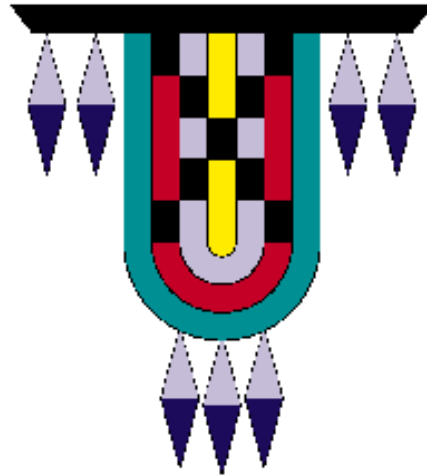

Kahnawà:ke Membership Law Project
Mohawk Council of Kahnawà:ke Membership Department

2003 Kahnawà:ke Membership Law
Conceptual and Operational Issues Report



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1. Introduction

Following years of public consultations, and revisions to many drafts of a Communal Law on Membership and on a Custom Code the Kahnawà:ke Membership Law was written. The Kahnawà:ke Membership Law was enacted in 2003 and came into force in September 2004.

Following a community review of a Custom Code on Membership in 1999, the Mohawk Council of Kahnawà:ke (MCK) undertook the task of creating the 2003 Kahnawà:ke Membership Law (Law) we have today. Two reports given to the MCK, one from the Mohawk Council of Kahnawà:ke Membership Department (October 2007) *A Review of the Kahnawà:ke Membership Law* and the other being from Organizational Development Services (April 2008) *Council of Elders Operational Review*, highlighted many issues related not only to the Law's clarity, but to challenges that emerged by the weak undertaking of the necessary planning, implementation, monitoring and evaluation of the Law's practical application.

Three summary reports, the Membership Task Force (July 1996) *Report on the Consultation on the Kahnawà:ke Communal Law on Membership*, the Information Task Force (January 1997) *Report on the Consultation on Membership: Phase II* and the Membership Task Force (December 1999) *Final Report on the Thirty Day Process – Custom Code on Membership*, gathered feedback from community members which related to the development of membership law. Recurrent themes emerged and repeated points persisted across the five reports.

The 2003 Kahnawà:ke Membership Law (Law) has undergone a critical review to identify operational and conceptual issues. This report considers content of the five reports referenced above that were summarized as part of the Kahnawà:ke Membership Law Project. If one or more of the summarized reports are referenced under alternative considerations to identified issues in the Law, it will be because the issue is also mentioned in that report, and is considered supportive documentation. Report references will appear with the year, and the acronym of the author in brackets (2008 ODS Report).

The conceptual and operational issues are presented in a table format, in tables 1 & 2. A copy of the Law will be necessary to read along with the issues identified in the tables.

Appended to this report is a simplified version of the 2003 Kahnawà:ke Membership

2. Recurring Themes

Following a review of the summarized reports listed in the reference section located at the end of this report, a number of themes are recurring. The following points describe the theme or idea. If a concept is identified more than once, it is considered recurring. This section presents an overview of concepts that cross the reports and is anticipated to stimulate discussions among stakeholders and decision makers for outcome action planning and to give a sense of the consultation participant areas that are important. The themes are described in a narrative manner and are presented in no particular order.

Membership Decision Making Body

It is clear that there are several references made in the reports relating to the many values necessary for making good membership decisions and to apply to the structuring of the decision making body, known presently as the Council of Elders. Some values referenced as important include being fair, compassionate, knowledgeable and educated, engaging in communications and using consensus for overall decisions. An elective process needs to be considered for the composition of the decision making body, including recruitment of members. Important as well is identifying criteria, administrative structure (through regulatory procedures), roles and responsibilities. Composition is referenced in 4 of the 5 reports, so is very important to consultation participants and report authors. The approach to decision making needs to be standardized and requires process for identifying roles, responsibilities, administrative structures, communication approaches. and procedures for membership hearings. Accountability is also referenced four of the five reports as very important to this decision making body – necessary are evaluation processes and accountability measures to determine active participation for example. Stated often is that there will be no loss of Mohawk status. That is the Mohawk status which existed prior to any marriage to a non-member.

