

COMMUNITY DECISION-MAKING PROCESS
KANIEN'KEHÁ:KA OF KAHNAWÀ:KE LAW
SECOND HEARING, MEETING #3
GOLDEN AGE CLUB
24, Onerahtókhakha/April 2018
6:00 PM – 8:30 PM

DRAFT RECORD OF DISCUSSION

FACILITATORS:

Ron Skye (Lead)
Melanie Mayo (Co-Facilitator)
Leslie Skye (CDMP)

RESOURCE PEOPLE:

Alexis Shackleton
Kahsennenhawe Sky-Deer
Arlene Jacobs
Shari Lahache
Arlene Beauvais
Jean Pommainville

RECORDER(S):

Katsistohkwí:io Jacco

❖ **Opening Address** – *Leslie Skye*

❖ **Welcome/Respectful Behaviors/Process** – *Leslie Skye*

❖ **Proposed Amendments to the Kahnawà:ke Membership Law** - *Kahsennenhawe Sky-Deer and Alexis Shackleton:*

- Common-Law Relationship
- Iah teionkwehón:we
- Composition and Powers of the Community Review Board
- Community Review Board
- Application for Recognition
- Adopted Children
- Responsibilities of a Kanien'kehá:ka of Kahnawà:ke
- Kanien'kehá:ka of Kahnawà:ke Pledge
- Suspension of Entitlements
- Revocation of Entitlements
- Renunciation
- Regulations
- Transitory Provisions

❖ **Next Steps** – *Facilitators*

LEGEND:

- TDC: Technical Drafting Committee
- S: Statement (By Community Member)
- Q: Question (By Community Member)
- Legal: MCK Legal Services Representative

❖ **Closing** – *Kahsennenhawe Sky-Deer*

Definitions

- 1. Common-Law Relationship:** “means a conjugal relationship, not solemnized by a marriage ceremony, law or custom, between two persons who live together and publicly refer to themselves as partners or spouses”.

DISCUSSION:

TDC: The community did come to consensus on this definition including the five year timeframe at a previous hearing, however, the timeframe is too long. If we keep it at a five year timeframe, that means people from Kahnawà:ke can enter into common-law relationships on the territory with a non-Native and for under five years, the non-Native person can live here, which is problematic. What was last added was that it was at a timeframe of five years. Does it make sense to keep this at five years in relation to section 15.1, or “suspension of entitlements”? Should an individual have to wait five years to get their entitlements suspended?

S: I think five years is a little bit too long; we would have to come up with two laws.

TDC: Do you mean two definitions?

S: We talked about when an individual is with a native person, and when a person is with a non-native person.

TDC: A definition of a common-law relationship has to encompass both.

S: If an individual from Kahnawà:ke is with a non-Native person, then they should be out right away. It doesn't matter if you marry them or not, the person should get suspended.

TDC: Then it does not make sense to have a timeframe of five years, because it would take five years for that individual to get suspended.

Q: Are you talking about removing them from the KKR after five years?

TDC: According to the definition with the timeframe of five years, you have to be with someone for a minimum of five years in order to get suspended.

Q: Even if it is off the territory?

TDC: Either way.

Q: So you would suspend someone from Kahnawà:ke just because their dating a non-Native? That shouldn't be happening.

TDC: The way it is written now, yes.

S: I do not think this is what the community agreed to or intended.

S: We talked about how if they did move off with a non-Native person, they wouldn't get suspended. For common law, isn't it usually a year?

TDC: There is no minimum in Quebec and every province is different.

S: More common-law relationships will be the norm, because less people get married. It has been proven that some people who have come from other reserves to reside here in Kahnawà:ke often bring a lot of baggage with them and community services has to get involved in their affairs. For something like this I believe it should stay at five years. For people living off the reserve, and especially if there are no children involved, we should leave them alone. What we should be concentrating on is who is living here with a non-Native in Kahnawà:ke.

TDC: How are we going to deal with transfers now?

TDC: If an individual wants to be on the KKR, then they must have the four Onkwehón:we Great Grandparents, according to how the law is drafted as of now. However, if an individual has no ties to Kahnawà:ke, they will not be accepted.

TDC: Would people who have no Mohawk lineage be accepted?

TDC: No, of those four Onkwehón:we Great Grandparents, at least two must be Kanien'kehá:ka.

