

COMMUNITY DECISION-MAKING PROCESS
KAHNAWÀ:KE JUSTICE SYSTEM
SECOND HEARING (#3)
Golden Age Club
18, Enniska/February 2014
6:00 PM – 8:30 PM

RECORD OF DISCUSSION

FACILITATORS:

Kahente Horn-Miller (Lead - CDMP)
Suzanne Lahache

RESOURCE PEOPLE:

Ron Skye (Lead – Resource Person)
Joe Delaronde
Dale Dione-Dell

RECORDERS:

Leslie Skye (Lead/Logistics)
Sophia Dupont (Main Screen)
Tammy Snow

6:00 P.M. OPENING – Leslie Skye

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

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

6:15 P.M. DELIBERATIONS/DISCUSSION – 1 Group

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

8:30 P.M. CLOSING - Leslie Skye

FINAL RECORD OF DISCUSSION

GROUP 1

Facilitator: Suzanne Lahache
Resource Person: Ron Skye
Recorder: Sophia Dupont

It was decided by consensus to address the issue of judges being of aboriginal descent before the definitions section.

JUDGES: ABORIGINAL DESCENT?

- Prior decision *formal legal training* means having completed an undergraduate degree in law at a recognized Northern American university.
- You can have someone of aboriginal descent but who does not know what it is like to be Onkwehonwe. Shouldn't the judge know our culture?
- I am more concerned about the person being qualified but it would be nice to also be of aboriginal descent.
- I think the judge should have more than just a degree, not just textbook.
- The requirement is that the judge has 5 years' experience.
- I was under the impression that this is our justice system. We would have to train the person of our culture, history and the Kaianere'kó:wa (Great Law of Peace).
- Criteria should be not only being trained in law but in our law. Not looking at it from a Western perspective, world view but our way.
- Section 2, the entry point for all our laws is Skeén:nen Aonsón:ton and this is more agreeable for who we are and starts there for any breaking of laws.
- What happens if we don't have anyone available of aboriginal descent?
- There needs to be some training.
- There would have to be a cultural sensitivity component developed to operationalize it.
- If we indicate aboriginal descent as criteria, we will limit ourselves. It is not where the judge started but where they are coming in and there has to be cultural sensitivity training.
- You don't have to be aboriginal to understand the ways.
- There should be a hand-book; this is our culture, values, etc. This can be something that is developed on the side.
- We can have criteria on knowledge of Kahnawà:ke, our justice system and the Iroquois system.
- You can teach the basics of our culture but they will not see it our way. The position should be filled by First Nations people. I know of a lot of Native lawyers and I'm sure there would be some to step forward and want to be a judge in Kahnawà:ke. We need to have a Native judge if we want to have a Native justice system.
- Preference is for Natives but not to limit.

- As a professor of non-Native students, it is the techniques you use to teach of where we came from, where we are now, and where we're going. We have many people in our community to teach. It has to be someone who is committed and wants to work in our community.
- Any candidate should avail themselves to training to gain the understanding of our culture.
- Making decisions based on the seven generations to come and these principles keep us who we are.
- Individuals submit their names and then candidates go before the community and have the opportunity to select according to willingness to learn our culture.
- Demonstrate the willingness to participate.
- Individual must be willing to acquire knowledge of our culture.
- We should give preference to the Five Nations. They need to know that there is a grand council on this side.
- The downfall is that the community is developing laws but the pieces are not ready.
- This would be something to develop for all people who come to work in Kahnawà:ke (KSCS, schools, MCK, hospital).
- I agree with the judges being of aboriginal descent, but with the Gladue report (Section 718 of Criminal Code) sentencing can be different.
- Gladue is not often used in Quebec.
- Gladue is something that is there and we have to be cognizant of it.
- Any justice system should reflect our culture; have these principles in our laws.
- MCK legal services bring in outside lawyers and do go through a culture shock but they do adjust so judges either have to have the knowledge or be willing to obtain it.
- Demonstrate that they have the requisite knowledge pertaining to the 5 Nations culture and history and be willing to participate in our awareness, Kahnawà:ke culture or be willing to acquire such knowledge.
- Demonstrate knowledge of the Five Nations culture and history and state the willingness to acquire such knowledge.
- Having requisite knowledge of our culture (identify or define what knowledge) which is the history of the Five Nations, role of the Grand Council and relationships.
- We should separate requisite knowledge and culture & history.
- Must be aware of challenges of aboriginal people.
- From perspective of Haudenosaunee peoples from the past and present.
- They would have to go through cultural sensitivity training.
- We have five bullets in the criteria section; do the applicants have to meet all the criteria?
- What is "requisite knowledge"? Back to definitions. Hard to measure, becomes very subjective.
- Justice Commission can do screening to see if they meet requirements and then the community could ask questions about having requisite knowledge.
- Change word "Mohawk" to "Kanien'kehaka" throughout the document except when it refers to a "**Mohawk Council Resolution**".
- Shouldn't everyone already have that requisite knowledge?
- How was the criteria arrived at for having five years' experience?

