

DRAFT KAHNAWÀ:KE TOBACCO LAW
FIRST HEARING – Meeting #5
GOLDEN AGE CLUB
16 Ohiaríha / June 2016
6:00 PM– 8:30 PM

RECORD OF DISCUSSION

RESOURCE PEOPLE:

Brian Delormier – KTA
Devery Bauersfeld – KTA
Lionel Deer Jr. – KTA
Peggy Mayo Standup – KTA

Chief Robert Patton – MCK
Dennis Diabo – MCK Technician

FACILITATORS:

Leslie Skye – KLCC Lead
Joe Delaronde
Dale Dione

CHIEFS IN ATTENDANCE:

Chief Martin Leborgne
Chief Kahsennenhawe Sky-Deer

RECORDER:

Kim Beauvais

6:00 P.M. **OPENING** – Leslie Skye

6:05 P.M. **INTRODUCTION/MEETING GUIDELINES** – Leslie Beauvais-Skye

6:10 P.M. **DRAFT KAHNAWÀ:KE TOBACCO LAW** – Joe Delaronde & Dale Dione

SECTION VIII – CERTIFICATES AND OTHER FORMS OF AUTHORIZATION

SECTION IX – PRICE CONTROLS

SECTION X – COMMUNITY CONTRIBUTION FUND; CONTRIBUTION FEES; CONTRIBUTION STAMPS; AND, DISBURSEMENTS FROM THE FUND TO ELIGIBLE RECIPIENTS

SECTION XI – ADMINISTRATION; INSPECTORS; ENFORCEMENT; JUDICIAL PROCESS; AND, COMING INTO FORCE

8:25 P.M. **NEXT STEPS** – Joe Delaronde

8:30 P.M. **CLOSING** – Leslie Skye

SECTION VIII

8. CERTIFICATES AND OTHER FORMS OF AUTHORIZATION

8.1 No person or business entity is permitted to Broker, grow, process, supply, manufacture, wholesale, retail or transport tobacco or tobacco products within, to or from the Mohawk Territory of Kahnawà:ke unless that person or business entity holds a valid certificate or other form of authorization granted by the Commission.

Consensus reached on the existing wording of Section 8.1.

8.2 To allow for this Law to be implemented in an orderly fashion, any person or business that holds a licence, permit, certificate or other authorization in relation to the tobacco industry that was issued by an agency or authority other than the Commission must relinquish the licence, permit, certificate or other authorization within six (6) months of the date this Law comes into effect, failing which that person or organization will no longer be eligible to apply for or to hold a certificate or other form of authorization from the Commission.

Q: Regarding Duty paid being sold on the territory, and if a store does not sell Kahnawake manufactured brands, will that store have to give up their existing permits (from Quebec)?

A: The idea is that only Kahnawake permits should be here on the territory.

Q: I have a gas station; I would like to be able to sell duty paid cigarettes. Is this saying I won't be able to sell them?

A: It was decided at a prior meeting that all outside permits will have to be given up, and people will have to have a Kahnawake permit.

Comment: Once this Law is operational, all the outside permits (Quebec or Federal) will have to be given up.

Consensus was reached on Section 8.2 as it is currently written.

8.3 Certificate or other forms of authorization granted by the Commission may not be sold, transferred or otherwise assigned.

Consensus that Section 8.3 wording remain as is.

ELIGIBILITY

8.4 To be eligible to apply for and hold a certificate or other form of authorization from the Commission, a person must be a natural person who is a Kanien'kehá:ka of Kahnawà:ke, over the age of twenty-one (21) years.

Consensus reached on the existing wording of Section 8.4.

8.5 To be eligible to apply for and hold a certificate or other form of authorization from the Commission, a business entity must be wholly owned and operated by one or more Kanien'kehá:ka of Kahnawà:ke, all of whom are over the age of twenty-one (21) years.

Q: What is the difference between a natural person in 8.4 and a business entity in this section?

A: The business entity is comprised of more than one person.

Consensus reached on the existing wording of Section 8.5.

8.6 Commencing six (6) months from the date on which this Law comes into effect, any person or organization that holds a licence, permit, certificate or other authorization in relation to the tobacco industry that was issued by an agency or authority other than the Commission is not eligible to apply for or hold a certificate or other form of authorization from the Commission.

Consensus reached on the existing wording of Section 8.6.

APPLICATIONS

8.7 The Commission may, upon receiving an application in the prescribed form and the applicable fee, grant a certificate or other form of authorization granting a person or business entity permission to conduct business as a Broker, Grower, Processor, Supplier, Manufacturer, Wholesaler, Retailer or Transporter of tobacco products within the Mohawk Territory of Kahnawà:ke.

Consensus reached on the existing wording of Section 8.7.