Citizenship

It is referenced many times that traditional concepts of Mohawk identity, identified values to be incorporated into a law and to incorporate clans and Great Law principles. Several reports stated that lands be held be Mohawks only.

Appeal Process to Membership Decisions

Four of the five reports identify a process for appeal is necessary.

Membership Criteria

Fifty percent blood quantum is cited a membership criteria in the reports as well as the support of the marriage Moratorium (1981). There should be equal application of the law for men and women. Criteria should be inclusionary/traditional – using lineage/ancestry, clans, adoption, non-native residency. This was referenced in four of the five reports. Important is responsibilities linked to membership.

Community Education

Often referenced is the need to educate our community in the areas of history of membership, comparisons of the Great Law/Indian Act, identity vs membership and what are our entitlements/rights and privileges. Most often referenced is the community education need to recognize/discuss/validate the injustices and emotions related to the Indian Act membership system.

Residency

Clear is the inclusion of residency option for non-natives married to Mohawk and that responsibilities be linked to residency.

Administrative Recognition of Membership

It is important in the reports for those who lost membership status because of non-native marriages, be eligible for services. Cited was the need to create a public records office. As well, a communications approach is required between the Council of Elders and the community, membership applicants, membership and MCK personnel. Recommended is the development of a public relations plan for the Council of Elders.

Enforcement

The theme of enforcement of community laws or the currently weak enforcement is very necessary for a membership law (referenced in all reports) and includes community organizations applying the law.

3. Conceptual Issues

Conceptual issues involve primarily ideas and thoughts about specific content. This is anticipated to assist decision-makers and stakeholders to identify areas to modify or at a minimum discuss the components of the 2003 Kahnawà:ke Membership Law. The sections in column one correspond to the section in the Kahnawà:ke Membership Law.

Table 1: 2003 Kahnawà:ke Membership Law(KML) Conceptual Issues

Section	Conceptual Issue	Alternative Considerations
1	<p>The Preamble contains very broad principles, action words and references to rights, respect and identity as a step. It is lengthy, repetitive and contains very heavy concepts. Many points are overemphasized, evidenced by the use of the word “survive” six times. It is unclear how this law will defend the nations. Although the preamble referenced consultation and expression of will, the community consultation held in 1996 and 1999, have a small number of reported participants, with the consultation in 1996 ending with a select group. As well an Elder’s group was formed in 1998, when a <i>Declaration</i> was determined on membership. The grouping of community members was generally exclusive therefore a challenge to accept the “expression of will.”</p> <p>Reference to international principles of human rights and natural justice is unclear on how this Law provides for all Nations. The Council of Elders are accountable to apply the KML using International Human Rights principles and the KML structure in its fundamental form does not support these principles that applies to all(universality), for everyone to have the same rights (indivisibility), equality and non-discrimination, Rule of Law and Accountability. Also referenced in the Preamble is application of the KML in accordance to natural justice, but description of this is not included nor is a description of the international human rights.</p>	<p>A review of the <i>Declaration</i> will remind of what the intent of a membership law was at that time, that is to “protect, continue and maintain the integrity of the Kanien’kehá:ka People and to strengthen the Kanienké:ha Nation.” As well to “reaffirm and reassert our determination to protect, foster and nurture our existence as a distinct Kanienké:ha Nation.”</p> <p>Re-examine the preamble as it relates to the purpose and revise it to reflect basic principles that the law is supporting and promoting, so that the message is presented in a concise and clear manner that sets the tone for the KML. Select key verbs and principles to shorten.</p> <p>Consider re-wording of “expression of will.”</p> <p>Clearly this law is not for all. Reference to other rights needs to be re-considered, or offer readers descriptions with examples of what this is and how one may apply principles in the Law’s implementation. Remove reference to international principle of human rights and natural justice. (2008 ODS Report).</p>
2.1	<p>The purpose of the KML refers the reader to the Preamble, obliging the reader to sift through the preamble to select what the purpose is.</p>	<p>Purpose of the law should be stated in this section and not referred to descriptions in the preamble so that the reader is required to determine individually what the purpose is. Additional goals and objectives could provide clearer direction.</p>
2.2	<p>a) states “...establishing the entitlements and responsibilities associated with membership.”</p>	<p>Entitlements have been established for a long period of time before this Law, therefore consider another verb like confirm or states. (1996 MTF Report) (2007 MCK Report)</p>

