

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. KAHNAWKÀ: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 KFH&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.