

COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE ELECTION LAW
FIRST HEARING (MTG. #7)
Karonhianonhnha School
23, Ohiaríha/September 2014
6:00 PM – 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Leslie Beauvais-Skye (Lead -CDMP)
Paul Nicholas
Ron Skye

RESOURCE PEOPLE:

Trina C. Diabo (Lead – Resource Person)

RECORDERS:

Jessica Loft - Group 1
Lanny Jacobs – Group 2

6:00 P.M. **OPENING** – Leslie Beauvais-Skye

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

6:10 P.M. **REVIEW AMENDMENTS TO KAHNAWÀ:KE ELECTION LAW** – Trina C. Diabo

8:15 P.M. **NEXT STEPS** – Trina C. Diabo & Leslie Beauvais-Skye

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

GROUP 1

Facilitator: Ron Skye
Resource Person: Trina C. Diabo
Recorder: Jessica Loft

Question 1:

Do you agree to reduce the Chiefs from twelve (12) to nine (9)?

DISCUSSION:

- The workload is not evenly distributed at present, and nine (9) Chiefs are able to handle the workload if the distribution of the files were equal.
- The community population requires twelve (12) Chiefs.
- The cost to financially keep twelve Chiefs is not a reason to reduce to nine. The money is there to provide twelve. Reducing to nine will result in funds that will go back into community programs. The funding is capped for ten years. If the population grows, and there is a reduction to the number of Chiefs it could result in a problem in the future.
- Accountability and workload is the main problem. A structural analysis is what needs to be done. The number is not the issue.
- Short or long-term disability due to burn out or a medical issue is an important factor to consider. When there is a position empty because of burn out others have to handle the workload and it can be extremely cumbersome.
- Recommendation to have administrative backup to shadow Chiefs if there is a short-term or long-term disability.
- Chiefs will be required to do home visitation, to go back to the traditional way of connecting with community members, and reducing to nine will cause a problem because of the size of the population.
- Going to nine Chiefs could be viewed as mimicking the Traditional Haudenosaunee Government. Going to ten could be a solution that would hinder possible misunderstanding.
- Every five (5) years there is a mandatory review of every law. If the status quo is maintained, the issue can be revisited in five years.
- Is there anyone that is opposed to staying at twelve Chiefs? The criteria for Chiefs must be considered, i.e. experience, education, and capabilities.
- We have community members who are familiar with the issues, such as technicians and directors who are strong candidates and should be able to take the lead on the file.
- The survey does not reflect the decision that is being made today by the group attending this meeting tonight.
- Historical information regarding going from one, six, to twelve Council Chiefs. Population of 1000 people per Chief. There have been 12 since 1940-50

PARKING LOT:

- There will be CDMP revisions in regard to time frame to bring a law from inception to ratification.
- Chiefs Roles & Responsibilities should be put on the website.

OUTCOME: CONSENSUS REACHED TO REMAIN AT TWELVE (12) CHIEFS

FINAL RECORD OF DISCUSSION

Question 2

Should an independent Pre-Election Decisions and Review Board be created?

The Board could be comprised of three (3) community members and one (1) auxiliary member, all selected at the same meeting where the Electoral Officer is selected.

The Board's function is to, when requested by an Elector, review the decision taken by the Electoral Officer with respect to such decisions as:

- ⊙ candidate's eligibility to run in the election or to hold office;
- ⊙ compliance with nomination procedures;
- ⊙ application or non-application of a provision of the Election Law or its regulations;
- ⊙ an Elector's eligibility to vote;
- ⊙ a community member's eligibility to be on the Voter's List;

Any other decision taken by the Electoral Officer prior to the closing of the polls on Election Day.

Requests for review of a decision of the Electoral Officer are made verbally and decided as expediently as possible and in such a manner as not to inhibit to election proceedings. Decisions of the Board are final.

