

COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE JUSTICE SYSTEM
Meeting #3 – First Hearing

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

RECORD OF DISCUSSION

FACILITATOR:

Joe Delaronde

RESOURCE PERSON:

Ron Skye (Lead – Resource Person)

RECORDERS:

Sam Montour - SECTION II - 6

Brandi Meloche - SECTION II - 7

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.

Group 2

DISCUSSION SECTION II - 6. ADMINISTRATIVE TRIBUNALS:

Subsection 6.1

No suggested changes to content.

Subsection 6.2

Suggestion → Add “conduct appeals” to Subsection 6.2.

Subsection 6.3

Comment → It limits decisions and allows for review of decisions.

Comment → This is similar to the Council of Elders (COE), if the COE makes a decision to deny membership, the decision goes to a separate body for review but then back to the COE for a decision; they still have the final say.

Subsection 6.4

Suggestion → Further define the term “exceptional circumstances” and list this in the definition Subsection of the document or remove the entire term and be more specific as to what is meant.

Suggestion → Replace “exceptional circumstances” with “enabling legislation”.

Comment → Instead of a hearing panel it should be an administrative tribunal.

Suggestion → Consistency required with the term “adjudicator”. Replace “individuals” with “adjudicator” and replace “members” with “adjudicators”.

Subsection 6.5

No suggested changes to content.

Subsection 6.6

Comment → With regard to the term “*unfit*”; it is hard to prove a judge is unfit.

Comment → There was a discussion on this Subsection and whether or not a community appeal panel would need to be created for adjudicators who may be

dismissed to have their appeals heard. It was noted that there is generally a judicial council for situations like that *i.e.:* *a judge is older and let go for whatever reason, where will they go to process an appeal? Can they use the Administrative Tribunal?*

Suggestion → Use a similar process for appeals for the Adjudicators like what is used for Judges.

Comment → The appeal should not be done in a community forum, leaving it up to the community members that do decide to show up to hear and make a decision, because it could be stacked.

Comment → There needs to be an appeal process, similar to the processes judges have.

Comment → If left up to the community, they may not know what the judge did so they will not have all the information to make a fair decision. There needs to be a fair process.

Comment → Community members may not know what the judge did, so there needs to be a fair process.

Comment → Important for a process to address this in the document so the community could see.

Comment → It was noted that in Ontario there was a lot of abuses with judges, sleeping on the bench, nasty comments, unprofessionalism, but there is also an age limit. After 65 there is an annual review performed on the judge, complaints are looked at and taken into consideration. If you are let go, they may use you occasionally after that.

Comment → There are age limits in Quebec as well. It's usually termed "for life", but not literally.

Suggestion → It was noted that the removal process of the tribunal should be similar to that of a judge. There should be a clarified process outlined in this document.

Based on the above comments, it was agreed that Subsection 6.6 needs to be fleshed out further.

QUESTIONS/ANSWERS:

Subsection 6.1

Q. What is the difference between private matters versus public?

A. Private is more civil, individual whereas public is a government empowered entity versus the individual.

Subsection 6.2

Q. Is it all decisions or only when asked to review a decision?

A. Only when asked to review a decision.

Subsection 6.3

Q. How does 6.3 tie into 6.1?

A. 6.3 allows for individuals to have the opportunity to resolve the conflict. If the two parties are offered mediation and it does not work out, it goes to the civil court of Kahnawà:ke.

Q. When it says go to Court of Kahnawà:ke, does that mean the court we have today?

A. Not the Court as it stands today but the structure that will be developed in future.

Subsection 6.4

Q. It was questioned what the definition for exceptional circumstances was.

A. No definition listed in the definition section; that would have to be further defined.

Q. Is the composition of the tribunal composed of 3 adjudicators? It says individuals in the section and then adjudicator at the end. More consistency required.

A. Yes it should read adjudicators.

Subsection 6.6

Q. Where is the process outlined for the removal of an adjudicator, is there an appeal process?

A. There is currently no process; that is the question, should there be one?

Q. Are the Administrative Tribunal members there for life?

A. Yes, once accepted by the community.

DISCUSSION SECTION II – 7. COURT OF KAHNAWÀ:KE

Subsection 7.1

Comment → Serious criminal cases would be heard in an outside court but the community should have a say should our community court be able to hear criminal cases in the future.

