

COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE JUSTICE SYSTEM
Meeting #4 – First Hearing

Karonhianonha School Gym
30, Kenténha/October 2012
6:00 – 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Kahente Horn-Miller (Lead - CDMP)
Dodie Gilbert

RESOURCE PEOPLE:

Ron Skye (Lead – Resource Person)
Joe Delaronde

RECORDERS:

Leslie Skye (Lead/Logistics)
Sophia Dupont (Main Screen)
Brandi Meloche

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

6:05 P.M. INTRODUCTION/MEETING GUIDELINES – Kahente Horn-Miller

6:10 P.M. KAHNAWÀ:KE JUSTICE SYSTEM - Ron Skye

6:15 DELIBERATIONS/DISCUSSIONS –

8:15 NEXT STEPS – Kahente Horn-Miller & Ron Skye

8:30 CLOSING – Kahsennenhawe Sky-Deer

Note: Due to the low number of participants it was agreed to have one (1) group deliberate.

DISCUSSION SECTION II – 8. COMPOSITION OF THE COURT OF KAHNAWÀ:KE

- **8.1 QUESTION(S):** “At any time and all matters, whether in first instance or in an appeal”; does this mean the same thing? Was there any consideration of putting a maximum number of Judges? Conflict of internal problems; are three (3) Judges enough?
ANSWER: Yes. There will be a minimum of 3 judges but no maximum.
- **8.2 QUESTION(S):** Is the requirement only a “requisite knowledge of law”? What does this mean? Will there be another CDMP? Clarity required on the process.
- “Should meet criteria as outlined by Kahnawà:ke Justice Commission (KJC)”. What is the criterion? Expand.
- Expand/ Explain “Law applicable to the territory as approved by the CDMP”.
- Specify requisites for being selected as a Judge.
- **ANSWER: There is going to be a document developed by the Justice Commission identifying the criteria. The Kahnawà:ke Justice Act needs to refer to that document. The criteria will have to be developed and approved by the community.**
- Will now reference the “eligibility list” (Preferences to Kahnawà:ke, Native etc. eligibility). Preference given to “Kanien’kehá:ka People”.
- Natives should have preference in a Native Justice system; otherwise it’s a “White” Justice System.
ANSWER: When looking for a Native Judge, you must find someone who wants to give back to the community. It is difficult at times to find a Native/Community member without conflict who wants to give back. There should be Native preference, but we cannot shoot ourselves in the foot with this.
- Overall the community will have a say in the criteria to become a judge.
- Some concern with having Natives from our own community judging cases being that they may be holding a “grudge” from the past and may not be making fair decisions.
- Work needs to be done in the definitions → “Legally Trained Judge”.
- **8.3 QUESTION(S): (a)** How will this process select a Judge? Why would the choosing of a Judge go to the CDMP? They’ve already met eligibility requirements. Is the hiring given to the community at large?
ANSWER: If the community has the chance to give input on who is going to be sitting on the bench, they may be more compliant. → Further clarification is still required for the above question on the selection of a Judge and the CDMP.
- (b) Is the appointment of Judges a community decision or not?
ANSWER: Yes The Kahnawà:ke Justice Commission will “recommend” choice of Judge to the community. The community will be given the opportunity to object based on reasonable grounds.
- There has to be a reason, something tangible to object to the selection of a Judge.
- If the criterion is discussed in a group such as the CDMP, the group as a whole will discuss and decide if the selected Judge should get the position.
- Concern with opportunity to make choices based on personal preferences/prejudices.
- We need to trust the community in their decision making.

- Should we use the CDMP to choose Judges? There may be questions on why we do not hire Chiefs or Executive Directors through the CDMP.
- Community does need a way to confirm.
- There has to be a voice and a say from the community. Everything has to be open, the community should have a say as to who the person is that will judge cases.
- **Suggestion** → Why not have a vote? Why not give the name to the community and bring it to a vote?
- **ANSWER: Yes. The CDMP was made to develop laws. The requirements for the selection of Judges need to be brought back to the community. The Justice Commission will recommend individuals as judges and an opportunity will be given to the community to object if they feel it necessary.**
- CDMP could be used for all decisions.
- Confirm/validate instead of “choose”.
- **Suggestion** → Use the term “recommendation”.
- **Suggestion** → Criteria will be developed by the Justice System and brought to the community for approval. All were in agreement.
- There are concerns that bringing the decision of Judge Selection to the community may not work being that some will go against any choice just to stop the process.
- Further definition required for “Justice Commission”. Identify who the “Justice Commission” is.
- **8.4** → No comments or concerns.
- **8.5** → Concern with not having a retirement age for the Judge. Maybe just keep removal criteria. We need to respect the wisdom our elders hold.
QUESTION(S): Should there be a retirement age for Judges?
ANSWER: Normally retirement is at 65 but can go up to 70 depending on different jurisdictions.
- **8.6** → No comments or concerns.
- **8.7 a) & b)** state “No Judge” however, c) states “No presiding Judge” → This should all read the same way.
Suggestion → Omit the word ‘presiding’ in (c).
- Define “Public Service”.
- **8.8** → No Comments or concerns.
- **8.9** → “The Court” needs to be defined as administrative (in this case).
- “The Court may appoint such other officers” → Requires further clarification.
- **ANSWER: The court is comprised of the judiciary and the administrative human resources for its function. This could mean bailiff, court clerks etc.**

DISCUSSION SECTION II – 9. PRESIDING COURT OF KAHNAWÀ:KE

- **9.1***(add in 9.1) → Should say “in criminal or penal matters or civil matters”.
- Only one Judge is assigned per case.
- **Suggestion** → “One Judge will be assigned per case”
- **9.2** → No comments or concerns.
- **9.3 Suggestion** → “Be removed from the case”.
- Concern with having three (3) Judges and trying to access other Judges should the need arise.

ANSWER: There will be three (3) core Judges but should a conflict arise, there will be other Judges that can be accessed.

- Concern with matter of capacity for the above comment. There will not be that many Judges to choose from.
- Concern → No maximum amount of Judges specified.

DISCUSSION SECTION II – 10. REMOVAL OF AND OTHER SANCTIONS AGAINST JUDGES

- **10.1** → No comments or concerns.
- **10.2** → No comments or concerns.
- **10.3** → No comments or concerns.

DISCUSSION SECTION III – 11. COURT OF KAHNAWÀ:KE HEARINGS – SESSION OF THE COURT OF KAHNAWÀ:KE

- **11.1** → No comments or concerns.
- **11.2** → No comments or concerns.
- **11.3** → No comments or concerns.
- **11.4** → Concern with paying for translation to Kanien'kéha for a “civil matter”.
QUESTION(S): Shouldn't there be a statement made that Kanien'kéha is the official language and NOT English or French?
- **Suggestion** → Extend payment by the court for translation services into Kanien'kéha. Make a statement that this is our official language.

DISCUSSION SECTION III – 12. RULES OF EVIDENCE & PROCEDURE AND ADMINISTRATIVE MATTERS OF THE COURT OF KAHNAWÀ:KE

- **12.1 f)** “Indictable Offences” → These types of offenses are not currently being heard.
QUESTION(S): Is it necessary to keep “Indictable Offences” in this section?
- The above “Indictable Offences” will be removed.
- There was a question and concern on overall jurisdiction.
ANSWER: Kahnawake is developing its jurisdiction through the CDMP. We should move slowly to ensure that we have the capacity both human and financial in order to achieve our objectives. All were in agreement.