

**COMMUNITY DECISION-MAKING PROCESS
PROPOSED KAHNAWÀ:KE RESIDENCY LAW
COMMUNITY CONSULTATION**

Knights of Columbus
23, Onerahtohkó:wa/May 2017
6:00 – 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Leslie Beauvais-Skye (CDMP)
Joe Delaronde (Lead)

RECORDER:

Caroline McComber

RESOURCE PEOPLE:

Chief Rhonda Kirby (Lead)
Trina C. Diabo, Technician
Rose-Ann Morris, Resource
Kevin Fleischer (KLCC)

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- ❖ **Opening Address – Leslie Beauvais-Skye**

 - ❖ **Welcome/Respectful Behaviors/Process – Leslie Beauvais-Skye**

 - ❖ **Proposed Kahnawà:ke Residency Law Urgency - Background, Purpose, Scope & Mandate – Chief Rhonda Kirby**
Questions:
 - 1) **Does the community agree that there should be a Kahnawà:ke Residency Law ? If yes, is it Urgent?**

 - 2) **Does the community approve the Purpose & Scope of the Proposed Kahnawà:ke Residency Law?**

 - 3) **Does the community give the mandate to move the Proposed Kahnawà:ke Residency Law through the Urgent CDMP?**

 - ❖ **Recap & Next Hearing: Tuesday, May 30, 2017 – Chief Rhonda Kirby & Joe Delaronde, Facilitator**

 - ❖ **Closing – Leslie Beauvais-Skye**

Leslie Beauvais-Skye opened the evening's session outlining the evening's agenda along with the reasoning for the proposed law's categorization as Type I (Urgent). Expressing further that the proposed Residency Law is based on the decision of the recent Descheneaux court case where the Government was ordered to amend the **Indian Act** to remove gender inequalities in the Act. This Court judgement would allow many individuals who have no entitlement to now become registered on the Federal Band list. Consequently, this law was categorized as Urgent because these amendments would impact our community's basic human rights. Criteria: The necessity for immediate legislative action due to issues which pose (or will soon pose) an internal or external imminent objective threat to the security and safety (environmental, fiscal, legal, social cultural or political) of Kahnawà:ke.

With the 'urgent' process, the regular Type I is suspended, and the law is expedited through the CDMP without following the regular process (i.e., two Hearings in Phase II). Although the process is accelerated, the community should be aware that, should the community give the mandate for this law to move through the Urgent CDMP, it would still need to re-enter the regular CDMP within a year of passage.

Chief Rhonda Kirby provided overview on the Residency Law's background, purpose, scope and mandate of the `Proposed Kahnawà:ke Residency Law's urgency:

Purpose:

The Residency Law establishes a system to control the residency of non-members within Kahnawà:ke. Residency is a privilege of temporary residency to non-members who meet the criteria in the Law.

Scope:

Eligibility Criteria for non-member Residency

According to the survey, Community Meetings and a Moratorium the starting point for eligibility is:

- *People registered with Canada, with some lineage and grew up in Kahnawà:ke*
- *Natives married or common law with a Member of Kahnawà:ke*
- *Natives from other communities who are working in Kahnawà:ke*
- *Natives from other Communities who are attending an educational facility in or near Kahnawà:ke*
- *Non-Natives in a marriage before 1981 (as per the moratorium)*
- *Children under the age of 18 authorized to stay with their parent on the KKR and then required to apply for residency at the age of 18*
- ***Eligibility criteria may include:*** *Be willing to do a criminal background check. Provide proof of where and whom you will reside. Reason you desire to reside in Kahnawà:ke. Sign a waiver that you abide by Kahnawà:ke Laws and Regulations for residency requirements.*

According to the survey and Community Meetings and a Moratorium, the starting point for non-eligibility is:

- *People registered with Canada, with some lineage, (but is not on the KKR), who never lived in Kahnawà:ke or have not maintained ties to the Community*
- *Non-Natives in a relationship with KKR Members after 1981 Mixed Marriage Moratorium*
- *Non-Natives adopted by members listed on the KKR after 2003 (when the Membership Law was passed)*

Inquiry was made on the process of enforcement. Chief Rhonda Kirby advised that Kahnawà:ke can develop its own Residency Law, therefore enforcement issues would be handled by the Kahnawà:ke Peacekeepers. Kevin Fleischer advised further that there would be a court process (judgement) applied before the actual stages of eviction. Kevin Fleischer expressed that he expects that there will be procedures and/or process developed and these may be regulations.

