà:ke Justice System - 1st Meeting
21, Tsothohrhkó:wa/January 2014

Group 1

Facilitator: Patsy Bordeau
Resource Person: Ron Skye
Recorder: Sophia Dupont

PREAMBLE

- This is Kahnawake's jurisdiction therefore Kahnawake's judicial district
- Omnibus communal laws to be heard in Kahnawake (from 1988 onward)
- Because these laws were made outside Section 107 of the Indian Act, the JP's cannot hear these
- A law is going through the senate at present and it states that laws do not have to be submitted to the government by bands for approval but must be published in local paper or website. These laws still fall under Indian Act.
- The political side will have to negotiate with the government to recognize our law
- The CDMP process validates the law
- Community expressed that it did not want violent crimes heard in Kahnawake
- This act has a provision for a court of appeal, for Kahnawake Laws. Individuals will still have to go to Longueuil for appeals for criminal and penal offences.

QUESTIONS/ANSWERS:

- One community member had a problem with putting the word "except" in 4th paragraph of the preamble. Explanation that putting "except" in prevents us from being limited should Kahnawake want to develop legislation in this field in the future.

OUTCOME/POSITION OF GROUP 1:

- **Consensus of group 1 is that preamble is accepted as it.**

PARKING LOT ITEMS:

- None.

Section II - GENERALITIES

1. JURISDICTION

- Sovereignty is incremental as you exercise it
- When brought to the government, to use the word “sovereign” is fighting words.
- You cannot be sovereign until recognized
- To bring back the unification (territory, laws, language, education, etc.)
- Political willingness to get over it and just recognize it
- Quebec and Canada are younger than us (1867).
- **Consensus reached**

2. PURPOSE

- **Consensus reached**

3. APPLICATION

- What if PK’s refuse to enforce a Kahnawake law?
- The PK’s cannot refuse to enforce laws, they must collaborate with other agencies
- They are sworn in to uphold Kahnawake Mohawk Law.
- **Consensus reached**

4. PARAMOUNTCY

- Question raised if once Justice Act is enacted, does that cancel out a Section 107 court?
- No, because there will be a transition period from the Indian Act Section 107 court to Kahnawake stand-alone justice system
- Comment from a community member “This is very strong and exciting!”
- **Consensus reached**

QUESTIONS/ANSWERS:

- None

OUTCOME/POSITION OF GROUP 1:

- **Consensus reached on all sections.**

PARKING LOT ITEMS:

FINAL MINUTES

Second Hearing – 2nd Draft Kahnawà:ke Justice System - 1st Meeting
21, Tsothohrkó:wa/January 2014

- None

Section III - FORUMS

5. SKEN:NEN AONSON:TON

- Consensus reached

6. ADMINISTRATIVE TRIBUNALS

- Entities that are given powers (Gaming Commission, ABC Board), refuse to grant a permit, individual can try to resolve the conflict through the administrative tribunal. The administrative tribunal cannot change the board's decision but they can recommend that the Board review its decision.
- Some Kahnawake laws have a provision that the administrative tribunal can make its own decision and replace that of the board.
- The appeal would lie with the Court of Kahnawake.
- What section would apply for Chiefs? Answer: There is already a process in place for that (disciplinary measures) but may be something to be considered in the Elections Law

6.1 Consensus reached

6.2 Example of an administrative tribunal's decision replacing decision of a board. For example for a land allotment refusal: Make a land act, the board makes the determination and if refused, the individual goes to the administrative tribunal for redress. Consensus reached

6.3 Consensus reached

6.4 Consensus reached

6.5 Consensus reached

6.6 Consensus reached

7. COURT OF KAHNAWAKE

- This section deals with what the Court of Kahnawake is responsible for.
- The Court of Kahnawake is the court of first instance for all laws applicable in the territory. It can be used as the court of appeal for some Administrative Tribunal decisions to ensure that due process was followed.
- Can review decision of a lower court to find a remedy and correct it.
- "Superintending and reforming", justice team tried to use laymen's terms but sometimes it just could not be avoided.

