

KAHNAWÀ:KE MEMBERSHIP LAW

FIRST HEARING – Meeting #5

Knights of Columbus Hall

24, Kentenhkó:wa/November 2015

6:00 PM– 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Leslie Beauvais-Skye (KLCC)
Joe Delaronde (CDMP)
Ron Skye (CDMP)

RESOURCE PEOPLE:

Rose-Ann Morris (Registrar)
Shari Lahache
Arlene Beauvais
Jennifer McComber
Kevin Fleischer

RECORDER:

Kellyann Meloche

CHIEFS IN ATTENDANCE :

Chief Arlene Jacobs
Chief Clinton Phillips
Chief Kenneth McComber

6:10 P.M. **OPENING** – Leslie Beauvais-Skye

6:11 P.M. **INTRODUCTION/MEETING GUIDELINES** – Leslie Beauvais-Skye
Question was addressed with participants about having the meeting filmed. The majority present did not want to be filmed.

6:15 P.M. **KAHNAWÀ:KE MEMBERSHIP LAW AMENDMENTS:**

- **SEC. 8 KANIEN'KEHÁ:KA OF KAHNAWÀ:KE REGISTRY ADVISORY BOARD**
- **SEC. 9 REVIEW OF REGISTRAR'S DECISION**
- **SEC. 10 MEMBERSHIP REVIEW COUNCIL**
- **SEC. 11 VERIFICATION OF RECOGNITION**
- **ANY RELATED DEFINITIONS** - Rose-Ann Morris, Membership Registrar

8:25 P.M. **NEXT STEPS** – Joe Delaronde & Ron Skye

8:30 P.M. **CLOSING** – Leslie Beauvais-Skye

Facilitator:	Joe Delaronde/Ron Skye
Resource Persons:	Rose-Ann Morris, Shari Lahache & Arlene Beauvais
Recorder:	Kellyann Meloche

KAHNAWÀ:KE KANIEN'KEHÁ:KA REGISTRY ADVISORY BOARD

- 8.1 There is hereby established a body to be known as the Kahnawà:ke Kanien'kehá:ka Registry Advisory Board.
- 8.2 The Kahnawà:ke Kanien'kehá:ka Registry Advisory Board will consist of five (5) Kanien'kehá:ka of Kahnawà:ke who are ordinarily resident in Kahnawà:ke. Three (3) Kanien'kehá:ka of Kahnawà:ke will be elected, in accordance with the procedures set out in the Regulations, to a three (3) year term. Two (2) Kanien'kehá:ka of Kahnawà:ke will be appointed by the Mohawk Council of Kahnawà:ke to serve a three (3) year term concurrent with those elected, and will be selected in accordance with the procedures set out in the Regulations.
- 8.3 The Kahnawà:ke Kanien'kehá:ka Registry Advisory Board will , upon request by the Registrar, provide non-binding advice and guidance to the Registrar.
- 8.4 The Kahnawà:ke Kanien'kehá:ka Registry Advisory Board will perform its duties in accordance with the provisions of this Law and the Regulations.
- 8.5 The Kahnawà:ke Kanien'kehá:ka Registry Advisory Board is a volunteer Board. Members will not be remunerated for their services.

DISCUSSION:

- The title has been changed, and 8.1 is a new section.
- Community agreed to delete the Council of Elders. There was CDMP discussion in the mandate sessions about having an oversight body for the Registrar's decision. It wasn't clear what the mandate would be for this body.
- We're calling it the Kanien'kehá:ka of Kahnawà:ke Registry Advisory Board, 3 elected and 2 appointed.
- 8.1
 - Issue with the whole concept of the Advisory Board. What's the purpose of this Advisory Board? It has no clout; it's on voluntary basis. Is it ruled by consensus? How would they get a quorum? Seems there's a lot absent to this board, it's just advice.
 - (A) – We proposed it as an advisory body; all the details would be in the regulations. We need a decision what is the mandate of the Advisory Board.