TDC: the TDC is proposing to strike out “at least five years” and leave it without a timeframe.

S: I personally do not agree to it, because that means someone dating someone outside of the territory will get suspended.

TDC: What do you believe is a better timeframe? Six months? One year?

Legal: This definition does not include dating, rather it is referring to an actual relationship or a marriage. Typically, when people are dating, it means that they have not yet taken that step towards declaring themselves as partners or spouses. Therefore, dating is just the beginning of a relationship, but would not be considered common-law.

Q: You are determining this for people living off the territory? Do you know how many people will be removed from our registry if they are with a non-Native?

Q: If they leave the territory, and are respecting the law, why are we going to punish them?

Legal: Right now we are just trying to get the definition of common-law, and we can discuss how it will affect suspension and revocation of entitlements when we get there.

S: The majority of our young people who go off to college can live together with someone, and be in a relationship with them. Does this mean they're going to get their status suspended?

TDC: The only reason how this is going to happen is if a complaint is made.

S: In this day and age, especially with young people, pictures are always posted on social media, so everyone will know about it.

S: I see us causing more problems for ourselves if we put a timeframe, in this case it is good to leave it out of the timeframe. I don't see anyone that would make a complaint about young people simply dating.

TDC: Suspension and revocation have not been decided yet. We are just trying to get this definition.

S: I agree that it should be six months to a year, but for on the territory. We need to refer to on the territory and off the territory.

S: I do not think we should worry about people living off the territory, they are following the law and shouldn't be penalized. We should eliminate the five years.

TDC: If we left the five years, it would mean that a person from here could bring a non-Native to live here means they can live here for under five years.

S: Regardless of what the definition of common-law is, a non-Native cannot be here for more than thirty days calendar days in a year. If people are living off the territory, why should we care?

S: It shouldn't be against the law to be in a relationship with someone; it is not the same as marriage.

Q: What if they end up being together forever?

TDC: Can we clarify the thirty calendar days in a year?

TDC: I believe the community debated on the thirty days in a year for the amount of time a non-Native can be staying here in Kahnawà:ke, but consensus was not reached.

S: We never got consensus on this?

TDC: How would we be able to monitor if a non-Native is here for more than thirty calendar days in a year? This is why I believe consensus wasn't reached.

S: The same way we know a non-Native is living in a home in Kahnawà:ke.

TDC: I think you are referring to the discussion that was had at the Residency Law consultation. Can we focus on this law and move into the section on suspension and revocation?

TDC: There are different levels of a relationship also; dating, common law and marriage.

S: Common law shouldn't even be there; let someone on the outside date with whoever they want.

TDC: So should they lose their rights?

S: No.

**Referred to Section 15.1 on "Suspension of Entitlements".*

TDC: When we're talking about suspension and revocation, we came up with compromises where a person who is suspended would get to maintain the following entitlements:

- a) the right to hold the interests in land which they have at the time they leave;
- b) the right to transfer those interests to other members;
- c) the right to receive educational services for their children;
- d) the right to operate a business (complying with other Kahnawà:ke Law)
- e) the right to be buried in Kahnawà:ke

TDC: A-E were suggestions that were made by legal for a compromise.

S: These are not entitlements to membership. The fact of the matter is, a Kahnawa'kehró:non can get all of these services no matter what.

TDC: Then we can eliminate A-E, and now that we are getting into this discussion about on reserve and off reserve, we will not consider the proposed compromises. This was something that legal proposed based on the debate for people who choose to live off the reserve and those who live on.

Q: What is the difference? People can run to the federal government and get what ever they want anyway.

TDC: Let's not address the enforcement aspect of it right now, let's just try to come to consensus on the definition of common-law relationship. There are people living in this community who are not on the KKR, but the residency law will deal with what entitlements they can and cannot have.

**Referenced Section 16.1 "Revocation of Entitlements".*

TDC: If you voluntarily leave the territory to live with a non-Native, you will be suspended from the KKR. However, if you are revoked from the KKR, you will have to reapply for your status, which is a more difficult process. A suspension is easily lifted if you choose to come back.

Q: If they do leave the territory voluntarily, do they get suspended?

TDC: I would assume there would be a set procedure.

Q: But if they get married, then they are out?

TDC: Yes.

