

MOHAWK COUNCIL OF KAHNAWAKE

Memorandum

TO: Interim Legislative Coordinating Committee
Attn: Linda Delormier, Coordinator

CC: Kahnawà:kehró:non Ratitsenhais

FROM: Alana Rice, Executive Director

DATE: 2009, Tsothóhrha / December 16

SUBJ: Election Law

As the Election Facilitation Committee for the 2009 Mohawk Council of Kahnawà:ke Elections, we present our recommendations for consideration as part of the ILCC process to review / amend the Current Election Law.

As the Facilitation Committee our mandate was to assist the electoral officer with his duties and responsibilities. Primarily we provided administrative support, coordination, communication, verification of eligibility and advisory services.

The Committee was composed of the following people:

Dodie Gilbert – Coordinator for the Committee, OCC Administration
Alana Goodleaf Rice – Executive Director, MCK Administration
Jean Pommainville, General Counsel, Legal Services
Justus Polson-Lahache, Communications Officer, MCK Communications
Joe Delaronde, Political Press Attaché/Communication Officer
Ron Skye, Director of Justice Services, Court of Kahnawà:ke
Alexis Shackleton, Interim Director, SDU
Rodney Thomas, Membership Registrar, SDU
Dwayne White, Director of Operations, OCC
Nelva Diabo, Administration
Lanny Jacobs, OCC Technician
Samantha Montour-Cross, OCC Administration / Technical Support

We met on a regular basis to ensure that all aspects of the election process were coordinated and conducted. The committee came together to first coordinate the process to select the electoral officer. Once the officer was in place, the committee then proceeded to assist him as requested. The group meetings were conducted on a continuous basis and proved to be quite successful.

As this group came together on an ad-hoc basis, we consider our mandate to have been completed with the conclusion of the by-election held on September 9th, 2009. However, we felt it necessary to share our experience and prepare recommendations that will hopefully assist in improving the electoral process for future years.

Recommendations:

1. The committee is in full agreement with the recommendations put forth from not only this past Electoral Officer but all of the recommendations that were submitted from the previous electoral officers as well. All recommendations, if implemented would greatly improve the current process.
2. The committee supports the recommendations prepared by Jean Pommainville of Legal Services regarding specific sections of the law that require amendment. (see attached).
3. As the coordinating body, we feel that it is important to review the Election Law in its entirety beginning with the scope, purpose and intent.
4. The Law should establish parameters / fundamental Elements of Operations, including such things as:
 - Preamble
 - Oath of Office
 - Eligibility - Who can run?
 - Residency - qualifications
 - Blood Quantum
 - Membership
 - Roles & Responsibility (Terms of Reference)
 - Identify areas of regulations
 - Final Roles - Funding/Parameters
 - Identify authority (reg., body (power), EO, etc
 - Election Day - duration
 - Duration of Term
 - Traditional Forum
 - Number of Chiefs
 - How to Vote (Grand Chief & Council)
 - Appt of Electoral Officer (Elected)
 - Examine conflict of existing laws
 - Jurisdiction
 - Appeal Process

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5. Election Regulations and Procedures should be developed as a separate document, an annex that can be amended from time to time for administrative purposes without the need to amend the actual law. The regulations should include such things :
 - Forms
 - Timeframe - dates
 - Procedures / manual
 - Timing & application of appeals.
6. A separate and distinct regulatory body should be established to oversee the implementation of the law and the Election process. Some of the key responsibilities of this body would be :
 - To make regulations
 - To oversee/run the elections
 - Facilitate appeals process
 - How to access eligibility
 - Appt. Appeal Review body
 - ? Appt of Electoral Officer.
 - Code of Ethics for Electoral Officer.
 - Terms of Reference - Electoral Officer

We understand that the ILCC has received a request to amend the Election Law and will be going forward in the near future to seek a mandate from the Community. We are hopeful that our recommendations will be considered in this process.

Nia:wen



Alana Goodleaf-Rice

LEGAL SERVICES POST ELECTION 2009 REPORT

The purpose of this report is to make suggestions to amend the Election Law in order that the Law more fully conform to the realities of conducting General Elections in and for the Territory of Kahnawà:ke.