- (A) – They don't have any authority, they can assist. One role which is to advise the Registrar upon Registrar's request.
- Is it necessary to have this in the law?
 - (A) We can use this board for non-member residency.
 - (A) We can look at that suggestion and we'd have to split the application process section.
 - (A) We had consensus already that the Registrar decides.
- I don't think it is needed. It's only here because some community members wanted it in there at the time. After it was drafted, we ensured that what those community members wanted was in the draft law. It's creating a few levels here.
- People wanted this Advisory Board in place because they didn't want the Registrar to have all the power. They wanted the community to have some sort of say.
- We currently propose the Administrative Tribunal, the Court of Kahnawake, etc. I think there are enough levels of checks and balances.
- This body is only used when the Registrar wants to. After thoroughly looking at this board, it's not needed.
- We had discussions with portfolio Chiefs and membership staff. It's creating another level, what if we don't meet because the Advisory Board is not available? It's going to be difficult to overturn the Registrar's decision since we have the documents in the office, we can trace their lineage. These are confidential documents with personal information that Membership would not be able to show the community. This section is causing more bureaucracy.
- I can see changing this section if the Review Council was structured the same way. 3 elected and 2 appointed.
- This Advisory Board has no clout, yet Membership Review Council should have a least 5 rather than just 3 members.
- We should clarify. The way it's drafted, the Membership Review Council is an interim body.
- **Decision to omit section 8.**

OUTCOME:

CONSENSUS REACHED:

TO REMOVE ALL OF SECTION 8

REVIEW OF REGISTRAR'S DECISION

- 9.1 A decision by the Registrar may be reviewed by the Administrative Tribunal in accordance with the *Kahnawà:ke Justice System* and applicable regulations.
- 9.2 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.
- 9.3 The Administrative Tribunal may confirm, vary or quash the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.
- 9.4 A decision by the Administrative Tribunal may be appealed to the Court of Kahnawà:ke in accordance with the *Kahnawà:ke Justice System* and applicable regulations.
- 9.5 Final judgments or orders by the Court of Kahnawà:ke regarding membership can be automatically appealed to the Kahnawà:ke Court of Appeal.

Discussion:

- 9.1
 - I don't think the Administrative Tribunal is required if there is a Review Council.
 - (A) The Review Council is only an interim body.
 - It should replace the Administrative Tribunal because the community does not choose who is on the Administrative Tribunal. The Advisory Board we will know, we put them in.
 - (A) If you want to get rid of the Admin Tribunal, the Review Council will need teeth and be strengthened. You will have the same problems as you've had before. One of the issues you seen before, was a decision made upon review, and the Council of Elders never changed it.
 - (A) If it was an appeal it goes to the Court of Kahnawà:ke. Each decision can go there.
 - It says the Admin Tribunal can overturn the Registrar's decision. They can't overturn it on their own. I don't want them to have that ability. They are chosen ad-hoc, we haven't any idea who those people are.
 - (A) How those people are selected, is not decided yet.
 - What's the difference between 9.3 and 10.5?
 - (A) In section 10, we kept the Membership Review Council in case the justice system wasn't in place by the time the Membership Law was passed. Meant to be interim. It has the same wording because they would do the same job

