

COMMUNITY DECISION-MAKING PROCESS  
KANIEN'KEHÁ:KA OF KAHNAWÀ:KE LAW  
SECOND HEARING, MEETING #5  
KARONHIANÓNHNHA SCHOOL GYM  
12 Ohiaríha/June 2018  
6:00 PM – 8:30 PM

**FINAL RECORD OF DISCUSSION**

**FACILITATORS:**

Joe Delaronde (Lead)  
Leslie Skye (CDMP)

**RESOURCE PEOPLE:**

Alexis Shackleton  
Kahsennenhawe Sky-Deer  
Arlene Jacobs  
Jean Pommerville  
Shari Lahache  
Jennifer McComber

**RECORDER(S):**

Katsistohkwí:io Jacco

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- ❖ **Opening Address** – Katsistohkwí:io Jacco
  - ❖ **Welcome/Respectful Behaviors/Process** – Leslie Skye
  - ❖ **Proposed Amendments to the Kahnawà:ke Membership Law** – Kahsennenhawe Sky-Deer and Alexis Shackleton:
    - Suspension of Entitlements
    - Revocation of Entitlements
  - ❖ **Next Steps - Facilitators**
  - ❖ **Closing** – Katsistohkwí:io Jacco

**LEGEND:**

**Q:** Question (by community member)

**S:** Statement (by community member)

**TDC:** Technical Drafting Committee

**Legal:** MCK Legal Services Representative

## Suspension of Entitlements

The Portfolio Chief began the meeting by showing the Draft Kanien'kehá:ka of Kahnawà:ke Law on the projector, highlighting the section on "Suspension of Entitlements". She explained that according to the *Miller v. MCK decision*, this section was declared discriminatory, and it was directed by the outside Court that the MCK re-write this section. She stated that the purpose of re-drafting is not to completely change the sentiment of the people in the community regarding who should be on the Kahnawà:ke Kanien'kehá:ka Registry, but to make the Law without discrimination.

She then explained that Kahnawà:ke as a community, needs to move forward and past the idea of "Membership," and begin to focus on our Onkwehón:we identity. In fact, the idea that an Onkwehón:we person could have their rights suspended or revoked for marrying a non-Onkwehón:we stems from the Indian Act, which is an Act that we want to continue to move away from. She believes that the bigger problem in the community is the fact that non-Onkwehón:we people are living on the territory, and will be dealt with in the Residency Law.

### DISCUSSION:

**Q:** Can we see the Residency Law?

**TDC:** Yes, it was posted online today.

## Revocation of Entitlements

**1. Section 15.1:** "A Kanien'kehá:ka of Kahnawà:ke who commits a material breach of any of his or her obligations or responsibilities as set out in:

- a) this Law or its Regulations,
- b) the Kanien'kehá:ka of Kahnawà:ke Pledge;
- c) the *Kahnawà:ke Residency Law* or its Regulations;

may have their entitlements to reside on the Territory, to receive a land allotment or any other benefits and services provided and administered by the Mohawk Council of Kahnawà:ke revoked by the Court of Kahnawà:ke.

Applications for revocation of the entitlements must be filed with the Court of Kahnawà:ke within thirty (30) days of knowledge of the alleged material breach of an obligation or responsibility mentioned in section 15.1 and the application will follow the rules of evidence and procedure of the Court in civil matters".

### DISCUSSION:

**Q:** What is a material breach? And why are you deciding not to do a definition?

**Legal:** Currently there is no definition of "material breach," but we could certainly have one in the Law.

A definition of material breach would be a serious breach of a law or regulation; an action that is followed by a severe consequence.

**S:** "May" should say "shall".

**Legal:** It says "may" because it is the Court of Kahnawà:ke that has the final decision.

**S:** I am not comfortable with referencing documents we have not yet seen; the Residency Law and the Regulations.

**TDC:** The Residency Law was posted earlier today on [www.kahnawakemakingdecisions.com](http://www.kahnawakemakingdecisions.com). The Residency Law is going to outline who can and cannot live in Kahnawà:ke, and in the Draft Law, there are several different permits that an individual can obtain to live here if they are not on the KKR. However, non-Onkwehón:we people and those who were not married before 1981, still will not be permitted to live here or be on the KKR.

