

COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE FAMILY HOMES LAW (KFHL)
 FIRST HEARING – MEETING #1
Karonhianonhnha
 27th, Onerahtohkó:wa/May 2014
 6:00 pm - 8:30 pm

RECORD OF DISCUSSION

FACILITATORS:

Kahente Horn-Miller (Lead –CDMP)
Ron Skye
Trina C. Diabo

RESOURCE PEOPLE:

Paul Nicholas (Lead-Resource Person)
Melanie Gilbert
Rosemary Lahache
Rose Ann Morris – Group 1
Mary Lee Armstrong (Legal Services)

RECORDERS:

Sophia Dupont – Group 1
Coco Sky – Group 2

 6:00 P.M. OPENING ADDRESS – Leslie Skye

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

6:10 P.M. KAHNAWÀ:KE FAMILY HOMES LAW, Recap- Chief Clinton Phillips

6:15 P.M. DRAFT KAHNAWÀ:KE FAMILY HOMES LAW- Paul Nicholas

6:30 P.M. QUESTION - **This Draft represents a solid starting point. Input from Kahnawà:ke Stakeholders was key. The draft was developed to prevent Federal Laws and Provincial courts from dictating on Kahnawà:ke lands. Do you want to move forward with this draft in the Urgent CDMP process?**

8:00 P.M. NEXT STEPS- Kahente Horn Miller

8:50 P.M. CLOSING – Leslie Skye

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GROUP 1

Facilitator: Ron Skye
 Resource Person: Paul Nicholas, Rose-Ann Morris
 Group Speaker: Heather Jacobs-Whyte
 Recorder: Sophia Dupont

Question

15 Minute Group Discussion

This Draft represents a solid starting point. Input from Kahnawà:ke Stakeholders was key. The draft was developed to prevent Federal Laws and Provincial courts from dictating on Kahnawà:ke lands. Do you want to move forward with this draft in the Urgent CDMP process?

DISCUSSION:

- **Q:** How do you prove for common-law relationships that the two persons have lived together and that have been “*publicly represented as Spouses for 5 years*”?
A: This is addressed in the Kahnawà:ke Membership Law.
- **Q:** Is there an actual Application form for Section 8 – Mediation: Application to homologate the terms of an agreement?
A: Yes, one of the spouses would have to fill out the form which would be in the Regulations.
- Section 12.11 Certificate of Possession (CP) or Certificates of Occupation. For couples married before 1981 to non-native spouses, the value of the land will not be included in the calculation of the family patrimony. Only the value of the house will be included in the calculation to be divided between the spouses. If one of the spouses cannot hold title to land in Kahnawà:ke (CP), the value of the land will not be included in the calculation to be divided.
- For Domestic Agreements, it will not affect people who are already married but will affect people who marry in the future. It allows for a “pre-nuptial agreement” whereas Quebec law does not recognize this.
- **Q:** In the Amendment section, it says that the law will be amended from time to time, should it not be clearer?
A: The CDMP Type I process to amend the KFHL will begin within one (1) year after this urgent law is passed. Once the revision to the urgent law is made there is a mandatory five-year review of the law.
- **Q:** If you have land without a structure on it, does it have value?
A: If purchased during the marriage, yes. An inheritance or gift is not considered part of the family property or patrimony and will remain with the person that inherited it.

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It does not have any value to a person who cannot own property in Kahnawake. Any added value due to renovations of property or structures owned would be divided between the spouses.

- **Q:** How will the value of land be established?
- A:** The mechanism to establish the value of the land will be in the Regulations.
- This law was very well prepared and the bottom line is to protect Kahnawà:ke land.

Pertaining to the Scope of the Law

“The Law will establish rules and mechanisms for the division and possession of Matrimonial Interests in Kahnawà:ke lands in the event of death of a spouse or the breakdown of a marriage or common-law relationship.

The Law was developed to work in conjunction with divorce-separation processes, but does not deal with the declaration of a divorce judgment; the issue of child support; child custody or ownership of personal property. The Law will not provide for applications for emergency protection orders.”