- (A) It is the same. The thinking for 10.5 is if the Membership Review Council would be maintained, then it should have the same authority.
- Rulings in 8 and 9, when you get to review, how many people work in your office right now?
- (A) There are 3 other staff members in the Membership Department.
- Doesn't it have to go through community meeting?
- (A) No they wouldn't. We would provide a notice of the list of the people who applied in advance of the decision being made.
- What you're posting, should eliminate whether we want it or not for the 60 day period. Why have them in place? Whatever you have the decision on it's going to be appealed.
- You have meetings in-between the 60 days. People will still get their advice to the Registrar. Why have all this stuff in the middle, which makes it a long time.
- (A) That's a really good point! It seems there was a request to have a body to handle some of this.
- The Registrar has people that work with her, and they oversee her. She makes her decision on the advice of those other 3. That's still 3 people, plus the Registrar, plus possibly the MRC. Do we trust that team and her to make those decisions? She will have all those documents.
- If they have questions on a person, they can ask within the 60 days.
- Remove the Administrative tribunal part, have the 60 days acknowledged. If the decision is challenged, it would go to the Court of Kahnawà:ke.
- Take out all of the different committees. It's difficult to get people to attend committee meetings, you can't find them. I trust in the system and the people that are here (Membership Department), and those that will follow it.
- (A) When we talk about the 3 levels of appeal. There is the Administrative Tribunal first, to ensure they followed due process.
- I can agree to remove both. I would like any appeals to go directly to the Court.
- (A) Court cases can be very adversarial. If there's an Administrative Tribunal, it's more for a quicker decision. You can solve your problems more in the front. If we get rid of the first level, you cut that step out and if it's an important issue, the individual should have recourse to appeal and should have every opportunity to fight that decision.
- (A) Our laws ensure that our cases, laws stay here. There should always be 3 levels of redress. It's an international standard, to allow people to avail these processes. We are trying to keep within 3 levels of appeal to stick with international standards.

- If we have to have 3 levels of appeal, I still don't like that Administrative Tribunal have any authority to quash and change the Registrar's decision. It was never brought up once at any of the hearings.
- (A) Presently the Membership Review Council may affirm a decision of the Council of Elders or annul the decision and return the matter back to the Council of Elders for reconsideration with instructions. (Section 5.3 of Membership Law Regulation No. 1 was read aloud.)
- There still may be a need to have a Review Council.
- 9.3 Should not be in here. To replace her decision with their own, is against the decision of what the people wanted.
- (A) Some Administrative Tribunals can overturn a decision if process wasn't followed. They then could send it back for the Registrar to review again. There are also some that make changes to the decision.
- (A) There are some concerns here. There are Administrative Tribunals that change and overturn decisions. If the group here decides how it should work, then it would work as requested/changed.
- I agree with what you're saying. If the tribunal made a mistake, the Registrar's office can then correct them and say, no this is the documents we have, the information that's available. They should have the authority to send it back but not quash.
- (A) Lots of discussion on the Administrative Tribunal, there's also a lot on the actual application. Ensuring people were treated fairly, not just great-grandparent issues, it's anything throughout the process could go to the Tribunal.
- I'm not suggesting removing the tribunal; I'm saying they cannot replace the Registrar's decision.
- Should the Administrative Tribunal have the authority and responsibility to render their own decision (to quash the decision of the Registrar)?
 - **NO THEY SHOULDN'T.**
- Some excerpts of how the Council of Elders worked, in terms of process, and it wasn't followed and people's lives were scrutinized. There should be some type of overview, but not so many levels. There should be some safeguards to ensure there aren't any conflicts of interest. The Registrar has all those facts. What more would 3 people have to offer other than historical data.
- What happens when we start getting all those appointments and one more is not paid for or appointed by the Council? Then we end up with 5 Council appointees and only 3 community members?
- (A) The Council of Elders was appointed by the community but had no accountability. They were also life members unless they quit. We can go all out

and give responsibility to the Registrar, or we have different levels of oversight. If there are problems we have levels of appeal.

- I think the question is to leave in QUASH.
- We can suspend a decision, rather than quash.
- The Administrative Tribunal may confirm, reject or confirm in part (Take out vary or quash).
- Get rid of the replacement of decision. Send it back with instructions with what they think what went wrong and return it back to the Registrar.
- If there is an issue with the decision. They go to the Administrative Tribunal. The Tribunal can say this part is fine, however this part isn't. They could send it back with request. There may also be a problem with only part of the decision.
- The Admin Tribunal should not adjudicate any part of our law.
- We're talking about facts. The Registrar has all the facts. They come to this decision with all the facts. The Administrative Tribunal should not have the right to make their own decision. They shouldn't reject the decision totally. What could they base their decisions on?
- If we look at the tribunal making certain things, or can address certain things. What if they said, how will it work?
- Are we removing the Administrative Tribunal to make its own decision? 9.3 starting at AND....
 - **YES WE ARE REMOVING THAT PART!**
- How about we review this at the next meeting once the wording is changed?
 - **YES AGREED**
- Change the word "membership" to "recognition" in section 9.5?
- We need to make note for the Drafting Team on the word membership, in this section may be broader than just recognition and we have to look at the whole membership process. The Justice System Act refers to membership.

