

COMMUNITY DECISION-MAKING PROCESS
KANIEN'KEHÁ:KA OF KAHNAWÀ:KE LAW
SECOND HEARING, MEETING #6
KARONHIANÓNHNHA SCHOOL GYM
19 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 Pomainville
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:
 - 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

Revocation of Entitlements

The Portfolio Chief on this Law began the Hearing by Explaining that at the meeting held the previous week on June 12, 2018, a new proposal by the TDC was presented to the community. The TDC proposed to change the previous Sections 15 and 16 of the Law on “Suspension of Entitlements” and “Revocation of Entitlements,” and condense it into just one section. The main reason as to why the community members decided to defer their decision on the TDC’s proposal was because the Residency Law had been published that same day, and they felt that they needed time to review it before rendering a decision. Since then, the TDC redrafted their proposal based on the discussion that was had on June 12, 2018, and below is the new proposed section on “Revocation of Entitlements”:

1. Section 15.1: “A Kanien’kehá:ka of Kahnawà:ke who has breached 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”.

DISCUSSION:

Legal: We took into account the discussion from June 12, 2018 and the concerns that community members had with our previous proposal for Section 15 on “Revocation of Entitlements”. As you will see in the newly proposed Sections 15.2 and 15.3, there are two ways that an individual can breach the law; an ongoing breach, and a breach that occurred in the past.

S: I have a problem with 15.1b), with the reference to the word “pledge”. For some reason I’m not in favor of using this word. We are not Americans or immigrants. I believe that we should use a word in Kanien’kéha instead.

S: When a person is already recognized as Onkwehón:we, why should they have to do a pledge?

TDC: If you look at Section 13 of the Law on “Responsibilities of a Kanien’kehá:ka of Kahnawà:ke”, it references here when it is require for an individual to make a pledge, and it is only for people who are newly accepted onto the Kahnawà:ke Kanien’kehá:ka Registry (KKR). What do you think it should say instead?

S: A statement of respect.

S: This pledge does not exist yet, so I’m not comfortable with referencing it.

TDC: Yes it exists; there has been a pledge since 2003.

S: But it says violating the pledge will result in serious consequences.

TDC: The pledge is basically affirming that you will respect the responsibilities as a Kanien’kehá:ka.

S: I’ll suggest that we just reference 13.1, instead of saying pledge.

Legal: Sure, that works.

TDC: Is b) really necessary? We could actually just say the law and its regulations, which is a). Do you all agree with that?

S: Yes.

S: I have a problem with referencing the Residency Law, because it has not been passed yet. How many community members worked on the Residency Law?

TDC: We know that it has not passed yet, but we have to continue on. We explained before that you cannot have Residency without the Kanien’kehá:ka of Kahnawà:ke Law, and vice versa.

TDC: We talked about it at the meeting last week; we are asking that you trust that we took the sentiment of the community and put it into the Residency Law. At the Residency Consultation, everyone was still adamant that the community still does not want non-Natives to live here. Perhaps we could reference it as “The Proposed Kahnawà:ke Residency Law”.

Legal: The Residency Law is also going through the Urgent Law Making Process, so it will pass much quicker.

TDC: Do we have consensus?

S: Yes.

Legal: When the Law gets passed, this section will likely be condensed into one sentence, just for your information.

OUTCOME:

➤ **DECISION:** It was decided that the proposed Section 15.1b) be deleted, and it was agreed that the format of Section 15.1 will be condensed into one sentence.

➤ **CONSENSUS REACHED.**

2. Section 15.2: “An application for revocation of the entitlements must be filed with the Court of Kahnawà:ke within six (6) months of the 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:

TDC: There will be an application form that gets developed in the Regulations, but the application goes through the court and not the membership department. I know there was a concern about the timeframe at the last meeting, but there must be evidence that the court will use in order to determine whether or not their entitlements will be revoked.

S: Okay, so let’s say I breached the Law seven months ago, does that mean that I could go to court and say that a complaint is invalid because it happened more than seven months ago?

TDC: Read Section 15.3, and it covers an ongoing breach of material obligations.

