



History of the Kahnawà:ke Membership Law

In recent weeks, the Membership issue has been in the political forefront in the community. In the interest of providing historical context to the 2003 Kahnawà:ke Membership Law this pamphlet is being made available to provide information to those who may not have seen it when it was previously published in October 2012. It was distributed to the community in preparation for the start of discussions on amendments to the Membership Law, using the Community Decision Making Process. Those hearings began in January 2013.

Before European Contact:

Before European contact, First Nation Indians had our own system for identifying citizens of our Nations with clan systems, matrilineal systems (mother based), kinship systems (community ties, residency), hereditary systems (chiefs, clan mothers) and had provisions for marriages and traditional adoptions. Once Britain won lands over the French, the 1763 Royal Proclamation was put into force and involved North American Indian relations, lands and protection under the Crown.

The 1800's:

During the mid to late 1800's, many Acts or laws were made by Canada involving land protection and identifying who was an Indian. Canada introduced enfranchisement (1857) when an Indian lost rights and recognition to become a British subject. In 1850 the definition of an Indian was by birth/blood, being part of a band of Indians and being married or adopted into the band. The 1869 Enfranchisement Act allowed for self government with elected Chiefs. This is the time that by law, an Indian woman who married a non-Indian man lost rights and recognition - their children did not gain Indian status. This has been part of our lives for more than one hundred years.

The Indian Act:

The Indian Act came in 1876 when the government of Canada put together all existing Acts (Laws) made until this time. The Indian Act continued with enfranchisement and a community government system of elected Chiefs. The Superintendent General (who appointed the Indian Agent) had power over lands and government of the community. The Indian Act was amended in 1951 and created the Department of Indian Affairs, continued with enfranchisement (loss of rights), Band council government system and further entrenched gender based criteria in the definition of an Indian, favouring male lineage. In 1985, another amendment was made that attempted to remove the gender based criteria and granted First Nation communities the right to determine their own membership rules. The Indian Act was again amended for gender equality in 2011 to allow the grandchildren of women who lost Indian status as a result of marrying non-Indian men to apply for Indian status.

THE KAHNAWÀ:KE MEMBERSHIP LAW

Federal Registry vs Kahnawà:ke Registry:

There has always been confusion when it comes to the Kahnawà:ke Kanien'kehá:ka Registry and the Federal Registry of the Aboriginal Affairs and Northern Development Canada (AANDC). The Federal Indian Registry is a confidential federal record of all persons who are registered as Indians in Canada in accordance with the Indian Act. An individual must meet the federal guidelines of registration to be eligible to be registered. At this time, an individual is issued a band number from AANDC. Once an individual is registered on the Federal Registry, it is then determined whether or not an individual will go on the Kahnawà:ke Registry or must apply for membership. This is determined by the MCK Membership Registrar applying the rules and regulations of the Kahnawà:ke Mohawk Law and Moratorium on Mixed Marriages of May 22, 1981.

An individual has three options to apply to be registered. They can apply to be registered through the MCK Membership Department, Kahnawake Service Center of the Lands & Estates Office of AANDC (formerly known as DIA), or go directly through Headquarters of the Department of Aboriginal Affairs.

Moratorium on Membership:

On May 22, 1981 at a Band meeting, a Moratorium (or freeze) on mixed marriages (Mohawks marrying non-natives) and adoption of non-natives was agreed to. A person had to have 50% Indian blood to be recognized as being an Indian and any Mohawk who married a non-native would leave the community with benefits administered by the Mohawk Council of Kahnawà:ke suspended. This was an important time for our community in that the issue of membership was taken into our own hands for survival as Indian people.

The Kahnawà:ke Mohawk Law:

In 1984 the Kahnawà:ke Mohawk Law was established. This Law identified our rights as Onkwehonwe of the Mohawk Territory. The rights were Mohawk registration, residency, land allotment and land rights, welfare, education, voting, burial, medication and dental, tax privileges and housing. This Law referenced the 1981 Moratorium and someone who married or lived in common law with a non-native would not be allowed residency, land allotment and land rights and voting privileges.

The Law did not remove any non-native women whose marriages prior to 1981 were intact with the Mohawk man, along with their children kept all rights regardless of the parent's marital status. A Mohawk at this time was defined as any person whose name appeared on the Band list and Reinstatement list and who had 50% or more blood quantum.

The 1995 Mohawks of Kahnawà:ke Communal Law on Membership:

In 1996 a MCK report focused on community consultation on membership and used feedback to contribute to the re-drafting of the 1995 Mohawks of Kahnawà:ke Communal Law on Membership. This consultation marked the introduction of non-member residency and Native lineage with two Mohawk grandparents as a criterion with removal of blood quantum criterion, and also determined that a Mohawk never loses rights. A consultation that occurred later in 1996 used radio shows and information sessions to inform the community on the revised Communal Law. Protest letters were filed that voiced objection to the removal of the 50% blood quantum criterion and the removal of the 1981 Moratorium on mixed marriages. This community action influenced the consultation to change direction to focus on entitlement, residency and a membership board with groups from 3 membership perspectives. A Custom Code on Membership was identified.