(Group went on break after this topic)

OUTCOME:

CONSENSUS REACHED:

9.3 To remove that they can replace the decision.

The Administrative Tribunal may confirm, vary or quash the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.

Note: The Drafting Team will provide a newly worded Section that reflects the limitations of the Administrative Tribunal. See Section 10.5 – the word ‘quash’ was eliminated in both sections 9.3 & 10.5.

9.5 We have to take a look at the word membership.

MEMBERSHIP REVIEW COUNCIL

- 10.1 Until such time as the *Kahnawà:ke Justice System* is implemented and the Administrative Tribunal is operational, decisions by the Registrar may be reviewed by the Membership Review Council on an interim basis in accordance with this Law and the *Regulation Respecting the Membership Review Council*.
- 10.2 There is hereby established a body to be known as the Membership Review Council empowered by the Mohawk Council of Kahnawà:ke, through the enactment of this Law.
- 10.3 The Membership Review Council will consist of three (3) members, selected in Accordance with the procedures set out in the *Regulation Respecting the Membership Review Council*.
- 10.4 The Membership Review Council 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.
- 10.5 The Membership Review Council may confirm, vary or quash the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.
- 10.6 A decision by the Membership Review Council may, upon implementation of the *Kahnawà:ke Justice System* and applicable regulations, be appealed to the Court of Kahnawà:ke.
- 10.7 The Membership Review Council, in performing its duties, conducting its meetings and making its decisions will respect the principles of fairness, dignity of the person, compassion and consensus that are consistent with the traditions and customs of the Kanien'kehá:ka of Kahnawà:ke.

- 10.8 The members of the Membership Review Council will be remunerated for their services in an amount to be established by the Mohawk Council of Kahnawà:ke.
- 10.9 The Mohawk Council of Kahnawà:ke will, until such time as the Administrative Tribunal is operational, fund the Membership Review Council. The Membership Review Council will submit to the Mohawk Council of Kahnawà:ke an annual budget for its approval.
- 10.10 The Membership Review Council will create and maintain a record of its proceedings, any decisions it makes and the reasons for its decisions.

DISCUSSION:

- 7:36 p.m. restart from break Section 10 - Membership Review Council.
- The Membership Review Council is made up of 3 Elders who were NOT on the Council of Elders, the Membership Review Council did not have to meet again because their job was to review decisions made by the Council of Elders. The proposal was to continue with the Review Council but strengthen the mandate.
- 10.1 – This is an interim Review Council. (Understood) **NO OBJECTIONS.**
- 10.2 – **NO OBJECTIONS.**
 - Addition, where is the people of Kahnawake to select the Review Council?
Should say that they are empowered through the law.
 - (A) The people confirm the Law, and then empowered through this Law.
 - Should they both be combined into one? The Review Council and the Tribunal?
 - This is in place now. Who are the people in the Review Council now?
 - (A) Leonard Bordeau, Chris Leclair, and Juanita Delisle (resigned). They were appointed same time as the Council of Elders by the community.
- 10.3 – **Decision to have 5 people on the interim body.**
 - I'd suggest we have at least 5, not just 3. If there's a need for a quorum, if one is ill, or unavailable, the process can still go through. People are usually waiting.
 - How many people will be put on the Tribunal? If 5, this body should also be consistent with the Tribunal.
 - (A) A Tribunal would normally be 1, but may go up to 3.
 - Since it's an interim body, it should only be 3 not 5.
 - (A) The point was made, if you have 3 and someone is sick, you're then hung up.
So maybe 5 would be good because quorum is needed.
 - What are those regulations?
 - (A) They will need to be developed.
 - How long are they appointed for?