DISCUSSION:

- **Q:** Why is there is a question in regards to the pre & post elections process?
- **A:** Example: Keith Mayo's election resulted in the Electoral Officer (EO) stepping down. An assistant can help to make decisions when there is difficulty occurring within the election process. When research was done, such as the Tom Dearhouse, Fury, and the Keith Myiow election a need for an independent advisory body during difficult times was strongly recommended. When a non-native lawyer provided an overwhelming amount of legal documents it was intimidating. If an Onkwehonwe person was assisting and a problem occurred it could be handled seamlessly.
- Having the authority, power, policy & procedures should not be given to the EO. Regulations need to be developed because the EO is not a lawyer.

- **Q:** How do we know if we need a Board or if the regulations only need to be tightened?
- **A:** The EO chooses an Assistant in the Law. They are not there to interpret the Law. The criteria and regulations can run the elections smoothly when the policies and procedures are in place.
- It is a duplication of services, but an Advisory Board comprised of former Eos from previous elections could be an asset. Selecting former Eos would be positive because it would not cause issues with confidentiality.
- Having a permanent elections committee comprised of five to seven was not approved in the past, however it would be cost efficient and they would develop the expertise in terms of policy, procedure, and regulations.
- The investigation of whether a member is eligible to vote as per the community elections process should be delegated to someone in Membership and not be performed by the EO.
- An Advisory person should be strictly advisory, without power and can provide information without breaking confidentiality. The EO can ask for advice without naming names and just explain the situation. Decisions are at the discretion of the EO.
- The EO can go through the Electoral Law revision process and strengthen the process making it more accurate and precise during the Election process. In this case an Advisory Board is unnecessary. Two past Eos and a Lawyer should suffice.
- **Q.** Where do you go to appeal a decision if you have a problem with the Eos decision pre-election?
- **A.** The Administrative Tribunal and that is where redress occurs.

PARKING LOT:

The www.kahnawakemakingdecisions.com website has been down for a couple of days. Speak to Tom Scott in regards to posting a "Temporary Out of Service Due to Technical Problems" so that community members trying to access the site know the issue will be resolved soon.

OUTCOME:

A pre-election Board is not required. Issues the Electoral Officer has should be addressed via process, procedures, and regulations. The Electoral Officer should have the ability to strike an Ad-Hoc committee at their discretion through the regulations.

CONSENSUS REACHED WITH ONE OBJECTION NOTED FOR THE RECORD

Consensus was reached to add an Ad Hoc or Advisory Committee that can be struck through the Regulation, and utilized if the said Electoral Officer would like to have that in place (Optional up to Electoral Officer).

Question 3

To have a Post-Election Appeal Process within the Law?

- ⊙ Currently there is no time frame for an appeal process within the Law.
- ⊙ The Justice will have thirty (30) days to render a decision from the date on which the hearing has ended or in the case of a decision based solely on the material submitted thirty (30) days from the date the delay to file a written answer to the particulars has expired.

DISCUSSION:

- A decision goes to the Court, not to the Administrative Tribunal; a verbal decision can be made within ten (10) days.
- Any appealed decision is a lengthy process and can take years to come to a determination.
- Q. Is there a time limit for someone to object to a decision?
- A. Yes they have ten (10) days to launch an objection.

OUTCOME:

Justice could provide a verbal decision to the community in fifteen (15) days from the date of filing. The written decision can be done in forty-five (45) days from date of decision.

CONSENSUS REACHED WITH TWO OBJECTIONS NOTED. Justice could provide a verbal decision to the community in fifteen (15) days from the date of filing. The written can be done in forty-five (45) days from date of decision.

GROUP 2

Facilitator: Paul Nicholas
Resource Person: Trina C. Diabo
Recorder: Lanny Jacobs

Question 1

Do you agree to reduce the Chiefs from twelve (12) to nine (9)?