S: When we had this discussion before, if they leave off the territory, nothing will happen to them. We shouldn't bother them.

TDC: We drafted the law based on what the community came to consensus on in previous hearings; it was said that they would get suspended.

TDC: We took out all of the entitlements from the 2003 law. At present, when we think of entitlements, we have all privileges as Kanien'kehá:ka of Kahnawà:ke. However, if a person leaves the territory voluntarily and is in a common law relationship and lives with a non-Native, many of these entitlements will not even be necessary (such as water and sewer, the right to run for council, etc.).

Q: There was a young man who was at one of our meetings, who lives off the territory and is respecting the law. How are we going to do this? We want them to abide by our law, so why are we going to punish them even further if they leave the territory?

Q: How much more do you want us to take away?

S: I am suggesting that for anyone off the territory, to leave them be and not attack their rights.

TDC: At the Iroquois summit last week and it was stated by many elders that when you choose to go on the outside, that is where your mind goes. You have turned your back on your people, and so that is where you should go. What does this mean to you guys?

S: That is a traditional way of thinking, but this is not a traditional system.

S: The reason why he came to the meeting was to tell us that he chose to live outside, and that he is living with his choice. If they lose their rights, they know it. We cannot worry about the people on the outside, we have to focus on people who are here.

S: These people know what they are giving up; they choose to leave and they know what goes along with it.

S: If they are respecting our law, we should show them respect. They are still Mohawks. We shouldn't totally push them away from us. We should be commending these people who respect the law and live off the territory.

S: But we should also be rewarding our people who are marrying within the community or other nations.

S: You cannot help who you fall in love with. We cannot penalize people for following our law.

S: They are penalizing themselves.

S: If you leave, and you still have a voice, you are defending your non-Native family. In the past, it got so bad to the point where non-Native were starting to run the town.

S: We have a table here at CDMP where you can come and be an observer if you are not on the KKR. We need to have confidence in ourselves. If you are not living here, you will not be obtaining housing anyway; there are many services that you will not get anyway when living off the territory. I understood growing up that if I married out, I would've had to leave.

TDC: Back to common-law relationship, can we agree on the definition without the timeframe?

S: Is anyone here from the Residency Law TDC? Is the thirty day period that we discussed earlier relevant?

Residency TDC: We are not at that point yet, but we just put out a call to have focus groups on May 24, 2018.

TDC: We have tried to build in mechanisms that allow some leeway for non-Natives staying here; such as family staying with you.

S: I brought up the thirty day period because I believe that we wouldn't even be debating this if it is written in the residency law that non-Natives cannot reside here for longer than thirty days.

S: My other issue with having a timeframe is that many people are always off and on; which means that they will never be considered common-law.

TDC: Can we come to an agreement on the redrafting?

Q: If you put a date on this, it means that they can live here for that amount of time under that?

TDC: Yes.

Q: Should it match the land allotment policy? That one states that they have to be living together for at least a year to be considered common-law.

TDC: The land allotment policy is a year, but this is different from the membership law. There may be changes that happen to the residency law that will be reflected here.

S: We should have some sort of process where we can identify how long people have been in relationships with non-Natives. For example, when you go and visit another country and plan on living there for a period of time, you have to apply for a visa and get permission to do so. We need a process similar to this.

TDC: We know who is living together; it is not that hard to identify.

TDC: Can we agree to this definition without the timeframe?

S: Yes.

S: I would take that out and leave it at "live together".

Legal: If we leave the definition at "live together," it can refer to another type of relationship, such as friends rooming together.

Q: What happens if I rent out my house to a non-Native in the Residency law?

Legal: There will be legal consequences for doing so, and we can also charge someone for being here illegally.

TDC: Do we have consensus?

S: Yes.

OUTCOME:

- **CONSENSUS REACHED.** Proposed definition of “Common-Law Relationship” by TDC accepted by the community members in attendance.

2. **Iah Teionkwehón:we:** “means a person who has no Kanien'kehá:ka Lineage or **Onkwehón:we** Lineage”.

DISCUSSION:

TDC: We changed the definition from non-Indigenous to Kanien'kéha names.

S: Should we reference the custom code?

TDC: It is too difficult to reference the custom code. The custom code calculation is in reference to the Kanien'kehá:ka Great Grandparent. For the purposes of application, revocation and suspension, we reference Iah teionkwehón:we.