8.8 The Commission may establish a procedure that will expedite the processing of an application received from a person who, or business entity that, operated a business within the Kahnawà:ke tobacco industry prior to the enactment of this Law.

Consensus reached on the existing wording of Section 8.8.

DECISIONS

8.9 Decisions of the Commission regarding granting, denying, suspending, revoking, or amending of a certificate or other form of authorization will be in writing and include the reasons on which the decision is based.

Consensus reached on the existing wording of Section 8.9.

8.10 Decisions of the Commission will be signed by the persons who rendered the decision and will be held in the Commission's administrative offices.

Consensus reached on the existing wording of Section 8.10.

8.11 The Commission may review, amend or revoke any decision it has rendered when:
(a) new information is discovered which, if it had been known in time, might have led to a different decision;
(b) a party was unable, for a good reason, to be heard at the time the decision was made;
(c) an error in the Commission's procedure could make the decision invalid.

Consensus reached on the existing wording of Section 8.11 in its entirety.

8.12 If an applicant provides untruthful or misleading information to the Commission the application will be denied and the applicant will not be allowed to re-apply.

Consensus reached on the existing wording of Section 8.12.

HIRING PREFERENCE

8.13 All holders of certificates or other form of authorization must in recruiting, training and hiring employees, give preference to qualified Kanien'kehá:ka of Kahnawà:ke in all job categories particularly management positions.

Consensus reached on the existing wording of Section 8.13 with one objection that it be mandatory to hire Kanienkehaka of Kahnawake.

SECTION IX

9. PRICE CONTROLS

9.1 To maintain the viability, stability and profitability of the Kahnawà:ke tobacco industry, the Commission may establish the minimum and maximum prices at which:

- (a) a Grower sells raw tobacco to a Processor or Broker;
- (b) a Processor or Broker sells tobacco products to a Manufacturer;
- (c) a Manufacturer sells tobacco products to a Wholesaler;
- (d) a Wholesaler sells tobacco products to a Retailer or retail outlets; and
- (e) a Retailer or retail outlet may sell tobacco products to the general public.

Consensus reached on the existing wording of Section 9.1 with the replacement of the word “may” to “shall”.

9.2 To maintain the viability, stability and profitability of the Kahnawà:ke tobacco industry, the Commission may:

- (a) define a list of tiers for the different categories of holders of certificates or other form of authorization; and
- (b) establish the minimum and maximum fluctuation in pricing between those tiers.

Consensus reached on the existing wording of Section 9.2 in its entirety.

SECTION X

10. COMMUNITY CONTRIBUTION FUND

10.1 There is established a fund to be known as the Kahnawà:ke Community Contribution Fund (the “Fund”).

Consensus reached on the existing wording of Section 10.1.

10.2 The Fund will be considered a trust fund for the benefit of the Kanien'kehá:ka of Kahnawà:ke.

Consensus reached on the existing wording of Section 10.2.

10.3 The Commission will be the trustee of the Fund and is responsible for administering the Fund in accordance with the highest standards of honesty, integrity and professionalism.

Consensus reached on the existing wording of Section 10.3.

10.4 The Commission will report to the Kanien'kehá:ka of Kahnawà:ke on a regular basis regarding all monies received into the Fund and disbursed from the Fund.

Consensus reached on the existing wording of Section 10.4.

10.5 The Commission will establish and maintain an account at the Caisse Populaire Kahnawà:ke, or such other financial institution or instrument as the Commission may select, for the purpose of administering the Fund.

Consensus reached for Section 10.5 to read: “The Commission will establish and maintain an account at a financial institution or instrument as the Commission may select, for the purpose of administering the Fund.”

10.6 The Fund will be held and administered independently and autonomously from any person, group, organization or governmental body.

Consensus reached on the existing wording of Section 10.6.

CONTRIBUTION FEES

10.7 The fees contributed to the Fund will comprise:

- (a) fees collected by the Commission for the granting or renewal of certificates or other forms of authorization (“Certification Fees”);
- (b) Contributions Fees, as hereinafter described; and
- (c) fines levied and collected by the Commission.

Consensus reached on the existing wording of Section 10.7.

10.8 Contribution Fees will be imposed on all finished tobacco products distributed within the Mohawk Territory of Kahnawà:ke, including tobacco products that are imported into and exported from the Mohawk Territory of Kahnawà:ke.

Consensus reached on the existing wording of Section 10.8.

10.9 The appropriate Contribution Fee will be paid by a Manufacturer, Wholesaler or Retailer upon placing his or her order for Contribution Stamps to be affixed to all tobacco products.

Consensus reached on the existing wording of Section 10.9.