Comment → Murder trials being heard in the community is huge. If the law states that all criminal cases can be heard in Kahnawà:ke, one can legally request to have their serious crime heard in the community. This needs to be further defined.

Comment → If the intention is to hear criminal cases, (i.e. murder cases) in the future, it needs to be clearly identified in the law.

Comment → “All criminal” means “all” right across the board. Requires clarification. The word “Criminal” is too open. Requires further definition.

Suggestion → Add “Until such time” so that the Kahnawà:ke court has the option to hear criminal cases in the future.

Suggestion → Remove the word “criminal”. “Actual Offenses” needs clarification. Clarify → “Qualifier”.

Suggestion → Change “serious crimes” to “major criminal crimes” with an explanation.

Subsection 7.2

Comment → Other Laws” will have to come to the community before they are actually made into a law.

Comment → Different laws, powers etc. We need power to implement these laws. There has to be an arrangement that these laws will also be enforced outside of the community.

Comment → Any ‘Body’ will fall under the supervision of the Court of Kahnawà:ke.

Comment → Two different principals.

Comment → Reciprocity referentially incorporated included. This requires further definition.

Comment → Tobacco – Kahnawà:ke accepts Tobacco as a trade; the outside courts say it’s against the law. If the outside court has a ruling against a community member for tobacco, can they come in to enforce their ruling?

Comment → 7.2 This requires further definition.

Subsection 7.3

No Comments

Subsection 7.4

Comment → *“The Court of Kahnawà:ke shall have the power to decide on any particular matter, and will have authority to decide”* . It’s worded as though a Judge can rule with an outside law.

Suggestion → The above statement requires more clarity. Re: Powers of Court.

Comment → People should have the power.

Comment → Discussion from 7.1 needs to relate to 7.4

Comment → Federal, Provincial, Kahnawà:ke – This may become confusing.

Comment → 7.4 needs to be further defined.

Comment → Further Definition → Subject Matter, Geographical Matter and Personal.

QUESTIONS/ANSWERS:

Question → Summary: Does the Court of Kahnawà:ke have the general jurisdiction? No mention of outside court. Will the Court have jurisdiction of that case but referring it to an outside court?

Answer → The Court does have limited jurisdiction over certain offences contained in the Criminal Code and current Band by-laws made under the Indian Act. The community of Kahnawà:ke does not yet have a “Kahnawà:ke Criminal Code”.

Question → If we don’t want a prison, we cannot use those terms. What do we say?

Question → What is the difference of sending a person to jail or to prison? An indictable offense can mean many things. A person can be charged with an offence and receive a sentence of 1 month or 2 years or more. “Indictable” is not the best word to use.

Question → What do you mean by “serious” crimes? This needs clarification.

Question → If there was a jail term from a “serious” crime, where would the jail time or the person do their sentence?

Answer → During the community consultations the community stated they did not want a jail in the community. They also stated that all judgments from a Kahnawà:ke Court would need to be recognized by other governments. In order to achieve this there will be a need to make reciprocal arrangements with other governments on accepting individuals in jails for crimes committed within our territory if a jail sentence is imposed.

Question → What are the odds of outside jails taking someone from Kahnawà:ke when their jails are already overcrowded? Will a sentenced person get sent far away or kept close by?

Question → Is tobacco a major/serious crime?

Answer → Every year the Quebec government comes out with a scale (i.e. a day in jail is equal to \$100.00 fine etc.) for offences that they prosecute. Normally if someone is sentenced to more than 2 years they will be sent to a Federal Prison. Less than 2 years they will be sent to a Provincial prison. Kahnawà:ke has already taken the stance that Tobacco offences contained within the Criminal Code or Customs and Excise Act are not applicable here.

Question → If the outside court has a ruling against a community member for tobacco, can they come in to enforce their ruling?

Question → Does “all persons” apply to children as well?

Answer → Yes, it should.

PARKING LOT ITEMS:

Comment → A community member remarked on the low attendance for tonight's Justice Hearing and felt there was inadequate PR given to the community to publicize the Hearings.

Response → Adequate information was given to the community for this Justice Hearing and past Hearings that include: Posters, PSAs on K103 & two K103 Radio talk shows on upcoming Justice Hearings, PSAs in The Eastern Door, MCK website, www.kahnawakedecisionmaking.com website and lori:wase online website.