TDC: Do we have consensus?

S: Yes.

OUTCOME:

- **CONSENSUS REACHED.** Proposed definition of “Iah Teionkwehón:we” by TDC accepted by the community members in attendance.

Suspension of Entitlements

Section 15.1: If a Kanien'kehá:ka of Kahnawà:ke leaves the Territory voluntarily pursuant to the procedure set forth in the *Regulations Respecting Suspension and Revocation of Entitlements to Receive Benefits and Services*, because the person:

- a) married, or marries, a Iah teionkwehón:we person after May 22, 1981, or
- b) commenced, or commences, after May 22, 1981, a Common-Law Relationship with a Iah teionkwehón:we person, or
- c) adopted or adopts a Child who has no Kanien'kehá:ka Lineage or Onkwehón:we Lineage after November 10, 2003,

the person will have their entitlement to receive any of the benefits and services to which they would otherwise be entitled as a Kanien'kehá:ka of Kahnawà:ke suspended for such time as they remain in one of the above situations.

DISCUSSION:

TDC: A suggestion was made by legal to not differentiate between common law and marriage; less people get married in this day and age.

S: It should be treated the same; whether you're common law or married.

TDC: I have question for legal; should it match the wording in Section 16.1?

Legal: Yes, I think that would make sense.

TDC: It should mirror the wording in terms of drafting.

Legal: In 16.1, we could take out the last phrase “for so long as they remain married...”

Q: Did the community come to consensus on individuals from Kahnawà:ke who are co-habiting with non-Natives to get suspended?

TDC: Is that fair?

S: If someone has a non-Native living in their house, then yes they should be suspended.

Legal: Residency would take care of the co-habiting.

S: But it could not deal with revocation of entitlements.

Legal: No, but there will be legal implications for the person living here in the territory.

S: No one is saying that non-Natives are allowed to live on the territory.

**Referenced a previous ROD.*

Q: Isn't this for living on the reserve? Not off the reserve? We should be focusing about on the reserve. Not for outside of the reserve. If you rent your house to a non-Native, it is the home owner who should have their rights suspended.

TDC: I understand your concern; we could add in "allows a Iah teionkwehón:we to reside on their property within the territory will have their rights suspended".

S: Then the non-Native person should get evicted and the home owner should get suspended.

S: We cannot double penalize them and just give them fines over and over again. In my opinion, they should just be suspended right away.

S: When the eviction letters were being sent to people living with non-Natives in the community, my mother received a letter because the MCK knew that a non-Native was living in her apartment. It was my mother who was getting the letter, but she didn't know about that her tenant was letting a non-Native live there. We don't always know who the tenants are bringing in.

TDC: I think that will be addressed in residency. People have been speaking about a landlord-tenant issue for years.

S: You should say a landlord who knowingly rents to a tenant who is non-Native. You cannot hold someone responsible for someone sneaking in.

Q: Could something like that be put into Section 13, which is the material breach of the responsibilities? This would mean renting to a tenant who is non-Native is not upholding their responsibilities.

Legal: I think it already is in section 13.1; you have a responsibility to uphold all of the laws and regulations.

S: Do we need a section like that in revocation?

Legal: We can take 15.4 and put it in revocation as well.

TDC: I am proposing we make c) "allows a Iah teionkwehón:we to reside on their property within the territory will have their rights suspended," and then move the current c) to d).

TDC: Or should we do create a Section 15.2 and write it in there?

S: I think it should be right before 15.4 which is a material breach of responsibility.

TDC: I'm not sure it would be captured there.

Legal: Yes, I believe it could fit in there.

S: It shouldn't be in the responsibilities, because you cannot really enforce responsibilities.

TDC: Can we have consensus on this and we will figure out where to put in the law? The consequence for cohabiting with a non-Native would be suspension.

S: Yes.

Q: Is there a timeframe for cohabiting? Is there no thirty day minimum?

TDC: Maybe cohabit is the wrong word; we could use resides in their dwelling or resides on their property.

TDC: Were looking at something that is more of a business proposition; renting or leasing?

S: I mean allowing a person to reside on your property within the territory.

TDC: Outside of a conjugal relationship?

S: Yes. We need to protect our rights and our land.