- Common-law relationship is five (5) years. The Kahnawà:ke Membership Law states that if an indigenous person wants to apply to be a member of Kahnawà:ke, they have to be in the relationship for five (5) years to be eligible.
- If there is a mortgage but the couple has not been together for five (5) years, they can have a “domestic agreement”.
- An application can be made to the Court of Kahnawà:ke to have a court order homologated but not for judgments made prior to the coming into effect of this law.
- Possibility of homologation of an external order at the Court of Kahnawà:ke but some people will be left in limbo.
- We want to protect the land and make sure it stays in the family and not go to a non-native.

CONSENSUS REACHED WITH PROVISION THAT AREAS IN PARKING LOT BE ADDRESSED IN THE FUTURE

PARKING LOT:

- Retroactivity for a judgment that was rendered before the coming into force of the Kahnawà:ke Family Homes Law (KFHL).
- With development of the Kahnawà:ke Justice Act, we would like to look at child custody and support issues and settling of estates. The KFHL is a stepping stone and has to be ready for December 2014.

Key definitions

“Common-law relationship” is defined as: a conjugal relationship, not solemnized by a Marriage ceremony, Law or custom, between two persons that have lived together and that have been publicly represented as spouses for 5 years.

Family Home” shall include a structure situated on Kahnawà:ke Lands where spouses habitually resided. This definition includes only the portion of the structure that is used for residential purposes.

Matrimonial Interest” shall include any interest, other than a commercial interest, in Kahnawà:ke Lands including the Family home acquired by the spouses as of the date of their marriage or common-law relationship. For most couples, this will include the value of the family and any secondary homes, including the value of the CP. This could also include the value or interest held in virtue of a residential lease for a building used as the Family Home.”

Common-law relationship

Definition of five (5) years is to be consistent with the Kahnawà:ke Membership Law and all subsequent laws created except when there is an existing policy stating different (example: Social Assistance acknowledges common-law immediately when cohabitating).

Family home

CONSENSUS REACHED

Matrimonial interest:

Q: For clarification, what does the following mean? *“could also include the value or interest held in virtue of a residential lease for a building used as the family home”*.

A: When a lease is involved in the Matrimonial Interests, the value of that lease will be included in the calculation. In most cases one partner will be granted occupation and the other could be granted compensation.

The value of the home that is accrued during the relationship is to be divided.

The KFHL was created for lawyers and judges to understand and has been drafted and reviewed by many lawyers.

CONSENSUS REACHED WITH PROVISION THAT AREAS IN PARKING LOT BE ADDRESSED IN THE FUTURE

PARKING LOT:

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- Example of a couple purchasing a house jointly but there is a breakdown in the relationship before the 5-year common-law recognition; this would have to be settled in civil court. To be addressed is how the division of matrimonial interests for couples who have not made the 5-year point will be decided.

Occupation of Lands

“Upon breakdown of a marriage or common-law relationship, a spouse that does not hold an interest in the other spouse’s home will not have a right to reside in the Family Home unless an Agreement or Court Order provides otherwise. Individuals that cannot hold a CP in Kahnawà:ke cannot benefit from an Order that would transfer ownership or a permanent right of occupation to Kahnawà:ke lands.

A spouse may benefit from shared or exclusive interim occupation orders, the intent being that these orders would set out who can occupy the family home until such time as the division of Matrimonial Interests is completed. Decisions made under this Law pertaining to occupation and division of property will be determined with paramount consideration given to the best interest of any children.”

Q: How can someone who does not have an interest in the home, get the home?

A: If you cannot hold a Certificate of Possession (CP), you cannot own the home.

S-2 can order that someone who cannot hold a CP (a non-native person); can be allowed to live in the home. There is a conflict of laws.

The non-native parent may reside in the family home until the children reach the age of 18.

CONSENSUS REACHED WITH PROVISION THAT AREAS IN PARKING LOT BE ADDRESSED IN THE FUTURE

PARKING LOT:

What if an elderly parent lives with the couple? A common practice in our community is to take care of our parents. Their best interests should be taken into consideration as well as the children’s - **11.3 k)** any other relevant factors.

Division of Matrimonial Interests

“The Law will provide mechanisms for individuals to create their own domestic agreements to determine how division and possession of Matrimonial Interests should be determined. The Court will only hear Applications when spouses cannot reach their own agreements pertaining to the division and possession of Matrimonial

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Interests. Participation in a mediation session will also be mandatory, and Applications to the Court will be a last resort.

