

KAHNAWÀ:KE MEMBERSHIP LAW
FIRST HEARING – Meeting #3
Knights of Columbus Hall
15, Seskehkó:wa /September 2015
6:00 PM– 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Leslie Beauvais-Skye (Lead - CDMP)
Joe Delaronde

RESOURCE PEOPLE:

Rose-Ann Morris (Lead – Resource Person)
Shari Lahache
Arlene Beauvais
Jenny McComber
Kevin Fleischer

RECORDER:

Caroline McComber

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

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

6:10 P.M. **KAHNAWÀ:KE MEMBERSHIP LAW AMENDMENTS** - Rose-Ann Morris, Membership Registrar

**Section 5 on REGISTRAR, and
Section 6 on Kanien'kehá:ka of Kahnawà:ke registry
Any related definitions**

8:25 P.M. **NEXT STEPS** – Leslie Beauvais-Skye

8:30 P.M. **CLOSING** – Kahsennenhawe Sky-Deer

Note: Due to low number of participants, it was agreed to have one group deliberate. Participants from Group 2 joined Group 1.

Group 1

Facilitator: Joe Delaronde
Resource Person: Rose-Ann Morris, Shari Lahache, Arlene Beauvais & Kevin Fleischer
Recorder: Caroline McComber

Chief Kahsennenhawe Sky-Deer reiterated to this evening's group participants that this Law has been enacted encouraging that the focus for this evening should be on the amendments as proposed reminding that Section 4 *Definitions* will be readdressed only as they correspond to the Law's sections under discussion.

Joe Delaronde opened the group discussion presenting the tracked revisions version of the *Kahnawà:ke Membership Law* to guide and review with the group on the revisions made to the Law along with an overview of the agenda items as follows:

REGISTRAR

DISCUSSION:

- 5.1 Upon the enactment of this Law, the Mohawk Council of Kahnawà:ke will, after an open application process, appoint a suitable person to be the Registrar for the purposes of this Law.
- 5.2 The Registrar's appointment will be effective until:
- it is revoked by the Mohawk Council of Kahnawà:ke,
 - the Registrar resigns, or
 - the Registrar, for any reason, is unable to perform his or her duties under this Law.

In question for § 5.2 what does the term “revoked” process entail? Rose-Ann Morris advised that the Registrar is required to follow all the guidelines and polices of the MCK, in essence it is MCK that can revoke the contract for the Registrar’s employment.

- 5.3 The Registrar must be:
- a **mature** person of good character,
 - recognized as a **member of the** Kanien'kehá:ka of Kahnawà:ke, and
 - a person who ordinarily **normally** resides within the Territory.

In question for § 5.3 was the reference of why “member” is being omitted? Rose-Ann Morris expressed that “recognized” as a Kanien'kehá:ka of Kahnawà:ke better reflects that the community

sets the direction of who can be Kanien'kehá:ka of Kahnawà:ke getting away from the Indian Act Membership terminology.

- 5.4 The Registrar will maintain and administer both the Kahnawà:ke Kanien'kehá:ka Registry and the Approved Kahnawà:ke Resident list, ~~non member resident list~~ and perform any duties related thereto.

Rose-Ann Morris commented that for this section, the Drafting Team wanted be make very clear that the Kahnawà:ke Kanien'kehá:ka Registry and the Approved Kahnawà:ke Resident list are indeed separate of each other.

5.5 The Registrar will:

- a) review and decide applications for instatement, reinstatement or for permission to be an Approved Kahnawà:ke Resident, and
- b) review and decide applications to suspend or revoke a person's recognition or to suspend or revoke a person's permission to be an Approved Kahnawà:ke Resident.

In question for § 5.5, where/when will the community be informed of who is approved and not approved as a Kahnawà:ke Resident? Rose-Ann Morris advised that this is covered in part in § 5.7. Also in question is whether § 5.5 (a) includes transfers? Arlene Beauvais advised that transfers are addressed in § 12.5 Application Process/Recognition.

In question was whether “recognized” should be included to § 5.5 (a)? Rose-Ann Morris pointed out that in other sections instatement and reinstatement were replaced with “recognized”. Kevin Fleischer advised that this could be addressed with the Drafting Team for clarity and possible re-editing for consistency throughout the amended Law.

5.6 The Registrar will at all times:

- a) act fairly, impartially and in accordance with the provisions of this Law and the Regulations,
- b) ensure that all information in his or her possession, including but not limited to the Kahnawà:ke Kanien'kehá:ka Registry, is held in confidence and is not divulged, discussed or released to any person or authority, except with the permission of the person to whom the information relates, as required to verify a person's eligibility for benefits and services, as may be required by access to information laws applicable within the Territory, or in accordance with this Law and the Regulations, and
- c) ensure the information contained in the Kahnawà:ke Kanien'kehá:ka Registry and the ~~non member resident~~ Approved Kahnawà:ke Resident list is safeguarded from loss, destruction, tampering and unauthorized use.

In question for § 5.6 (a) what is the process of “act fairly”? Explained was an excerpt from § 9 Review of Registrar’s Decision:

The Administrative Tribunal shall review and determine whether due process was followed, whether laws of natural justice were adhered to, ensure absence of bias, ensure the decision was reasonable, determine whether there was an absence of jurisdiction, or, if there was a mistake of law.

Also addressed in this section was that there are no “conflict of interest” provisions identified? Can the Registrar recuse herself in the event of a conflict of interest? Rose-Ann Morris advised that is not currently addressed within the Law as amended, however, should be further explored by the Drafting Team to develop a process.