10.10 All Certification Fees and Contribution Fees collected by the Commission will be deposited into the Fund and will be disbursed in accordance with the following priorities:

- (a) to pay the operational and administrative costs of the Commission;
- (b) to establish a fund to assert and, if necessary, defend this Law;
- (c) to distribute to Eligible Recipients.

Consensus reached on the existing wording of Section 10.10.

CONTRIBUTION STAMPS

10.11 Evidence that the appropriate Contribution Fee has been paid on tobacco products will be reflected by the affixation of a Contribution Stamp on all tobacco products imported, exported or manufactured within, from or to Mohawk Territory of Kahnawà:ke.

Consensus reached on the existing wording of Section 10.11.

10.12 The Commission will design and administer the distribution of Contributions Stamps.

Consensus reached on the existing wording of Section 10.12.

10.13 The Commission will issue a Contribution Stamp only when payment of the appropriate Contribution Fee has been received or arrangements for payment, satisfactory to the Commission, have been made.

Consensus reached on the existing wording of Section 10.13.

10.14 The Commission will establish rules and procedures to ensure that Contribution Stamps are properly issued and affixed to tobacco products prior to importation, exportation, distribution or sale of the tobacco product within, to or from Mohawk Territory of Kahnawà:ke.

Consensus reached on the existing wording of Section 10.14 with the addition of the word “the” before Mohawk Territory of Kahnawake.

10.15 Tobacco products that do not have the appropriate Contribution Stamp affixed may not be imported, exported, distributed or sold within, from or to the Mohawk Territory of Kahnawà:ke.

Consensus reached on the existing wording of Section 10.15.

DISBURSEMENTS FROM THE FUND TO ELIGIBLE RECIPIENTS

10.16 Subject to the provisions of this Law, the Commission will decide when, to whom and in what amounts monies from the Fund will be disbursed to Eligible Recipients.

There was a question as to whether the MCK ie Community Organizations would have a need to access the fund, would they be considered. The community consultations indicated that any direct contribution would potentially affect MCK funding adversely. If a need should arise, there would be a possibility that donations could be made.

Consensus reached on the existing wording of Section 10.16.

10.17 The Commission will establish specific criteria that will be used to determine whether a person or organization qualifies as an Eligible Recipient and will prepare the appropriate forms to be used by Eligible Recipients to apply for a disbursement from the Fund.

Consensus reached on the existing wording of Section 10.17.

SECTION XI

11. ADMINISTRATION

11.1 The Commission will employ the inspectors, administration and support staff and will retain the professional assistance that the Commission requires to fulfill its mandate.

Consensus reached on the existing wording of Section 11.1.

11.2 The Commission will maintain an office within the Mohawk Territory of Kahnawà:ke.

Consensus reached on the existing wording of Section 11.2.

- 11.3 The Commission will keep accurate records of the operations of the Commission, including but not limited to:
- (a) agenda and minutes of meetings of the Commission;
 - (b) resolutions and decisions of the Commission;
 - (c) certificates or other forms of authorization issued by the Commission;
 - (d) fees collected by the Commission;
 - (e) expenditures made by the Commission.

Consensus reached on the existing wording of Section 11.3.

- 11.4 The Commission will determine which records will be accessible to Kanien'kehá:ka of Kahnawà:ke.

Consensus reached on the existing wording of Section 11.4.

INSPECTORS

- 11.5 The Commission will appoint one or more inspectors to ensure full compliance with the requirements of this Law.

Consensus reached on the existing wording of Section 11.5.

ENFORCEMENT

- 11.6 In addition to any other sanction that the Commission may impose under this Law, if the Commission, in its sole discretion determines that the holder of a certificate or other form of authorization has breached any provision of this Law, the Commission may impose a fine for each instance of such breach of not less than One Thousand (\$1,000.00) Dollars and not more than Twenty Thousand (\$20,000.00) Dollars.

Consensus reached on the existing wording of Section 11.6.

- 11.7 The Kahnawà:ke Peacekeepers have authority to investigate and initiate the appropriate proceedings for any breach of this Law that lies outside the scope of the Commission's mandate to remedy.

Consensus reached on the existing wording of Section 11.7.

JUDICIAL PROCESS

- 11.8 The Court of Kahnawà:ke has sole and exclusive jurisdiction to hear and decide any charges laid by the Kahnawà:ke Peacekeepers for a breach of this Law.

Consensus reached on the existing wording of Section 11.8.

COMING INTO FORCE

- 11.9 This Law comes into force on the date that it is adopted by the Kanien'kehá:ka of Kahnawà:ke.

Consensus reached on the existing wording of Section 11.9.

By virtue of this process, Community Representatives must be chosen. Evelyn Lahache Jacobs was chosen.

First Hearing – Meeting #5

Approved by:

Chief Robert Patton

Date

Peggy Mayo-Standup, KTA Coordinator/
Technician

Date