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Section	Conceptual Issue	Alternative Considerations
3	<p>The jurisdiction of the KML refers the reader to the Preamble, obliging the reader to sift through the preamble to select what the jurisdiction is.</p> <p>This section refers to the KML exercising our collective rights “until such time as the community addresses the issue of citizenship.”</p>	<p>Jurisdiction of the law should be stated in this section and not referred to descriptions in the preamble so that the reader is required to determine individually what the jurisdiction is. Discuss if this law should be presented as interim.</p>
4	<p>Business Relationship is not identified to be a reference anywhere in the KML; the only reference located is to “own and operate a business” in section 15.1.</p> <p>Clarity issues exist in many definitions. Clearer descriptions would increase the potential of consistent application and/or understanding.</p> <p>Mother Earth, although is described with enthusiasm, does not provide a clear description of how one may demonstrate respect. How can one determine if one is respecting or plans to respect Mother Earth?</p> <p>Need correct spelling of Rotinonhsonnion:we.</p> <p>Elder, description is clear – indicators for holding trust, respect and confidence is a challenge to identify. A member can be anyone and can be any member from any point in time after this Law.</p>	<p>Remove the definition for Business Relationship.</p> <p>Discuss the necessity to state “human being” for the definition of child and for the need for the definition of a person.</p> <p>Proof for Indigenous and Kanien’kehá:ka Lineage should be listed and/or described for consistency. Not necessarily in the KML itself, but perhaps in the regulatory procedures. Discuss the importance of being specific as to geographical boundaries of the USA. (2008 ODS Report)</p> <p>Include some terms that describe actions a person may demonstrate that respects Mother Earth – perhaps an interview with our cultural facilitator at the MCK language center. (1999 MTF Report).</p> <p>Consult with language employees at the MCK language center.</p> <p>Consider indicators or a different definition and the addition of “comes from Kahnawà:ke” - not only to be a member. (1997 ITF Report) (2007 MCK Report)</p>

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11.4, 11.6, 14.1, 17.1	<p>Sections reference “family ties” “ties” and “positive contribution,” but the KML has not a definition to promote clarity and general understanding of expectations related to these definitions.</p> <p>The word Kanien’kehá:ka is used throughout the Law but not everyone knows what this is translated as and should not be assumed that everyone does.</p> <p>Guardian is referenced and should be clear as to who can be a guardian to avoid the situation of any person claiming to inappropriately be a guardian.</p>	<p>Providing definitions or descriptions of these terms, will offer consistency in interpretation and application. Accountability and transparency for decisions in this respect will be easily observed as well readers of the KML will know what is expected by these terms. (1999 MTF Report) (2007 MCK Report) (2008 ODS Report)</p> <p>Only family relationship is defined – family ties and family may mean many things to different people. Clear description is necessary if this is going to be membership criteria.</p> <p>Positive contribution needs to be described with use of examples if this is to be a membership criteria,</p> <p>Ties as referenced in S. 17.1, Responsibilities of Members, has to maintain ties with the community. Description and examples is deemed appropriate. (2008 ODS Report) Kanien’kehá:ka should be defined to ensure everyone knows what this means in English. (1997 ITF Report) (2007 MCK Report)</p> <p>As well as a definition for Guardian is appropriate.</p>
5.6	The same point for additions or removal from the Registry will be made available is repeated.	State removal or additions from the Registry, including names of persons, only once to lower the amount of text one is required to read and comprehend.
6.3	This section includes”...as of the date on which this section of the Law comes into force.” Is it necessary to make this reference in consideration of lowering the amount of text one needs to read and comprehend?	Discuss with stakeholders and decision-makers whether this is necessary and if this adds to the clarity of this section and decide whether to remove it.
6.5	This section states “...whose membership has been revoked and...”	For clarity, consider the addition of “revoked <i>under this Law...</i> ”

