

COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE FAMILY HOMES & MATRIMONIAL INTERESTS LAW
SECOND HEARING – MEETING #1
URGENT PROCESS
Golden Age Club
4th, Seskehkó:wa/September 2014
6:00 pm - 8:30 pm

RECORD OF DISCUSSION

FACILITATORS:

Leslie Beauvais-Skye (Lead –CDMP)
Joe Delaronde
Ron Skye, KLCC

RESOURCE PEOPLE:

Paul Nicholas (Lead-Resource Person)
Rose Ann Morris
Mary Lee Armstrong (Legal Services)

RECORDERS:

Trina C. Diabo
Jessica Loft

6:00 P.M. OPENING ADDRESS – Chief Kahsennenhawe Sky-Deer

6:05 P.M. INTRODUCTION/MEETING GUIDELINES/URGENT PROCESS -
Leslie Beauvais-Skye, Joe Delaronde & Ron Skye

6:10 P.M. KAHNAWÀ:KE FAMILY HOMES & MATRIMONIAL INTERESTS
LAW, Recap - Chief Lloyd Phillips and Chief Clinton Phillips

6:15 P.M. AMMENDMENTS TO DRAFT KAHNAWÀ:KE FAMILY HOMES &
MATRIMONIAL INTERESTS LAW - Paul Nicholas

6:30 P.M. QUESTION – Regarding the tracked changes to the KFH&MI Law, did we get it
right?

8:00 P.M. NEXT STEPS - KLCC, Paul Nicholas, Chief Phillips

8:30 P.M. CLOSING - Chief Kahsennenhawe Sky-Deer

**Group 1
(Focus Group Format)**

Facilitator: Joe Delaronde
Resource Person: Paul Nicholas
Recorders: Trina C. Diabo and Jessica Loft

QUESTION:

Regarding the tracked changes to the KFHL, did we get it right?

Pre-Discussion:

- Question: Is the draft law going to be submitted to Canada for their approval?
Response: Both levels of external governments would need to be engaged, but would take a different approach than what is asked for in S-2 legislation. External recognition of the KFHL&MI Law would be needed if we want to fully displace S-2 from applying.

Discussion:

Track Change#1: Addition stemming from comments received during 30 day consultation phase, “and the *United Nations Declaration on the Rights of Indigenous Peoples*” **Consensus reached to accept amendment**

- Does this law contradict the UN declaration & infringe on our people?
- Individuals will be using this law.
- Under S-2, when people go to the outside court system, the Court needs to consult with the local band council. That puts a strain on our system.
- It's not the council that uses this law it is the people and couples that use this law.
- An agreement will be required to have our law recognized.
- Should use a referendum to ratify the law?
- The CDMP is more powerful than going to a referendum.
- Under S-2 the Quebec Court will decide on marital real interest if we do not pass our own law.
- People will still have to go to Quebec courts for divorce judgments and child custody issues.
- This law for now will only deal with the Kahnawà:ke “land” portion of a separation.
- Should the reference to the UN not be a part of the KFHL? [After 1981 a Kahnawà:ke Mohawk whom is involved in an interracial marriage loses his/her rights and benefits. According to the MCK, does a community member have a

- say in regards to the Laws being passed? –Membership Note for future Membership meeting].
- For clarity this law is not the Membership law.
 - Comparison to current Membership Law and “apartheid” This law and the Membership Law are going to intersect.
 - Does adding this reference to the UN to this document protect the people as a collective?
On an International level it references our sovereignty and it would be a positive reference to include in the document. Many Indigenous groups reference the UN declaration.
 - Will low attendance allow a decision to be contested in the future because it did not go through a referendum?
An appeal can always be overturned. The court will ask how the law was put into process.
 - We have until December 16, 2014 as the deadline to complete this law.
 - A question for clarity is asked on section 4 and referencing section 35 (1) of the Constitution Act, 1982.
 - The reference was read, and explained that it strengthens local arguments for jurisdiction on the subject.

Track Change #2: Under **DEFINITIONS “Custom”** means the cultural or traditional practices that the Mohawks maintain and **continue to** practice today.” **Consensus reached on amendment**

Track Change #3: “For greater certainty, this Law **(b) replaces the application...**”
Section 6.2 was a change to format, and the addition of (c) **“applies in respect of rights and interests acquired both before and after this law comes into force.”** **Consensus reached on amendments**

Track Change #4: Section 8. Use of subheadings in section, **“Mandatory mediation information session”** **Consensus reached on amendment.**

Q: Would mediation have services covered by program funding?

A: Yes, but associated legal fees would be individual’s responsibility. Next steps require identifying costs to MCK.

Track Change #5: Addition by MCK Legal Services based on Model First Nation Real Property Law provided at National Forum, **“18.3 An appeal from an Order or Declaration of the Court does not operate as a stay or suspend the operation of the Order or Declaration unless the judge hearing the matter decides otherwise.”** **Consensus reached on amendment**

Clarification: appeals will not stall decisions

Questions:

Q: Are there standards for not showing up for mediation?

A: There are exemptions to mediation that will be considered as in domestic abuse situations.

- Q:** In a common-law relationship, 3.5-years accumulate real property; is there protection?
- A:** No, 5 years is the length of time stipulated for a common-law relationship in the law.
- Q:** Member disagrees with the Kahnawà:ke decision can they go to an outside court to appeal or reheard?
- A:** The people should respect Kahnawà:ke jurisdiction.
- Q:** Clarification, can we go back and change parts of this law that has already been discussed and agreed to at past meetings?
- A:** Past decisions made to move forward with this Law remain, however amendments in one-year plus a day could be developed going through the regular CDMP.
- Q:** Is there an opportunity for Canada to challenge our Laws because we did not have a referendum?
- A:** Canada does not require that in their system. We should not be bound by that process. We want reciprocal recognition of our Laws.
- Q:** Is there compensation for equal property fairness?
- A:** Other forms of compensation i.e. money, house, etc. will be built in and could be included in the final settlement.

Parking Lot:

- The jurisdiction of property and assets are not specific to the Kahnawà:ke territory (Property in Florida and other jurisdictions).
- A Kahnawà:ke man in attendance identifies himself as being a suspended member, for marrying a non-member after 1981, he continues to voice his concerns in hearing.

Final Outcome:

A summary of all amendments was reviewed. The group agreed to approve the law. A majority supported the law, some choosing to abstain and nobody objecting.