Should the Court be involved, for married couples, the division of matrimonial property will occur according to substantially the same rules that apply today in virtue of the Quebec Civil Code. This system will also be extended to common-law couples, which by definition are couples that have lived together for a minimum of five years. The same rules will also apply in the case of the death of a spouse, and in spite of any provision in the will of the deceased.”

- Civil Code of Quebec recognizes civil unions and religious marriages but does not recognize common-law relationships.

CONSENSUS REACHED WITH PROVISION THAT AREAS IN PARKING LOT BE ADDRESSED IN THE FUTURE

PARKING LOT:

It should be addressed how to place a value on the land and how to prove what their true income versus declared income is in relation to the proposed KFHL as it relates to the Quebec Civil Code.

Reword Section 8.1 to say “**Participation in an orientation session is mandatory**”.

Jurisdiction, Orders and Enforcement

“Unlike the federal law, which designates Quebec Superior Court, Applications will be heard at the Court of Kahnawà:ke. Court will have power to make Orders for transfer of property or other forms of compensation to ensure that division of property is completed. Court can render Orders where a Party fails to respect a Court Order, including the transfer or seizure of a CP or other property. Peacekeepers can enforce Orders.”

Q: Where would this fit in the event of divorce or separation if one spouse sells the property without the knowledge or consent of the other spouse?

A: Section 13 has provisions to prevent this.

CONSENSUS REACHED

GROUP 2

Facilitator: Trina C. Diabo
Resource Person: Melanie Gilbert, Rosemary Lahache, Marylee Armstrong
Group Speaker: Jody Jacobs
Recorder: Coco Sky

Question 1 15 Minute Group Discussion

This Draft represents a solid starting point. Input from Kahnawà:ke Stakeholders was key. The draft was developed to prevent Federal Laws and Provincial courts from dictating on Kahnawà:ke lands. Do you want to move forward with this draft in the Urgent CDMP process?

DISCUSSION/QUESTIONS:

KFHL Summary

Q: In the case of a divorce judgment, do pensions, etc. still have to be dealt with by outside courts?

A: Domestic Agreements should be made to protect oneself. A divorce judgment will still be dealt with in a Provincial court. It is important to remember the purpose of this law is to deal with land and home within the Territory and also deals with cabin in Tiowero:ton.

Q: How do we keep it moving and it get it passed if there are stumbling blocks? What happens?

A: This law needs to be put in place because it is under the urgent law- making process which will move at a faster pace. People's suggestions and input will be added in, but because of the urgency we cannot keep putting it off.

Q: Is there any actual application form to fill out?

A: Yes, there is a form in the Regulations section of the Law. It will be an application to the court. One of the spouses would have to apply to the court.

Q: If a couple lives common-law, is the spouse entitled to property and or land?

A: Common-law after 5 years is considered a marriage. Both individuals are entitled if you bought land or house during the relationship. Both must be eligible CP holders.

Q: Can C.P holders, non- natives or people in a common-law relationship receive interest, or added value to the home?

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A: Interest can include breakdown of a marriage. Part of the criteria that will be looked at is if it is your home to begin with, the court can give only you the right of occupation. Also someone who cannot hold a C.P. may not be able to hold right of occupation, but can be entitled to monetary interests in the home but not the land. This is a factor to take into consideration.

Q: What is Patrimony?

A: Patrimony includes all the assets the couple collected together during the marriage. We are not looking at patrimony in this law, it is strictly for Kahnawà:ke land, primary land and Tiowero:ton territory.

Q: Who determines the value of the land? Would specific areas be taken into consideration to determine the value?

A: An Evaluator will be named under the Law. This area will be written out in detail within the Regulations.

Q: What if you cannot afford to pay the spouse the value of the home?

A: It can be enforceable and you may have to sell your home and split the assets. Occupation orders can be put in place. It is in the best interest of the children that is taken into account.