**S:** Yes but the Residency Law only got posted today. In general, the community has not been privy to this information.

**TDC:** Yes that is true, however, it would be difficult to approve the Residency Law without first having the Kanien'kehá:ka of Kahnawà:ke Law, and arguably vice versa.

**TDC:** I do not want to be perceived as if we are rushing this meeting. The Residency Law did come out on the same day as this meeting, which was not planned. However, if the community feels that they need to take the time to read the Residency Law, then we can reconvene next week. This is the community's

process, and you all get to decide. However, please have trust in the TDC; we have been listening to what the community's wishes are regarding both Membership and Residency, and have definitely been incorporating the community's sentiments in the Draft Residency Law.

*\*Asks Legal if it is possible to make slight changes, such as typos or rephrasing, to the Kanien'kehá:ka of Kahnawà:ke Law during the Formal Reading of the Law into the Record.*

**Legal:** Yes, there is likely going to be some minor necessary changes to be made anyway.

**Q:** Is your proposal intended to replace the current Sections 15 and 16 in the Law?

**TDC:** Yes.

**S:** I believe that what you are proposing is a really good condensed version of the previous Sections 15 and 16.

**S:** If the Residency Law or its Regulations have to comply with this new section, I am good with that.

**Q:** If I believe that an individual should be revoked, how do I go about making a complaint? It seems too open the way it is written now. What do applications for revocation mean?

**TDC:** In the past, it was required that ten community members complete an application to suspend someone from the Registry. However, now the requirement is only one complaint per application to instigate an investigation.

**TDC:** In the Draft Law, it will also be the Court of Kahnawà:ke that is establishing the investigation procedure.

**Q:** When was it required to receive ten complaints on an application before investigating?

**TDC:** In the 2003 Law.

**S:** We don't know the difficulty that may happen if we pass this Law without first reviewing the Residency Law. We may have to come back and review this Law.

**Legal:** This Law is very close to being finalized. It is definitely a possibility that this Law may require an amendment. If minor amendments need to be made, it can be done quickly and possibly in one Hearing.

**S:** I'm more comfortable with that explanation.

**TDC:** The Residency and Membership TDC's do meet and work together as well.

**Q:** How does one file a complaint? It does not specify.

**TDC:** If it is an application form, it has to be done in person. Applications are developed through the Regulations.

**Legal:** It is the Court of Kahnawà:ke that is deciding how the application will be submitted.

**Q:** Is the 30-day time limit going to be problematic? What if I knew about a non-Native that is living here for longer than thirty days? Will my complaint be invalid if I knew for longer than thirty days?

**TDC:** Why is there a thirty day window? If you commit a crime in a statute of limitations, it is not thirty days.

**Legal:** Generally, it is required for people who have specific rights to act on them, which is why the thirty day period was added in. An individual who may have their benefits revoked is losing a lot, and rules of natural justice have to be adhered to.

**S:** I still don't see a good reason for keeping the thirty day time frame.

**Legal:** It can be removed or expanded. However, remember that were not dealing with a criminal matter, were dealing with a civil matter. Typically, civil matters have specific timeframes for penalties. Under the Residency Law, penal and criminal sanctions will be dealt with.

**S:** I want to remove the thirty day time limit.

**TDC:** Would this be problematic in court if this gets challenged again?

**Legal:** Anyone on the KKR can complain though.

**S:** I believe we should keep a timeframe, because this may help to drive people to do the right thing and make a complaint if it is necessary. I think the timeframe makes the Law stronger.

*\*Asks Legal if a complaint would be invalid if an individual knew about someone non-Native that was living here for a longer time period of thirty days.*

**Legal:** Only from the person who knew longer than thirty days.

**S:** But it can be interpreted differently.

**TDC:** Any complaint has to be firsthand knowledge.

**S:** I am suggesting that the thirty day rule only come into effect when the Law gets enacted; we currently have no avenue to make a complaint.