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7.2	This section includes “...Mohawk Registry, <i>immediately before coming into force this section of the Law...</i> ” Is it necessary to make this reference for emphasis or to be aligned with a specific timeline? Is the entire Law enacted and in force altogether or in pieces?	Discuss with stakeholders and decision-makers whether this is necessary and if this adds to the clarity of this section. Decide whether to remove it or not.
7.2 b)	Punctuation.	Place a period at the end of the statement.
8.1	Terms in this Law require consistent use for <i>Kahnien’kehá:ka of Kahnawà:ke</i> (used in most of Law content) or <i>community of Kahnawà:ke</i> (used in section 8.1).	Engage in discussion with stakeholders and decision-makers regarding if this Law is to identify <i>Kahnien’kehá:ka of Kahnawà:ke</i> or those members of this community who can receive services and benefits as a Mohawk of Kahnawà:ke. Ensure consistent use of terms. (2007 MCK Report)
8.5	The principles referenced in this section lack description that will support consistent understanding and application of each principle of fairness, dignity, compassion, consensus. As a performance expectation, each principle requires the same understanding by all who sit as a member of the Council of Elders.	Provide a description of each principle – consider use in COE training and orientation using examples. Consider the source of information to be located in procedural regulations. (2008 ODS Report) Consider using or adding the traditional principles of Peace, Power, Righteousness, after discussion/determination of meanings with the cultural facilitator of the MCK Language Center. Support use of traditional principles in the Law.(1996 MTF Report) (1997 ITF Report) (2007 MCK Report) (2008 ODS Report)
10.1, 10.2, 11.1, 11.2, 11.3, 11.4 and 11.6	Several clauses relating to membership or application for membership, use a term that is stated in a way that raises question to its purpose or implications. The term is “all” that is sometimes underlined and sometimes is not underlined. The rationale for the underline is queried for emphasis.	Remove the underlining of the term “all” when stating criteria needs to be satisfied. It is clear that all criteria is required to be satisfied unless the term “or” is used between each criterion.

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Section	Conceptual Issue	Alternative Considerations
10.3	This section does not read as clear as it can be in that even though the name is not on the Mohawk Registry because of marriage to a non-Indigenous person prior to 1981, the person is nonetheless a Mohawk and can be reinstated. Stating that the person can be instated implies the person was never on any membership list, ever.	Re-word this section and use the verb reinstated so that there is not any remote reference to that person never having been recognized as a Mohawk. There can be a sentence that states “unless the person was never registered on a membership list, he/she can be instated,” for example. (1996 and 1999 MTF Report),
11.1, 11.2 11.3 & 11.4	This section on the application process uses two terms interchangeably - eligible and entitled. These two verbs relate to meeting criteria that will allow one to apply for membership. <u>Eligible</u> means entitled or qualified, meeting requirements and <u>Entitled</u> means may grant a right or give title (MSN dictionary).	Select one term so that there is not a question raised as to why terms are emphasized differently and if there is an underlying meaning to the selection of such a word. Recommend to use eligible. (1996 MTF Report),
11.1(d), 11.4 (b) & 11.5	Spelling is incorrect for Kanien’kehaka and Kanien’keha – check accents.	Correct the accents on these words written correctly throughout the document except for these sections.
11.6(a) & 14.1(b)	A member should be living in the community permanently and not have the risk of temporary residency because of the instability of a common-law relationship. This applies to a person who has some lineage and one should be married with demonstrated commitment with a member.	Remove option to be living in common law and clarify criteria to read “be married to a member” to be eligible to apply to be a member.
11.7	A person described in this section is eligible to be entered onto the Registry, yet the COE is allowed to impose conditions, limitations or restrictions as deemed appropriate. There is no reference made to selection criteria for such impositions to members – under what circumstances will these impositions be imposed? What does reasonable mean? Is reasonable open to individual interpretation?	Engage in discussion with stakeholders and decision-makers regarding this action – should we really be imposing conditions, limitations or restrictions on members?? If this is the case, a criteria listing needs to be drawn up as to what cases require such impositions and on what basis. A focus needs to be with membership responsibility. (1996 MTF Report), (1997 ITF Report),
14.2	Grammar correction for consistency.	Place a hyphen between non-member.
28.1	Is this the will of the community or the will of MCK with community input? The will of such a large group/community is a very large statement.	Further discuss this phrase and affirm that this Law through its development is truly the will of this community. Consider “reflects participant of consultations held on membership law.”