- (A) For life. However once the Tribunal is put into place, they will be replaced. They will be asked if they want to maintain their position on the Review Council or they will need to resign. In the new Law, they will no longer be active.
- (A) There should be terms put in place for the Tribunal.
- If the regulation says only 5 years, then they must be re-selected.
- Will the regulations go through the CDMP?
- They will be put before and through the community process, but not the approval of the regulations.
- The members on the Review Council need to be asked if they're still interested.
- (A) We will not know if they're grandfathered in until the regulations are developed.
- 10.4 – **NO OBJECTIONS**
- **10.5 – To remove the word quash. Use the same wording as in 9.3**
 - Once it goes through the drafting team, we aren't sure how this will really work. Once we have a draft, and we can look at that, then we'll know where this is going.
- 10.6 – **NO OBJECTIONS**
- 10.7 – **NO OBJECTIONS**
- 10.8 – **NO OBJECTIONS**
- 10.9 – **NO OBJECTIONS**
 - Would you know what the cost would be?
 - (A) It would be the honorarium plus the meeting expenses. Since it's going from 3 to 5 it will increase. The honorarium was \$50 at the time the Council of Elders were in place.
 - Is there going to be a section that I'm not seeing and I want to make an appeal, is there going to be an application form? I can't make an appeal based on nothing, I must have my evidence. I can't just make an application because I don't like the decision. Should there be criteria to appeal? Will this be a new section?
 - There should be rules set out in order to review. This could be a serious matter and it needs to be documented. This would be in the regulations.
- 10.10 - **NO OBJECTIONS**

OUTCOME:

CONSENSUS REACHED:

VERIFICATION OF RECOGNITION

11.1 A person shall be recognized as a Kanien'kehá:ka of Kahnawà:ke upon verification that he or she satisfies the following criteria:

- a) is born of two Kanien'kehá:ka of Kahnawà:ke , and
- b) has four (4) or more Kanien'kehá:ka great-grandparents,

11.2 A person shall be recognized as a Kanien'kehá:ka of Kahnawà:ke if he or she is identified as a Kanien'kehá:ka of Kahnawà:ke and upon verification that he or she satisfies all of the following criteria:

- a) is born of one Kanien'kehá:ka of Kahnawà:ke ,
- b) is born of the other person who is Indigenous (verified by proof acceptable to the Registrar),
- c) has four (4) or more great-grandparents who are Indigenous,
- d) is not on another Indigenous community membership list.

DISCUSSION:

For this section, we are taking section 10 of the current membership law, the people that are eligible to be automatic members. We are changing MEMBER to Kanien'kehá:ka of Kahnawà:ke. It becomes 11.1

We also changed "11.2 C". For 10.2 it was to recognize a child born of one member parent and the other from an indigenous community membership that we can verify. This will be 11.2 it will be broader than the current law.

This section was further explained and read.

- Read out definition of Indigenous from 11.2 C
- You may want to look at the term in the definition because you're using the word you're defining.
- What if their state recognized or federally recognized?
- (A) We are looking at lineage; it's their great-grandparents we are looking for.
- 11.2 E - Someone can't be on two band lists, they are applying to be a member to Kahnawake, and they can only be a member here. We do have people recognized on US tribes, but here (Canada) they can only be registered on one band.
- Are you going to post the names to the community to notify people who are an automatic member?

- (A) No we haven't done that in the past. They are listed in the public place at our office.
- What if they're lying about the parentage of their children?
- (A) Someone can make an objection, however, the person making the objection would have to show proof that the parent stated isn't their child. It would have to be verifiable proof. If information is falsified, there are ramifications for that.

OUTCOME:

CONSENSUS REACHED: NEW SECTION 11. NO OBJECTIONS