**Q:** Does the Residency Law outline all of the entitlements?

**TDC:** No it is not outlined in there.

**Q:** Then why were we told that last year?

**TDC:** All of the Kahnawà:ke Policies have criteria listed.

**Q:** What governs the water and sewer unit to state who gets those services?

**TDC:** They have their own policy and that is what they have to follow.

**TDC:** If we are all of the opinion that no matter who moves off or marries out, do people still feel comfortable with allowing them to have a voice in community decisions? Should they be allowed to participate in the CDMP?

**Q:** If you're not residing here and don't participate in anything that is going on in the Community, then why should you be able to vote?

**TDC:** Remember that nothing is perfect, of course there will probably be problems with this Law in the future, but it can always be amended.

**TDC:** The reason why it is taking so long is because the Community decided to review the Law in its entirety. If there are small changes or amendments that need to be changed, they can be made in the future. I want to assure you all that we will not have to review the Law in its entirety again, the scope can be short and limited. However, the Law does have to be in force and operation for at least one year before it can be amended. The reason it is at one year is because we have to let the Law fully function before we can declare that it needs amending.

**S:** I feel like we are going to do all of this work for nothing; people are still going to bring non-Onkwehón:we here to live, and they will continue to marry out.

**TDC:** Keep in mind that since the Moratorium on mixed marriages in the community in 1981, this Law has actually never really been enforced. We have been told under the current Court of Kahnawà:ke with the Justices of the Peace, cases under the Residency Law will be heard.

**Q:** What are the "rules of evidence and procedure of the Court in civil matters" that is mentioned in this section? Do we have those?

**Legal:** The rules are outlined in the Justice Act, but have not yet been put into force.

**Q:** If we don't have the Justice Act in place, then what are we supposed to do if this Law gets passed soon?

**S:** In order for a Judge or Justices of the Peace to make decisions, we need rules in place and there is definitely going to be a lot of traffic when this Law gets put into force.

**TDC:** When something is enacted, it is not necessarily all put into force, because some sections may be inoperable.

**Q:** How is the Residency Law going to be enforced? Are our current Justices of the Peace qualified to make those decisions?

**Legal:** There is a provision in the Indian Act that allows for the Justices of the Peace to hear cases pertaining to Residency. If an individual receives an eviction notice and chooses not to comply, it is being proposed that a bailiff will remove the person who is not entitled to live here. The Law itself gives the bailiff the authority to enforce an eviction notice.

**Q:** Does the eviction notice only apply to non-Natives? What about those married before 1981?

**TDC:** If a non-Native is living here and got married to someone in Kahnawà:ke before 1981, they will not get an eviction notice.

**Q:** If we are evicting a non-Native person, does the person who is from Kahnawà:ke that lives with the non-Native have to leave too?

**TDC:** That is their decision.

**Q:** What about the children?

**TDC:** It is common knowledge in Kahnawà:ke that you are not allowed to reside with a non-Native on the territory, unless you were married prior to 1981. I do agree that it is difficult when children are involved.

**Legal:** In this Law, it says if that if an individual is in a material breach of the Residency law, which encompasses living on the territory with a non-Native, it means that that individual may have their rights revoked.

**Q:** If this is revocation of entitlements, how would I get re-instated if my non-Native spouse dies?

**Legal:** If you left and don't live here and want to come back, then there is no material breach.

**S:** I believe that anyone who marries out should not have a voice in the community.

**TDC:** That is your opinion. Do you think it is right that a person who is 100% Onkwehón:we have their voice in the community taken away?

**S:** Yes, and I also believe that we should punish anyone from Kahnawà:ke that lives here and brought a non-Native here to live, because it is their fault.

**TDC:** I want to remind everyone that when we got taken to an outside court, we were not being challenged on Residency, but on the Kanien'kehá:ka of Kahnawà:ke Law. It was declared by the Judge that it is discriminatory for our Law to dictate who people can and cannot marry, which is why we are proposing this new section tonight.

*\*Break from 7:30 pm to 7:40 pm*

*\*After the break, the Portfolio Chief read aloud Sections 107 to 117 of the Draft Residency Law titled "Complaint for Eviction" and explained and provided examples on what every clause meant.*

**TDC:** Now it is up to the Community to say whether or not you are comfortable with our proposal based on what is written in the sections I just read aloud.

**Legal:** If it is conditionally accepted tonight, then next week can make the minor changes that need to be made during the Final Reading of the Law into the Record scheduled for June 19, 2018.

