

COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE MEMBERSHIP LAW
12th COMMUNITY CONSULTATION
 Karonhianonha School Gym
 26, Ohiarí:ha/June 2013
 6:00 PM – 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Kahente Horn-Miller (Lead - CDMP)
 Joe Delaronde (Facilitator)
 Kahienes Sky (Facilitator)

RESOURCE PEOPLE:

Rose-Ann Morris (Lead – Resource Person)
 Shari Lahache
 Jennifer McComber

RECORDERS:

Brandi Meloche (Group 2)
 Sophia Dupont (Group3)

6:00 P.M. **OPENING** – Kahsennenhawe Sky-Deer

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

6:10 P.M. **KAHNAWÀ:KE MEMBERSHIP LAW** – Rose-Ann Morris

6:15 P.M. **QUESTION 3:**

- Suspension or Revocation KKR Membership (benefits & services)?
- Married or marries a non-indigenous person after May 22, 1981
- Commenced or commences after May 22, 1981, a common-law relationship with a person who has no Kanien'kehá:ka or Indigenous lineage
- Person renounces their Membership or non-member residency

8:15 P.M. **NEXT STEPS** – Kahente Horn-Miller & Rose-Ann Morris

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

Note: Due to a low number of participants, it was agreed to have two groups' deliberate. Participants from Group 1 joined Group 2.

Question: 3**Suspension or Revocation KKR membership (benefits & services)?**

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GROUP 2

Facilitator: Joe Delaronde

Resource Person: Shari Lahache

Group Speaker: Kevin Fleischer

Recorder: Brandi Meloche

15 Minute Group Discussions

How long are suspensions?

Suspensions would last until the person's situation changed. Until then, all benefits would be suspended.

- Comment – other “crimes” aren't reasons for suspension?
- Did complainants require documentation?
- What is the investigative Process?
- What about reports of someone dating/living with a non-Native?
- Issues with enforcement. Suspension of garbage service? Water cut-off? Who would be there to enforce the garbage suspension on garbage day?
- Some rights and benefits are enforceable but some are not. Restrictions on voting may be possible but suspension of rights and benefits (Garbage, Water) may not be enforceable.
- Suspensions were posted/ advertised in the community.
- It may be embarrassing for the individual but it is a matter of public record.
- A separate body as independent as possible should hear these issues. Example: If someone is requesting to have someone suspended. Lawyers, investigation etc. may be too much for the Membership Department to handle.
- Tribunal for “suspensions”, independent of the MCK. – This would in effect replace the Council of Elders. This could be the group that was agreed to during the last discussion.

- The “Membership Review Board” would have to be specialized professionals.
- What kind of expertise would be required to serve on the “Membership Review Board”?
- Mix of appointed/elected. Members to the “Membership Review Board”.
- Rather than appointed, create criteria for this election.
- **Suggestions on Criteria:**
- Minimum Level Board Experience – 3 years or Requirement to Take Training
- Level of Education
- Good Mind, Positive/ Good Person/Fair Person.
- Knowledge of the Community/Families/History of Membership
- Knowledge of the Membership Law.
- No Criminal Record Conviction in the last 6 years
- **Automatic: 10.1-10.2 of the Kahnawake Membership Law**
- Born of 2 members (4 Great Grandparents)
- Born with 1 member (4 Great Grand Parents) and of another band, including the continental U.S. and the Inuit.
- **Non-Automatic: 11.1-11.6 of the Kahnawake Membership Law**
- Registrar refers to “Membership Review Board”
- How many would be in the group?
- 7 in the group, with 4 for a quorum.
- Staggered Terms
- Appeals to the Court of Kahnawake.
- Automatic appeal mechanism.
- Would the Alternative Dispute Resolution (ADR) have any part in this?
- Group doesn’t believe ADR would have any part in suspensions.
- Can judgment be appealed “outside”?
- Group feels that all appeals should be handled within Kahnawake.
- Make appeal specific to Court of Kahnawake.
- Registrar would be for people who meet all criteria – automatic membership.
- Agreed that both duties handled by same group.
- New Justice Act would allow for enforcement.
- Complaints – 1 written complaint not 10.

Parking Lot Items:

In terms of suspension of benefits/banishment → Question: What about those harming the community with the selling of drugs or other harmful acts/crimes?