S: So then they have within 6 months of the breach, if they go to court it could take up to a year.

Legal: As long as the application is filed within six months, it is valid.

TDC: Once you file the application that is when the clock stops. The court can take the time that it needs; a final decision doesn’t need to be rendered within six months.

Q: But then the breach can go up to a year?

Legal: Not necessarily.

Q: Can anyone file an application? Or does a person have to be on the KKR? Do we specify that, or leave it open?

TDC: There are other processes in the community where there is a requirement for a person to be on the KKR, do we want to maintain that as a certain protocol?

S: If a Kahnawà:kehró:non leases to a non-Native, you keep saying that they can get their rights revoked. But I don’t see that written anywhere.

Legal: It is in the proposed Residency Law; if an individual from Kahnawà:ke breaches the Residency Law, which includes allowing a non-Native to live on their property, then their entitlements could be revoked.

Q: Where does it say that?

Legal: In Section 15.1; if they breach the Residency Law, they can have their entitlements suspended.

TDC: If someone is breaching the Law, why should we specify who could make an application for complaint? For instance, if someone an Onkwehón:we person is living here and went through the process to obtain their Residency Permit and they know of someone who is non-Native and living here, or someone who did not apply for their Residency Permit, why shouldn’t they be allowed to make a complaint?

S: I agree with that.

Q: You said the application is a court application?

TDC: No, the application just gets filed with the court.

Q: And revocation is for community members? Where does it say the non-Native has to leave?

Legal: In the Residency Law.

S: Okay, I am good with that.

Q: What is an example of a breach is no longer ongoing?

Legal: I'll use the leasing example. If an individual from Kahnawà:ke decides to lease to a non-Native, that establishes a breach. If the non-Native then gets evicted and leaves the territory, then the owner is technically no longer breaching the Law once the non-Native leaves. The owner can be fined for doing so according the Residency Law, however, community members are able to take it a step further and file a complaint against the owner from Kahnawà:ke to have their rights revoked. An individual has six months to make the complaint since the breach occurred.

S: We're working on the Membership and Residency Laws, but in order to hear these issues, we don't have a court set up yet.

TDC: We do have a court in place right now to hear Residency, eventually we do want to transition into the Court that was established in the Kahnawà:ke Justice Act, where we have Judges and all of our Laws can be heard. The passing of this Law will definitely drive the implementation of the Justice Act.

TDC: Do we have consensus?

S: Yes.

OUTCOME:

➤ **CONSENSUS REACHED.**

3. Section 15.3: "Where the breach is ongoing an application for revocation of the entitlements may be filed with the Court of Kahnawà:ke at any time and the application will follow the rules of evidence and procedure of the Court in civil matters".

DISCUSSION:

TDC: Any questions? Do we have consensus?

S: Yes.

OUTCOME:

➤ **CONSENSUS REACHED.**

Legal: We explained last week that because we agreed to delete the previous Section 15 on "Suspension of Entitlements," we will also have to delete some parts of the Law that refer to the suspension of entitlements.

FINAL OUTCOME:

- Consensus was reached on the TDC's proposed Section 15.1, with minor deletions and changes. It was decided that this section be changed to read: *"A Kanien'kehá:ka of Kahnawà:ke who has breached any of his or her obligations or responsibilities as set out in: a) this Law or its Regulations, b) 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"*. It was agreed that this Section may be condensed into one sentence in the final version of the Law.
- Consensus was reached on Sections 15.2 and 15.3, as proposed by the TDC.

FINAL CONCLUSION:

- The TDC agreed that they will provide the community members with copies of the Law that show the sections that are going to be deleted in track change format. The sections that are going to be deleted from the Law pertain to Suspension of Entitlements, because the community agreed to only have a section on Revocation of Entitlements. This track change copy of the Law will be provided to community members at the Formal Reading of the Law into the Record.
- The Formal Reading of the Law into the Record will take place on June 26, 2018.

Approved by:

Alexis Shackleton

Date

Chief Kahsennenhawe Sky-Deer

Date