**TDC:** The idea is to get a provisional agreement on this. But if not, we will have to continue this discussion next week.

*\*The Portfolio Chief read aloud the KLCC Press Release for the 30-day Community Review period that was released on June 12, 2018 (today).*

**S:** The reason why I am here is because I don't want to see us get into more trouble with the outside courts. I still have a problem with the referencing of the "rules of evidence and procedure of the Court in civil matters". It seems like it is a big component of the Law, but they do not exist yet.

**TDC:** When we passed the Law in 2003, it was not put into force until 2004. This is because not all of the Law was fully operational until 2004.

**TDC:** Even if we pass the Law, it will not be put into force right away. We still have to hire a Registrar.

**S:** I still have a problem with the thirty day requirement; I don't think any community member should be limited to make a complaint against someone who is violating our Laws.

**TDC:** Do you want it higher to sixty days?

**S:** No, I don't want any timeframe. It does not seem efficient to me, and I still don't understand the reasoning.

**S:** I think we should take the thirty days out as well.

**TDC:** How do you all feel about the timeframe?

**Q:** I personally don't have a problem with it. Was it put in so that the evidence is stronger?

**Legal:** Yes.

**TDC:** Let's say that someone went to a wedding between a Kahnawà:kehró:non and a non-Onkwehón:we ten years ago and the couple has been living here. Does it mean that the individual who knew about it for ten years cannot now make a complaint? But if another individual just recently finds out about the couple living here, they can make the complaint?

**Legal:** Yes that is correct. The time is beneficial to the person who has to defend against this. If too much time has elapsed, what if that evidence is gone? The procedure is apart of due process; does it have to be thirty days, or six months? No it does not. But it takes away due process, which can be problematic.

**TDC:** Does it make it less defensible in court if we don't have a timeframe?

**Legal:** If a person does not get due process, then yes it will be harder to defend. As I explained earlier, there is a difference between civil and criminal matters.

**S:** I am suggesting we break until next week, so that we can read the Residency Law and digest it along with your proposal for tonight. I believe it is necessary in order to make a decision.

**TDC:** I do not think the decision is being rushed; we've had some good dialogue tonight. However, if the Community is not comfortable with making a decision tonight, then we will come back in a week.

**S:** I think it is the right thing to do to take a break; people need to get at least one good read of the Residency Law before we make this decision.

**S:** The Residency Law covers evictions, and I think that we need to come to Consensus on this tonight and deal with evictions in the Residency Law.

**TDC:** Both laws are fundamentally different in their application; what triggers someone to have their entitlements revoked is residing and harboring a non-Native person. All of those people who have received eviction notices cannot claim they did not know that they are residing here illegally. With the Residency Law, we can actually enforce this and not just send out warning letters.

**TDC:** Tonight, were asking if you are comfortable with what we are proposing tonight. The Residency Law does not deter away from the previous residency provisions that were contained in the Membership Law.

**Q:** When this Law gets enacted, shouldn't they go together at the same time? How long do you think it'll take for the Membership to be put into force?

**Q:** Will our current court be able to hear the KKL?

**TDC:** No, only Residency.

### **OUTCOME:**

- **DECISION:** It was decided by the community members in attendance that they will first read through the Draft Kahnawà:ke Residency Law and then come back to the CDMP for the KKL on June 19, 2018 where they will try to come to consensus on the TDC's proposal.
- **NO CONSENSUS.**

**FINAL OUTCOME:**

- Consensus was not reached on the TDC’s proposal for Section 15.1 on “Revocation of Entitlements”. There was a suggestion that the term “material breach” be added into the “Definitions” Section of the Law.

**FINAL CONCLUSION:**

- The community members in attendance agreed that they would like to be given the time to read through the Draft Kahnawà:ke Residency Law before making a decision on the TDC’s proposal for Section 15.1 on “Revocation of Entitlements”.
- The sixth meeting of the Second Hearing will take place on June 19, 2018.

**Approved by:**

\_\_\_\_\_  
Alexis Shackleton

\_\_\_\_\_  
Date

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Chief Kahsennenhawe Sky-Deer

\_\_\_\_\_  
Date