Recommendation #1

The Law establishes certain delays from the "...end of the incumbent Council's term of office" (See section 3.1 and 3.4) or from the "...date upon which the incumbent Council's term of office expires". (See section 4.1(a)).

The problem with this language is that the incumbent Council's term of office does not automatically terminate on a particular date, but rather only once the Electoral Officer formally announces the winners after the votes are counted.

There are two ways to overcome this problem. First a specific and pre-established date can be declared for elections. For instance it could be on the first Saturday of July every third year. The other way is to establish an "Election Period". This election period would start with the nominations for Electoral Officer, which would have a pre-established date, i.e. the 15th of March in the year of election and would end once the new Council is announced (generally on Election Day). With a clear start date the Law could provide a maximum and minimum "Election Period." If this recommendation were adopted a definition of "Election Period" would have to be included in the Law and section 3.1, 3.4 and 4.1(a) would have to be amended.

Recommendation #2

Amend section 6.1(b) to read:

- (b) must meet the requirements of the *Kahnawá:ke Membership Law* and be a member listed on the Kahnawá:ke Kanien'kehá:ka Registry;

Recommendation #3

Amend section 6.1(c) to read:

- (c) must be ordinarily resident of Kahnawá:ke; and

This amendment is proposed so as to conform to the language used in the definition "Ordinarily Resident."

Recommendation #3A

The definition of "Ordinarily Resident" should be changed in light of the Court of Kahnawà:ke's decision interpreting that meaning.

Recommendation #4

Correct section 9.1(c) because the “ failing which the nomination becomes null and void” does not form part of 9.1(c) but rather 9.1. There is a formatting problem.

The rules on how these forms should be fill-in and submitted to the EO have to be further developed (see the Kaniatari:io Gilbert issue).

Recommendation #5

Amend 15.1(a) to read:

- (a) must be a member listed on the Kahnawá:ke Kanien'kehá:ka Registry;

Recommendation #6

Clarify the issue of Mohawk Blood Quantum in section 15.1(b).

Recommendation #7

Correct the clerical error in section 15.1(f). The second sentence should read “ The six (6) year ban commences only after the sentence has been served in full”.

Recommendation #8

Remove the word “impeachment” in section 16.1 and replace with word “removal from office.” This change would reflect the fact that there is no impeachment process either under the Law or the Disciplinary Measures Regulations. Also, more clarity must be provided with respect to the procedures and powers for holding a by-election.

Recommendation #9

Remove the words “selection” from section 20.1 and replace them with the word “election”.

Recommendation #10

Remove the words “Mohawk of Kahnawá:ke” from section 21.8 and replace it with the word “Elector”.

Recommendation #11

Amend section 26.1(a) to read:

- (a) must meet the requirements of the *Kahnawá:ke Membership Law* and be a member listed on the Kahnawá:ke Kanien'kehá:ka Registry; and

Recommendation #12

Delete from section 30.1 the words:

“...or, at the request of an affected candidate, where there are ten (10) or less votes separating a candidate who is elected and a candidate who is not so entitled,”

because this eventuality is foreseen in section 30.3 of the Law and is therefore redundant.

Recommendation #13

Amend section 30.4 to read:

30.4 The Electoral Officer, candidates and the candidate's representatives will have the right to recount any candidate's votes. A candidate or representative cannot refuse a recount.

This section should also be clarified. Can the recount be asked for even if there are more than ten (10) votes separating the candidates?

Recommendation #14

Section 32.3 should be amended by removing the words “two (2) years” and replacing them with the words “three (3) years”, in order to reflect the three-year term.

Recommendation #15

Correction of the spelling of “Kahnawà:ke” throughout the Law.

Recommendation #16

Create a review body to review the EO's decisions with respect to eligibility to run for office and allow a final appeal to the Court of Kahnawà:ke.

Recommendation #17

Review the forms attached to the Law.

Recommendation #18

Create authority within the Law to ratify the Disciplinary Measures Regulations.