THE KAHNAWÀ:KE MEMBERSHIP LAW

The Custom Code on Membership:

The Custom Code on Membership released to the community in February 1999 by the Mohawk Council of Kahnawà:ke, was brought through a series of discussions with Elders and at community meetings to refine the document. The Custom Code underwent a 30-day review for community ratification and was approved by the Mohawk Council of Kahnawà:ke (MCK). In 2003, the Kahnawà:ke Membership Law was passed and enacted in 2004.

The 2003 Kahnawà:ke Membership Law:

The Custom Code on Membership was the document used for the base of the 2003 Kahnawà:ke Membership Law that was enacted on November 10, 2003 and is a Law respecting the collective right to determine our own membership. The Law provides a Registrar to administer the Kahnawà:ke Kanien'kehá:ka Registry and the non-member residency list. A Council of Elders responsible to apply the Law and make decisions on membership applications is part of the Law

The membership criteria is that a person is a member at birth if identified as such, is born of 2 members (or of one member and one from another of the 6 Nations), has 4 or more great-grandparents and has a clan or will get a clan.

SDU Review of the Kahnawà:ke Membership Law (KML):

In 2007, the Social Development Unit Director and the Membership Registrar undertook a review of the Kahnawà:ke Membership Law (KML) to highlight issues and concerns related to its administration and implementation. In addition to recommending review of the KML, the report recommended an independent review of the Council of Elders. The Council of Elders were suspended in 2007.

Independent Review of the Council of Elders:

In 2008, an independent review of the Council of Elders was performed by ODS. The review examined the Council of Elder's framework, alignment, impacts and provided recommendations to improve operations, involving developmental requirements, policy and procedures, competency and training, and identified needs for response planning. The intent of the KML was to take further steps away from the Indian Act and return to more traditional Kanien'kehá:ka ways of determining who belongs to the community and is entitled to the associated privileges of being a member. ODS concluded that Kahnawà:ke has not moved as far from the Indian Act as envisioned in the preamble of the KML. The Council of Elders was a well-intentioned concept, yet there were key elements that should have been in place and not left to development while the Council of Elders was expected to operate.

Community Decision Making Process:

In 2009 the Kahnawà:ke Membership Law was submitted for a community review through the Community Decision Making Process. During 2010 the Membership Department contracted the summary of the numerous membership reports, developed a Conceptual and Operational Issues Report with a summarized version of the Membership Law, conducted a survey of Community Organizations Consultations Report, contracted a community survey on the Membership Law, and held 8 informational sessions on Membership to gauge community support for the Law.

MEMBERSHIP LAW KEY ISSUES

KML Amending Process:

KML has its own amending process set out in section 26 of the Law. An amendment may be proposed by the Council of Elders, or the Mohawk Council of Kahnawà:ke, or 100 members of Kahnawà:ke. The party that proposes the amendment will make a written draft of the proposed amendment, which will be reviewed by the Council of Elders and the Council of Chiefs until the wording is agreed to or is rejected. If agreed to, then the amendment is put out to the community for 30 days. Any suggested changes will go to the Council of Elders and Council of Chiefs to review and reach agreement on the wording of the amendment. Once agreed to, the amendment is passed by Council of Chiefs Resolution.

The community will need to decide as a first step in CDMP whether to repeal the KML amending process in section 26 in favour of the CDMP?

Definition of Great-Grandparent:

The KML bases membership eligibility on lineage from great-grandparents, but the Council of Elders often questioned the eligibility of the great-grandparents and refused membership if the great-grandparents were not full Kahnawà:keronon.

Should the KML simply state that the great-grandparent criteria is someone recognized as Kanien'kehá:ka of Kahnawà:ke and that no blood quantum should be applied? Or, KML could be clarified by adding a definition to the definition section?

Role of Membership Registrar and Council of Elders:

The KML outlines the role of the Office of the Registrar in

processing individuals who are automatic members seems to be the responsibility of the Registrar, while the application process for determining members seems to be the responsibility of the Council of Elders. The KML states that the Council of Elders have the authority to review decisions made by the Registrar, but it does not note they have the authority to overturn them. However, the Council of Elders did give direction to the Registrar to remove names of individuals under the age of 18 from the Registry.

There are overlaps in responsibilities in KML between the Registrar and the Council of Elders. There needs to be clarification on what KML means to oversee the Registrar. Until 2004 implementation of the Council of Elders, the Membership Department made the decisions on eligibility for Indian Registration and Membership. The KML removed these responsibilities except for automatic membership. Only the Council of Elders could process applications for Membership and non-Member residents. Since the 2007 suspension of the Council of Elders, there is a backlog of completed applications for membership.

Kahnawà:ke Canada Relations:

In 2011 the Mohawk Council of Kahnawà:ke (MCK) entered into discussions with Aboriginal Affairs and Northern Development Canada (AANDC) to develop a Memorandum of Understanding (MOU) on Kahnawà:ke Canada Relations (KCR) based on finding operational solutions jointly. KCR is starting with Lands and Membership. The MOU was signed by Minister Duncan in February 2012. Joint KCR Work Plans were developed with AANDC for Lands and for Membership and signed by both parties in March 2012.

KCR Membership approach is to exchange information by MCK and AANDC on membership to reach common understandings, hold joint discussions, and develop options and solutions for outstanding issues on membership.

To review the KML, the summary sheets, and reports check the website at kahnawakemakingdecisions.com.

Printed copies of the summaries and reports will be available for pick up at the SDU Reception and MCK Main Building Reception.