DISCUSSION:

- At last meeting we were going to keep it at 12 for 2015 elections, because the town is not ready for it yet. Can tell by low numbers (the low participant level at tonight's meeting). Believe we need to keep it as is for 2015. Find the numbers (participation) too low to consider.
- With large work load, we'll have to go door-to-door with land claim issue. Each council member will have to do this. To reduce the number is crazy. Too much work on our plates.
- It is not the employee's responsibility; it should be the Chiefs responsibility.
- Going door-to-door for the SSSL and reducing to 9 Chiefs will not be enough. I don't support going down to 9 Chiefs, I never did. I want it to stay at 12 Chiefs.
- Q: Why does this question keep coming back to this forum? Are you going to keep asking until you get the answer you want?
- A: It has never reached consensus. The consensus that was reached later on was to hold a referendum. At the last meeting if we would have gone with what the majority wanted, we would have gone with 9 Chiefs.
- Q: Do you keep bringing it back until you reach consensus?
- A: Yes.
- The question is do you want to change it? Do you keep bringing it back until you get a positive result?
- A: It will come back until the community reaches consensus on what they want to have in place.
- On another issue it took 3 times before there was consensus.
- Needs to stay at 12 for now. Do not like process of bringing back again and again. Do not like it. Needs to stay at 12 because the community hasn't been properly consulted.
- Keep it at 12 because of the work load. The town is growing and there are a lot of issues.
- Keep at 12 because of the upcoming increased workload with the SSSL. This question should be asked at next election.
- That is a referendum then we should scrap this Process.

- For budgetary reasons, I would like to see a reduction and there are a lot of talented employees that can do some of the work.
- I agree that staff can do it.
- I could agree to 10 Chiefs.
- We just signed a financial agreement for 10 years.
- What do we hear in the media? Will we be better off with a 10-year financial agreement? Don't use excuse of money because it is not.
- I already agreed to 10 at last meeting and I haven't changed my mind.
- Last year Communications asked this question to the Chiefs and I put 9. They asked how we could decrease our budget. I remember when 3 Chiefs were out at one time and the place continued. I also asked what we were going to do in the restructuring.
- Not sure. I am working at my limit.
- Can you accept 10?
- The SSSL consultation is very big and requires a lot of time. I could live with 10, but not for this election.
- If law changes it would be for this election.
- We said that it is not for this election.
- Two more amendments left to do after this question.
- If there is no consensus tonight, it remains at 12 (status quo).
- I am saying I prefer 9. You say 10 but can you live with 9.
- At the first meeting I said 9 and it was for financial reasons. I could live with a full council for the next term and it will be amended in five years. My mind is at 9 but I could live with 12.
- With comment being made that 9 is traditional. I didn't think of that number because of that. I thought about 9 when 3 Chiefs were out. I could live with 10.
- Five people at this table said 12 for this election.
- One person has left this table. Her opinion will be there.
- If we can't come to consensus by 7:00, we will do a vote. That is what I have been told.
- These amendments are being made for this election.
- The Justice Act is not in force.
- This law falls under the Court of Kahnawà:ke.
- We hear strongly that the majority wants 12.
- We keep hearing for this election. Does this mean we are willing to change it for the next election?
- Is the group willing to consider going to 12 for this coming election?
- We can change the 9 to any number.
- In the last meeting it was said that whatever the number is it wouldn't be for this election.
- Q: Has this question been in the Process for the past 3 years?
- A: Yes since first meeting of the First Hearing.
- If this law is not in effect in 2015 it will be for 2018.
- I can live with 12.
- I can live with 12. Just at last meeting the majority said 10.

- The whole group can live with 12 for the 2015 election.
- I would like to know what the other group is saying before we say we have consensus.
- I don't have a problem with the change. I don't find that the community is not informed. Needs to go to the wider community. Not in this forum. It is a community decision.

PARKING LOT:

- Questions need to be clearer.

OUTCOME:

CONSENSUS REACHED to remain at 12 Chiefs

Question 2

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DISCUSSION:

- Still not clear why another process is being utilized to answer this question when it involves pre and post-election.
- The recommendation was made because a past Electoral Officer (EO) wanted assistance and did not want the advice of a non-native lawyer they preferred to have the advice of community members. They wanted an independent body comprised of community members to advise them.
- There were concerns with this recommendation.
- This is not an advisory body. They would not make decisions. This is not what is written. It is very different.
- I think that there should be a team.
- There is already a team. It has always been there – MCK Admin. I think that the EO should have a team.
- With this you can appeal before the election. Do not agree with appointing at same time as, but it has to be someone who is legally trained. A review board is a good idea.