Question: 3**Suspension or Revocation KKR membership (benefits & services)?**

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-Person renounces their Membership or non-member residency

GROUP 3

Facilitator: Kahienes Sky
Resource Person: Rose-Ann Morris
Group Speaker: Ron Skye
Recorder: Sophia Dupont

Group 3 Discussion:

- Why pay \$20? Why 10 members? I am against the fee and the requirement of having ten (10) members make the complaint.
- The three (3) suspensions were based on members marrying (or common law) with non-Native spouses.
- The \$20 was an administrative fee that went to the COE.
- The fee may have been in place to avoid frivolous complaints to have a member suspended.
- I question having the body have 30 days to hear the complaint. It is forcing the issue to be heard before having all the evidence. The period should be longer.
- I agree, it should be at least 45 to 60 days.
- The process should be done within 30 days but not the decision.
- It is in the Membership Law that if a member marries a non-Native, you can have their benefits suspended.
- What services are available to a status Indian and to a member of Kahnawake? What is the distinction and what are the implications?
- It is difficult to make the distinction sometimes.

- The bulk of federal funding is based on users of the service and on-reserve residency.
- The key services that would be suspended are land allotment, housing and water & sewer, voting, burial (refer to section 15 of membership law).
- The non-Natives have everything and it has to be stopped.
- That will be the enforcement which will be addressed later on in the law.
- For eye glasses and dental, everyone with Indian status is entitled.
- There are about 10,000 people registered on Canada's list but about 3,900 are not members of Kahnawake.
- If membership is suspended, there are still services available through the federal registry (education, medical).

Suspension and Revocation reviewed:

20.1 A member who:

- a) Married, or marries, a non-Indigenous person after May 22, 1981, or
- b) Commenced, or commences, after May 22, 1981, a common-law relationship with a person who has no Kanien'kehá:ka or Indigenous lineage,

Will have their entitlement to receive any of the benefits and services to which they would otherwise be entitled as a member of the Kanien'kehá:ka of Kahnawá:ke, suspended for as long as they remain married or in a common-law relationship with the non-Indigenous person.

Group 3:

- Yes we need to keep this in the law but how do we enforce?
- I know of people who have married non-Native and they left the territory. But there are others who stayed.
- There is an education process that has to be done so that the younger generation knows that they will have to leave if they marry out.
- If a Native marries a non-Native, they should still have their benefits but their spouse cannot acquire rights or benefits.
- If the children are told what the law is, they have to respect it.
- A lady who marries out should not lose her benefits, she's still an Indian. Why should there be a punishment?
- It's not about not being a Mohawk, it is about laws.
- There was a survey in the 90's; I heard a lot of grievances and some hard-liners. We have to listen to the people of the community and not only the people

breaking the law. Ten people will not sign an application to suspend membership because of retaliation.

- I know of ladies that married out but left the community and came back in their 80's and now live at the Elders' Lodge.
- I believe it is demeaning to have to ask permission to be reinstated if you were born a Mohawk.
- To think of our grandchildren, back in generations, they did not follow the law. There is not enough room for our own members. Put a law in force where the young ones will understand that we mean business.
- I was told that if I married out, I would have to leave.
- The law should be based on the output we want. Is it to keep the bloodline as pure as possible or to increase our numbers? What is the goal of the law, what do we want to accomplish?
- For the younger generation, they have to understand because we are a different era here.
- Membership goes back to the late 1700's. There were Huron's, white people, etc., living here.
- Services are being cut back everywhere and we don't want people to abuse it. I heard of someone from Chateauguay marrying a Mohawk and the family want to use the spouse's band number and have stuff delivered.
- If a member of Kahnawake is suspended, it does not stop them from receiving services through the federal government.
- Cut off some services but they are able to retain others.
- Some are breaking the law by building on other people's land.
- To suspend water is not feasible as it is a basic necessity for health & safety.
- At what percentage of blood quantum do we consider those that the band council accepted back in the past?
- We are beyond using blood quantum (to get away from old Indian Act).
- At what level, will we be considered Metis rather than Mohawk because of all the dilution?
- At minimum there has to be four (4) great-grandparents and we already received consensus on that.
- The 1981 moratorium was decided by the community.
- The community has been informed that these issues are being decided at these meetings and this is the attendance that we have.
- There was a meeting held at the Knights and the hall was packed, that was when the law was passed.
- In 2003, the law was reaffirmed.
- Then it was the custom code and each version of the law became more detailed.
- There will be a cost associated with the enforcement.
- For the children of reinstated members, they would have to apply for membership on their own and if they do not have the four (4) great-

grandparents, they do not become members.