TDC: I was made aware of someone who is non-Native and has come to live here from California for six months. When I questioned this person on her presence in the community, she told me the person that she is residing with obtained a permit for her to stay here. However, there is no process for that. Should this person have their rights suspended? After what period of time?

S: I believe after thirty calendar days during through the year.

TDC: It is difficult to monitor this.

S: Yes but we need a timeframe, and we always know who is here illegally.

TDC: Yes, it is usually family that tells on family.

Legal: In residency, the non-Native person will be removed from the territory.

S: We want to deter them from making this decision.

Legal: But if they do it over and over again, it will be a lot of work.

TDC: I am proposing we tie the Residency law into this law. We can say in residency that if they violate the law more than three times, they will be suspended. It is difficult to put it in this law. I think we can deal with it in the penal provisions in the residency law.

S: I think that would take too long; the person could be here for how long? If you allow for someone to reside on your territory, you should be suspended. If they violate this continually, then they should be revoked.

Q: So what you're saying is that if I voluntarily decide to move off the reserve and live with a Non-Native, I will be suspended? But if I rent my apartment to a non-Native, nothing happens to me? Why should you suspend my rights when I am respecting the law?

TDC: The difference is that one is a relationship and one is not.

S: I don't think they should be suspended for living off the territory in the first place.

TDC: As of right now it does not say on the territory. If I marry a non-Native, and I leave the reserve, why should I be suspended?

TDC: What if someone says I followed the law, I am here to vote. Should they?

S: You keep bringing up issues of voting, but many people lived out and married out.

TDC: But the line was drawn at 1981.

Q: So are there people who married out after 1981 and came back to vote?

TDC: I think so.

S: It says after 1981, you marry out and you should be out.

TDC: Something has to start the complaint process.

TDC: So are we good with this? The issue of cohabiting will be added in.

S: If anything, you should allow someone who is residing off the territory them to be buried here. What if they want to be next to their family? That is not fair and it is inhumane. I am against them getting suspended. They are respecting the law and we are disrespecting them. They are still Mohawk people. Maybe they shouldn't be allowed to vote, but we should allow those children to come to school here. They are more likely to marry back in if they can go to school here.

S: I agree with the suspension, but to lose the right to burial is what I don't agree with.

TDC: A-E is no longer in here.

Q: Then why are we talking about it?

S: Because they should at least be allowed to be buried here.

S: We have no control of land transfers anyway, so this is not really an entitlement that will be getting suspended.

S: We need to have a serious discussion about what are entitlements of Kanien'kehá:ka of Kahnawà:ke actually are.

TDC: Maybe we can say with the exception of burial for those who are from Kahnawà:ke.

S: If you're going to do that, you're going to have a couple who are going to want to come and be buried here with their kids. We need to think twice about burial in Kahnawà:ke.

TDC: I think were hanging ourselves up on something that we already came to consensus on.

S: People can be cremated and buried in the territory and nobody is going to know.

TDC: All of these provisions were removed based on consensus in the First Hearing

TDC: Do we have consensus on this definition?

Q: What are the entitlements of Kahnawa'kehró:non? We need to know before we come to consensus.

TDC: Housing, Residency, water, sewer, voting, etc. which are all governed by other laws.

Q: Are these the only ones?

TDC: There are more.

Q: What about boards?

TDC: Each board has their own regulation.

TDC: Do we have consensus?

S: Yes.

OUTCOME:

- **DECISION:** Consensus was reached on the current wording of 15.1 provided the TDC deals with the issue of cohabitating/leasing and suspension of entitlements is addressed either in this law or in the Residency Law.
- **CONSENSUS REACHED.** One objection.

FINAL OUTCOME:

- Consensus was reached on the definitions of “**Common-Law Relationship**” and “**Iah Teionkwehón:we**” as proposed by the TDC.
- **Section 15.1 on “Suspension of Entitlements”** received consensus on the current wording of 15.1 provided the TDC deals with the issue of cohabitating/leasing and suspension of entitlements is addressed either in this law or in the Residency Law.
- **One objection was made.**

FINAL CONCLUSION:

- The next Hearing will resume with the “**Composition and Powers of the Community Review Board,**” and will be held on May 1, 2018.

Approved by:

Alexis Shackleton

Date

Chief Kahsennenhawe Sky-Deer

Date