4. Operational Issues

Operational issues involve mainly administrative aspects of the Law. Identification of these areas relate to an operation or action necessary to apply and implement the Law. There may be inconsistencies or clarity issues requiring attention. The sections in column one correspond to the section in the KML.

Table 2: 2003 Kahnawà:ke Membership Law(KML) Operational Issues

Section	Operational Issue	Alternative Considerations
4	<p>The Kahnawà:ke Kanien'kehá:ka Registry (KKR) conflicts with inclusion of non-member residents and with section 7.1. The definition states that the non-member residents are included in the KKR, but 7.1 implies that the information on non-members residents is not and is kept in a separate listing. There are 2 lists holding non-member resident information that require updating and administrative time.</p> <p>The definition of common-law relationship is a challenge to determine the time that is identified "not less than 1 year." What sort of documentation is necessary for one to state he/she has been living in common-law for a certain time interval?</p>	<p>Review will ensure change for consistency. Perhaps include in the KK Registry, member and non-member residents general information, and any conditions imposed to lower administrative tasks and keep all information centralized for easy access, updating and viewing.</p> <p>If this will not be criteria for sections 11.6 and 14.1 with descriptions located in the table for conceptual issues, page 8 of this report, then this definition will not be necessary and can be removed. If not, discussion should occur so stakeholders and decision makers are clear on what is expected.</p>
5.1	It is stated that the MCK will "appoint" a suitable person to be the Registrar. There was a posting and interview held for this position.	Consider change of the term <i>appoint</i> to <i>select</i> .
5.5 (b)	It is queried if we do in fact have an access to information law in effect? Would that be specific to personal information? This law cannot be located on kahnawake.com under public documents. What "access to information law" is applicable within the Territory?	Clarify "access to information law" that applies in the Territory in the KML if this is deemed necessary to support the responsibilities of the Registrar. Perhaps it is sufficient to state that personal information is accessible to the person to which it applies. Consider the addition to a phrase that references "under legal obligation" if this was the intent.
8.1 & 8.2	The Council of Elders are stated to be both appointed (s 8.1) by the community of Kahnawà:ke and selected (s 8.2) in accordance to Regulations.	Use one term for the purpose of establishing the Council of Elders – appoint or select. The term used in the regulations should be used.