Authority to hear, approve and revoke the Residency Applications & Permits

- *Residency Registrar - Authority*
- *Community Advisory Board – Advisory to the Registrar*
 - *Applications that are not clear cut*
 - *Appeals*

Appeals Process:

- *Community Advisory Board (Step 1)*
- *Court of Kahnawake (Step II)*

Reasons & processes for revocation of residency

- *Committed a Serious Crime (examples rape or murder)*
- *Breaking Mohawk Law - person demonstrates conduct viewed as undesirable*
- *Should persons have their residency privilege revoked if the member breaks up with the non-member resident (spouse or common law partner) (non-member breaks up with the member)*

Enforcement

- *The Registrar will be able to have a Bailiff serve the notice of revocation*
- *Non-Compliance goes to the Court of Kahnawà:ke/Peacekeepers*

Concern was raised on the timeframes of the Kahnawà:ke court process for evictions once the Law becomes enacted. Chief Rhonda Kirby advised at this point in time, regulations can only be developed and defined once the community approves a mandate for a Residency Law.

Further inquiry was raised concerning the clarity of the following clause:

- *Should persons have their residency privilege revoked if the member breaks up with the non-member resident (spouse or common law partner) (non-member breaks up with the member)*

Chief Rhonda Kirby advised for the record that this was an oversight, therefore the clause will be amended as follows:

*"Should persons have their residency privilege revoked if the **non-member** breaks up with the **member resident** (spouse or common law partner)"*

Also inquired was whether the Residency Law is a Membership Code. Chief Rhonda Kirby advised that the Membership Law and the proposed Residency Law are each their own legislations and are separate from each other. It was proposed to include "this is who Mohawks are" into the Residency Law with Chief Rhonda Kirby advising that was certainly possible.

Kevin Fleischer advised that many questions and/or concerns cannot be properly addressed at this given time without a draft law to look at. The mandate is required for the actual drafting to commence, therefore there can be no system of rules the community recognizes as regulating the actions of its non-member residents. However, the process will need to be fair, efficient and expeditious.

Further concern was raised that the proposed Residency Law is being rushed and whether there are any conflicting issues with the current Membership Law. Chief Rhonda Kirby advised that during the decision-making process of amending the Membership Law, there were clauses clearly related to Residency having no relation with Membership and removed.

Inquiry was raised concerning the two (2) prior requests for a Residency Law that was made to the Kahnawà:ke Legislative Coordinating Commission (KLCC) and what is the difference between the two (2) and Chief Rhonda Kirby's request and whether or not they were supported. Leslie Beauvais-Skye reminded people that anyone on the KKR who is 18 years of age could submit a request for a law, further explaining that there were a total of three (3) requests made to the CDMP for a Residency Law. Leslie Skye-Beauvais further advised that at the time the prior requests came through the KLCC, the docket was full and the KLCC had communicated to each that their request would be looked at in the New Year.

Chief Rhonda Kirby advised legislative decisions are not made by Council but go to the KLCC and further stated that she believed that the KLCC considered her request first because of the urgency based on the impending threats due to the Descheneaux

decision. Chief Rhonda Kirby further advised that because her request was specific to the Descheneaux decision, her request had taken precedence over the prior two (2) requests.

Now that Canada has an obligation to amend the *Indian Act* to respond to the decision by the court-extended deadline of July 3, 2017, it is imperative that we get our Law enacted. Further reiterating that should the Law be accepted using the urgent process, it would still need to re-enter the regular CDMP within a year of passage.

Issue was raised that during the Membership Law drafting, 'our' privileges were removed and whether privileges would be included into the proposed Residency Law. Chief Rhonda Kirby advised that for the time being, the Residency clauses can be removed from the Membership Law and replaced into the drafting of the proposed Residency Law; however residency would be the privilege.