Pertaining to the Scope of the Law

“The MRI Law has history behind it. Kahnawa’kehró:non need to ensure Kahnawà:ke has its own law put in place so the outside courts do not have jurisdiction over decisions on the land or homes. We need to make sure this law is passed before the deadline of December 2014, as it will supersede the Federal Law. After which the law will be put through the regular (non-urgent) Type I Community Decision-Making Process.”

CONSENSUS REACHED

Key definitions

Common-Law Relationships

Q: If a common-law couple lives together for three years and they break up, do those three years count?

A: Yes it counts, but you need to be together for five years to utilize the court. If the Law is passed, the years that a couple is together before that date count.

CONSENSUS REACHED

Family Home

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Q: What happens when a couple has two homes, but only lives in one home?

A: The court only deals with the family home that is the home that the couple resides in. Examples are that one spouse could be eligible to an interest if he/she added some value to his/her home, if it was used as the family home. Business interest would be deducted if he/she owned a business after it was attached to the family home. The value would be subtracted. The business would not be a part of the patrimony.

CONSENSUS REACHED

Matrimonial Interest:

Rental-family home. The original lease holder may not have the right to occupy.

CONSENSUS REACHED

PARKING LOT:

There are questions/concerns with the last sentence of Matrimonial Interest. *“This could also include the value or interest held in virtue of residential lease for a building used as the Family Home.”* There is dislike with the wording. An owner of the home should have a say on who could live there. This should be included. If a home is being rented, it should be up to the person renting the building on who gets to stay.

CONSENSUS REACHED TO MOVE FORWARD WITH THE EXCEPTION OF THE PARKING LOT ISSUE IN REGARDS A THE RESIDENTIAL LEASE. Need clarity in law for value of interest on a residential lease for a building as a family home.

Occupation of Lands

Example: If the native was cohabitating with a non-native the court will not allow him/her to live in the home, unless there are children involved. This is where a Right of Occupation will come into effect for a specific amount of time, until the children are of the age of majority. Concerns were that this overrides the Kahnawake Membership Law.

CONSENSUS REACHED WITH THE MANDATORY REVIEW IN ONE YEAR

Division of Matrimonial Interest:

Q: If a spouse contests a court judgment, is there an appeal process? Can they circumvent this for the division of the property?

A: For married couples they can go to the outside court, but common-law couples cannot. You can obtain your divorce judgment outside but you can come to the Court of Kahnawake to address your home and property.

There is an appeal process within this law. Currently the law only deals with the land and the family home. So a married couple still must obtain their divorce judgment in a provincial court, then apply to the Court of Kahnawà:ke to settle the land and home. The hope is that the Provincial Court will recognize that Kahnawà:ke has the jurisdiction to make decisions pertaining to the Kahnawà:ke land and home, and will inform couples that they must go back to Kahnawà:ke to settle this area. In relations to common-law, Quebec currently does not recognize common-law relationships, so without the Kahnawà:ke Law, there is no avenue for a common-law relationship breakdown.

CONSENSUS REACHED

Jurisdiction, Orders and Enforcement:

What would other forms of compensation be? Only the property itself was discussed. What would he/she receive as far as monetary value is concerned? Need more knowledge, definitions and clarification with regard to compensation, monetary value and how it would be enforced (i.e. sold?).

CONSENSUS IS REACHED ON THIS SECTION FOR THE SAKE OF MOVING FORWARD. BUT THE GROUP HAD REQUESTED FROM THE FACILITATOR TO PROVIDE CLARIFICATION ON WHAT OTHER FORMS OF COMPENSATION COULD MEAN, EXAMPLE; BANK ACCOUNTS, SEIZURES, ETC.

PARKING LOT:

Consensus was reached on all section of the Draft MRI Law for the sake of moving forward and that there is a mandatory review in a one year period. There are two Parking Lot issues:

1. There is clarification required on what other forms of compensation could mean, example, bank accounts, seizures, etc.
2. There is clarification needed for value of interest on a residential lease for a building, as a family home.

FINAL OUTCOME:

Groups 1 and 2 came to consensus on the principles or key features of the KFHL. Clarification is needed on section 8.1, regarding mediation, and residential leases. All other parking lot items would be discussed and addressed when the law is reviewed in the

normal CDMP process within one year of enactment of the Kahnawà:ke Family Homes Law.

FINAL RECORD OF DISCUSSION

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