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Section	Operational Issue	Alternative Considerations
8.2	The range of seats in the Council of Elders is 9 -15. In order to function efficiently, a group should not be composed of 15 members. It is a challenge to facilitate discussion and reach consensus and time is a factor to allow such a large group to verbalize all points of view.	<p>Reduce the number of Council of Elders (COE) to lower the outcome of intimidation for applicants, challenges in meeting quorum and amount of time required for discussions for more efficient decision-making or re-organize into groups with specific functions. (2008 ODS Report)</p> <p>Consider a COE membership of 7 members, with 5 being quorum. Two alternate members would be prudent.</p>
8.3	It is stated that the COE will review decisions of the Registrar and oversee the Registrar's function. These people are community people not necessarily equipped with administrative, evaluative or supervisory skill, experience or training. Being the decision maker for membership applicants is a major responsibility alone.	<p>It is not reasonable to expect community members to make membership decisions on applications in addition to performing administrative, evaluative and supervisory tasks. Reassess the role of the COE as it relates to the Registrar who already has a supervisor as part of the function within the MCK Social Development Unit. Have the COE focus their function on membership decisions only and remove references to supervisory, administrative and evaluative roles.</p> <p>The original purpose identified by participants in community consultation in 1996 and 1999, was to make decisions regarding membership.</p> <p>Consider the option to identify that the COE can, like everyone else, request to view the names of those added or removed from the Registry, and to have expanded ability to discuss decisions made by the Registrar. (1997 MTF Report) (2007 MCK Report) (2008 ODS Report)</p>

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Section	Operational Issue	Alternative Considerations
8.3	It is stated that the COE will enact regulations as provided in this Law. It is not prudent for a body to regulate themselves – this will create a bias that challenges support of the principles written in the KML. A process that approves regulations is not identified.	<p>Identify an authority in the Law responsible for writing and having regulations approved pursuant to the KML. The COE should be a stakeholder in the development of regulations however, perhaps in a review process prior to approval.</p> <p>Establish among the decision makers and MCK authorities a process for reviewing and approving regulations to avoid haphazard methods from being employed for time management or other reason.</p>
8.7, 8.8, 9.8 & 9.9	These sections relate to the MCK providing funds to establish and maintain a COE/Membership Review Council (MRC) office support staff to perform its duties. It is a heavy administrative burden for the COE/MRC to direct, supervise and evaluate support staff and also ensure office function. These people are community people not necessarily equipped with administrative, evaluative or supervisory skill, experience or training. Being the decision maker for membership applicants is a major responsibility alone.	It is not reasonable to expect community members to make membership decisions on applications in addition to performing administrative, evaluative and supervisory tasks. Reassess the need for a separate office and consider incorporating administrative needs of the Council of Elders (COE) into the Social Development Unit/Membership Department structured office services. Administrative role of the COE/MRC should be limited to confirming content of and depositing records of proceedings to designated office personnel. This will be cost saving for the MCK as well as an action for keeping all information centralized for easy access to update, view, keep safe, store and provide standard availability of office services. This action may also have outcome to build a collaborative relationship with common goals and objectives and provide opportunity to document and/or clarify roles and responsibilities between MCK Membership personnel and the COE or Membership Review Council.

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Section	Operational Issue	Alternative Considerations
9	This section on the Membership Review Council (MRC) challenges the reader to identify purpose and function of this decision-making component of the KML. The authority is limited to “review of decision of the COE” when “requested”.	Authority over decisions made by the COE will support honesty and process evaluation. Discuss with stakeholders and decision-makers the utility of the MRC. Modify this section to give the MRC authority over Council of Elders decisions that are challenged. Create an alternate forum for decision review when decisions are challenged by an applicant or other. Remove the Membership Review Council altogether and insert a section that provides a process for appeal to Council of Elder’s decisions. (1996 MTF Report) (1997 MTF Report) (2007 MCK Report) (2008 ODS Report)
10	This section states, “ is a member at birth...if he or she is identified as a Kahnien’kehá:ka of Kahnawà:ke..” It is not clear <u>who</u> can identify the person at birth – non-clarity of terms can lead to individual interpretation and conflict.	Identify clearly who can identify a person at birth to avoid potential of individual interpretation and conflict. Consider identifying a parent or grand-parent.
10.1, 10.2, 11.1, 11.2, 11.3, 11.4, 11.6, and 17.1.	All of these sections reference a “Kahnawà:ke process of seeking a Kahnien’kehá:ka clan”, yet there is not description of such a process. This leads to uncertainty and stress for applicants, and can lead to conflict by community members as to what the actual process is. If this is membership criteria, then the process is necessary to be developed and approved by stakeholders and decision-makers.	Interview, draft, develop and approve a process for attaining a Kahnien’kehá:ka clan. Use a communication plan to ensure community stakeholder input. (2008 ODS Report) Include a communication requirement to the Council of Elders for persons who have attained a clan using the Kahnawà:ke process.
1, 10.2,	In the definition for Kanien,kehá:ka & Indigenous lineage and in the section 10.2(b), “proof” is cited as a necessary component for determination of membership, yet there is no reference to what “proof” can be. It will clarify expectations in the Law of what proof can be so that a person is aware of what information is required to obtain as proof of lineage.	List several types of proof that is acceptable for one’s lineage. Consider reference to another document like in procedural regulations or write in the Law at least 2 types of proof that will be acceptable so a person will not need to search for an information source that gives this information. (1999 ITF Report) (2008 ODS Report)