7.1 Consensus reached

7.2 Consensus reached

- 7.3 Consensus reached
- 7.4 Consensus reached

8. COMPOSITION OF THE COURT OF KAHNAWAKE

- It was decided to have 3 judges
- They have the responsibility to find a solution within confines of jurisprudence
- Outside jurisprudence can be used if laws of natural justice were followed (example given of immigrant child that is granted medicare card)
- Criteria to become a judge are in the regulations
- Special dispensation to continue after age 65, two other peer judges will decide. Decision can be appealed to an Ad-Hoc Committee
- Can't be employed by the MCK or be a chief on council
- Can our PK's be employed as bailiffs? They currently assist bailiffs but this can be considered a conflict as there are specific criteria for becoming a bailiff.
- Are there regulations for the criteria for judges, yes at the back of the document.

- 8.1 Consensus reached
- 8.2 Consensus reached
- 8.3 Consensus reached
- 8.4 Consensus reached
- 8.5 Consensus reached
- 8.6 Consensus reached
- 8.7 Consensus reached
- 8.8 Consensus reached
- 8.9 Consensus reached

9. PRESIDING COURT OF KAHNAWAKE JUDGE(S)

- In criminal cases, there is one judge.
- How does judge gain seniority, through years of service?
- When the Justice Commission appoints a judge, are all judges considered having the same seniority?
- They will all have to start at square one but lead judge will be decided amongst themselves (judges) according to experience
- ***To be mindful when developing the regulations to be clear as to what defines "senior".***

- 9.1 Consensus reached
- 9.2 Consensus reached
- 9.3 Consensus reached

FINAL MINUTES

9.4 **Consensus reached**

10. REMOVAL OF AND OTHER SANCTIONS AGAINST JUDGES AND OTHER DECISION-MAKERS

- A judge cannot be removed by the political body or the Justice Commission, there has to be an investigation before any sanction can be imposed
- There will have to be Regulations developed by the Justice Commission
- The decision of the Ad-Hoc Committee will be posted and made public
- Redress is at the Court of Kahnawake
- The Justice Commission appoints the Ad-Hoc Committee and has to be in the Regulations

10.1 **Consensus reached**

10.2 **Consensus reached**

10.3 **Consensus reached**

QUESTIONS/ANSWERS:

- None

OUTCOME/POSITION OF GROUP 1:

Consensus reached on all sections.

PARKING LOT ITEMS:

- None

Section IV – COURT OF KAHNAWÀ:KE HEARINGS

11. SESSIONS OF THE COURT OF KAHNAWAKE

- Judges of the Provincial Court of Quebec are paid approximately \$ 225 K per year
- Kahnawake will start with an honorarium, on a sessional basis, \$ 500 per 3 hour increment for example
- If the individual wants to have criminal/penal case heard in Kanienkeha, Russian, etc., the court provides the translator.
- When it is a civil case, the individual pays for his/her own translator.
- Fines are not kept by the court. All fines are sent to MCK and go to the community general fund.

- 11.1 Consensus reached
- 11.2 Consensus reached
- 11.3 Consensus reached
- 11.4 Consensus reached
- 11.5 Consensus reached

12. RULES OF EVIDENCE & PROCEDURE AND ADMINISTRATIVE MATTERS OF THE COURT OF KAHNAWAKE

- Some items were removed because they fit better in the Regulations
- Intention is not to reinvent the wheel
- Selection process of Justice Commission members, mandated by council: representatives from KSCS, Court, JP's, PK, MCK legal, ADR and 2 community members
- Process to adopt Regulations by CDMP, stakeholders are consulted, posted for 30 days and then adopted by Council through an MCED. (Similar as a type 2 legislation)
- g) Any other rules, procedures, guidelines or policies for the efficient and effective operating of the Courts of Kahnawake

- 12.1 Consensus reached

QUESTIONS/ANSWERS:

None

OUTCOME/POSITION OF GROUP 2:

Consensus reached on all sections.

PARKING LOT ITEMS:

FINAL MINUTES

Second Hearing – 2nd Draft Kahnawà:ke Justice System - 1st Meeting
21, Tsothohrkó:wa/January 2014

- *To be mindful when developing the regulations to be clear as to what defines “senior”.*

Community Representative

Date

Technician

Date

Chiefs Advisory

Date