Group 3: Yes definitely keep this clause in the law but it needs to be better defined. If member marries non-Native, suspend membership for programs and services during the time of the marriage. If they divorce or spouse is deceased, the member should have his/her benefits reinstated.

- All other policies (land allotment, etc.) would have to follow and be in line with the Membership Law.
- It is a residency issue not a membership issue.
- When a member is not allowed to have land because they have been suspended, we have to put it in the law that someone else cannot do it for them.
- If a member is single and builds a house then marries out, can the spouse live in the house?
- Only if the spouse has Aboriginal lineage, he/she can apply for non-member residency.
- I would like to keep the 1981 law.
- I think it should be effective from 2013, because it is a new process. To reaffirm 2003 law and strengthen it.
- I agree with the statement of having membership suspended if a member marries a non-Native but from now onward. There has to be a start date.
- It doesn't make sense to keep the date to go back to 1981 because it was not enforced since then. What about someone that married out in 2010?
- The membership department did take people off the list pre 2003.
- If they applied for a service (land, housing, water), they were asked if they were married to non-Native and if they were, they were taken off the list.
- There were cases where people fell through the cracks and it was not enforced.
- In a court of law, it can be challenged that it was not enforced since 1981 so this sets the precedent.
- I don't think so because there was a moratorium 1981.
- All non-Native women who acquired membership through marriage were taken off the membership list and put on the non-member residency list.

- We have to put safe-guards in place and not start the whole process over.
- It doesn't matter what year we put, it will be the problem of enforcement.
- The Peacekeepers cannot enforce the law as it is right now because it was not sent to Ottawa to be approved.
- There is a defense because it is a community law.
- There can be challenges because of Charter rights, etc.
- If we put the date of 1981, does it mean the community can go back to those who broke the law since then, and have them removed?
- Yes, but there has to be compensation (for improvements or interests) and it is going to cost the community.
- Whose responsibility is it to send our laws to Ottawa?
- It is Council's.
- The community said in 1988 to stop sending our laws to Ottawa for their approval/permission.
- Is Kahnawake ready to have its own law in 2013 that the outside will recognize?
- We need a law that has teeth.
- There has to be the political will to move the law forward.
- We have to say this is what we are putting in place and that's it.
- They have never said that we can make our own laws.
- You are scaring people because you say that there will have to be compensation paid.
- The enforcement component would be put in the law and state what the penalty is (removal, fines).
- On the Justice Act, we've told them this is what we're doing here. The community will develop the parameters.
- Base our law on the same process that Canada and the United States empowered its laws, by the People.
- This will keep membership from being decided by the outside court.
- Before, in a divorce settlement, the non-Native spouse could get the house and land on a reserve by provincial court but federal court reversed the decision saying the Native spouse would have to pay compensation to the non-Native spouse to leave the house and land.
- The Federal government wants all First Nations to make its own membership law under their terms but we do not agree. We will make our own law under our own terms.
- We are not accepting responsibility for the people that the Indian Act put on the federal registry.
- We have traditional people who are part of the community and they are not here. We have to listen to them.
- I am here and so are others who are traditional so they can come out too.

- We are dealing with all kinds of situations, I agree with keeping the law but the implementation date to be from now.
- It is a residency issue when it comes to services and benefits.
- Should they stay here if they are married to a non-Native, the simple answer is no; but to put the year doesn't matter (for example 1942, 1979, 2001 or other).
- This version of the law does incorporate the 2003 version.
- When they talk about longhouse participation, in 1974 they evicted people.
- I am comfortable with the law but the date would require a legal opinion on 1981 date to see if we would be putting ourselves into a lot of legal problems.
- I am in favor of the 1981 date because it was the community that came out at that time and they decided at that time.
- The traditional people agreed to the 1981 version.
- I believe it should be effective in 2013.
- The federal government is giving us a chance to put forth our own matrimonial property law.
- I suggest putting the 1981 date and we can revisit it.
- The Matrimonial Real Interest law is more complicated when it comes down to the division of assets.
- If we obtain a legal opinion on the date of retroactivity to 1981, this would solidify our law to be enforceable.

Group 3: Further discussion required, no consensus reached on the application date of 1981. Suggestion was made to obtain a legal opinion because of all the inconsistencies in enforcing the 1981 version.