

COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE ELECTION LAW
SECOND HEARING
Karonhianonhnha School
21, Tsothohrkó:wa/January 2015
6:00 PM – 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Joe Delaronde

RESOURCE PEOPLE:

Trina C. Diabo (Lead – Resource Person)

Angus Montour

Joann Patton

RECORDERS:

Leslie Beauvais-Skye

6:20 P.M. **OPENING** – Leslie Beauvais-Skye

6:25 P.M. **INTRODUCTION/MEETING GUIDELINES** – Leslie Beauvais-Skye

6:30 P.M. **REVIEW OF AMENDMENTS TO KAHNAWÀ:KE ELECTION LAW** – Trina C. Diabo

7:15 P.M. **NEXT STEPS** – Joe Delaronde & Trina C. Diabo

7:20 P.M. **CLOSING** – Leslie Beauvais-Skye

GROUP 1

Facilitator: Joe Delaronde
Resource Person:
Group Speaker:
Recorder: Leslie Beauvais-Skye

The Kahnawà:ke Membership Department has requested the term **ordinarily resident** be maintained in the MCK Election Law. The reason is, in the future the Kahnawà:ke Membership Law is being proposed to be named the “Kanien’kehá:ka of Kahnawà:ke Law,” and within the Law the definition for an “ordinarily resident” (which was changed from normally resident) means that a person maintains their permanent home in Kahnawà:ke and includes persons who may be absent for a period of time, but who return to Kahnawà:ke on a regular basis from their place of employment, training or schooling, and also person who do not reside in Kahnawà:ke due to housing shortages. Therefore changing the term from “ordinarily resident” to “Kanien’kehá:ka of Kahnawà:ke Resident” could potentially create confusion with the term “Approved Kahnawà:ke Resident” that will be meant to replace non-member resident in the Membership Law.

Question 1:

Does the community want to consider this recommendation to maintain the term “Ordinarily Resident” or come up with a different term rather than “Kanien’kehá:ka of Kahnawà:ke Resident” or maintain the original consensus? (The definition did not change.)

DISCUSSION:

- Can this be changed in the future?
Yes it can be changed.
- What context does Ordinary Resident have in the Membership Law? Don’t they have separate definitions?
No, the definitions are different and didn’t change.
- The suggestion was to change the term Ordinarily Resident to Kanien’kehá:ka of Kahnawà:ke.
- The request from Membership is to maintain the definition of Ordinary Resident. The Membership Law uses the term “Normally Resident”, but it has the same definition as Ordinarily Resident.
- Part of the confusion is that the Membership Department is proposing these recommendations based on the future amendments of the Kahnawà:ke Membership Law. So this is projected to cause confusion.
- Normal Resident in Membership is the same as Ordinarily Resident in the Election Law.
- It’s to avoid any confusion.
- Legal Resource clarifies that some people refer to Ordinarily Resident as an Indian Act term, but it’s a general legal term. In terms of moving forward with our Justice System it’s important to remain consistent.

OUTCOME:

- Agreed to keep Ordinary Resident.
Consensus Reached

In 26.1 (a) must be changed to read: “Must be on the list of voters from the Kanien’kehá:ka of Kahnawà:ke Registry.” Currently it says you must meet the requirements of the Kahnawà:ke Membership Law and be listed as a member on the Kahnawà:ke Kanien’kehá:ka Registry (KKR). The rationale is that maintaining this wording, “must meet the requirements of the Kahnawà:ke Membership Law,” could be interpreted that a person has to be put on KKR because they meet the criteria or be removed from the KKR because they do not meet the criteria.

Question 2:

Does the community agree with this recommendation?

DISCUSSION:

- There are some people on KKR that don’t meet the requirements of the Membership Law
- Just clarifies and avoids issues on Election Day. You can vote if you are on the KKR.

OUTCOME:

- Agreed to maintain requirements “Must be listed as a member on the Kahnawà:ke Kanien’kehá:ka Registry.”
- Agreed to remove the requirements “must meet the requirements of the Kahnawà:ke Membership Law.”

Consensus Reached

In 26.1 references to “or entitled to be listed” should be deleted. The membership staff is on hand on Election Day for any inquiries of why a person is not on the voters list. The rationale is that if left as is, it is open to interpretation.

Question 3:

Does the community agree with this recommendation?