Inquiry was raised concerning those that do not comply with proposed Residency Law questioning how the Trespass Law (Kahnawà:ke Building Use Law) and issues on residency differ. Kevin Fleischer advised that with an actual court process where judgements can be issued, enforcement matters would be executed by the Kahnawà:ke Peacekeepers reiterating that these details would be determined once the mandate is given to proceed with the drafting of the Law. Kevin Fleischer responded to the inquiry concerning trespassing referencing a decision from the Court of Kahnawà:ke from the late 1980's that was appealed to an external Court.

Comment was made that the community should not waste more time debating this issue. With the enactment of the proposed Residency Law, Kahnawà:ke will finally be in the position to render court judgement to bring violators to the Court of Kahnawà:ke executing evictions once and for all. It was the opinion of the participant that these court judgments will be completely legal that no outside court can overrule. This is the only hope we have so let's work together in getting the mandate this evening. Further, several of the evening's participants expressed the importance and urgency in the community working together in getting the mandate for the proposed law this evening.

Inquiry was made on whether there may be an applicable residency permit fee. Chief Rhonda Kirby advised that this could be considered during the drafting of the Law further advising that in the event that the Law becomes enacted, there is the possibility that it may be challenged.

Inquiry was further raised on the non-member resident entitlements. It was clarified that the entitlements are strictly residency.

Kevin Fleischer commented that with the *Appeals Process* it may be a conflict that Community Advisory Board also acts as the Appeals Board recommending further that they be separate. It was further advised that the 'Scope' as presented is a draft

therefore; details in relation to appeals will be addressed during the drafting of the proposed law.

**QUESTION (1):
DOES THE COMMUNITY AGREE THAT THERE SHOULD BE A
KAHNAWÀ:KE RESIDENCY LAW? IF YES, IS IT URGENT?**

After much debate, the facilitator questioned *Does the community agree that there should be a Kahnawà:ke residency law and is it deemed urgent?*

Outcome:

The community reached consensus with two (2) in opposition that a Residency Law is required.

Outcome:

The community reached consensus that there was a need for a Residency Law and that it was urgent. Two (2) community members were in opposition that there should be an Urgent Residency Law.

**QUESTION (2):
DOES THE COMMUNITY APPROVE THE PURPOSE & SCOPE OF THE PROPOSED
KAHNAWÀ:KE RESIDENCY LAW?**

The facilitator surveyed the group on whether they approve of the ‘**purpose**’ as outlined:

Purpose:

The Residency Law establishes a system to control the residency of non-members within Kahnawà:ke. Residency is a privilege of temporary residency to non-members who meet the criteria in the Law.

Outcome:

The community reached **consensus** with two individuals opposing to approve the **Purpose** of the proposed Kahnawà:ke Residency Law.

The facilitator surveyed the group on whether they also approved the ‘**scope**’ as outlined:

Outcome:

Consensus was not reached on the clause ‘*People registered with Canada, with some lineage and grew up in Kahnawà:ke.*’ It was proposed to accept the ‘Scope’ by **consensus** giving the mandate with the **proviso** that the Drafting Team will include options within the draft law when it becomes available where further discussion and debate can take place within the CDMP.

**QUESTION (3):
DOES THE COMMUNITY GIVE THE MANDATE FOR THE PROPOSED
KAHNAWÀ:KE RESIDENCY LAW CDMP?**

Outcome:

By consensus, the community has given the mandate to proceed with the proposed *Kahnawà:ke Residency Law* using the 'urgent' process provisions within the Community Decision Making Process.

FINAL OUTCOME:

FINAL CONCLUSION →

The community has given the mandate to proceed with the proposed *Kahnawà:ke Residency Law* using the 'urgent' process within the Community Decision Making Process.

Consensus was reached on the following:

- the need for a Residency Law and its Urgency
- the Purpose and Scope of the law
- a Mandate to move the law forward using the Urgent Process

DRAFING TEAM TO DEVELOP SOME OPTIONS OR RECOMMENDATIONS IN RELATION TO THE ONE CLAUSE "*People registered with Canada, with some lineage and grew up in Kahnawà:ke.*".

Approved by:

Chief Rhonda Kirby, Portfolio Chief

Date

Trina C. Diabo, Technician

Date