It was decided though the community consultations those five years were sufficient so as not to shut the door.

- Does this apply for only judges coming from outside? No, it applies to all.
- Preference will be given to Kahnawà:kehró:non
- Indigenous lineage (Membership Law)
- How much busier will the Court of Kahnawà:ke be dealing with civil, penal and criminal cases?
- Who will appoint the judges, MCK? The Justice Commission screens applications and makes recommendations then the community selects the judges

Consensus reached on the following requirements.

“Preference will be given to individuals of Onkwehonwe descent”

“Have knowledge of Kanien’kehaka culture and customs and/or be willing to acquire training to gain that knowledge.

Change word “Mohawk” to “Kanien’kehaka” throughout the document except when it refers to a *“Mohawk Council Resolution*

DEFINITIONS

Onkwehonwe – “Original people of North America”

Consensus reached on the definition of Onkwehonwe.

“Original people of North America”

Question on Regulation 2

- If wording is CDMP, will the judge have to attend 3 hearings as this is way too much and too cumbersome.
- Suggestion to change word to “modified CDMP”.
- Change it to a “special community meeting” or “confirmation hearing”.
- We wanted to use the idea of consensus-building to select the judge.
- That is a good process to have the judges present to answer questions.
- To leave it up to the community members to appoint is too much because they may not be qualified to appoint.
- The best ones that meet the eligibility criteria will be brought in front of the community to select from.
- A confirmation hearing can be very gruelling; sometimes the person doesn’t get through the confirmation.
- Selection by consensus.
- Suggestion that three representatives sign as being witnesses to the meeting and the confirmation of the selection.

- Ask potential judge if the person can speak Kanien'kéha in court and if they say no, you don't select that person for example.
It was noted that the law states that people are given the language of their choice to have their case heard.

Consensus reached on the following wording.

Within 60 days of publication, the Justice Commission will hold a special community meeting to confirm selection of the judges by consensus”

Change “upon selection” to “upon confirmation”

Addition of:

- Dissenting opinion
- Onkwehonwe

Removal of:

- Admissibility
- Discovery
- Frivolous
- Interested person

Some words removed because they no longer appear in the document

- “punishing of” comment SD61, suggestion to change to “rectify”
- Our way is to bring people back on the right road not punish

Consensus reached on changing wording

Change “punishing of” to “rectify”.

Consensus reached on correction of spelling

Ietsénhaienhs – capital “c” for chief

Ratitsénhaiens – capital “c” for chief

NEXT STEPS:

Technical team will incorporate above changes and prepare revision for distribution to the community. Next date for submission to community for 30 day review is May.

FINAL MINUTES

Second Hearing - Meeting #3 Kahnawà:ke Justice System (Act)

Approved by:

Ron Skye, Director of Justice

Date

Christine Zachary-Deom, Justice Portfolio Chief

Date