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Table 2: 2003 Kahnawà:ke Membership Law(KML) Operational Issues

Section	Operational Issue	Alternative Considerations
11.5	Disputes will occur among the COE members regarding the determination of great-grandparents being Kanien'kehá:ka and so logically the source of the dispute will emerge from the COE themselves. It is not effective nor should it be supported, for the COE to resolve their own disputes that emerge from themselves or there would be no dispute to begin with.	Consider a problem-solving process that combines a small number of COE members appointed by the COE to discuss and come to a resolve with persons from the Registrar and Membership Department. Small groups allow more effective discussion and consensus to be achieved. A new grouping will put new light and offer new discussion points to the dispute. The process can include presentation of the outcome to the entire COE membership. (2008 ODS Report)
13.2	This person would be affirming through a Member Pledge – as a child, if the term <i>reaffirming</i> is to be used. He/she was not required to pledge anything like this. Likely at the point of reaching the age of majority, this would be the first time to be required to pledge anything.	Replace the term <i>reaffirm</i> and use the word affirm.
13.3	This section states that an adopted child who does not meet the 4 great-grandparent criteria can apply to be reinstated or instated when the age of 18 years is reached – does this mean that this is an exception to the membership criteria? This contradicts the membership criteria as well as sections 13.1 and 13.2. Is this only section whereby lineage is truly applied? Without the count?	Discuss the clarity and implication of this. Consider removing the option for instatement or reinstatement and keep the option to apply for non-member residency. Consider exploring traditional adoption in that the child would be member for life, with section 13.2 applying in this case. (1996 MTF Report) (1999 MTF Report)
13.4,13.5 & 14.1(c)	References to “enactment of the Law” should have the date 2004 added so that the question of, “ <i>when was this enacted again?</i> ” is not necessary – this improves clarity and supports smooth comprehension.	Write in the year of enactment, 2004 if it is necessary to keep the statement in at all. Once enacted, logically the entire Law is in effect.

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Table 3: 2003 Kahnawà:ke Membership Law(KML) Operational Issues

Section	Operational Issue	Alternative Considerations
16	The COE is required to determine in a dispute whether a non-member resident receives services. These people are community people not necessarily equipped with evaluative skill, experience or training. Being the decision maker for membership applicants is a major responsibility alone. A question arises in that what criteria is followed that allows determination if services are given or not? Is there a direct relationship with the Director of the Capital Unit or Public Works for example, who would know this information?	<p>It is not reasonable to expect community members to make membership decisions on applications in addition to performing evaluative tasks. Reassess the need for this role to be given to the COE.</p> <p>Make a list of services associated with residency and put in the KML for certainty.</p> <p>Automatic provision of a standard fee (also a community revenue source) for services to non-member residents who are also on the INAC registry will lower the potential for MCK legal liability by limiting the risk of violation (to an extent) of section 15 of the Canadian Charter of Rights and Freedoms. Everyone who has a home in the community should receive residency services. Stakeholders and decision makers need to engage in discussion. Remove the word reasonable.</p>
19.1	Logistically, does a person who was a member and who is reinstated really need to make a pledge? It was the government's legislation that removed their membership not themselves. What is the purpose of the pledge for Mohawks who were registered, then not?	Those who are reinstated should not be required to make a member's pledge. These people were Mohawk on the register before. (1996 MTF Report) (1999 MTF Report)
20.1(b)	If one commenced or commences a common law relationship, entitlements will be suspended. The definition of a common law relationship is not less than a year – is this meant to say a person may have a common law relationship up to one year before entitlements would be suspended? How would this be measured – what sort of process would be clear?	Consider the removal of the time qualifier, “not less than a year” from the definition.