5.7 The Registrar will make available for the review of the Mohawk Council of Kahnawà:ke and ~~members of the~~ Kanien'kehá:ka of Kahnawà:ke during normal business hours, any additions, suspensions or removals from the Kahnawà:ke Kanien'kehá:ka Registry and the Approved Kahnawà:ke Resident list, including the names of the persons added or removed from the Kahnawà:ke Kanien'kehá:ka Registry and the Approved Kahnawà:ke Resident

5.8

In question was whether any individuals suspended are removed from the Kahnawà:ke Kanien'kehá:ka Registry? Rose-Ann Morris advised that they are removed from Kahnawà:ke Kanien'kehá:ka Registry and categorized as “suspended” with entitlements and benefits suspended.

Also in question was whether new applications would be publicized to the community. Chief Kahsennenhawe Sky-Deer suggested that it could be similar to the Lands Unit, Land Allotments Public Service Announcements.

CONSENSUS REACHED:

Consensus was reached for amended sections: § 5.3, § 5.4, § 5.6, § 5.7 and the addition of § 5.5 (a) & (b).

KAHNAWÀ:KE KANIEN'KEHÁ:KA REGISTRY

DISCUSSION:

Rose-Ann Morris provided an overview that the only amendments made to this section is the removal of terms “member(s)” and “reinstated”.

- 6.1 The Kahnawà:ke Kanien'kehá:ka Registry is hereby established
- 6.2 The Kahnawà:ke Mohawk Registry is hereby replaced by the Kahnawá:ke Kanien'kehá:ka Registry.
- 6.3 With the exception of any person who has no Kanien'kehá:ka or Indigenous lineage, all persons who, as of the date on which this section of the Law comes into force, were listed on the Kahnawà:ke Mohawk Registry and who reside in or maintain ties with Kahnawà:ke, will be recognized as ~~members of the~~ Kanien'kehá:ka of Kahnawà:ke and will be listed on the Kahnawà:ke Kanien'kehá:ka Registry.
- 6.4 The Registrar will add to the Kahnawà:ke Kanien'kehá:ka Registry the name of any person who is verified and recognized ~~instead of reinstated as a member~~ under this Law.
- 6.5 The Registrar will remove from the Kahnawà:ke Kanien'kehá:ka Registry the name of any person whose recognition as a Kanien'kehá:ka of Kahnawà:ke has been revoked and will make a notation in the Registry of any person ~~member~~ who is suspended.

In question is who is going to enforce until this Law is enacted and why has there not been an enforcement body in place in the interim? Chief Kahsennenhawe Sky-Deer clarified that until we can amend the section of the Law that addresses the removal and suspension aspect and until these amendments to the Law are recognized to obtain future court orders to physically remove individuals in violation from the territory, we are currently status-quo.

In the last several years, Council has asked what we can do as an interim measure to enforce the violations. Council was advised that the Membership Law could not be circumvented and anything outside of amending the law may result in subjecting the MCK to further law suits.

One Member recommended as addition to the definition of the “Kahnawà:ke Mohawk Registry” is to include “was repealed when the Law came into place and has since been replaced with “Kahnawà:ke Kanien'kehá:ka Registry”. The KML Drafting Team will review the suggested inclusion in the definition for Draft 2 of the Law.

CONSENSUS REACHED:

Consensus was reached for amended sections: § 6.1, § 6.2, § 6.3, § 6.4 and § 6.5

DEFINITIONS (Section 4)

DISCUSSION:

"Approved Kahnawà:ke Resident" ~~Non-member Resident~~ means a person who has been confirmed to have permission to reside within the Territory and to receive those privileges as provided in this Law, provided the person's permission to be an **Approved Kahnawà:ke Resident** ~~non-member resident~~ has not been suspended or revoked,

Rose-Ann Morris advised that the term(s) non member resident has been replaced with the term "Approved Kahnawà:ke Resident" referenced in § 5 and § 6 recommending that the approval of the new term be deferred until the review of § 7. Approved Kahnawà:ke Resident

"Instatement" means recognizing ~~confirming~~, for the first time, a person to be a Kanien'kehá:ka of Kahnawà:ke in accordance with this Law,

Rose-Ann Morris further advised the only revision made to the definition is the replacement of the term confirming to recognizing. Further, the Drafting Team will discuss whether this definition is deemed necessary and possibly omit all together.

"Kahnawà:ke Kanien'kehá:ka Registry" means the list of **Kanien'kehá:ka of Kahnawà:ke** ~~members and the list of non-member residents~~ maintained by the Registrar in accordance with ~~after the enactment~~ this Law and, for greater certainty, does not mean any lists kept by the Department of **Aboriginal Indian** Affairs and Northern Development (Canada) or any other foreign government,

"Kahnawà:ke Mohawk Registry" means the list of persons created in accordance with the 1981 Moratorium and the 1984 Kahnawà:ke Mohawk Law concerning Membership,

"Normally" Ordinarily resident" means that a person maintains their permanent home in Kahnawà:ke and includes persons who may be absent for a period of time but who return to Kahnawà:ke on a regular basis from their place of employment, training or schooling and also includes persons who do not reside in Kahnawà:ke due to housing shortages,

"Reinstatement" means confirming the recognition of a person who was previously removed from the Kahnawà:ke Kanien'kehá:ka Registry,

CONSENSUS REACHED:

Consensus was reached to accept all amendments to the above definitions with the notations of regarding the deferral of Approved Kahnawà:ke Resident when the section is discussed and the Drafting Team's decision for Draft 2 on the terms Instatement and Reinstatement.

CONCLUSION:

Consensus was reached on the three (3) agenda items:

- ❖ Section 5 on *REGISTRAR*, and
- ❖ Section 6 on *KANIEN'KEHÁ:KA OF KAHNAWÀ:KE REGISTRY*
- ❖ Section 4 on *DEFINITIONS* as related

Announced was that the next meeting has been scheduled for Tuesday, October 13th, 2015 at the Knights of Columbus Hall