- Membership works closely with the EO. The EO is appointed at a community meeting. What if there are not three people who will volunteer from the community? Would this halt the elections?
- I think an appeal body shouldn't make decisions. There should be a legal tribunal. If you give them certain powers they can get blamed for decisions.
- This Board would be making a decision for the EO.
- There are two different ideas and they are getting mixed up.
- If the EO is running into problems in the decisions that they make, they need support for the decision that they make.
- The elector has an appeal process. The Board's function would be to advise on their decision.
- Don't want to have this body make the final decision.
- Appeal and review are not the same.
- If someone is challenging the EO's decision, what role does the Board play?
- The Board would be to advise and give support on why the decision was made.
- If someone challenges the EO, where does it go?
- It would be dependent on the Justice Act ~ Tribunal.
- This type of Board is not unheard of. It can help to handle and resolve problems before elections. It would be good.
- It is Membership's responsibility to verify if the person is on the KKR. It would be difficult for another body to also take on this role.
- Will having a new law help with past problems that the EOs have and will it eliminate the need for this board.
- There is no need for an advisory group when the EO already has the support.
- Would like to have a separate group to be able to go to before an election. Do not agree with other group.

OUTCOME:

Group 1 presented their Consensus to Group 2. Consensus was reached to add that an ad hoc or advisory committee can be struck through the Regulation, and utilized if the said Electoral officer would like to have that in place (Optional up to Electoral Officer)

Group 2 went back into discussions.

CONSENSUS REACHED: Consensus was reached to agree with Group 1's proposal, with two (2) Objections. Consensus was reached to add that an ad hoc or advisory committee can be struck through the Regulation, and utilized if the said Electoral officer would like to have that in place (Optional up to Electoral Officer).

Question 3

To have a Post-Election Appeal Process within the Law?

- ⊙ Currently there is no time frame for an appeal process within the Law.
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DISCUSSION:

- There is no timeframe for post-election appeal process within the law.
- If you get rid of the Review Board you have to go to a post-election appeal process.
- There needs to be a pre-election appeal process.
- 30 days is too long.
- Sometimes 10 days is too short. Maybe it should be 30 days, maximum. If it can be done in 3 days then that is good.
- My decision on timeframe is based on pre-election and post-election.
- Two people did not agree with 15 days from date of filing the appeal to give a verbal decision and found that it was not enough time. The other side would need time to respond and the judge would need time to review and prepare.
- Only have elections every 3 years. Should be prepared to do this quickly.
- Agrees with process, but too short a time frame of 15 days.
- Example given of past election that had approximately 12 appeals.
- One agreed with the process.
- Another agreed with the process noting that 20 days was suggested, but could live with 15 days.
- Another agreed with shortened timeframe and with process.
- Yet another agreed with the suggestion of other group and not concerned about timeframe and agreed with process.
- Lastly, another agreed with having a timeframe but wanted a pre-decision making body in place.

OUTCOME: Group 1 presented their Consensus to Group 2. Consensus was reached to add a timeframe to the Post-election Appeal Process. A Justice/Judge will have fifteen (15) days after an appeal is received to render a decision, with a 45-day limit to provide a written judgment.

Group 2 went back into discussions. Concern on the timeframe, not being long enough for Justice to make decision. What if there are many appeals? Election is only every three (3) years, Justice should be ready.

CONSENSUS REACHED WITH GROUP 1'S PROPOSAL: Consensus was reached to agree with Group 1's proposal with two (2) Objections. Consensus was reached to add a timeframe to the Post-election Appeal Process. A Justice/Judge will have fifteen (15) days after an appeal is received to render a decision, with a 45-day limit to provide a written judgment.

FINAL MINUTES

Kahnawà:ke Election Law FIRST HEARING (#7)

Approved by:

Trina C. Diabo, Technician

Date