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Table 2: 2003 Kahnawà:ke Membership Law(KML) Operational Issues

Section	Operational Issue	Alternative Considerations
20.3	There is reference to suspension but not the final decision-making process.	Add a statement that references a final decision being made regarding the suspension following the review by the COE. Consider changing in (b), “circumstances within their control” to “by choice” for simplicity sake.
20.4 & 20.7	There is not definitive statement of consequence for misleading membership document. This should be considered a serious violation of trust. The word “ <i>may</i> ” implies something could happen or not happen.	Select a more definitive term that will act as deterrent to people providing fraudulent, false or misleading membership documents with a clear consequence to revoke or not grant membership in our community.
20.5	The definition of the Kahnawà:ke Kanien’kehá:ka Registry includes non-member residents. Content of the Registry need not be listed.	Remove the last statement “or from the list of non-member residents, as the case may be.”
20.6	Material breach as an action is not easily recognized.	Consider an alternate term that describes the action.
20.7	If a non-member resident breached one of four criteria, their residency permission <i>may</i> be suspended or revoked. It appears that there may or may not be any action taken.	The consequence should be more tangible with a term such as <i>will</i> .
24.1	Who the Elders are and a process to select, appoint or accept, would clarify how this could occur.	Consider making a reference to who/how or where Elders will be to perform a verification of a translation. Better to be clear than risk misinterpretation.
26	The list of steps outlined to review an amendment could be shortened to make it easier to obtain.	Omit sections 26.6 to 26.10, and simplify by proceeding directly to s. 26.11, by forming a committee.
26	Facilitation of call outs for amendments increases the engagement of the community.	Consider addition of a section that on regular intervals, conduct a call out to community members to submit amendment proposals during a specific time period. Diminish the burden for the community to submit an amendment proposal.(2008 ODS Report)

5. Conclusion

The 2003 Kahnawà:ke Membership Law (KML) has been a challenge to implement, monitor and evaluate. The KML was implemented without a plan that identified success and evaluation indicators. Performing a critical review of the KML identified areas of inconsistency and the need for clarity in several sections of the Law. The themes highlighted recurring concepts mostly for the current Council of Elders, their accountability requirements and the strong enforcement need for this community law.

The expectations in the KML of the Council of Elders included those for decision-making, supervisory, administrative, and evaluative areas. These expectations have been too great for the purpose for which the COE was created – membership decisions though the application of the Kahnawà:ke Membership Law. Applications of the developmental requirements identified in the 2008 report are a strong base for implementation planning. Another consideration is the sequencing of the Law sections. The appended summarized version of the KML offers an alternative for sequencing of sections.

A question raised by performing this critical review include, “Is this law one that determines who is eligible for benefits and services or one that determines who is a Kanien’kehá:ka?” We need to clarify if the KML should be an administrative process for registration and membership for eligibility of benefits and services or should it be to determine our identity and citizenship. This law may be a combination of many of these references, perhaps. Discussions with stakeholders on this could provide clearer direction for the purpose of this law. Community education is necessary for several areas. Education and discussion with the general community of the history of membership as well as the role of traditional practices not only in membership but in our ceremonies, will be a source to engage our community and specifically our youth who may not be well informed in these areas. Clarity for this Law’s purpose will help define membership criteria.

There is much work to be done to bring our community law into a structure that is empowered by the community, clear and consistent so that the decision making body is competent and knowledgeable to make membership decisions.

6. Reference List

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