DISCUSSION:

- Clerical errors are covered off in 21.7. If a person is entitled to be on the Voters List and was left off due to error; the membership staff is on hand to confirm that a person was left off due to an error.
- If “or entitled to be listed” remain, it would be simple to add a clarifier that this is not open to interoperation and it’s covered in 21.7.

OUTCOME:

- Agreed to maintain “or entitled to be listed”, and simply add a clarifier that this is covered in 21.7.

Consensus Reached

It has been recommended by MCK Legal Counsel to amend the timeframe for Appeals Process. Although it was agreed to by consensus, Legal Services wishes to state that the 15 day time limit from the time the appeal is received to render a decision are far too short for the parties to be able to provide full particulars for the appeal and in defense of the appeal. This may result in a failure to comply with the rule of natural justice. The 15 days should only start to run once the appeal is **heard** not when it is **lodged**.

The Justice will have fifteen (15) days to render a decision from the date an appeal is heard (**not received**) and will have an additional Forty-Five (45) days to render a written judgment.

Question 4:

Does the community agree with this recommendation?

DISCUSSION:

- There are too many tasks to be completed in time to meet the 15 day period.
- If the judge can't meet the 15 days, then they'll be in contravention of the Law.
- Suppose they appeal on the 7th day. From the date the court receives it they have 7 days to respond. Then another for a total of 21 days. The first 7 days doesn't count - the Court has 7 days to respond; it's not long enough.
- Once the judge gets everything in their hand then they have 15 days.
- 15 days for decision and 45 days for written judgment.
- Natural justice means what makes sense. If an appeal is made they would have to go for another appeal; the point is the judges themselves would say there is a problem. It's too short of a time.
- It would harm the credibility of the justice system. Some appeals can be easy, but others are more complex. What kind of decision are you getting if all the work the judge had to do was rushed?
- What if there is more than one complaint? Historically we haven't had anyone with more than one complaint, but we don't want anyone having to bring their complaint to the outside.
- I felt it was impossible and glad it's back out for discussion.
- If quick it could be done in less time.
- What is meant by Natural Justice?
It's an unwritten rule; a right for fair trial and having a fair amount of time to prepare a judgment.
- Where does the 45 days come in?
It's to write it. Once the complaint is heard, the judge will have 15 days to render a verbal decision; then they will have 45 days to render the written decision.
So it could be longer than 60 days?

- The attorneys have to make themselves available on that court date. It's at the discretion of the judge.
- Within 7 days of the election if no complaints are received then this doesn't come into play.

OUTCOME:

- Agreed to change the clause to read: "The Justice will have fifteen (15) days to render a decision from the date an appeal is heard and will have an additional Forty-Five (45) days to render a written judgment."

Consensus Reached

There were also incidental changes that were recommended to tighten up wording:

In 15.2 it was suggested to make the wording clearer: the clause would now read: "*For greater certainty, the term "criminal offense" contained in subsection 15.(1)(g) includes any conviction for an indictable offense or three (3) summary conviction offenses committed within a period of five (5) years. In the case of the latter, the six (6) year ban from holding office will commence after the last of the summary conviction offense sentence has been served in full. Criminal conviction for a tobacco charge (possession, manufacture or transport) will not be considered as a criminal offense for the purpose of this Law.*"

DISCUSSION: 15.2

- What was it changed from?
Trina read section aloud (pg. 9). Basically it was tightened up so it wasn't as wordy.
Essentially it's the same meaning; it's for improved readability.

Consensus was reached to the change.

In 21.8 it is suggested to add the following sentence in the clause that: "*The Electoral Officer and Assistant Electoral Officer should refer a person to the MCK Membership Department staff to clarify why that person is not on the voters list.*" (As this is the role of the Membership Department.)

DISCUSSION: 21.8

- Trina read section aloud (pg.12). Just one sentence that the electoral officer refers.
- It is said that the one thing missing from this law is a removal process.
Trina clarified that there is a removal process at Council and explained that the MCK Election Law is for the Electoral Officer to run Election, the accountability for Chiefs doesn't fit into the Election Law. There are Disciplinary measures at Council.
- Maybe it's time for the community to look at disciplinary measures.

OUTCOME:

- Agreed to the change to add the sentence.

Consensus Reached

FINAL MINUTES

Kahnawà:ke Election Law SECOND HEARING

Approved by:

Trina C. Diabo, Technician

Date